COMPANY LAW

AND

PRECEDENTS

BY

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OF LINCOLN'S INN, BARRISTER-AT-LAW

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PREFACE

The object of this book is to give in one volume the Statute and Case Law relating to Companies, and also such Company Forms and Precedents as are likely to be of service in ordinary practice. I have found it necessary to include the Assurance Companies Act, 1909.

The cases decided in the Hilary Term, 1912, and the more important of those decided in the Easter Term, 1912, have been incorporated in the text. Among the latter will be found the decision of the Court of Appeal in the Birkbeck Permanent Benefit Building Society case, and that of the Divisional Court in *Galloway* v. *Schill Seebohm & Co.*, a case relating to the particulars required in the summary to be filed under section 26 of the Companies (Consolidation) Act, 1908. Another recent case of considerable importance is the General Motor Cab case, decided by the Court of Appeal on April 1st, 1912. There is as yet no full report of this case, which deals with the powers, conferred by section 120 of the Act, and I have therefore had recourse to the petition and a transcript of the shorthand note taken of the judgments.

For convenience of reference, forms have, throughout the book, been placed immediately after the part of the text dealing with the subject-matter to which they relate—and references to the forms will also be found in the text. The Appendix to the book contains the Companies (Consolidation) Act, 1908, and all rules, orders, and regulations made under or kept on foot by that Act, and now in force, including the Limited Partnerships (Winding-up) Rules, 1909, and Order XLIa. of the County Court Rules. The Stock Exchange Rules and Regulations relating to official quotations and special settlements are also in the Appendix. The subject is, of course, primarily dealt with from a lawyer's point of view, but I have also endeavoured to deal fully with any questions which appeared to me likely to be of interest to

accountants, secretaries, and other persons concerned with the practical working of companies. I have devoted special attention to ensuring that all statements with regard to practice of every sort embody the existing practice, and so far as possible all orders inserted are orders of very recent date.

While I am alone responsible for everything that appears in this book, I have sought to obtain expert assistance and advice as to the practice that prevails in the various courts and departments which are concerned with companies. Mr. Thomas Barnes, of the Companies (Winding-up) Department, has read through both the MSS. and the proofs of all parts of this work which deal in any way with his department (that is to say, from p. 557 to the end). Thanks to his invaluable advice and assistance, I feel that whatever other failings the book may have, it does give an accurate account of the practice and procedure in the Companies (Winding-up) Court. I have also received considerable assistance from the other officials in the Companies (Winding-up) Department, and perhaps I might specially mention Mr. J. R. Bull. I was anxious to make the forms of memorandum and articles, debentures, and debenture trust deeds suitable for an official quotation on the Stock Exchange, and in this I have been helped by the secretary of the Share and Loan Department of the Stock Exchange, Mr. J. A. Torrens-Johnson, who has most kindly read through such forms, and given me information on points arising out of the rules and practice of the Stock Exchange. The Committee of the Stock Exchange have allowed me to publish in the Appendix to this book the extracts from their rules and regulations which I have already mentioned. The Comptroller of the Companies Department of the Board of Trade, Mr. Heron Maxwell, has given me permission to publish certain forms and regulations; and Mr. H. A. Payne, of the Board of Trade, and the Assistant-Registrar of Joint Stock Companies, Mr. G. J. Sargent, have given me information on various points of practice in their respective departments. I take this opportunity of tendering to all these gentlemen my most hearty thanks for the assistance they have given me.

ARTHUR STIEBEL.

6, NEW COURT,
LINCOLN'S INN,
May, 1912.

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COMPANY LAW AND PRECEDENTS

CHAPTER I.

INTRODUCTORY.

THE Companies (Consolidation) Act, 1908, consolidates into one Act the provisions contained in the Companies Acts, 1862 to 1908—and consequently practically the whole of the Statute law relating to limited companies is contained in it—the mass of case law which had grown up round the earlier Acts, is, however, practically left untouched, and very little attempt has been made to incorporate it into the Act.

The Consolidation Act (*a*) repeals all the Acts cited as "the Companies Acts, 1862 to 1908" (*b*) and also the Companies Seals Act, 1864; sections 25, 26, and 34 of the Stannaries Act, 1869; the Joint Stock Companies Arrangement Act, 1870; section 56 of the Conveyancing (Scotland) Act, 1874; section 10 of the Supreme Court of Judicature Act, 1875, so far as it relates to the winding-up of companies; subsection (1) of section 28 of the Supreme Court of Judicature (Ireland) Act, 1877, so far as it relates to the winding-up of companies; sections 9, 10, 13 (2), and 31 of the Stannaries Act, 1887; section 3 of the Trustees Savings Banks Act, 1887; sections 1, 2, and 3 of the Preferential Payments in Bankruptcy Act, 1888, so far as they relate to companies; section 18 of the Revenue Act, 1889; section 4 of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, so far as it relates to companies; the Directors Liability Act, 1890; the Preferential Payments in Bankruptcy Amendment Act, 1897; and subsection 4 of section 6 of the Limited Partnerships Act, 1907. The Act leaves on foot the powers of a company to alter its memorandum of association under section 3 of

(*a*) Companies (Consolidation) Act, 1908, s. 286.

(*b*) *I.e.* The Companies Acts, 1862, 1867, 1877, 1879, 1880, 1883 (Colonial Registers), 1886, 1890 (Memorandum of Association), 1890 (Winding-up), 1893 (Winding-up), 1898, 1900, 1907, and 1908.

the Mortgage Debentures Act, 1865 (*c*), and does not repeal or affect the Life Assurance Companies Act, 1870 to 1872 (*d*), or section 3 of the Trade Union Act, 1871 (*e*), except that references in them to the Companies Act, 1862, or the Companies Act, 1862 and 1867, are to be read as references to the Companies (Consolidation) Act, 1908.

With regard to the repealed Acts and provisions the repeal does not affect

(*a*) The incorporation of any company registered under any enactment repealed; nor

(*b*) Table B. in the schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof so far as the same applies to any company existing at the commencement of the Act; nor

(*c*) Table A. in the first schedule annexed to the Companies Act, 1862, or any part thereof, either as originally contained in that schedule or as altered in pursuance of Section 71 of that Act, so far as the same applies to any company existing at the commencement of the Act.

(*d*) The continuance in force of section 47 of an Act to regulate Joint Stock Banks in England (7 & 8 Vict. c. 113) and the part of section 12 of the Joint Stock Banking Companies Act, 1857, which is set out in the second part of the Sixth Schedule to the Act (*f*).

These last two provisions were kept in force by section 205 of the Companies Act, 1862, and are as follows:—

"Every company of more than six persons established on the sixth day of May, one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session of the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, intituled 'An Act to regulate Joint Stock Banks in England,' shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of the Country Bankers Act, 1826, provided that such first-mentioned company shall make out and deliver from

(*c*) Companies (Consolidation) Act, 1908, s. 292.

(*d*) *Ibid.*, s. 293. These Acts have, however, now been repealed and re-enacted (with material alterations) by the Assurance Companies Act, 1909.

(*e*) Companies (Consolidation) Act, 1908, s. 294.

(*f*) *Ibid.*, s. 286 (1).

time to time to the Commissioners of Inland Revenue the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act (*g*)."

Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, and intituled "An Act to Regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any number of persons not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of the Joint Stock Banking Companies Act, 1857, have carried on such business (*h*).

The mention of these particular matters in section 286 of the Companies (Consolidation) Act, 1908, does not as the section expressly states prejudice the general application of section 38 of the Interpretation Act, 1889, with regard to the effect of repeals (*i*).

The Act also provides (*k*) that—

Every conveyance, mortgage, or other deed, made before the commencement of the Act in pursuance of any enactment thereby repealed, is to be of the same force as if the Act had not passed, and for the purposes of that deed the repealed enactment is to be deemed to remain in full force (*l*), and that where any enactment repealed by the Act is mentioned or referred to in any document that document is to be read as if the corresponding provision (if any) of the Act were therein mentioned or referred to and substituted for the repealed enactment (*m*).

With regard to the application of the Act to existing companies (*n*)

(*g*) 7 & 8 Vict. c. 113, s. 47.

(*h*) Joint Stock Banking Companies Act, 1857, s. 12 (the part which is not repealed).

(*i*) Companies (Consolidation) Act, 1908, s. 286 (2). This section preserves existing rights and liabilities.

(*k*) As to liquidations which had commenced before the Act came into force, see *post*, p. 779, note (*b*).

(*l*) Companies (Consolidation) Act, 1908, s. 288.

(*m*) *Ibid.*, s. 291.

(*n*) By the definition section of the Act (s. 285), the expression "existing company" means a company formed and registered under the Joint Stock Companies Acts or under the Companies Act, 1862, and the expression "Joint Stock Companies Acts" means the Joint Stock Companies Act, 1856; the Joint Stock Companies Acts, 1856, 1857; the Joint Stock Banking Companies Act, 1857; and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intituled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.

it applies in the same manner in the case of a limited company other than a company limited by guarantee as if the company had been formed and registered under the Act as a company limited by shares ; in the case of a company limited by guarantee, as if the company had been formed and registered under the Act as a company limited by guarantee ; and in the case of a company other than a limited company, as if the company had been formed and registered under the Act as an unlimited company ; but any reference express or implied, to the date of registration must be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, as the case may be (*o*).

The Act applies to every company registered but not formed under the Joint Stock Companies Acts, or the Companies Act, 1862, in the same manner as it applies to companies registered but not formed under the Act (*p*) ; but any reference, expressed or implied, to the date of registration must be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts or the Companies Act, 1862, as the case may be (*q*) ; it applies to every unlimited company registered, in pursuance of the Companies Act, 1879, as a limited company, in the same manner as it applies to an unlimited company registered in pursuance of the Act as a limited company ; but any reference, expressed or implied, to the date of registration must be construed as a reference to the date at which the company was registered as a limited company under the Companies Act, 1879 (*r*).

A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct (*s*).

No company, association, or partnership (*t*) consisting of more than ten persons may be formed, for the purpose of carrying on the business of banking (*u*), unless it is registered as a company under

(*o*) Companies (Consolidation) Act, 1908, s. 245. It will be seen that companies registered under the Joint Stock Companies Act can now (as they could under the Act of 1862) register under this Act. A company registered under the Act of 1862 cannot register under this Act.

(*p*) See *post*, pp. 23 *et seq.*, as to this.

(*q*) Companies (Consolidation) Act, 1908, s. 246.

(*r*) *Ibid.*, s. 247

(*s*) *Ibid.*, s. 248.

(*t*) In *Smith* v. *Anderson* (1880), 15 C. D. 247, JAMES, L.J., treats the words "association" and "company" as being synonymous. The word "partnership" would apply to a body of persons, which cannot change its members or introduce new members without the consent of all the partners.

(*u*) In *District Savings Bank* (1861), 3 De G. F. & J. 335; 31 L. J. Bank 8, a Savings Bank was, owing to the nature of its business, held not to carry on a banking business.

the Act, or is formed in pursuance of some other Act of Parliament, or of Letters Patent; and no company, association, or partnership consisting of more than twenty persons may be formed, for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under the Act or is formed in pursuance of some other Act of Parliament or of Letters Patent, or is a company engaged in working mines within the Stannaries and subject to the jurisdiction of the court exercising the Stannaries jurisdiction (*x*). This section in substance reproduces section 4 of the Act of 1862. An old common law partnership will not be within the prohibition of the section even if it has changed some, or probably all, its members after the Acts came into force (*y*).

The word "business" in the section is wider than the word "trade," and will consequently include farming (*z*); but the fact that land or other property is bought for the purpose of being distributed among or held for the benefit of the purchasers will not amount to a business being carried on, for the carrying on of a business implies a series of transactions (*a*), and even if the purchasers have under the document which regulates their rights and duties, ancillary powers, *e.g.* powers of sale and reinvestment, which if they stood alone and were the main object of the association, would constitute the carrying on of a business—this will not bring the association within the section (*b*); it will be otherwise where such powers are not ancillary but are some of the main objects of the association—so where land which was purchased was to be distributed, but the mines were to be reserved and worked, it was held that a mining business was to be carried on (*c*).

If a business is being carried on by trustees for more than twenty persons, then as trustees are in no sense agents of their cestuis qui trustent, the business will not be carried on by more than twenty persons, always assuming there are not more than twenty trustees, and the case will not be within the prohibition of the section (*d*). In such case the beneficiaries will often be entire strangers to one

(*x*) Companies (Consolidation) Act, 1908, s. 1.

(*y*) *Shaw* v. *Simmons* (1884), 12 Q. B. D. 117.

(*z*) *Harris* v. *Amery* (1866), L. R. 1 C. P. 148.

(*a*) *Smith* v. *Anderson* (1880), 15 C. D. 247; *Re Siddall* (1885), 29 C. D. 1; *Crowther* v. *Thorley* (1884), 32 W. R. 330; *Wigfield* v. *Potter* (1881), 45 L. T. 612.

(*b*) *Smith* v. *Anderson* (1880), 15 C. D. 247; *Reg.* v. *Whitmarsh* (1850), 15 Q. B. 600; *Moore* v. *Rawlins* (1859), 6 C. B. N. S. 289.

(*c*) *Crowther* v. *Thorley* (1884), 32 W. R. 330.

(*d*) *Smith* v. *Anderson* (1880), 15 C. D. 247; *Crowther* v. *Thorley* (1884), 32 W. R. 330; *One and All Sickness and Accident Assurance* (1909), 25 T. L. R. 674.

another, and so for that reason will be outside the section as not constituting a company association or partnership.

The business need not necessarily be one under which it is contemplated that the company, association or partnership is to acquire gain; it will be enough if the individual members are to do so (*e*), and so mutual insurance companies (*f*), and mutual money-lending societies will be within the section (*g*). An association becomes illegal as soon as it grows beyond twenty members (*h*). The section contains an exception in favour of companies formed in pursuance of some other Act of Parliament. In one case (*i*) Wright, J., held that a society formed under an Act (*k*) which was subsequently repealed, became illegal on the repeal of such Act. A Scotch court has taken the opposite view (*l*). The decision of Wright, J., was admittedly taken without full consideration, as there was another point which was sufficient to decide the case, and quite apart from the provisions of section 38 of the Interpretation Act, 1889, his decision involves reading the words "formed in pursuance of some other Act of Parliament" as "formed and existing in pursuance of some other Act of Parliament"—and it is therefore submitted that the Scotch case was correctly decided. Societies registered under the Friendly Societies Acts are within this exception to the section (*m*). Trades unions cannot register under the Act (*n*). It has been held that a trade union, which had succeeded in registering under the Companies Act, 1862 to 1898, must be treated as an unregistered society, and that, as it had more than twenty members, it could not sue for fines due under its rules (*o*).

(*e*) *Bear* v. *Bromley* (1852), 18 Q. B. 271, and *Reg.* v. *Whitmarsh* (1850), 15 Q. B. 600, were decided under the earlier Acts, and the words about individual members, were inserted to do away with the law laid down in these cases.

(*f*) *Arthur Average Association* (1875), 10 Ch. 542; *Padstow Total Loss and Collision Assurance Association* (1882), 20 C. D. 137.

(*g*) *Shaw* v. *Benson* (1883), 11 Q. B. D. 563; *Jennings* v. *Hammond* (1882), 9 Q. B. D. 225.

(*h*) *Re Thomas* (1885), 14 Q. B. D. 379.

(*i*) *Ilfracombe Permanent Benefit Society*, [1901] 1 Ch. 102.

(*k*) 6 & 7 Will. IV. c. 32.

(*l*) *Smith* v. *Irvine and Fullarton Investment and Building Society* (1903), 6 Fraser, 99.

(*m*) *Peat* v. *Fowler* (1886), 55 L. J. Q. B. 271. See also *Marrs* v. *Thompson* (1902), 86 L. T. 759, as to whether unregistered friendly societies are not in the same position.

(*n*) The Trade Union Act, 1871, s. 5, provides that the registration of a trade union under this Act shall be void. An association which has objects which standing alone would make it a trade union, will not be a trade union if it has also other objects, *Osborne* v. *Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163; affirmed [1910] A. C. 87. See also the judgment of CHITTY, J., in *Mineral Water Bottle, &c., Society* v. *Booth* (1887), 36 C. D. 465, as to enforcing an article which savours of trade unionism.

(*o*) *Edinburgh and District Aerated Water Defence Association* v. *Jenkinson* (1904), 5 Fraser, 1159; *British Association of Glass Bottle Manufac-*

A society which is illegal under this section cannot sue (*p*) or be sued (*q*) for debts due to it or from it, in carrying on its business; it cannot be wound up under the Act (*r*); it cannot nor can its members come to the court to have the trusts under which its property is held administered (*s*); and it cannot have costs awarded to it (*t*). Its members are, however, beneficially interested in its funds, so that they can obtain a conviction against any person who has embezzled them (*u*), and they can recover so much of their contributions as have not been spent (*x*).

Foreign corporations, even though they have more than twenty members, are not within the section (*y*).

Any seven or more persons, or, where the company to be formed will be a private company (*z*) within the meaning of the Act, any two or more persons associated, for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of the Act in respect of registration, form an incorporated company with or without limited liability (that is to say), either—

turers v. *Nettlefold* (1911), 27 T. L. R. 527. See s. 294 of the Companies (Consolidation) Act, 1908, which provides that nothing in that Act is to affect the provisions of s. 5 of the Trade Union Act, 1871. The Companies (Converted Societies) Act, 1910, would appear to make the certificate of the Registrar conclusive in all cases, and it may, therefore, be doubted if these decisions are good law.

(*p*) *Shaw* v. *Benson* (1883), 11 Q. B. D. 563; *Jennings* v. *Hammond* (1882), 9 Q. B. D. 225; *Edinburgh and District Aerated Water Co.* v. *Jenkinson* (1904), 5 Fraser, 1159.

(*q*) *Phillips* v. *Davies* (1889), 5 T. L. R. 98; *South Wales Atlantic Steamship* (1876), 2 C. D. 763; *Ex parte Day* (1876), 1 C. D. 699; unless, indeed, it has subsequently been incorporated and all its members have acquiesced in the debt; *Re Thomas* (1885), 14 Q. B. D. 379.

(*r*) *Padstow Total Loss and Collision Assurance Association* (1882), 20 C. D. 137; *Arthur Average Association* (1875), 10 Ch. 542; *Ilfracombe Permanent Building Society*, [1901] 1 Ch. 102. The reasoning in these cases seems to apply where the petitioner had no notice of the Society's illegality. The first case in this note shows that if an order has been made to wind up such a society the remedy is by way of appeal, and the second that the illegality of the society cannot be set up as a defence in proceedings in the winding-up after the winding-up order.

(*s*) *Sykes* v. *Beadon* (1879), 11 C. D. 170; *Barclay* v. *Pearson*, [1893] 2 Ch. 154. See, however, *Hume* v. *Record Reign Syndicate* (1899), 80 L. T. 404; *Sheppard* v. *Oxenford* (1855), 1 K. & J. 491; 3 W. R. 397.

(*t*) *Ilfracombe Permanent Building Society*, [1901] 1 Ch. 102.

(*u*) *Reg.* v. *Tankard*, [1894] 1 Q. B. 551.

(*x*) *Cp. Barclay* v. *Pearson*, [1893] 2 Ch. 154; *Marrs* v. *Thompson* (1902), 86 L. T. 759.

(*y*) *Bateman* v. *Service* (1881), 6 A. C. 386.

(*z*) The provisions of the Act as to private companies do not seem to lend themselves to a case of a company which has not got a share capital.

(i) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (*i.e.* a company limited by shares); or

(ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event if its being wound up (*i.e.* a company limited by guarantee); or

(iii) A company not having any limit on the liability of its members (*i.e.* an unlimited company) (*a*).

The memorandum must bear the same stamp as a deed, and must be signed by each subscriber in the presence of at least one witness, and that attestation will be sufficient in Scotland as well as in England and Ireland (*b*).

There may in the case of a company limited by shares, and there must in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule to this Act (*c*).

In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration (*d*).

In the case of a company limited by shares and registered after

(*a*) Companies (Consolidation) Act, 1908, s. 2. For the contents of the memorandum in each case, see the next chapter.

(*b*) *Ibid.*, s. 6. It is, however, not a deed, and a person who signs as attorney for a subscriber need therefore not be appointed by deed: *Whitley Partners* (1886), 32 C. D. 337.

(*c*) The forms in the first schedule to the Act may be altered by the Board of Trade, but not so as to ncrease the amount of fees payable to the Registrar of Joint Stock Companies: any such Table or Form when altered must be published in the *London Gazette*, and will thenceforth have the same force as if included in one of the schedules to the Act, but no alteration in Table A in the First Schedule will affect any company registered before the alteration, or repeal as regards that company any portion of that Table. Companies (Consolidation) Act, 1908, s. 118: there have now been three Table A's. See as to this, *post*, pp. 86 and 87.

(*d*) Companies (Consolidation) Act, 1908, s. 10. Articles of asso-

the commencement of the Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule to the Act, those regulations will, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles (*e*).

To come within the provisions of the Act relating to private companies, a company must by its articles—

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

(*b*) limit the number of its members (exclusive of persons who are in the employment of the company) to fifty ; and

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

A private company may, subject to anything contained in the memorandum or articles of association of the company, by passing a special resolution and by filing with the Registrar such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company. It is thought, and this is also the view taken by the Registrar of Joint Stock Companies, that a company which apart from the fact of its being a private company would be entitled to carry on business (*e.g.* a company originally formed as a public company, before the 1st of July, 1908), need not file a statement in lieu of a prospectus or a statutory declaration (*h*).

Joint holders of shares are for the purposes of the section treated as a single member (*h*).

ciation must bear the same stamp as a deed, and be signed by each signatory to the memorandum in the presence of one witness. See as to this and as to the form of and alterations to articles, *ibid.*, ss. 12 and 13, and *post*, p. 86 *et seq.*

(*e*) Companies (Consolidation) Act, 1908, s. 11.

(*f*) The Registrar of Joint Stock Companies takes the view that this must apply to all the shares of a company.

(*g*) In addition, the Registrar insists on the articles not containing provisions as to share warrants, see *post*, p. 87, note (*m*), and p. 310. A company continues to be a private company while it has these provisions in its articles, even though it wholly disregards them (*e.g.* by having 250 members): *Park* v. *Royalties Syndicate*, [1912] 1 Ch. 330.

(*h*) Companies (Consolidation) Act, 1908, s. 121. The provisions as to altering private companies into public companies are difficult to understand. Is it enough to have a resolution altering the articles in the matters which distinguish a private company from a public company, or must the resolution expressly state that the company is to become a public company? It is thought that the latter form of resolution will be unnecessary, though no doubt desirable.

The advantages, in addition to requiring two signatories only to the memorandum, enjoyed by a private company are—

(1) They are not required to include in the summary to be filed with the Registrar of Joint Stock Companies under section 26, a statement in the form of a balance sheet.

(2) They need not under section 65 forward or file a statutory report.

(3) The provisions of section 72 restricting the appointment and advertisement of first directors and requiring a list of persons who have consented to be directors to be delivered to the Registrar of Joint Stock Companies when registration is applied for, do not apply to private companies.

(4) They need not file with the Registrar of Joint Stock Companies the statement in lieu of a prospectus required by section 82 of the Act.

(5) The minimum subscription section (section 85) does not apply to them.

(6) They need not obtain a certificate entitling them to commence business (see section 87), and if a private company turns itself into a public company, such a certificate is not necessary, and, indeed, is wholly inapplicable (*i*).

(7) The rights of inspection and receiving copies of balance sheets conferred by section 114 on preference shareholders and debenture holders do not apply.

Of course, too, the prohibition against carrying on business contained in section 115 only applies where there are less than two (not less than seven) members. The Registrar of Joint Stock Companies is not concerned, when registering a company which has seven signatories to its memorandum, and which complies with section 72 of the Act, with the question whether it is a private company or not. The question may, however, arise if he seeks to enforce penalties for not making returns required of a public company. The memorandum and articles (if any) must in the case of all companies registered under the Act be delivered to the Registrar of Joint Stock Companies for that part of the United Kingdom in which the registered office of the company is stated by the memorandum to be situate and he must retain and register them (*k*); but where the registration of a

(*i*) On special request such a certificate is sometimes issued.

(*k*) Companies (Consolidation) Act, 1908, s. 15: as to the fees payable on registration, see *post*, pp. 43 *et seq.* In addition to such fees, there is an *ad valorem* stamp duty of 5*s.* for every £100 and fraction of £100 of the amount of the nominal capital of a limited company, and a statement of the amount which is to form the capital of such a company must be delivered to the Registrar of Joint Stock Companies: 54 & 55 Vict. c. 39, s. 12; 62 & 63 Vict. c. 9, s. 7.

company involves, either because of the name of the company or otherwise, a fraud, the Court will not grant a mandamus to the registrar of Joint Stock Companies, ordering him to register. Thus no mandamus was granted where the registrar declined to register a company with the word "dentist" as part of its name, because that implied that the company was, what it was not and could not be, registered under the Dentists Act, 1878 (*l*). Except in the case of a private company, an applicant for registration of the memorandum and articles of a company must on application deliver to the Registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented, the applicant will be liable to a fine not exceeding £50 (*m*).

A statutory declaration by a solicitor of the High Court and in Scotland by an enrolled law agent engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company of compliance with all or any of the requirements of the Act in respect of registration and of matters precedent or incidental thereto, must be produced to the Registrar of Joint Stock Companies, and he may accept such a declaration as sufficient evidence of compliance (*n*).

It has been suggested that a company which has no intention whatever of carrying on business here, but intends to carry on and manage its business entirely abroad, is not entitled to register under the Act (*o*) in the case under discussion, the articles contained provisions which were invalid according to English law—and the question was whether a winding-up order should be made—and such order was made, the company being treated as a fraudulent one. In spite of the great eminence of the judges who made these remarks, it is submitted that it is perfectly competent for such companies to register here, and this view has been taken in two later cases (*p*).

The fact that all the signatories are nominees of one person will not disentitle them to registration (*q*).

On the registration of the Memorandum of Association of a

(*l*) *Rex* v. *Registrar of Joint Stock Companies for Ireland*, [1904] 2 Ir. 634.

(*m*) Companies (Consolidation) Act, 1908, s. 72 (2). See *post*, p. 15, for this form; and see s. 72 (1), *post*, pp. 348 *et seq.*, as to the restriction, on the appointment and advertisement of directors.

(*n*) *Ibid.*, s. 17 (2). See *post*, p. 14, for form of such statutory declaration.

(*o*) *Princess of Reuss* v. *Bos* (1871), L. R. 5 H. L. 176 and S. C. in the court below *sub nom. General Company for the Promotion of Land Credit* (1870), 5 Ch. 363.

(*p*) *Capital Fire Insurance Association* (1882), 21 C. D. 209; *Attorney-General* v. *Jewish Colonization Association*, [1901] 1 K. B. 130.

(*q*) *Salomon* v. *Salomon & Co.*, [1897] A. C. 22; *Munkittrick* v. *Perryman* (1896), 74 L. T. 149.

company (*r*) the Registrar of Joint Stock Companies must certify under his hand that the company is incorporated and in the case of a limited company that the company is limited (*s*) a certificate of incorporation given by the Registrar of Joint Stock Companies in respect of any association will be conclusive evidence that all the requirements of the Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the association is a company authorised to be registered and duly registered under the Act (*t*).

It was held under section 18 of the Act of 1862, that if the Memorandum of Association had only been signed by six signatories (*u*), the certificate of the registrar was not conclusive, and the company was not duly incorporated; to alter the law so laid down, a section corresponding to the present one was included in the Act of 1900 (*x*); this section would also seem to do away with cases like *Northumberland and Durham District Banking Co.* (*y*), where it was said that if the company which was not an existing banking company, so as to be capable of registration, had been registered, the court could go behind the registrar's certificate.

It has been held that a trade union if in fact registered can be treated as an unincorporated body (*z*), because section 5 of the Trade Union Act, 1871, says that the registration of a trade union under the Companies Acts is void—it is thought that these cases cannot be supported since the Companies (Converted Societies) Act, 1910—notwithstanding the fact that the Companies (Consolidation) Act, 1908, expressly provides (*a*) that nothing therein contained is to affect the provisions of section 5 of the Trade Union Act, 1871—and that in all cases the certificate of the registrar will

(*r*) See *post*, pp. 54 and 68, under memorandum of association as to the points which the Registrar will object to in the name and objects of a company.

(*s*) Companies (Consolidation) Act, 1908, s. 16 (1).

(*t*) *Ibid.*, s. 17. By section 1 of the Companies (Converted Societies) Act, 1910, it is provided that for removing doubts it is declared that s. 17 shall apply as well in the case of a friendly society converted into a company as in all other cases.

(*u*) *National Debentures, &c., Corporation*, [1891] 2 Ch. 505.

(*x*) Companies Act, 1900, s. 1. The section is retrospective.

(*y*) (1858), 2 De G. & J. 357. See also *Hercules Insurance Co.* (1871), 11 Eq. 321, where registration after a winding-up petition had been presented was held to be ineffectual; and *Wenlock* v. *River Dee Co.* (1888), 38 C. D. 534.

(*z*) *Edinburgh and District Aerated Water Defence Association* v. *Jenkinson & Co.* (1904), 5 Fraser, 1159. See also *British Association of Glass Bottle Manufacturers* v. *Nettlefold* (1911), 27 T. L. R. 572.

(*a*) Companies (Consolidation) Act, 1908, s. 294; as to what is a trade union, see *supra*, p. 6, note (*n*). The Companies (Converted Societies) Act, 1910, was apparently not referred to in *British Association of Glass Bottle Manufacturers* v. *Nettlefold* (1911), 27 T. L. R. 527.

now be conclusive for all purposes (*b*). Even before section 18 of the Act of 1862 was altered it was held that it was impossible to go behind the Registrar's certificate where one or more of the signatories were infants (*c*), or even where the memorandum was altered after having been signed (*c*)—and consequently, it would seem, there were no signatories at all (*d*).

The fact that the certificate has been obtained by fraud will not make it the less conclusive (*e*).

From the date of incorporation mentioned in the certificate of incorporation the subscribers of the memorandum together with such persons as may from time to time become members of the company, will be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in the Act (*f*).

The power of holding land is however subject to the exception that a company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by its individual members, may not, without the licence of the Board of Trade, hold more than two acres of land; but the Board may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Board think fit (*g*). Applications under this section should be made by letter from the secretary or solicitor of the company to the Board, and the letter should give the reasons why it is desired to hold the additional land. The practice of the Board is to give a licence to hold rather more land than is immediately required, on the company giving a letter undertaking to furnish particulars of all land held, if and when required by the Board so to do; but the Board of Trade will, if desired, give a licence to hold a particular piece of land.

(*b*) Cp. *Ennis and West Clare Rail. Co.* (1879), 3 L. R. Ir. 94; *Cussons, Ltd.* (1904), 73 L. J. Ch. 296. In *McGlade* v. *The Royal London Mutual Insurance Society*, [1910] 2 Ch. 169, the Court of Appeal seems to have thought it might have been possible to challenge the incorporation of a Friendly Society as a company on the ground of the resolution authorising such incorporation being *ultra vires*. The Companies (Converted Societies) Act, 1910, was passed to meet this case, and it extends protection to all cases where the Registrar has given a certificate of incorporation.

(*c*) *Nassau Phosphate Co.* (1876), 2 C. D. 610; *Laxon & Co.*, [1892] 3 Ch. 555.

(*d*) *Peel's Case* (1867), 2 Ch. 674; *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 325.

(*e*) *Glover* v. *Giles* (1881), 18 C. D. 173.

(*f*) Companies (Consolidation) Act, 1908, s. 16 (2).

(*g*) *Ibid.*, s. 19. Usually no advertisement is directed in these cases. For form of licence, see Form 5 in the Third Schedule to the Act.

The power of holding land does not extend to foreign corporations, which will be subject to the provisions of the Mortmain Acts—but it has been extended to companies incorporated in a British possession, which have filed with the Registrar of Joint Stock Companies the documents specified in paragraphs (*a*), (*b*), and (*c*) of section 274 (*h*) of the Act—such companies have the same power of holding land as if they were incorporated under the Act (*i*).

If at any time the number of members of a company is reduced in the case of a private company below two or in the case of any other company below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months, and is cognisant of the fact that it is carrying on business with fewer than two or seven members, as the case may be, will be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joinder on the action of any other member (*k*).

FORM OF STATUTORY DECLARATION UNDER SECTION 17 (2) OF THE ACT TO BE MADE ON THE REGISTRATION OF A COMPANY (*l*).

No. of certificate__________ Form No. 41.

COMPANIES (CONSOLIDATION) ACT, 1908.

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

DECLARATION OF COMPLIANCE with the requisitions of the Companies (Consolidation) Act, 1908, made pursuant to section 17 (2) on behalf of a company proposed to be registered as the

____

Presented for filing by______________________

I

of

Do solemnly and sincerely declare that I am *

of the

* Here insert a solicitor of the High Court (or in Scotland an enrolled law agent) engaged in the formation, or a person named in the articles as a Director or Secretary.

(*h*) See *post*, pp. 31 *et seq*.

(*i*) Companies (Consolidation) Act, 1908, s. 275.

(*k*) *Ibid.*, s. 115. For the purposes of this section representatives of members, *e.g.* executors or administrators or trustees in bankruptcy, are not members: *Bowling and Welby's Contract*, [1895] 1 Ch. 663.

(*l*) Form 41 prescribed by order of Board of Trade of 29th March, 1909.

Limited and that all the requisitions of the Companies (Consolidation) Act, 1908, in respect of matters precedent to the registration of the said company and incidental thereto have been complied with. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at

the day of
one thousand nine hundred
and before me

A Commissioner for Oaths.

FORM OF LIST OF PERSONS WHO HAVE CONSENTED TO ACT AS DIRECTORS TO BE DELIVERED TO THE REGISTRAR ON AN APPLICATION FOR REGISTRATION OF A COMPANY, SECTION 72 (2) (*m*).

No. of Certificate ____________ Form No. 43.

COMPANIES (CONSOLIDATION) ACT, 1908.

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

List of Persons who have consented to be Directors of the ______

____

______________________________Limited, to be delivered to the Registrar pursuant to section 72 (2)

Presented for Filing
By ______________________________

To the Registrar of Joint Stock Companies.

* Here insert "I" or "We."

* ______________, the undersigned, hereby give you notice, pursuant to section 72 (2) of the Companies (Consolidation) Act, 1908, that the following persons have consented to be Directors of the ______________________

____, Limited.

Name.	Address.	Description.

Signature, Address and Description of Applicant for Registration.

Dated this ________ day of __________, 19 .

(*m*) Form 43 prescribed by order of the Board of Trade of 29th March, 1909.

Section 72 (3) of the Companies (Consolidation) Act, 1908, provides that :—

"This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business."

Turning to the special requirements of the Assurance Companies Act, 1909.

This Act does not affect the National Debt Commissioners or the Postmaster-General, acting under the authorities vested in them respectively by the Government Annuities Acts, 1829 to 1888, and the Post Office Savings Bank Acts, 1861 to 1908 ; it also does not apply to a member of Lloyd's or of any other association of underwriters approved by the Board of Trade, who carries on assurance business of any class, provided that he complies with the requirements set forth in the Eighth Schedule to the Act, and applicable to business of that class (*n*).

Save as otherwise expressly provided by the Act nothing in the Act applies to assurance business of any class other than one of the classes specified in section one of the Act, and a policy is not to be deemed to be a policy of fire insurance by reason only that loss by fire is one of the various risks covered by the policy (*o*).

Section 1 of the Act provides that—

this Act shall apply to all persons or bodies of persons, whether corporate or unincorporate, not being registered under the Acts relating to friendly societies or to trade unions (*p*) (which persons and bodies of persons are hereinafter referred to as assurance companies), whether established before or after the commencement of this Act, and whether established within or without the United Kingdom, who carry on within the United Kingdom assurance business of all or any of the following classes :—

(*a*) Life assurance business ; that is to say, the issue of, or the undertaking of liability under, policies of assurance upon human life or the granting of annuities upon human life (*q*).

(*n*) These provisions are thought to be beyond the scope of this work, and are therefore omitted.

(*o*) Assurance Companies Act, 1909, s. 28.

(*p*) The Board of Trade may, on the application of any unregistered trade union originally established more than twenty years before the commencement of this Act, extend to the trade union the exemption conferred by the Act on registered trade unions, and may on the application of an unregistered friendly society extend to the society the exemption conferred by this Act on registered friendly societies if it appears to the Board, after consulting the Chief Registrar of Friendly Societies, that the society is one to which it is inexpedient that the provisions of the Act should apply, *ibid.*, s. 35.

(*q*) The expression "annuities on human life" does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade, or employment, or of the dependants of such persons, *ibid.*, s. 29.

In respect of this class of business—

"Policy on human life" means any instrument by which the payment of money is assured on death (except death by accident only), or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life; and where the company grants annuities upon human life "policy" includes the instrument evidencing the contract to pay such an annuity, and "policy holder" includes annuitant; (*r*).

A scheme by which women who have purchased goods for a certain number of weeks prior to their husbands' deaths get an annuity during widowhood, is within these provisions (*rr*).

(*b*) Fire insurance business; that is to say, the issue of, or the undertaking of liability under, policies of insurance against loss by or incidental to fire; (*s*)

(*c*) Accident insurance business; that is to say, the issue of or the undertaking of liability under, policies (*t*) of insurance upon the happening of personal accidents, whether fatal or not, disease, or sickness, or any class of personal accidents, disease, or sickness; (*s*)

(*d*) Employers' liability insurance business; that is to say, the issue of, or the undertaking of liability under, policies (*t*) insuring employers against liability to pay compensation or damages to workmen in their employment; (*s*)

Where a company carries on employers' liability insurance business the Act does not apply in respect to that business in the cases following:—

(1) Where the company is an association of employers which satisfies the Board of Trade that it is carrying on or is about to carry on business wholly or mainly for the purpose of the mutual insurance of its members against liability to pay compensation or damages to workmen employed by them, either alone or in conjunction with insurance against any other risk incident to their trade or industry; or

(2) Where the company carries on the employers' liability insurance business as incidental only to the business of marine insurance by issuing marine policies or policies in the form of marine policies covering liability to pay compensation or damages to workmen as well as losses incident to marine adventure or adventure analogous thereto; (*u*)

(*r*) Assurance Companies Act, 1909, s. 30 (*a*) and (*b*).

(*rr*) *Nelson & Co.* v. *Board of Trade* (1901), 84 L. T. 565.

(*s*) Assurance Companies Act, 1909, s. 1.

(*t*) In relation to accident insurance business and employers liability insurance business the expression policy includes any policy under which there is for the time being an existing liability or under which any liability may accrue: Assurance Companies Act, 1909, ss. 32 and 33.

(*u*) *Ibid.*, s. 33 (1) (*a*) and (*b*)

(*e*) Bond investment business; (*w*) that is to say, the business of issuing bond or endowment certificates by which the company, in return for subscriptions payable at periodical intervals of two months or less, contract to pay the bond holder a sum at a future date, and not being life assurance business as above defined (*x*).

A company registered under the Companies Acts which transacts assurance business of any of these five classes in any part of the world is to be deemed to be carrying on such business within the United Kingdom (*x*).

Subject to the exceptions after mentioned—

Every assurance company must deposit and keep deposited with the Paymaster-General for and on behalf of the Supreme Court the sum of twenty thousand pounds.

The sum so deposited must be invested by the Paymaster-General in such of the securities usually accepted by the Court for the investment of funds placed under its administration as the company may select, and the interest accruing due on any such securities will be paid to the company.

The deposit may be made by the subscribers of the memorandum of association of the company, or any of them, in the name of the proposed company, and, upon the incorporation of the company, will be deemed to have been made by, and to be part of the assets of, the company, and the Registrar of Joint Stock Companies, may not issue a certificate of incorporation of the company until the deposit has been made.

Where a company carries on, or intends to carry on, assurance business of more than one class, a separate sum of twenty thousand pounds must, subject to the exceptions after mentioned, be deposited and kept deposited under this section as respects each class of business, and the deposit made in respect of any class of business in respect of which a separate assurance fund is required to be kept will be deemed to form part of that fund, and all interest accruing due on any such deposit or the securities in which it is for the time being invested must be carried by the company to that fund.

The Paymaster-General may not accept a deposit except on a warrant of the Board of Trade.

The Board of Trade may make rules with respect to applications for warrants, the payment of deposits, and the investment thereof or dealing therewith, the deposit of stocks or other securities in lieu of money, the payment of the interest or dividends from time to time accruing due on any securities in which deposits are for the time being invested, and the withdrawal and transfer of deposits (*y*), and the rules so made will have effect as if they were enacted in this Act, and must be laid before Parliament as soon as may be after they are made.

This section applies to an assurance company registered or having its head office in Ireland, subject to the following modifications:—

References to the Supreme Court are to be construed as references to

(*w*) In the cases of these companies the expression "policy" includes any bond, certificate, receipt, or other instrument evidencing the contract with the company: Assurance Companies Act, 1909, s. 34 (*a*).

(*x*) *Ibid.*, s. 1.

(*y*) Rules have, as is mentioned later, been made, but the question of withdrawing and transferring deposits is reserved for the chapter on petitions (*infra*, p. 772 *et seq.*).

the Supreme Court of Judicature in Ireland, and references to the Paymaster-General are to be construed as references to the Accountant-General of the last-mentioned Court (*z*).

In the case of life assurance companies the obligation to deposit and keep deposited the sum of £20,000 applies notwithstanding that the company has previously made and withdrawn its deposit or been exempted from making its deposit under any Act repealed by the Assurance Companies Act, 1909 (*a*). Where a company incorporated before 1870 was unable to make a deposit, a receiver was appointed, on a motion to get in and collect a fund which had been set aside to meet policies and the income thereof and all premiums and other moneys in respect of outstanding policies of the company (*b*).

Any business carried on by an assurance company which under the provisions of any special Act relating to that company is to be treated as life assurance business is to continue to be so treated, and is not to be deemed to be other business or a separate class of assurance business within the meaning of the Act (*c*).

With regard to companies carrying on fire insurance business, accident insurance business, and bond investment business—

Such of the provisions of the Act as relate to deposits do not apply with respect to any such business carried on by a company, if such company has commenced to carry on that business in the United Kingdom before the third day of December nineteen hundred and nine (*d*).

With regard to companies carrying on employers' liability insurance business—

Such of the provisions of the Act as relate to deposits to be made under the Act do not apply with respect to the employers' liability insurance business carried on by a company where the company had commenced to carry on that business within the United Kingdom (*f*) before the twenty-eighth day of August nineteen hundred and seven (*f*). Employers' liability insurance business carried on outside the United Kingdom is not to be treated as part of the employers' liability insurance business of the company for the purposes of the Act (*g*).

(*z*) Assurance Companies Act, 1909, s. 2. The deposit is like the fund to be set aside under s. 3 of this Act, *infra*, pp. 21 and 22, the security of the policy-holders or of the particular class of policy-holders for whom it is deposited, *Nelson & Co.* (1906), 22 T. L. R. 406.

(*a*) Assurance Companies Act, 1909, s. 30 (c). The Acts repealed by this Act are the Life Assurance Companies Acts, 1870, 1871, and 1872; the Trade Union Act Amendment Act, 1876; and the Employers Liability Insurance Companies Act, 1907.

(*b*) *Cryer* v. *Universal Insurance and Investment Co.*, Times Newspaper, 8th July, 1910, p. 3.

(*c*) Assurance Companies Act, 1907, s. 30 (*g*).

(*d*) *Ibid.*, s. 31 (*b*), s. 32 (*c*), and s. 34 (*b*).

(*f*) *Ibid.*, s. 33 (*d*).

(*g*) *Ibid.*, s. 33 (*i*).

With regard to fire and accident insurance business—

It is not necessary to make a deposit in respect of fire insurance business where the company has made a deposit in respect of any other class of assurance business, and where a company, having made a deposit in respect of fire or accident insurance business, commences to carry on life assurance business or employers' liability insurance business, the company may transfer the deposit so made to the account of that other business, and after such transfer the deposit will be treated as if it had been made in respect of such other business (*h*);

With regard to fire insurance business—

Such of the provisions of the Act as relate to deposits to be made under the Act do not apply where the company is an association of owners or occupiers of buildings or other property which satisfies the Board of Trade that it is carrying on or is about to carry on business wholly or mainly for the purpose of the mutual insurance of its members against damage by or incidental to fire caused to the houses or other property owned or occupied by them (*i*).

The Board of Trade has made the following rules under the Assurance Companies Act, 1909:—

Where any company (*k*) is required, in pursuance of the Act, to deposit the sum of twenty thousand pounds with the Paymaster-General for the time being for and on behalf of the Court, the company, or the subscribers of the memorandum of association of the company or any of them, as the case may be (in this Rule referred to as the depositors), may, in the name of the company, make application to the Board of Trade for a warrant, and the Board of Trade may thereupon issue their warrant to the depositors for lodgment of such deposit in Court (*l*), which warrant shall be a sufficient authority for the company or persons therein named to lodge the money therein mentioned at the bank (*m*) to the account of the Paymaster-General (*n*) for and on behalf of the Court, and for the Paymaster

(*h*) Assurance Companies Act, 1909, s. 31 (*d*) and s. 32 (*c*).

(*i*) *Ibid.*, s. 31 (*c*).

(*k*) "Company" means a company to which the Act applies, and includes an Irish company as next herein-after defined.

"Irish Company" means a company to which the Act applies, and which is registered or has its head office in Ireland. Order of the Board of Trade 6th June, 1910. Rules relating to deposits by assurance companies under s. 2 of the Assurance Companies Act, 1909, R. 1.

(*l*) "The Court" means the Supreme Court of Judicature in England or in the case of an Irish Company the Supreme Court of Judicature in Ireland: *ibid.*

(*m*) "The Bank" means the Bank of England (Law Courts' Branch), or in the case of an Irish Company the Bank of Ireland, or in either case such Bank or branch of a Bank as may from time to time be appointed to receive and deal with cash and securities under the control of the Paymaster-General on behalf of the Court: *ibid.*

(*n*) "The Paymaster-General" means the Paymaster-General for the time being or in the case of an Irish Company the Accountant-General for the time being of the Supreme Court of Judicature in Ireland: *ibid.*

General, or the Assistant Paymaster-General (*o*) to issue directions to the Bank to receive the same, to be placed in the books of the Paymaster-General, to the credit of *ex parte* the company mentioned in such warrant, according to the method for the time being in force respecting the lodgment of money.

Provided, that in lieu, wholly or in part, of the lodgment of money, the depositors may bring into Court as a deposit an equivalent sum of any stocks, funds, or securities in which cash under the control of or subject to the order of the Court may for the time being be invested (the value thereof being taken at a price as near as may be to, but not exceeding, the current market price); and in that case the Board of Trade shall vary their warrant accordingly, by directing the lodgment of such amount of such stocks, funds, or securities, by the company or the persons therein named, to the said account of the said Paymaster-General for the credit in his books of *ex parte* the Company mentioned in such warrant (*p*).

Where the assurance business by reason whereof the deposit is made is a class of business in respect of which a separate assurance fund is required to be kept (that is to say, is either life assurance business, employers' liability insurance business or bond investment business), then and in any such case the application to the Board of Trade and the warrant of the Board of Trade shall specify the particular class of business in respect of which the deposit is being made, and the deposit shall be marked accordingly in the books of the Paymaster-General to a special ledger credit. In all other respects the provisions of the last preceding Rule shall apply to any such separate deposit (*q*).

Where a lodgment of money or securities has been made under the preceding Rules, the Court may, on the application of the Company order—

(*a*) Investment in such of the stocks, funds, or securities in which cash under the control of or subject to the order of the Court may for the time being be invested as the applicants desire and the Court thinks fit, and either by way of original investment or by way of variation of investment.

(*b*) Payment to the Company of the interest, dividends, or income from time to time accruing due on any stocks, funds, or securities in which the deposit is for the time being invested.

(*c*) Transfer or payment in the cases provided for by the Rules following of the deposit and the stocks, funds, or securities for the time being representing the same either from one ledger credit of the Company to another or out of Court (*r*).

In the case of a company transacting other business besides that of assurance or transacting more than one class of assurance business—

(*o*) "The Assistant Paymaster-General" means the official or one of the officials acting for the time being as the Assistant or Deputy of the Paymaster-General as hereinbefore defined in relation to business connected with the Court: Order of Board of Trade of 6th June, 1910, Rules relating to deposits by Assurance Companies under s. 2 of the Assurance Companies Act, 1909.

(*p*) *Ibid.*, R. 2.

(*q*) *Ibid.*, R. 3.

(*r*) *Ibid.*, R. 4.

A separate account must be kept of all receipts in respect of the assurance business or of each class of assurance business, and the receipts in respect of the assurance business or, in the case of a company carrying on more than one class of assurance business, of each class of business, must be carried to and form a separate assurance fund with an appropriate name; the investments of any such fund are not required to be kept separate from the investments of other funds.

A fund of any particular class is as absolutely the security of the policy holders of that class as though it belonged to a company carrying on no other business than assurance business of that class, and will not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of assurance of that class, and may not be applied, directly or indirectly, for any purposes other than those of the class of business to which the fund is applicable (*s*).

These provisions do not however apply to companies carrying on fire or accident insurance business so far as such businesses are concerned (*t*), and in the case of life assurance business there are the exceptions following—

(1) Nothing in the Act providing that the life assurance fund shall not be liable for any contracts for which it would not have been liable had the business of the company been only that of life assurance is to affect the liability of that fund, in the case of a company established before the ninth day of August eighteen hundred and seventy, for contracts entered into by the company before that date;

(2) In the case of a company carrying on life assurance business and established before the ninth day of August eighteen hundred and seventy, by the terms of whose deed of settlement the whole of the profits of all the business carried on by the company are paid exclusively to the life policy holders, and on the face of whose life policies the liability of the life assurance fund in respect of the other business distinctly appears, such of the provisions of the Act as require the separation of funds, and exempt the life assurance fund from liability for contracts to which it would not have been liable had the business of the company been only that of life assurance, do not apply (*u*);

Deposits made under the Life Assurance Companies Acts, 1870 to 1872, or the Employers Liability Insurance Companies Act, 1907, and the deposit funds representing the same are *primâ facie*, and, in default of reason to the contrary, to be treated and dealt with as

(*s*) Assurance Companies Act, 909, s. 3. In *Nelson & Co.*, [1905] 1 Ch. 551, BUCKLEY, J., declined to sanction a scheme for reduction of contracts, on the ground that as the company's business was carried on it could not comply with these provisions; and see *British Widows Assurance Co.*, [1905] 1 Ch. 40, for a scheme sanctioned by the Court.

(*t*) Assurance Companies Act, 1909, s. 31 (*e*), and s. 32 (*d*).

(*u*) *Ibid.*, s. 30 (*e*) and (

having been made in respect of the life assurance business or as the case may be, the employers liability insurance business of the companies by or on behalf of which such deposits were made (*x*).

The issuing in any case of any Warrant or certificate relating to a deposit or to the deposit fund, or any error in any such Warrant or certificate, or in relation thereto, will not make the Board of Trade, or the person signing the Warrant or certificate on their behalf, in any manner liable for or in respect of the deposit fund, or the interest or dividends accruing on the same, or any part thereof, respectively (*y*).

Any assurance company which makes default in complying with any of the requirements of this Act will be liable to a penalty not exceeding one hundred pounds, or, in the case of a continuing default, to a penalty not exceeding fifty pounds for every day during which the default continues, and every director, manager, or secretary, or other officer or agent of the company who is knowingly a party to the default will be liable to a like penalty; and, if default continue for a period of three months after notice of default by the Board of Trade (which notice must be published in one or more newspapers as the Board of Trade may, upon the application of one or more policy holders or shareholders, direct), the default will be a ground on which the Court may order the winding up of the company, in accordance with the Companies (Consolidation) Act, 1908 (*z*).

If any account, balance sheet, abstract, statement, or other document required by this Act is false in any particular to the knowledge of any person who signs it, that person will be guilty of a misdemeanour and will be liable on conviction on indictment to fine and imprisonment, or on summary conviction to a fine not exceeding fifty pounds (*a*).

Every penalty imposed by this Act may be recovered and applied in the same manner as penalties imposed by the Companies (Consolidation) Act, 1908, are recoverable and applicable (*b*).

Part VII. of the Companies (Consolidation) Act authorises certain companies to register under the Act, and contains the following provisions:—

With the exceptions and subject to the provisions mentioned and contained in the section, and hereafter mentioned—

(i) any company consisting of seven or more members, which was in existence on the second day of November eighteen hundred and sixty-two (which was the date of the commencement of the Companies Act, 1862), including any company registered under the Joint Stock Companies Acts (*c*); and

(*x*) Order of the Board of Trade of 6th June, 1909. Rules relating to deposits by assurance companies under s. 2 of the Assurance Companies Act, 1909, R. 10.

(*y*) *Ibid.*, R. 8.

(*z*) Assurance Companies Act, 1909, s. 23.

(*a*) Assurance Companies Act, 1909, s. 24; Perjury Act, 1911, s. 5.

(*b*) Assurance Companies Act, 1909, s. 25.

(*c*) The Joint Stock Companies Acts are defined by s. 285 of the Act as meaning the Joint Stock Companies Act, 1856; the Joint Stock Companies Acts, 1856, 1857; the Joint Stock Banking Companies

(ii) any company formed after that date, whether before or after the commencement of the Act, in pursuance of any Act of Parliament other than the Companies (Consolidation) Act, 1908, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted by law (*d*), and consisting of seven or more members;

may at any time register under the Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration will not be invalid by reason that it has taken place with a view to the company being wound up.

The exceptions and provisions above referred to are as follows—

(*a*) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as defined by section 250 of the Act may not register in pursuance of these provisions.

(*b*) A company having the liability of its members limited by Act of Parliament or letters patent may not register in pursuance of this section as an unlimited company or as a company limited by guarantee:

(*c*) A company that is not a joint stock company as defined by section 250 of the Act may not register under these provisions as a company limited by shares:

(*d*) A company may not register in pursuance of these provisions without the assent (*e*) of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose:

Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require, but does not include 7 & 8 Vict. c. 110, intituled an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies. Such companies are existing companies within the meaning of the same section, and the Act applies to them even apart from registration under it; see Part VI. of the Act, ss. 245 *et seq.* Application for a certificate of incorporation must in the case of a company desiring to be registered under Part VII. of the Act be on Form 17 or 18 supplied by Somerset House. Each of such forms must be signed by a director, secretary, or other authorised officer of the company. Form 17 applies where limited liability is desired. Form 18 in other cases. Each of such forms costs 2*d*.

(*d*) A partnership consisting of seven or more members is not a company "otherwise duly constituted by law" so as to be capable of registration under this section. *Reg.* v. *Registrar of Joint Stock Companies*, [1891] 2 Q. B. 598; *Cussons, Ltd.* (1904), 73 L. J. Ch. 296.

(*e*) Such assent must be shown by a copy of the resolution written or printed on Form 22 supplied by Somerset House (cost 2*d*.). The resolution may be written or printed on the third page of the form, and must be signed at the end by an authorised officer of the company.

(*e*) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent must consist of not less than three-fourths of the members present in person or by proxy at the meeting :

(*f*) Where a company is about to register as a company limited by guarantee, the assent to its being so registered must be accompanied by a resolution (*f*) declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount (*g*).

In computing any majority under these provisions when a poll is demanded regard will be had to the number of votes to which each member is entitled, according to the articles of the company (*g*). In other cases the majority will of course be ascertained by a show of hands (*h*).

A company registered under the Companies Act, 1862, cannot register under these provisions (*g*); and a foreign corporation can likewise not avail itself of them (*i*). Societies registered under the Friendly Societies Act, 1896 (*k*), or the Industrial and Provident Societies Act, 1893 (*l*), may by special resolution register themselves as companies under the Act. Without prejudice to the powers conferred by the Friendly Societies Act, 1896, the committee of management or other governing body of a collecting society having more than one hundred thousand members may petition the Court for an order for the conversion of the society into a mutual company under the Companies (Consolidation) Act, 1908. The Court must be satisfied on a poll being taken that 55 per cent. of the members over sixteen years of age agree to the conversion, and may settle a memorandum and articles of association for the company (*ll*).

(*f*) This resolution must be presented for filing with the Registrar on Form 22 supplied by Somerset House (cost 2*d*.). The resolution may be either printed or written on the third page of such form, and should be signed at the end by an authorised officer of the company.

(*g*) Companies (Consolidation) Act, 1908, s. 249.

(*h*) *Ernest* v. *Loma Gold Mines*, [1897] 1 Ch. 1; *Horbury Bridge Co.* (1879), 11 C. D. 109.

(*i*) *Bulkeley* v. *Schutz* (1871), L. R. 3 P. C. 764; approved in *Bateman* v. *Service* (1881), 6 A. C. 386.

(*k*) Section 71. If the special resolution contains the particulars required to be contained in the memorandum, and a copy thereof has been registered at the central office, a copy of such resolution under the seal or stamp of the central office will have the same effect as a memorandum; and see also *Blythe* v. *Birtley*, [1910] 2 Ch. 228; *McGlade* v. *The Royal London Mutual Insurance Society*, [1910] 2 Ch. 169. See also the Companies (Converted Societies) Act, 1910.

(*l*) Section 54—the provisions of which are identical with s. 71 of the Friendly Societies Act, 1896, and see s. 55 as to a company converting itself into a society under the Industrial and Provident Societies Act.

(*ll*) Assurance Companies Act, 1909, s. 36.

The definition of a Joint Stock Company contained in section 250 of the Act, and above referred to is as follows:

"For the purposes of this part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares (*m*)."

Before the registration in pursuance of this Part of the Act of a joint stock company there must be delivered to the registrar the following documents (that is to say)—

(1) A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number (*n*):

(2) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) If the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say):—

(*a*) The nominal capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;

(*b*) The number of shares taken and the amount paid on each share;

(*c*) The name of the company, with the addition of the word "limited" as the last word thereof (*o*); and

(*d*) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee (*p*).

(*m*) Companies (Consolidation) Act, 1908, s. 250.

(*n*) This Form (No. 19) is supplied by Somerset House (cost 2*d*.). A 5*s*. registration fee stamp must be impressed. It must be signed by a director, secretary, or other authorised officer. Form 20 also supplied by Somerset House should be applied for at the same time. It is a continuation of Form 19.

(*o*) The preceding particulars will be presented for filing on Form 21, supplied by Somerset House (cost 2*d*.). Such statement must be signed by a director, secretary, or other authorised officer of the company.

(*p*) Companies (Consolidation) Act, 1908, s. 252.

Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there must be delivered to the registrar of joint stock companies—

(1) A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and

(2) A copy of any Act of Parliament, letters patent, deed of settlement, contract of co-partnery, cost book regulations, or other instrument constituting or regulating the company; and

(3) In the case of a company intended to be registered as a company limited by guarantee a copy of the resolution declaring the amount of the guarantee (*q*).

The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar must be verified by a statutory declaration of any two or more directors or other principal officers of the company (*r*), and in addition the registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as within the meaning of section 250 of the Act (*s*).

Where a banking company which was in existence on the seventh day of August, eighteen hundred and sixty-two proposes to register as a limited company, it must at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability will have no operation (*t*).

No fees are chargeable in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some Act of Parliament or by letters patent (*u*).

When a company registers in pursuance of this Part of the Act with limited liability, the word "limited" will form and be registered as part of its name (*x*).

(*q*) Companies (Consolidation) Act, 1908, s. 253.

(*r*) *Ibid.*, s. 254. This declaration will be in Form 23 supplied by Somerset House (cost 2*d.*).

(*s*) Companies (Consolidation) Act, 1908, s. 255.

(*t*) *Ibid.*, s. 256.

(*u*) *Ibid.*, s. 257.

(*x*) *Ibid.*, s. 258.

On compliance with the requirements of this Part of the Act with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule to the Act, the registrar of joint stock companies must certify under his hand that the company applying for registration is incorporated as a company under the Act, and in the case of a limited company, that it is limited (y), and thereupon the company will be incorporated, and will have perpetual succession, and a common seal, with power to hold lands; and any banking company in Scotland so incorporated will be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament (z).

All property, real or personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this part of the Act, will on registration pass to and vest in the company as incorporated under the Act for all the estate and interest of the company therein (a).

Registration of a company in pursuance of this Part of the Act will not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of the company before registration (b).

All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of the Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; but execution may not issue against the effects of any individual member of the company on any judgment, decree or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding-up the company (c).

(y) As to the conclusiveness of the certificate, see s. 17 of the Act, *supra*, p. 12.

(z) Companies (Consolidation) Act, 1908, s. 259.

(a) *Ibid.*, s. 260, in *Cussons, Ltd.* (1904), 73 L. J. Ch. 296, where a partnership consisting of more than seven members had succeeded in getting itself registered under this part of the Act, it was held that though the company so formed ought never to have been registered, the certificate of the registrar was conclusive as the company being well formed, but that the property of the partnership did not pass to the company under this section. In the circumstances of the case the company has got a title under the Real Property Limitation Acts, 1833 and 1874.

(b) Companies (Consolidation) Act, 1908, s. 261.

(c) Companies (Consolidation) Act, 1908, s. 262. This section does not render persons who were members before the company was registered liable as contributories: *Lanyon* v. *Smith* (1863), 3 B. & S. 938; *Harvey* v. *Clough* (1863), 2 N. R. 204; *Lofthouse's Case* (1858), 2 De G. and J. 69; *Sheffield and Hallamshire, &c., Society* (1865), 4 De G. J. and S. 699. It was otherwise under the Act of 1856: *Ex parte Stevenson* (1863), 32 L. J. Ch. 96.

When a company is registered in pursuance of this Part of the Act—

(i) All provisions contained in any Act of Parliament deed of settlement, contract of co-partnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, will be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles :

(ii) All the provisions of the Act will apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under the Act, subject as follows (that is to say) :—

(*a*) The regulations in Table A in the First Schedule to the Act will not apply unless adopted by special resolution :

(*b*) The provisions of the Act relating to the numbering of shares will not apply to any joint stock company whose shares are not numbered :

(*c*) Subject to the provisions of this section (*d*) the company will not have the power to alter any provision contained in any Act of Parliament relating to the company ;

(*d*) Subject to the provisions of this section (*d*) the company will not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company ;

(*e*) The company will not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company ;

(*f*) In the event of the company being wound up, every person will be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before the registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among

(*d*) Companies (Consolidation) Act, 1908, s. 263.

themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding-up the company, so far as relates to such debts or liabilities; and every contributory will be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability; and in the event of the death or bankruptcy of any contributory or the marriage of any female contributory, the provisions of the Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively will apply:

The provisions of the Act with respect to—

(*a*) The registration of an unlimited company as limited;

(*b*) The powers of an unlimited company on registration as a limited company to increase the nominal amount of its capital and to provide that a portion of its capital shall not be capable of being called up except in the event of winding up (*e*):

(*c*) The power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of a winding-up (*e*):

will apply, notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of co-partnery, cost book regulations, letters patent, or other instrument constituting or regulating the company.

The section does not authorize a company to alter any such provisions contained in any deed of settlement, contract of co-partnery, cost book regulations, letters patent, or other instrument constituting or regulating the company as would, if the company had originally been formed under the Act, have been required to be contained in the memorandum, and are not authorised to be altered by the Act: and the Act does not derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company, be vested in the company (*f*).

(*e*) As to this, see ss. 58 and 59 of the Act, and *post*, p. 50 and p. 257.

(*f*) Companies (Consolidation) Act, 1908, s. 263. As to substituting a memorandum and articles of association for a deed of settlement, see *post*, p. 693.

Every company incorporated outside the United Kingdom which establishes a place of business (*g*) within the United Kindgom must within *one month* from the establishment of the place of business, file with the registrar of joint stock companies—

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

(*b*) A list of the directors (*i*) of the company;

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

and, in the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company must file with the registrar a notice of the alteration within such time as may be prescribed (*k*).

Any process or notice required to be served on the company will be sufficiently served if addressed to any person whose name has been so filed and left at or sent by post to the address which has been so filed.

Every company to which this section applies must in every year file with the registrar such a statement in the form of a balance sheet as would, if it were a company formed and registered under the Act, and having a share capital be required to be included in the annual summary.

Every company to which this section applies and which uses the word " limited " as part of its name must—

(*g*) Place of business includes a share transfer or share registration office, Companies (Consolidation) Act, 1908, s. 274 (6). A company which merely employs agents for the purpose of obtaining subscriptions here will not thereby have " established a place of business: " *Huron* v. *Erie Loan and Saving Co.*, [1911] S. C. 612.

(*h*) Certified means certified in the prescribed (*i.e.*, prescribed by the Board of Trade) manner to be a true copy or correct translation, Companies (Consolidation) Act, 1908, s. 274 (6), and s. 285. Regulations of the Board of Trade of 29th March, 1909, contain the provisions which are set out below.

(*i*) Director includes every person occupying the position of a director by whatever name called: *ibid.*, s. 274 (6).

(*k*) *I.e.*, within twenty-one days after the date on which the particulars of the alteration could in due course of post and if despatched with due diligence have been received in the United Kingdom from the place where the company is incorporated: Order of Board of Trade of 29th March, 1909.

(*a*) In every prospectus (*l*) inviting subscriptions for its shares or debentures in the United Kingdom state the country in which the company is incorporated ; and

(*b*) Conspicuously exhibit on every place where it carries on business in the United Kingdom the name of the company and the country in which the company is incorporated ; and

(*c*) Have the name of the company and of the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company.

If any company to which this section applies fails to comply with any of the requirements of this section the company, and every officer and agent of the company, will be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues (*m*).

There must be paid to the Registrar for registering any document required by this section to be filed with him a fee of five shillings, or such smaller fee as may be prescribed by the Board of Trade (*n*).

The Regulations of the Board of Trade, dated 29th March, 1909, as the certification of copies and translations of documents which require to be filed under this section contain the following provisions—

(1) A certified copy of the charter, statutes, or memorandum and articles of association, or other instrument constituting or defining the constitution of a company in the case of a company incorporated in a foreign country required to be filed with the Registrar under section 274 of the Companies (Consolidation) Act, 1908, shall be deemed to be certified as a true copy if in such foreign country it is—

(*a*) Duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by any of the

(*l*) Prospectus means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of the company: Companies (Consolidation) Act, 1908, s. 285.

(*m*) The offence may be prosecuted under the Summary Jurisdiction Acts Companies (Consolidation) Act, 1908, s. 276 (1); but in Scotland the prosecution is at the instance of the Lord Advocate or a procurator fiscal, as the Lord Advocate directs: *ibid.*, s. 276 (2), and see s. 277 as to application of fines.

(*n*) Companies (Consolidation) Act, 1908, s. 274. These provisions apply to every assurance company, as defined by the Assurance Companies Act, 1909, constituted outside the United Kingdom which carries on assurance business within the United Kingdom, whether incorporated or not: Assurance Companies Act, 1909, s. 19.

British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889, or in any Act amending the same ; or

(*b*) Duly certified as a true copy by a notary of such foreign country, the certificate of the notary being authenticated by any of the British officials mentioned in section 6 of the said Act or in any Act amending the same ; or

(*c*) Duly certified as a true copy on oath by some officer of the company before a person having authority to administer an oath as provided by section 3 of the said Act, the status of the person administering the oath being authenticated by any of the British officials mentioned in section 6 of the said Act, or in any Act amending the same.

(2) A certified copy of the charter, statutes, or memorandum and articles of association, or other instrument constituting or defining the constitution of a company, in the case of a company incorporated in the Channel Islands, Isle of Man, or in any colony, island, plantation, or place under the Dominion of His Majesty in foreign parts, required to be filed with the Registrar under section 274 aforesaid, shall be deemed to be certified as a true copy if in the Channel Islands, colony, island, plantation, or places under the Dominion of His Majesty, it is

(*a*) Duly certified as a true copy by an official of the Government to whose custody the original is committed.

(*b*) Duly certified as a true copy by a notary public of such colonies, islands, or places aforesaid.

(*c*) Duly certified as a true copy on oath by some officer of the company before some person having authority to administer an oath as provided by section 3 of the Commissioners of Oaths Act, 1889.

(3) In the case of a company in which the charter, statutes, or memorandum and articles of association, or other instrument constituting or defining the constitution of the company is not written in the English language a certified translation thereof required to be filed with the Registrar shall be deemed to be certified as a correct translation if certified to be a correct translation,

(*a*) When such translation is made out of the United Kingdom by

(1) An official having custody of the original ; or

(2) A notary public of the country or place where the company is incorporated,

the signature or seal of the person so certifying where the company is incorporated in a foreign country being authenticated in either case by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889, or in any Act amending the same ;

(*b*) Where such translation is made within the United Kingdom

(1) In the case of a translation made in regard to a

company whose place of business is established in England, by

(1) A notary public in England, or

(2) A solicitor of the Supreme Court in England.

(2) In the case of a translation made in regard to a company whose place of business is established in Ireland, by

(1) A notary public in Ireland, or

(2) A solicitor of the Supreme Court in Ireland.

(3) In the case of a translation made in regard to a company whose place of business is established in Scotland, by

(1) A notary public in Scotland,

(2) An enrolled law agent.

(4) The Board of Trade may in any particular case, if they think fit to do so and upon such conditions as they think fit, permit certified copies or translations though not certified in accordance with the above requirements to be filed with the Registrar.

Prior to the passing of the Act of 1907, which first introduced these provisions, it was settled law that a foreign corporation which carried on business here must be considered as resident here, and must be equally liable to service as if it were resident here (*o*) ; it is thought that this will still be the law in the case of foreign corporations which fail to comply with the section. This does not apply to Scotch or Irish companies on which the Companies Acts (*p*) or some other Act (*q*) prescribes a special mode of service, but it does apply (*r*) to Scotch and Irish companies where this is not the case.

(*o*) *Newby* v. *Van Oppen* (1872), L. R. 7 Q. B. 293 ; *Lhoneux* v. *Hong Kong and Shanghai Bank* (1886), 33 C. D. 446 ; *Haggin* v. *Comptoir d'Escompte de Paris* (1889), 23 Q. B. D. 519 ; *La Bourgogne*, [1899] P. 1, [1899] A. C. 439 ; *Dunlop Pneumatic Tyre Co.* v. *Gesellschaft fur Motor*, [1902] 1 K. B. 342 ; *Saccharin Corporation* v. *Chemische Fabrik Von Heyden*, [1911] 2 K. B. 516 ; and also *Carron Iron Co.* v. *Maclaren* (1855), 5 H. L. C. 416 ; and contrast *Ingate* v. *Austrian Lloyds* (1858), 4 C. B. (N. S.) 704 ; *Nutter* v. *Messageries Maritime de France* (1885), 54 L. J. Q. B. 52 ; *Mackereth* v. *Glasgow and South Western Rail. Co.* (1873), L. R. 8 Ex. 149 ; *Badcock* v. *Cumberland Gap Park Co.*, [1893] 1 Ch. 362 ; and see O. IX. R. 8, R. S. C.

(*p*) *Watkins* v. *Scottish Imperial Insurance Co.* (1889), 23 Q. B. D. 285.

(*q*) *Palmer* v. *Caledonian Railway Co.*, [1892] 1 Q. B. 823.

(*r*) *Logan* v. *Bank of Scotland*, [1904] 2 K. B. 495. The section does not apply to any Scotch or Irish companies.

LIST OF DOCUMENTS PRESENTED FOR FILING UNDER SECTION 274 OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (s).

Registered No. F.__________ Form No. 1, F.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

List of Documents presented for filing by the* __________

Pursuant to section 274.

Presented for filing.
by__________
The * __________
incorporated in † __________
and which has a place of business in the United Kingdom at __________

Presents for filing, pursuant to section 274 of the Companies (Consolidation) Act, 1908, the following documents:—

(A) ‡
(B) ‡
(C) ‡

The copies and translations (if any) above-mentioned must be certified in the manner prescribed in the regulations of the Board of Trade on that behalf, published in the *London Gazette* of the 30th March, 1909.

Signature of the persons authorised under section 274 (1) (c) of the Companies (Consolidation) Act, 1908 (see below), or of some other person in the United Kingdom duly authorised by the Company.

Date__________

* Insert name of company. † Insert country of origin.

‡ For the particulars of the documents required to be filed, details of which are to be inserted here, see below.

Particulars of the Documents required to be filed.
(Section 274 (1) Companies (Consolidation) Act, 1908).

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

(B) A list of the Directors of the Company;

(C) The names and addresses of some one or more persons resident in the United Kingdom authorised to accept on behalf of the Company service of process and any notices required to be served on the Company.

(s) Form prescribed by the Order of the Board of Trade of 20th March, 1909.

LIST OF DIRECTORS TO BE FILED UNDER SECTION 274 OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (*t*).

Registered No. F.__________ Form No. 2, F.

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

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Return pursuant to section 274, by
The *__________
incorporated in †__________
and which has a place of business in the United Kingdom at__________
of a list of its directors.

Presented for filing
by__________

* Insert name of company. † Insert country of origin.

List of Directors of the

Names of Directors.	Addresses of Directors.	Descriptions or Occupations of Directors.

Signatures of the persons authorised under section 274 (1) (*c*) of the Companies (Consolidation) Act, 1908, or of some other person in the United Kingdom duly authorised by the Company.

Date__________

LIST OF PERSONS RESIDENT IN THE UNITED KINGDOM AUTHORISED TO ACCEPT SERVICE ON BEHALF OF A FOREIGN COMPANY TO BE FILED PURSUANT TO SECTION 274 OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (*u*).

Registered No. F.__________ Form No. 3, F.

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

(*t*) Form prescribed by the order of the Board of Trade of 29th March, 1909.

(*u*) Form prescribed by the order of the Board of Trade of 29th March, 1909.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Return pursuant to section 274, by
The *______
incorporated in †
which has a place of business in the United Kingdom at
of the names and addresses of some one or more persons resident in the United Kingdom authorised to accept on behalf of the Company service of process and any notices required to be served on the Company.

Presented for filing
by______

* Insert name of company. † Insert country of origin.

List of persons authorised to accept service on behalf of the Company.

Names of Persons.	Addresses.	Descriptions or Occupations.

Signatures of the persons authorised under section 274 (1) (*c*) of the Companies (Consolidation) Act, 1908, or of some other person in the United Kingdom duly authorised by the Company.

Date______

NOTICE OF ALTERATION OF THE CHARTER, ETC., OF A COMPANY TO BE FILED PURSUANT TO SECTION 274 OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (*x*).

Registered No. F.______ Form No. 4, F.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

The *______

Notice of alteration in the Charter, Statutes, Memorandum, or other Instrument constituting or defining the constitution of the Company.

(*Pursuant to section* 274.)

NOTE.—This notice must be filed within twenty-one days after the date on which particulars of the alteration could, in due course of

(*x*) Form prescribed by the order of the Board of Trade of 29th March, 1909.

post, and if despatched with due diligence, have been received in the United Kingdom from the place where the Company is incorporated.

Presented for filing

by______________________________________

Notice is hereby given, pursuant to section 274 of the Companies (Consolidation) Act, 1908, by the * __________ incorporated in † __________ and which has a place of business in the United Kingdom at __________ of the alteration in the ‡ __________ constituting or defining the constitution of the Company

____

§ Certified Copy of Alteration with Certified Copy of new Deed, if one has been executed, and Certified Translation of Alteration, or—and —Deed, if not in English language, must accompany this Notice, and be shortly referred to here.

____

Signatures of the persons authorised under section 274 (1) (*c*) of the Companies (Consolidation) Act, 1908, or of some other person in the United Kingdom duly authorised by the Company.
____
____
____
____
____
____

Date__________

* Insert name of company.

† Insert country of origin.

‡ Insert "Charter," "Statutes," "Memorandum," or "Articles," or other instrument, as the case may be.

§ The copy and Translation (if any) must be certified in the manner prescribed in the Regulations of the Board of Trade on that behalf published in the *London Gazette* of the 30th March, 1909.

NOTICE OF ALTERATION IN THE LIST OF DIRECTORS OF A FOREIGN COMPANY TO BE FILED PURSUANT TO SECTION 274 OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (*y*).

Registered No. F.__________ Form No. 5, F.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

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

(*y*) Form prescribed by the Order of the Board of Trade of 29th March, 1909.

Notice of alteration in the list of Directors of the *

(*Pursuant to section* 274.)

NOTE.—This Notice must be filed within twenty-one days after the date on which particulars of the alterations could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom from the place where the Company is incorporated.

Presented for filing
by ______________________________

Notice is hereby given, pursuant to section 274 of the Companies (Consolidation) Act, 1908, by the * ______________________________
incorporated in †
and which has a place of business in the United Kingdom at ______________
of alteration in the list of Directors.

Names of Directors.	Addresses of Directors.	Descriptions or Occupations of Directors.	Remarks as to the alteration.

Signatures of the persons authorised under sections 274 (1) (*c*) of the Companies (Consolidation) Act, 1908, or of some other person in the United Kingdom duly authorised by the Company.

Date ______________

* Insert name of company. † Insert country of origin.

NOTICE OF ALTERATION IN THE NAME OR ADDRESSES OF PERSONS RESIDENT IN THE UNITED KINGDOM AUTHORISED TO ACCEPT SERVICE ON BEHALF OF A FOREIGN COMPANY TO BE FILED PURSUANT TO SECTION 274 OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (*z*).

Registered No. F. ____________ Form No. 6 F.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

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

(*z*) Form prescribed by the Order of the Board of Trade of 29th March, 1909.

The *______________________________

Notice of alteration in the names or addresses of the persons resident in the United Kingdom authorised to accept on behalf of the Company service of process and any notices required to be served on the Company.

(*Pursuant to Section* 274.)

NOTE.—This Notice must be filed within twenty-one days after the date on which particulars of the alteration, could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom from the place where the Company is incorporated.

Presented for filing

by______________________________

Notice is hereby given, pursuant to section 274 of the Companies (Consolidation) Act, 1908, by the *______________incorporated in †______________________________ and which has a place of business in the United Kingdom at______________ of alteration in the names or addresses of the persons resident in the United Kingdom authorised to accept on behalf of the Company service of process and any notices required to be served on the Company.

‡ Particulars of Alteration.

____

____

Signatures of the persons authorised under section 274 (1) (*c*) of the Companies (Consoldiation) Act, 1908, or of some other person in the United Kingdom duly authorised by the Company. } ______________

Date______________

* Insert name of company.

† Insert country of origin.

‡ Where any persons are appointed, the full names, addresses, and descriptions of the persons so appointed should be given.

STATEMENT IN THE FORM OF A BALANCE SHEET TO BE FILED BY A FOREIGN COMPANY PURSUANT TO SECTION 274 OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (*a*).

Registered No. F.______________ Form No. 7, F.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

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

Statement in the form of a balance sheet by the______________

(*a*) Form prescribed by the Order of the Board of Trade of 29th March, 1909

(*Pursuant to Section* 274 (3).)

Presented for filing
by________________

Return pursuant to section 274 (3) of the Companies (Consolidation) Act), 1908, by________________
The *________________
Incorporated in †________________
and which has a place of business in the United Kingdom at________
of a Statement in the form of a *Balance Sheet* audited by the Company's Auditors ‡________________and made up to____________day of

____

Signatures of the persons authorised under section 274 (1) (*c*) of the Companies (Consolidation) Act, 1908, or of some other person in the United Kingdom duly authorised by the Company

Date____________

* Insert name of company. † Insert country of origin.
‡ Insert names and addresses of auditors.

Section 274 (3) of the Companies (Consolidation) Act, 1908, is as follows :—

" (3) Every company to which this section applies shall in every year file with the registrar such a statement in the form of a balance sheet as would, if it were a company formed and registered under this Act, and having a share capital, be required under this Act to be included in the annual summary."

The statement above-mentioned is described in section 26 (3) of the Act as follows :—

" Statement in the form of a balance sheet audited by the Company's auditors, and containing a summary of its share capital, its liabilities, and its 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 the balance sheet need not include a statement of profit and loss."

For the purposes of the registration of companies under the Act, the Act provides that there shall be offices in England, Scotland, and Ireland, at such places as the Board of Trade think fit (*b*).

(*b*) Companies (Consolidation) Act, 1908, s. 243. The offices existing at the commencement of the Act in England, Scotland, and Ireland for registration of joint stock companies are continued as if they had been established under the Act, and registers of companies kept in any such existing offices are respectively to be deemed part of the registers

The Board of Trade may appoint such registrars, assistant registrars, clerks, and servants as the Board think necessary for the registration of companies under the Act, and may make regulations with respect to their duties; and may remove any persons so appointed.

The salaries of the persons appointed under this section are fixed by the Board of Trade with the concurrence of the Treasury, and paid out of money provided by Parliament.

The Board of Trade may require that the office of the Registrar of the Court exercising in respect of the winding-up of companies the stannaries jurisdiction shall be one of the offices for the registration of companies within that jurisdiction; and may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

Any person may inspect the documents kept by the Registrar on payment of such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar, on payment for the certificate, cerfied copy, or extract, of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation, and not exceeding sixpence for each folio of a certified copy or extract, or in Scotland for each sheet of two hundred words.

A copy of or extract from any document kept and registered (c) at any of the offices for the registration of companies in England, Scotland, or Ireland, certified to be a true copy under the hand of the Registrar or an Assistant Registrar (whose official position it is not necessary to prove) will in all legal proceedings be admissible in evidence as of equal validity with the original document.

of companies to be kept under the Act. The existing registrars, assistant registrars, officers, clerks, and servants in those offices are during the pleasure of the Board of Trade to hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Board of Trade with regard to the execution of their duties. The existing official receivers and officers of the Board of Trade appointed for the execution of the Companies (Winding-Up) Act, 1890, are during the pleasure of the Board of Trade to hold the offices and receive the salaries or remuneration hitherto held and received by them—and persons other than officers of the Board of Trade performing any duties under the Companies (Winding-Up) Act, 1890, and receiving therefor any salary or remuneration by the direction of the Lord Chancellor, are, during his pleasure, to receive the salaries or remuneration hitherto received by them, Companies (Consolidation) Act, 1908, s. 289.

(c) The Registrar will register a document after the expiration of the time limited for that purpose by the Act—except in cases where the court has power to extend the time for registration, when an order of the Court will be necessary.

Whenever any Act is by the Companies (Consolidation) Act, 1908, directed to be done to or by the Registrar of Companies, it will, until the Board of Trade otherwise directs, be done in England to or by the existing Registrar of Joint Stock Companies, or in his absence to or by such person as the Board of Trade may for the time being authorise ; in Scotland to or by the existing Registrar of Joint Stock Companies in Scotland ; and in Ireland to or by the existing Assistant Registrar of Joint Stock Companies for Ireland, or to or by such person as the Board of Trade may for the time being authorise in Scotland or Ireland, in the absence of the Registrar or Assistant Registrar ; but in the event of the Board of Trade altering the constitution of the existing registry offices or any of them, any such act must be done to or by such officer and at such place with reference to the local situation of the registered officer of the companies to be registered as the Board of Trade may appoint (*d*).

There are to be paid to the Registrar in respect of the several matters mentioned in Table B in the First Schedule to the Act the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct.

All fees paid to the Registrar in pursuance of the Act must be paid into the Exchequer (*dd*).

The following is the table of fees set out in Table B.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF COMPANIES (*e*).

I. *By a company having a capital divided into shares.*

	£	s.	d.
For registration of a company (*f*) whose nominal share capital does not exceed £2,000	2	0	0
For registration of a company whose nominal share capital exceeds £2,000, the following fees, regulated according to the amount of nominal share capital (that is to say):			
For every £1,000 of nominal share capital, or part of £1,000, up to £5,000	1	0	0
For every £1,000 of nominal share capital, or part of £1,000, after the first £5,000, up to £100,000	0	5	0

(*d*) Companies (Consolidation) Act, 1908, s. 243.

(*dd*) *Ibid.*, s. 244.

(*e*) The Board of Trade may alter this Table, but not so as to increase the amount of fees payable to the Registrar. Any such alteration must be published in the *London Gazette*, and will thenceforth have the same force as if it were contained in the Schedule to the Act: Companies (Consolidation) Act, 1908, s. 118. There are also certain further fees payable, *e.g.*, under s. 93 (registration of mortgages), and s. 274 (registration of documents by foreign companies).

(*f*) There must also be filed with the Registrar a statement of the share capital with a 5*s*. *ad valorem* stamp duty for every £100 or fraction of £100 over any multiple of £100, or of the amount of such capital : Stamp Act, 1891, s. 112, as amended by the Finance Act, 1899, s. 7. Somerset House has its own form (No. 25) for this statement.

	£	s.	d.
For every £1,000 of nominal share capital, or part of £1,000, after the first £100,000	0	1	0
For registration of any increase of share capital made after the first registration of the company, the same fees per £1,000, or part of a £1,000, as would have been payable if such increased capital had formed part of the original capital at the time of registration (*g*).			
Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than £50, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration . . .			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company			
For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding-up in England	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the Registrar . . .	0	5	0

II. *By a company not having a share capital.*

	£	s.	d.
For registration of a company whose number of members, as stated in the articles, does not exceed 20 . . .	2	0	0
For registration of a company whose number of members, as stated in the articles, exceeds 20, but does not exceed 100	5	0	0
For registration of a company whose number of members, as stated in the articles, exceeds 100, but is not stated to be unlimited, the above fee of £5, with an additional 5*s.* for every 50 members or less number than 50 members after the first 100			
For registration of a company in which the number of members is stated in the articles to be unlimited	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of			

(*g*) There must also be filed with the Registrar on any increase of capital, within fifteen days after the passing of the resolution effecting such increase, a statement of the amount of such increase bearing a 5*s. ad valorem* stamp duty for every £100 or fraction of £100 over any multiple of £100 of the amount of such increase of capital, Stamp Act, 1891, s. 12 as amended by the Finance Act, 1899, s. 7. Somerset House has its own form (No. 26) for this statement. Interest at the rate of 5 per cent. per annum will also be payable if this statement is not so filed, Revenue Act, 1903, s. 5. Stamp duty is payable under these provisions where a resolution authorising directors to increase the share capital has been passed: *Attorney-General* v. *Anglo-Argentine Tramways*, [1909] 1 K. B. 677.

	£ s. d.
every 50 members, or less than 50 members, of that increase	0 5 0
Provided that no company shall be liable to pay on the whole a greater fee than £20, in respect of its number of members, taking into account the fee paid on the first registration of the company	
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company . . .	
For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding-up in England	0 5 0
For making a record of any fact by this Act required or authorised to be recorded by the Registrar	0 5 0

The Board of Trade must cause a general annual report of matters within the Act to be prepared and laid before both Houses of Parliament (*h*).

Any approval sanction or licence or revocation of licence which under the Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board or of any persons authorised in that behalf by the President of the Board (*i*).

(*h*) Companies (Consolidation) Act, 1908, s. 283.

(*i*) *Ibid.*, s. 284.

CHAPTER II.

THE MEMORANDUM AND ARTICLES OF ASSOCIATION.

As has been stated, the Act allows of three different kinds of companies registering under it—(a) companies limited by shares; (b) companies limited by guarantee; and (c) unlimited companies—and there are in addition certain companies formed under earlier Acts which may register under the existing Act.

The memorandum of association of companies limited by shares must state—

(i) The name of the company, with "Limited" as the last word in its name;

(ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;

(iii) The objects of the company;

(iv) That the liability of the members is limited;

(v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

(2) No subscriber of the memorandum may take less than one share:

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

Although, as has already been stated, there must be two subscribers in the case of private companies, and seven in other cases, such persons need not be independent persons—and a company will be validly formed if all the subscribers are the nominees of one person, or if all but one of them are nominees of that one (*b*).

The memorandum of a company limited by guarantee (*c*) or of an unlimited company (*d*) must state

(*a*) The name of the company, with limited as the last word in the case of a company limited by guarantee;

(*b*) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate; and

(*c*) The objects of the company.

(*a*) Companies (Consolidation) Act, 1908, s. 3.

(*b*) *Salomon* v. *Salomon & Co.*, [1897] A. C. 22; but cp. *Re Darby*, [1911] 1 K. B. 95.

(*c*) Companies (Consolidation) Act, 1908, s. 4.

(*d*) *Ibid.*, s. 5.

In addition the memorandum of a company limited by guarantee must state

(*d*) That the liability of the members is limited ; and

(*e*) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding-up, and for adjustment of rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

And if the company has a share capital, the amount of the share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount.

If a company limited by guarantee or an unlimited company has a share capital, no subscriber to the memorandum may take less than one share, and each subscriber must write opposite his name the number of shares he takes.

In the case of a company limited by guarantee, and not having a capital divided into shares, and being a company registered on or after the first day of January, nineteen hundred and one (being the date of the commencement of the Companies Act, 1900), every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member will be void.

For the purpose of the provisions of the Act relating to the memorandum of a company limited by guarantee and of section 21 of the Act, every provision in the memorandum or articles, or in any resolution of any company limited by guarantee and registered on or after the 1st day of January, 1901, purporting to divide the undertaking of the company into shares or interests will be treated as a provision for a capital divided into shares, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby (*e*).

This section and the provision requiring a company limited by guarantee, and having a share capital to state such share capital in the memorandum of association were first introduced by the Companies Act, 1900—apparently to meet the decision in *Malleson* v. *General Mineral Patents Syndicate* (*f*).

A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is contained in the Act (*g*). This prohibition extends not only to conditions which the Act requires to be set out

(*e*) Companies (Consolidation) Act, 1908, s. 21.

(*f*) [1894] 3 Ch. 538.

(*g*) Companies (Consolidation) Act, 1908, s. 7.

in the memorandum, but also to other conditions which are in fact set out there (*h*) ; but if the memorandum contains a power to alter any conditions, which the Act does not require to be set out in the memorandum, such a power will be valid (*i*).

A company (*k*) registered as unlimited may register under the Act as limited, and a company registered as limited may re-register under the Act ; but the registration of an unlimited company as a limited company does not affect any debts, liabilities, obligations, or contracts incurred or entered into by, to, with or on behalf of the company before the registration, and those debts, liabilities, obligations, and contracts may be enforced in manner provided by Part VII. of the Act in the case of a company registered in pursuance of that part (*l*). It is extremely difficult to see what can be effected by a limited company re-registering as a limited company unless, as is suggested in Buckley (*m*), a company limited by shares can turn itself into a company limited by guarantee, and *vice versa ;* but, as is there pointed out, if this is so, the difficulty of seeing why the proviso to the subsection should only apply to unlimited companies remains. Another suggestion, which does not seem to be open to the same objections, is that a limited company may under the section change the part of the United Kingdom in which its registered offices are situate. It is believed that no attempt has ever been made to carry either of these two suggestions into effect.

On the registration, in pursuance of this section of a company which has been already registered, the Registrar (*n*) must close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company ; but, save as aforesaid, the registration of such a company

(*h*) *Ashbury* v. *Watson* (1885), 30 C. D. 376.

(*i*) *Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87. The question of whether a power in the original articles of association to alter the memorandum is valid is discussed when the rights of the shareholders *inter se* are being considered : *post*, pp. 317 and 318, it is submitted that such a power is valid.

(*k*) The expression "company" in the Act is defined as meaning a company formed and registered under the Act or under the Act of 1862, or under the Joint Stock Companies Acts, Companies (Consolidation) Act, 1908, s. 285, and see the same section for a definition of the Joint Stock Companies Acts. On registration under this section the Registrar requires the same documents as in the case of a company registering under Part VII. of the Act, except in so far as such documents are already on the file.

(*l*) Companies (Consolidation) Act, 1908, s. 57 (1).

(*m*) 9th Edition, p. 150.

(*n*) This is the Registrar of Joint Stock Companies in England, Scotland, Ireland, or the Stannaries, as the case requires (s. 285 of the Act). It is submitted that the Scotch or Irish Registrar might close the former registration—where re-registration had taken place in England.

takes place in the same manner, and has the same effect as if it were the first registration of that company under the Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company (*o*).

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

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

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

A limited company may also provide by its original memorandum or by its memorandum as altered by special resolution for the liability of its directors or managers or managing director being unlimited (*q*).

Every company must send to every member at his request and on payment of one shilling or such less sum as the company may prescribe, a copy of its memorandum of association and articles (if any). A company making default on complying with these provisions will be liable to a fine not exceeding one pound for each offence (*r*).

With regard to the contents of the memorandum, a company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved, and signifies its consent in such manner as the registrar of joint stock companies

(*o*) Companies (Consolidation) Act, 1908, s. 57.

(*p*) *Ibid.*, s. 58. The subject of reserve capital in the case of a limited company is dealt with in s. 59. It is discussed under the heading of shares, *post*, p. 257.

(*q*) Companies (Consolidation) Act, 1908, ss. 60, 61, and see *post*, p. 347. Banks of issue have unlimited liability in respect of their notes: *ibid.*, s. 251.

(*r*) *Ibid.*, s. 18. Every assurance company which is not registered under the Companies Acts, shall cause a sufficient number of copies of its deed of settlement or other instrument constituting the company to be printed, and shall, on the application of any shareholder or policy holder of the company, furnish to him a copy of such deed of settlement or other instrument on payment of a sum not exceeding one shilling: Assurance Companies Act, 1909, s. 11.

requires (*s*). This section does not prejudice any right a company would have apart from it (*t*); but, on the other hand, it does not seem to put a company, whether registered under the Act or not, in any better position than it would be without the section (*u*).

The position at common law is that any rights a person has to prevent another from using a particular name depends on either (*a*) fraud; or (*b*) property (*x*). He has a right to prevent a person taking or using a name which he has identified with his goods, with the deliberate intention of stealing the goodwill of his business; and he has a right to prevent another, however innocently, from depriving him of his goodwill, including the benefit of any trade name he has succeeded in appropriating and making his own (*y*).

Mere similarity of name will not be enough (*z*), the question, where it is not a case of fraud, will be—is what the defendant is doing calculated to make the public or the trade think that he is carrying on the business of the plaintiff? (*a*) This will in all cases be a question of fact for the judge or the jury (*b*), and evidence cannot be given to show that people in general are likely to be deceived, for that is the question to be tried (*c*).

There will in all cases be two important elements to be taken into consideration in ascertaining this fact, (*a*) the nature of the name, and (*b*) the nature of the businesses (*d*). No doubt an ordinary

(*s*) Companies (Consolidation) Act, 1908, s. 8 (1). The registrar of joint stock companies requires a consent signed by the liquidator of the company.

(*t*) *Merchant Banking Co. of London* v. *Merchants' Joint Stock Bank* (1878), 9 C. D. 560.

(*u*) *Aerators* v. *Tollitt*, [1902] 2 Ch. 319; *British Vacuum Cleaner* v. *New Vacuum Cleaner*, [1907] 2 Ch. 312. In the first case, Farwell, J., pointed out that any right of action there might be by reason of any confusion caused by two companies with similar names being registered would only accrue to the Attorney-General on behalf of the public, and not to an individual.

(*x*) *Cp. Warwick Tyre Co.* v. *New Motor and General Rubber Co.*, [1911] 1 Ch. 249, as to the nature of such property.

(*y*) *Bourne* v. *Swan and Edgar*, [1903] 1 Ch. 211, and the cases there cited. Damage will apparently be assumed in these cases: *Ouvah Ceylon Estates* v. *Uva Ceylon Rubber Estates* (1910), 103 L. T. 416.

(*z*) *General Reversionary Investment Co.* v. *General Reversionary Co.* (1888), 1 Meg. 65; *Montreal Lithographing Co.* v. *Sabiston*, [1899] A. C. 610.

(*a*) *North Cheshire and Manchester Brewery Co.* v. *Manchester Brewery Co.*, [1899] A. C. 83.

(*b*) *Electromobile Co.* v. *British Electromobile Co.* (1908), 24 T. L. R. 192; *Ouvah Ceylon Estates* v. *Uva Ceylon Rubber Estates* (1910), 103 L. T. 416, citing *Payton & Co.* v. *Snelling* (1900), 17 Rep. Pat. Cases 635.

(*c*) *North Cheshire and Manchester Brewery Co.* v. *Manchester Brewery Co.*, [1899] A. C. 83; *Bourne* v. *Swan and Edgar*, [1903] 1 Ch. 211.

(*d*) *Aerators Co.* v. *Tollitt*, [1902] 2 Ch. 319; see also *Lloyds and Dawson* v. *Lloyds Southampton* (1912), 28 T. L. R. 338.

English word may acquire a secondary meaning so as to denote only the goods of the plaintiff (*e*); but that will always be an extremely difficult thing to prove (*f*), and the fact that the plaintiff has had, for a time, a monopoly in that class of goods will render it more difficult still (*g*). These same remarks would appear to apply to the case of a name descriptive of the place where business is being carried on, or of the nature of such business (*h*).

With regard to the name of a person the court will never absolutely prevent a person from carrying on business in his own name (*i*), but where he sells the right to use that name to a company unattached to any goodwill, *e.g.*, if he has never carried on the business in question, or has ceased to do so, it will restrain the company from using that name (*k*); it will, however, refuse to interfere with a man who has genuinely been carrying on his own business under his own name, and sells that business with the right to carry it on in such name to a company (*l*), and it will be slow to interfere with a foreign company which starts carrying on business here, in its own name (*m*).

With regard to other instances, it was held in one case that a person who had carried on the business of a lending library under the style of the Grosvenor Library, was entitled to prevent a company carrying on business under that name, as the plaintiff's customers were likely to think it was a new branch of his business (*n*). In another case an insurance company was restrained from carrying on its business in the same street as the plaintiff company under a name which, like the plaintiff company's name, had the word

(*e*) *Reddaway* v. *Banham*, [1896] A. C. 199.

(*f*) *Aerators Co.* v. *Tollitt*, [1902] 2 Ch. 319; *British Vacuum Cleaner* v. *New Vacuum Cleaner*, [1907] 2 Ch. 312; *Electromobile Co.* v. *New Electromobile Co.* (1907), 23 T. L. R. 631; (1908), 24 T. L. R. 192; *Industrial and General Trust* v. *General and Industrial Security*, *Times* newspaper, June 19, 1909; *Rugby Portland Cement* v. *Rugby and Newbold Portland Cement* (1891), 9 Rep. Pat. Cases, 46.

(*g*) *Cellular Clothing Co.* v. *Maxton*, [1899] A. C. 326.

(*h*) *Colonial Life Assurance* v. *Home and Colonial Assurance Co.* (1864), 33 L. J. Ch. 741; 33 Beav. 548.

(*i*) *Turton* v. *Turton* (1889), 42 C. D. 128; *J. & J. Cash* v. *Cash*, [1902] W. N. 32.

(*k*) *Tussaud* v. *Tussaud* (1890), 44 C. D. 678; *Fine Cotton Spinners, &c., Association* v. *Harwood Cash & Co.*, [1907] 2 Ch. 184; *Rendle* v. *J. Edgcumbe Rendle* (1891), 63 L. T. 94; *F. Pinet et Cie* v. *Maison Louis Pinet*, [1898] 1 Ch. 179; *Kingston, Miller & Co.* v. *Thos. Kingston*, [1912] W. N. 54; *Massam* v. *Thorley's Cattle Food* (1880), 14 C. D. 748. In the last case, unlike the others, the injunction only restrained the defendant from using the name in a way calculated to deceive.

(*l*) *S. Chivers & Sons* v. *S. Chivers & Co.* (1900), 17 Rep. Pat. Cases, 420; *Dunlop Pneumatic Tyre Co.* v. *Dunlop Motor Co.*, [1907] A. C. 430.

(*m*) *Saunders* v. *Sun Life Assurance Co. of Canada*, [1894] 1 Ch. 537; *cp. National Folding Box Paper Co.* v. *National Folding Box Co.* (1895), 43 W. R. 156.

(*n*) *Hoby* v. *Grosvenor Library* (1880), 28 W. R. 386.

"guardian" as its first word (*o*), and a company registered under the name of the Accident, Disease and General Insurance Company was restrained from using that name, though registered under it, at the suit of the Accident Insurance Company (*p*).

A brewery company has been prevented from using a name which was calculated to lead people to believe that its business was the result of an amalgamation with the plaintiff's business (*q*); but persons who had carried on business as cycle and motor cycle repairers were not restrained from forming a company under their own name, though people might be induced to believe they were connected with motor car manufacturers in a large way of business who had previously carried on business and formed a company under a similar name (*r*). Companies cannot register or be prosecuted for offences under the Pharmacy Act, 1868 (*s*), or the Dentists Act, 1878 (*t*), but they can be restrained from using a name which implies that they are registered under those Acts (*u*) or representing that they are so registered (*x*).

A plaintiff, whether a company registered under the Act (*y*) or not (*z*), can restrain persons from registering a company under a name calculated to deceive, and in one case—a case of fraud—not only was the company restrained from using its name and the signatories to its memorandum from allowing it to do so, but the signatories were restrained from allowing it to remain registered in that name. The alternative left to the defendants, as the plaintiff was a foreign company, and section 8 (2) of the Act was therefore not available, being either with the consent of the Board of Trade to change its name by special resolution, or to wind up (*a*).

(*o*) *Guardian Fire and Life Assurance* v. *Guardian and General Insurance* (1881), 50 L. J. Ch. 253.

(*p*) *Accident Insurance Co., Ltd.* v. *Accident Disease and General Insurance* (1884), 54 L. J. Ch. 104; in *Manchester Brewery* v. *North Cheshire and Manchester Brewery*, [1898] 1 Ch. 539, it was suggested that in this case too much weight had been laid on the first word of the name.

(*q*) *North Cheshire and Manchester Brewery* v. *Manchester Brewery*, [1899] A. C. 83.

(*r*) *Dunlop Pneumatic Tyre* v. *Dunlop Motor Co.*, [1907] A. C. 430.

(*s*) *Pharmaceutical Society* v. *London Provincial Supply* (1880), 5 A. C. 857.

(*t*) *O'Duffy* v. *Jaffe*, [1904] 2 Ir. 27.

(*u*) *Attorney-General* v. *Appleton*, [1907] 1 Ir. 252; see also *Rex* v. *Registrar of Joint Stock Companies for Ireland*, [1904] 2 Ir. 634; see also *Attorney-General* v. *Churchill's Veterinary Sanatorium*, [1910] 2 Ch. 401: a case under the Veterinary Surgeons Act, 1881.

(*x*) *Attorney-General* v. *George C. Smith*, [1909] 2 Ch. 524; *Attorney-General* v. *Myddletons*, [1907] 1 Ir. 471; see also *Henman* v. *Duckworth* (1904), 20 T. L. R. 436.

(*y*) *Tussaud* v. *Tussaud* (1890), 44 C. D. 678.

(*z*) *Hendriks* v. *Montagu* (1881), 17 C. D. 638.

(*a*) *La Société, &c., Panhard et Levassor* v. *Panhard Levassor Motor Co.*, [1901] 2 Ch. 513. In such cases an injunction may be granted at the suit of the Attorney-General

Like individuals, companies can carry on business in names which are not their own (*b*). In such case they are bound under pain of penalties to paint or affix and keep painted or affixed, their own name outside every place of business (*c*), but if they fail to do so, that will not disentitle them to relief (*d*). The court, however, will not protect a fraudulent business (*e*), nor a plaintiff who has delayed his suit and lain by while the defendant was to his knowledge acting (*f*). Where a company proposes to register with a fraudulent name, the registrar may decline to register (*g*). The Registrar will, owing to an order of the Board of Trade made some years back, usually not register a company with a name which contains the word "Royal," "Imperial," or any similar word, unless the leave of the Home Secretary has been obtained (*h*). Since the passing of the Geneva Convention Act, 1911, the words "Red Cross" or "Geneva Cross," are not allowed to form part of the name of a company without the authority of the Army Council. Application should be made to the War Office where such authority is desired.

If a company, through inadvertence or otherwise, is registered by a name identical with that by which an existing company is previously registered, without the consent of such other company if it is being dissolved, or so nearly resembling it as to be calculated to deceive, it may, with the sanction of the Registrar, change its name (*hh*). The Registrar in such case requires a resolution of the company authenticated by the secretary or some other officer of the company.

Any company may, by special resolution, and with the approval of the Board of Trade signified in writing, change its name (*hh*).

Where a company changes its name, the Registrar must enter the new name on the register in place of the former name, and must issue a certificate of incorporation altered to meet the circumstances of the case (*hh*).

acting on behalf of the public *Attorney-General* v. *Appleton*, [1907] 1 Ir. 252.

(*b*) *Merchant Banking Co. of London* v. *Merchants Joint Stock Bank* (1878), 9 C. D. 560; *H. E. Randall, Ltd.* v. *British American Shoe Co.*, [1902] Ch. 354.

(*c*) Companies (Consolidation) Act, 1908, s. 63.

(*d*) *H. E. Randall, Ltd.* v. *British American Shoe Co.*, [1902] 2 Ch. 354; *Pearks Gunston and Co.* v. *Thompson, Tolmey & Co.* (1901), 18 Rep. Pat. Cases, 185.

(*e*) *Lee* v. *Haley* (1869), 5 Ch. 155.

(*f*) *Lee* v. *Haley* (1869), 5 Ch. 155; *British Vacuum Cleaner* v. *New Vacuum Cleaner*, [1907] 2 Ch. 231.

(*g*) *Rex* v. *Registrar of Joint Stock Companies for Ireland*, [1904] 2 Ir. 634.

(*h*) Section 68 of the Trade Marks Act, 1905, prohibits the use of words calculated to suggest Royal patronage—but except where this provision applies, it is difficult to see how the Registrar gets jurisdiction to refuse to register in such cases, for they would not seem to raise a case of fraud, and s. 243 (2) of the Companies (Consolidation) Act scarcely seems to justify the Order of the Board of Trade. *Royal Worcester Corset Co.*, [1909] 1 Ch. 459, seems to support this view, for Rule 12 of the rules under the Trade Marks Act, 1905, was apparently only supported because of s. 11 of that Act. See also *Royal Baking Powder Co.* (1902), 19 Rep. Pat. Cas. 261.

(*hh*) Companies (Consolidation) Act, 1908, s. 8.

The change of name does not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name (*i*). The Board of Trade will give a provisional assent to a change of name before the special resolution is passed or confirmed. Sometimes the Board of Trade withholds its approval until the company alters its objects under section 9 of the Act (*ii*) or complies with some other requirement. The secretary or solicitor of the company should send a letter to the Board of Trade stating the reasons for the proposed change of name. If the Board approves of the change of name, its licence must be sent to the Registrar of Joint Stock Companies for filing. A fee of five shillings must accompany the licence.

A company retains its old name until the new certificate of incorporation has been issued (*k*). Where a new name has been taken the Court will not, even where the special resolution has not been duly passed, make an order vacating the registration of such new name and restoring to the company its old name, but it will, where the new name has been taken by reason of an order of its own, *e.g.* on a change of objects under section 9 of the Act, vacate such order (*l*).

It would appear that where two companies apply simultaneously to register under the same name, and there is a dispute as to which is entitled to the name, the Registrar need not register either until the matter has been decided by the proper tribunal (*m*).

Persons trading or carrying on business under any name or title of which "Limited" is the last word will, unless duly incorporated with limited liability, be liable to a fine not exceeding £5 for every day upon which the name or title has been used (*n*). A solicitor who enters an appearance for such persons under such name will be personally liable for costs (*o*).

Where it is proved to the satisfaction of the Board of Trade that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Board may by licence direct that the association be registered as a company with limited liability,

(*i*) Companies (Consolidation) Act, 1908, s. 8.

(*ii*) See the petition in *Plymouth Promenade Pier and Pavilion Co.*, 00449 of 1911, before NEVILLE, J., January 23, 1912.

(*k*) *Shackleford* v. *Dangerfield* (1868), L. R. 3 C. P. 407.

(*l*) *Australasian Mining Co.* (1893), 68 L. T. 437.

(*m*) *Reg.* v. *Registrar in Friendly Societies* (1881), L. R. 7 Q. B. 41. This case, though not decided under the Companies Acts, seems to establish this proposition.

(*n*) Companies (Consolidation) Act, 1908, s. 282. The offence may be prosecuted under the Summary Jurisdiction Acts, but in Scotland only at the instance of the Lord Advocate or a procurator fiscal, as the Lord Advocate directs: *ibid.*, s. 276, and see s. 277 as to the application of fines.

(*o*) *Simmons* v. *Liberal Opinion, Ltd.*, [1911] 1 K. B. 966.

without the addition of the word "Limited" to its name, and the association may be registered accordingly.

The licence by the Board of Trade may be granted on such conditions and subject to such regulations as the Board think fit, and those conditions and regulations will be binding on the association, and must, if the Board so direct, be inserted in the memorandum and articles, or in one of those documents (*p*).

The association will on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members and directors and managers to the Registrar of Joint Stock Companies.

A licence under this section may at any time be revoked (*q*) by the Board of Trade, and upon revocation the Registrar of Joint Stock Companies must enter the word "Limited" at the end of the name of the company upon the register, and the company will cease to enjoy the exemptions and privileges granted by the section.

Before a licence is revoked the Board of Trade must give notice in writing of their intention to the company, and afford the company an opportunity of being heard in opposition to the revocation (*r*).

The procedure in these cases is indicated by the memorandum of the Board of Trade, which is in the following terms:—

(A.)

"PROCEDURE IN CASES OF APPLICATION TO THE BOARD OF TRADE FOR "A LICENCE UNDER SECTION 20 OF THE COMPANIES (CONSOLIDA-"TION) ACT, 1908.

"1. The accompanying drafts (*p*) have been prepared to show generally "the manner in which the Memorandum and Articles of Association should "be framed where it is proposed to apply to the Board of Trade for a "Licence under the 20th section of the Companies (Consolidation) Act, "1908.

"2. Under this section any Chamber, Institute, Society, or other "association formed for the purpose of promoting commerce, art, science, "religion, charity, or any other useful object which does not involve the "division of profit, may, if it obtains the Licence of the Board of Trade,

(*p*) For form of memorandum and articles of association required by the Board of Trade in these cases, see *post*, p. 114.

(*q*) As a result of this power, the Registrar of Joint Stock Companies now declines to accept or file a special resolution altering the articles of these companies until the alteration has been approved by the Board of Trade.

(*r*) Companies (Consolidation) Act, 1908, s. 20. A company registered under the Act which by its memorandum prohibits the division of its profits among its members, gets the benefit of s. 37 of the Finance (1909 to 1910) Act, 1910, with regard to reversion duty and undeveloped land tax and the periodical payment of increment duty.

"be incorporated by registration with limited liability, but without the "addition of the word "limited" to its name.

"3. It is to be understood that the drafts of the Memorandum and "Articles of Association are subject to such additions, alterations, and "omissions as the circumstances of the Association desiring incorporation "may render necessary, or the Board of Trade may require.

"4. An association desiring to be incorporated in this manner should "make a written application to the Board of Trade for a Licence, and, "together with such application, should transmit for consideration a * *draft* "in duplicate of the proposed Memorandum of Association and Articles "of Association, together with a list of the promoters and proposed govern-"ing body of the Association, and any report or statement of its previous "proceedings as an unincorporated body. If the Board of Trade are "satisfied that the application may be entertained, they will furnish a "notice of such application, to be inserted in a local newspaper for the "information of the public, and if after the expiration of a limited time "there appears to be no sufficient reason why the Licence should not be "granted, the Board of Trade will accept the Memorandum and Articles "of Association, with such amendment, if any, as may be necessary, and "grant a Licence.

"5. The Board of Trade will require to have the Memorandum and "Articles of Association settled on their behalf by Counsel at the expense "of the applicants, for which purpose, a fee of *five guineas* must accompany "the application.† The Board of Trade will not, however, be responsible "for the Memorandum or Articles being properly framed as regards the "interests of the Association. No other fees or charges are payable to the "Board of Trade, and the fees for registration of the Association may be "ascertained by reference to Table B (II.) of the First Schedule to the "Companies (Consolidation) Act, 1908."

"* It is requested that the draft, and any subsequent revisions that "may be required, may, whether in print or manuscript, be of foolscap-"sized paper.

"† A cheque for the amount of this fee should be made payable to "'The Accountant General to the Board of Trade.'"

FORM OF ADVERTISEMENT (*t*).

Application for a licence of the Board of Trade.

Notice is hereby given that in pursuance of the 20th section of the Companies (Consolidation) Act, 1908, application has been made to the Board of Trade for a licence directing an association about to be formed under the name of   to be registered as a company with limited liability without the addition of the word limited to its name.

The objects for which the association is proposed to be formed are [here specify the main object] and other objects specified in its memorandum of association, a copy of which can be inspected at the office of Messrs.   No.   Street in the city of London.

(*t*) The advertisement generally appears from two weeks to a month before the last day for sending in objections.

Notice is hereby further given that any person, corporation, or company objecting to this application may bring such objection before the Board of Trade on or before the day of 19 , by a letter addressed to the Comptroller of the Companies Department, Board of Trade, 27, Great George Street, London, S.W.

X. Y. & Co.,
140, Street,
Solicitors for the applicants.

The next requirement of the memorandum of association is that it must state the part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate. It would seem that there is no way of altering the part of the United Kingdom in which the registered office of the company is situate, unless it can be done by re-registering under section 57 of the Companies (Consolidation) Act, 1908 (*u*).

"THE OBJECTS OF THE COMPANY."

The wording here differs slightly from that in the old Act of 1862. That Act required the memorandum to state "the objects for which the proposed company is established" (*x*). The forms given in the schedules to the two Acts are, however, identical (*y*), in both cases the object clauses stating that "the objects for which the company is established are" to do one particular named thing, and it is thought that the alteration is merely a verbal alteration.

If this is so the cases under the older Act still hold good.

This object clause limits the powers of the company (*z*). The company is incorporated subject to the conditions of its charter—*i.e.* its memorandum—and even the assent of every single shareholder will not authorize any act done, if it goes beyond what is stated to be the objects of the company; any such act is *ultra vires* (*a*), and is simply not the act of the company (*b*).

(*u*) See *ante*, p. 49.

(*x*) Companies Act, 1862, ss. 8, 9, and 19.

(*y*) See Forms A, B, C, and D in the Second Schedule to the Companies Act 1862; and Forms A, B, C, and D in the Third Schedule to the present Act.

(*z*) See *British South Africa Co.* v. *De Beers Consolidated Mines*, [1910] 1 Ch. 354, as to chartered companies, reversed on another point, [1912] A. C. 52.

(*a*) See *Ayers* v. *South Australian Banking Co.* (1871), L. R. 3 P. C. 548; *Batson* v. *London School Board* (1903), 2 L. S. R. 116; 20 T. L. R. 23; *National Telephone Co.* v. *St. Peter's Port*, [1900] A. C. 317; *Great Eastern Railway* v. *Turner* (1872), 8 Ch. 149, as to the rights of a company which has done an *ultra vires* act against outsiders, and as to the effect of a conveyance to a company of property which it is *ultra vires* for it to acquire.

(*b*) *Ashbury Railway and Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 653. A consent judgment will not bind a company where it is based on the assumption that an *ultra vires* act is valid: it will be other-

In memoranda of the present day it is usual, not to follow the shortness of the forms given in the schedules, but to give a long list of diverse objects, and often to add a clause stating that each of such objects is a separate and independent object. Such last clause would appear not really to add to the powers of a company (*c*), for it would seem that the real question to be decided—when the question arises whether a company is doing an *ultra vires* act or carrying on an *ultra vires* business—is yes or no is the company carrying on the business which it was originally intended it should carry on (*d*), or doing an act to further such business, or is it carrying on a business which at its inception was not really contemplated, except possibly as an expedient in the event of the real business failing ?

In answering this question the Court will struggle to read the memorandum in such a way as to make it honestly comply with the intention of the legislature, and will, it would seem, give strong effect to the rule of construction which is contained in the words *noscitur a sociis* (*e*). The Court will to find the real object look at the original name of the company, but it ought not to look at the prospectus or the acts of the promoters (*f*). Thus a company formed to carry out a scheme of warehousing in conjunction with the Metropolitan Railway, was held not to be carrying on its business, when it was simply lending its money out at interest, though that was one of its objects as stated in its memorandum (*g*), and a company formed to work a German patent for manufacturing coffee from dates was not, when that patent failed, allowed to work a Swedish patent, or to manufacture coffee from dates without a patent, though its memorandum contained powers to acquire other patents and to import and export all sorts of produce (*h*); and a company formed to work a particular mine in New Zealand was not allowed, when it proved to have no title to such mine, to acquire another mine in spite of wide words in its memorandum (*i*).

wise where the validity of the act in question was one of the points substantially in dispute : *Great North-West Central Railway and Charlebois*, [1899] A. C. 114.

(*c*) See, however, *London and Edinburgh Shipping Co.*, [1909] S. C. 1.

(*d*) The cases seem to go back to the old partnership case of *Baring* v. *Dix* (1786), 1 Cox. 213.

(*e*) In *Ashbury Railway and Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 653, a company formed to sell railway carriages, was not entitled to acquire and work a concession for a foreign railway, though it was authorized to carry on the business of general contractors.

(*f*) *Thomas Edward Brinsmead & Co.*, [1897] 1 Ch. 45, at p. 56, *per* VAUGHAN WILLIAMS, J. On several occasions the Court has looked at the prospectus. See the cases cited in the next four notes.

(*g*) *Metropolitan Railway Warehousing Co.* (1867), 36 L. J. (CH.) 827.

(*h*) *German Date Coffee Co.* (1882), 20 C. D. 169.

(*i*) *Haven Gold Mining Co.* (1882), 20 C. D. 151 ; and see *International Cable Co.* (1890), 2 Meg. 183. *New Gas Co.* (1877), 36 L. T. 365 ; 37

Nor was a company formed under the name of the Northamptonshire Bank, Ltd. for the purpose of carrying on a country bank in that county allowed to change its venue to London, and to carry on there under a changed name a business of land speculation, company promoting, and speculating in stocks and shares, although its memorandum contained the widest imaginable assortment of objects (*k*).

Again, companies formed to work a particular mine have been held not entitled, under powers to work mines elsewhere, to work (*l*) or to promote subsidiary companies to work (*m*) another mine, when the original mine had proved a failure.

In a later case (*n*) on the subject, however, a company named after a particular mine was, because it had power to work mines elsewhere, held to be a company incorporated for general mining purposes, and not to work a particular mine only. It was therefore entitled to work a second mine, after the original one had proved a failure. In this case the decision of the Court of Appeal in the *Coolgardie Mines case* (*o*) was apparently not cited.

Nor did wide powers avail a company, formed to take over other companies, whose businesses were the letting of seats for the Diamond Jubilee, where it proposed to do other business after that event (*p*). There are, it is true, a few cases which give a wider construction to the memorandum. Thus in one case, where a company proposed under general words to add to its original business of fire insurance other forms of insurance (*q*), the Court refused to apply the rule of *noscitur a sociis* to the construction of the insurance clauses in its memorandum (*q*). And in two other cases very wide clauses were construed so as to make all the objects enumerated separate and independent (*r*).

L. T. 111, seems scarcely consistent with these cases.

(*k*) *Crown Bank* (1890), 44 C. D. 634.

(*l*) *Coolgardie Consolidated Gold Mines* (1897), 76 L. T. 269; see also *Red Rock Gold Mining Co.* (1889), 61 L. T. 785; *Nylstroom Co.* (1889), 60 L. T. 477; and *M'Donald Gold Mines* (1898), 14 T. L. R. 204, where the fact that the petitioner had very little interest seems to have weighed with the Court; see also *Kronand Metal Co.*, [1899] W. N. 14.

(*m*) *Stephens* v. *Mysore* (*Kangundy*) *Mining Co.*, [1902] 1 Ch. 745. In this and the next case cited the memorandum contained a clause stating all the objects were separate.

(*n*) *Pedlar* v. *Road Block Gold Mines, Ltd.*, [1905] 2 Ch. 427; see also *Butler* v. *Northern Territories Mines of Australia* (1906), 96 L. T. 41; *London and Edinburgh Shipping Co.*, [1909] S. C. 1.

(*o*) (1897), 76 L. T. 269.

(*p*) *Amalgamated Syndicate*, [1897] 2 Ch. 600.

(*q*) *Norwich Provident Insurance Co., Bath's Case* (1878), 8 C. D. 334.

(*r*) *London Financial Association* v. *Kelk* (1884), 26 C. D. 107; *Butler* v. *Northern Territories Mines of Australia* (1906), 96 L. T. 41; see also *London and Edinburgh Shipping Co.*, [1909] S. C. 1.

It would appear that the bulk of authority is in favour of giving a limited construction to the object clause in the memorandum, in so far as such clause contains objects properly so called, and not mere powers. But where a company is formed not to work a particular undertaking, but an undertaking of a certain class, as, for instance, a hotel anywhere in London (*s*) or a skating rink (*t*), the company can carry on such undertaking on a smaller scale than was originally contemplated, even where an attempt to carry on such undertaking on the original lines has failed, thus a company formed to work breweries at Brighton, and in particular to acquire a certain specified brewery, was entitled to start business in a small way with another brewery there (*u*).

We come now to the question of the powers which the company will have to carry on its main object.

These may be divided into two classes—

1. Those which are so necessary for carrying out the main object of the company as to be implied.

2. Those powers, which though not so necessary as to be implied, are yet consistent with and reasonably conducive to the furtherance of such main objects. This latter class of power will, where expressly given by the memorandum or, it would seem, by the articles of association, be valid (*x*).

With regard to the first class, it is very usual to add to the object clause of the memorandum general words, such as "and the doing of all such other things as are incidental or conducive to the attainment of the above objects."

A good deal of weight was apparently put on these words in one of the earlier cases (*y*), and in another case where the general words were wider, as they made the directors of the company the judges of what was conducive to the attainment of the company's objects, Lord Cairns held that a company could by virtue of the general words make promissory notes, though apart from them it could not have done so (*z*).

The general tendency of the later cases seems, however, to be to treat these general words as simply expressing what in their absence would have been implied, and not as enlarging the implied powers of the company (*a*).

(*s*) *Suburban Hotel Co.* (1867), 2 Ch. 737.

(*t*) *Langham Skating Rink Co.* (1877), 5 C. D. 669.

(*u*) *Syers* v. *Brighton Brewery* (1864), 11 L. T. 560.

(*x*) Cp. *Agnew* v. *Murray* (1885), 9 A. C., at p. 537.

(*y*) *Simpson* v. *Westminster Palace Hotel* (1860), 8 H. L. C. 712.

(*z*) *Peruvian Railways* v. *Thames and Mersey Marine Insurance* (1867), 2 Ch. 617. See also on this case *Atkins* v. *Wardle* (1889), 58 L. J. (Q. B.) 377 (affirmed on another point (1889), 5 T. L. R. 734).

(*a*) *Johns* v. *Balfour* (1889), 1 Meg. 191; *Studdert* v. *Grosvenor*

It would appear that such powers will be implied as are reasonably necessary for attaining the objects of the company (*b*). Thus, in the course of carrying on its business a company can do anything which is usual in carrying on a business of that class, or, in other words, it has implied power to do such things as would be binding on a partnership carrying on the same business, if done by one partner (*c*). Thus an ordinary trading partnership has implied power to borrow money, and to give security for money so borrowed (*d*), and may give security for a past debt (*e*), though before the Companies Act of 1907 a trading company could not create perpetual debentures (*f*), and a banking company can lend money on the security of shares in another company, and can accept transfers of such shares (*g*). Usually a company if it has simply power to mortgage (*h*), or even if its main business is lending money on mortgage (*i*), cannot, it would seem, guarantee the debt of a prior mortgagee ; a banking company, however, can give guarantees, and can therefore guarantee the debt of a prior mortgagee (*k*).

A company with power to borrow can take over a prior mortgage and can enter on the mortgaged property and put it into repair (*l*).

Non-trading corporations, such as building societies (*m*), mining companies (*n*), telegraph companies (*o*), literary and social institutions (*p*) have no borrowing powers (*q*), and, contrary to the view

(1886), 33 C. D. 528 ; *Kingsbury Collieries and Moore's Contract*, [1907] 2 Ch. 259.

(*b*) *Per* Buckley, L.J., *Attorney-General* v. *Mersey*, [1907] 1 Ch. 81 and S. C., [1907] A. C. 415 ; *Kingsbury Collieries and Moore's Contract*, [1907] 2 Ch. 259.

(*c*) *Small* v. *Smith* (1884), 10 A. C. 119 ; *Bank of Australia* v. *Breillat* (1847), 6 Moore P. C. 152, at pp. 193, 194.

(*d*) *General Auction Estate, &c., Co.* v. *Smith*, [1891] 3 Ch. 432 ; *Australian Auxiliary Steam Clipper Co.* v. *Mounsey* (1858), 4 K. & J. 733 ; *Bryon* v. *Metropolitan Saloon Omnibus Co.* (1858), 3 D. G. & J. 123 ; *Gibbs and West's Cases* (1870), 10 Eq. 312 ; *Hamilton* v. *Windsor Iron Works* (1879), 12 C. D. 707.

(*e*) *Patent File Co.* (1870), 6 Ch. 83.

(*f*) *Southern Brazilian Rio Grande do Sul Railway*, [1905] 2 Ch. 78. The question of a company's borrowing powers is more fully dealt with in the chapter on Debentures, *post*, pp. 445 *et seq.*

(*g*) *Royal Bank of India* (1869), 4 Ch. 252.

(*h*) *Small* v. *Smith* (1884), 10 A. C. 119.

(*i*) *Life Association of Scotland* v. *Caledonian Heritable Security Co.* (1886), 13 Rettie 750.

(*k*) *West of England Bank* (1880), 14 C. D. 317.

(*l*) *Sheffield and South Yorkshire Benefit Building Society* v. *Aizlewood* (1889), 44 C. D. 312.

(*m*) *Cunliffe, Brooks & Co.* v. *Blackburn Building Society* (1885), 9 A. C. 857.

(*n*) *German Mining Co.* (1853), 4 De G. M. & G. 19 ; *Burmester* v. *Norris* (1851), 6 Ex. 796.

(*o*) *Troup's Case* (1860), 29 Beav. 353.

(*p*) *Re Badger*, [1905] 1 Ch. 568.

(*q*) See also *Baroness Wenlock* v. *River Dee* (1887), 36 C. D. 675 n. ; (1885), 10 A. C. 354 ; and *Reg.* v. *Sir C. Reed* (1880), 5 Q. B. D. 483.

that formerly prevailed (*r*), an overdraft at the bank for this purpose amounts to borrowing (*s*).

Again, a trading company can issue, make and endorse promissory notes and bills of exchange (*t*), but in the absence of special power in that behalf—a railway company (*u*), a waterworks company (*x*), a mining company (*y*), a salt and alkali company (*z*), or a company formed for keeping a swimming bath (*a*), could not do so.

An insurance company can pay on losses for which they are strictly speaking not liable, in cases where it is usual for persons carrying on a similar business to pay (*b*).

On the other hand, a company formed to carry on the business of a bill broker and scrivener, and to make advances and invest in securities, was held not entitled to promote another company, with the idea of thereby increasing its discount business (*c*), and without express power in that behalf a company cannot acquire shares in another company (*d*) except as an investment for funds which are temporarily unemployed (*e*), and cannot purchase the undertaking of another company (*f*). A company formed to do life-assurance business only cannot undertake marine insurance (*g*). Any company can, it appears, enter into a *bonâ fide* compromise, provided that the terms of the compromise do not involve the doing of an *ultra vires* act (*h*). Moreover, a company will have such implied powers in the management of their business and generally in the affairs of the company as are reasonably necessary for those purposes. Thus a company may make any use it pleases of property acquired for the

(*r*) *Cefn Cilcen Mining Co.* (1868), 7 Eq. 88; *Waterlow* v. *Sharp* (1869), 8 Eq. 501.

(*s*) *Cunliffe, Brooks & Co.* v. *Blackburn Building Society* (1885), 9 A. C. 857, 865.

(*t*) *Crouch* v. *Credit Foncier* (1873), L. R. 8 Q. B. 374; *Bank of Australasia* v. *Breillat* (1847), 6 Moore P. C. 152, at pp. 193, 194.

(*u*) *Bateman* v. *Mid Wales Rail. Co.* (1866), L. R. 1 C. P. 499; *Peruvian Railways* v. *Thames and Mersey Marine Insurance* (1867), 2 Ch. 617.

(*x*) *Broughton* v. *Manchester, &c., Waterworks Co.* (1819), 3 B. & Ald. 1.

(*y*) *Dickinson* v. *Valpy* (1829), 10 B. & C. 128.

(*z*) *Bult* v. *Morrell* (1840), 12 A. & E. 745.

(*a*) *Atkins* v. *Wardle* (1889), 58 L. J. (Q. B.) 377 (affirmed on another point (1889), 5 T. L. R. 734).

(*b*) *Taunton* v. *Royal Insurance Co.* (1864), 2 H. & M. 135.

(*c*) *Joint Stock Discount Co.* v. *Brown* (1866), 3 Eq. 139; see also (1869), 8 Eq. 381.

(*d*) *Ex parte Contract Co.* (1867), L. R. 3 Ch. 105; *British Nation* (1878), 8 C. D. 679.

(*e*) *Burland* v. *Earle*, [1902] A. C. 83; cp. also *Financial Corporation Goodson's claim* (1880), 28 W. R. 760.

(*f*) *Ernest* v. *Nicholls* (1857), 6 H. L. C. 401.

(*g*) *Phœnix Life Assurance Co.* (1862), 2 J. & H. 441.

(*h*) *Bath's Case* (1878), 8 C. D. 334; *Dixon* v. *Evans* (1872), L. R. 5 H. L. 606; and see *Great North-Western Central Railway* v. *Charlebois*, [1899] A. C. 114. As to references to arbitration by companies, *post*, pp. 328 and 329.

purpose of its business, where it is temporarily not required for such purpose.

Under this rule a hotel company has been allowed to let off part of its hotel (*i*), and a brewery company which had acquired larger premises than it required was held to be entitled to grant a lease of part of such premises (*k*).

Again, although less powers will be implied in the case of a statutory company than in the case of an ordinary company (*l*), railway companies have been held entitled to let out arches under their railway (*m*), to charge persons using their weighing-machines (*n*), and to run as excursion steamers steamboats, which were required for the purposes of their undertaking, but which were temporarily not required for their ordinary work (*o*).

Further, a company can build up a reserve fund, and when it has moneys unemployed in its business, can invest them (*p*).

A company may acquire and deal with any property which it is necessary for it to work or use in the course of carrying on its business. Here we are not speaking of property such as goods bought to be immediately sold again in the ordinary course of business, but of property as, for instance, land (*q*), which is required for more or less permanent retention and use in the working of the company's business.

(*i*) *Simpson* v. *Westminster Palace Hotel* (1860), 8 H. L. C. 712. In this case the partnership case, *Natusch* v. *Irving* (1824), 2 Coop. *temp.* Cott. 358, was mentioned as showing the principles that govern these cases.

(*k*) *London and Colonial Co. Horsey's Claim* (1868), 5 Eq. 562 *n.*

(*l*) See *Attorney-General* v. *Mersey Railway*, [1907] 1 Ch. 81. The judgment of Buckley, L.J., may be usefully consulted for the purposes of seeing what is and what is not *ultra vires*. It is conceived that on these points the decision of the House of Lords does not affect that of the Court of Appeal: see [1907] A. C. 415. But few of the cases on the powers of statutory companies are cited, as for the most part they are not applicable to the companies now under discussion.

(*m*) *Foster* v. *London, Chatham, and Dover Rail. Co.*, [1895] 1 Q. B. 711.

(*n*) *London and North-Western Rail. Co.* v. *Price* (1853), 11 Q. B. D. 485.

(*o*) *Forrest* v. *Manchester, Sheffield, &c., Railway* (1860), 30 Beav. 40, decided on another point on appeal: 4 D. G. F. & J. 126; cp. also *Attorney-General* v. *North-Eastern Railway*, [1906] 2 Ch. 675.

(*p*) *Burland* v. *Earle*, [1902] A. C. 83.

(*q*) All companies, formed under the Act, or the previous Act of 1862, have power to hold lands; but companies formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by its individual members, may not hold more than two acres of land without the licence of the Board of Trade; but the Board of Trade may empower such companies to hold as much land as the Board think fit: Companies (Consolidation) Act, 1908, s. 19. See *ante*, p. 13.

Thus a company formed to work mines was, after it had acquired a leasehold interest in such mines, held entitled to purchase the freehold of the mines and the surface over the same, and to let off the surface (*r*). A company formed to work a colliery was held entitled to purchase the colliery (*s*), and a company formed to work a patent was entitled to purchase the patent (*t*).

In another case it was held that a company could sell lands which it had power to acquire (*u*). A company has wide powers in dealing with its employees and generally in conducting its own internal affairs.

Thus it may, except where its business has come to an end (*x*), pay a bonus to (*y*) or pension off (*z*) its old employees. These cases are, it is true, cases of presents made by the company, but they are, it would seem, treated as cases where sums have been expended, with a view to obtaining increased efficiency in the staff in the future. Apart from cases coming under this head, a company cannot make presents (*a*).

The recent case of *Peel* v. *London and North Western Railway* (*b*) also throws important light on this branch of the law. It was there held that the funds of the company could be applied in sending out circulars and proxy papers stamped and filled up with the view of inducing shareholders to support the policy of the directors on a point in controversy. This case has additional importance by reason of the fact that for practical purposes it does away with two earlier decisions, one of which (*c*) decided that the funds of the society could not be applied for the purpose of prosecuting persons who had libelled the council of administration, and the other of which (*d*) decided that the funds of the society could not be applied

(*r*) *Johns* v. *Balfour* (1889), 1 Meg. 191.

(*s*) *Baglan Hall Colliery* (1870), 5 Ch. 346.

(*t*) *Leifchild's Case* (1865), 1 Eq. 231.

(*u*) *Kingsbury Collieries and Moore's Contract*, [1907] 2 Ch. 259.

(*x*) *Hutton* v. *West Cork Rail. Co.* (1883), 23 C. D. 654; *Stroud* v. *Royal Aquarium* (1903), 89 L. T. 243; but cp. *Kaye* v. *Croydon Tramways*, [1898] 1 Ch. 358.

(*y*) *Hampson* v. *Price's Patent Candle Co.* (1876), 45 L. J. (CH.) 437; and see *Normandy* v. *Ind, Coope, Co.*, [1908] 1 Ch. 84.

(*z*) *Henderson* v. *Bank of Australasia* (1888), 40 C. D. 170. Even in cases of companies not for profit, the rule is the same: *Cyclist's Touring Club* v. *Hopkinson*, [1910] 1 Ch. 179.

(*a*) *George Newman & Co.*, [1895] 1 Ch. 674; see also *Taunton* v. *Royal Insurance Co.* (1864), 2 H. & M. 135, where a company was held to be entitled to pay losses which it was not legally liable for.

(*b*) [1907] 1 Ch. 5, overruling *Studdert* v. *Grosvenor* (1886), 23 C. D. 528, unless that case can be supported on the ground that the directors were abusing their powers; see also *Campbell* v. *Australasian Mutual Provident Society* (1908), 77 L. J. (CH.) 116.

(*c*) *Pickering* v. *Stephenson* (1872), 14 Eq. 322.

(*d*) *Kernaghan* v. *Williams* (1868), 6 Eq. 228.

in prosecuting an action for the benefit of the company instituted by a shareholder suing on behalf of himself and all other shareholders of the company.

It had previously been decided that a corporation which conducted a newspaper could apply its funds in defending its editor in an action brought against him for a libel contained in the newspaper (e).

Similarly it has been held that it is not *ultra vires* a company to certify transfers (f), or to apply its funds in paying brokerage (g). A company has also implied power to receive payment in money's worth, and not in money, for its shares (h).

Of course, all these implied powers of a company must in every case be taken subject to this—they will be excluded if there is anything in the company's memorandum or articles which negatives their existence.

2. The powers, which though not so necessary to the company as to be implied, are yet reasonably conducive to the furtherance of its objects. These powers must be expressly given, but they are not properly objects of the company at all, and consequently they can just as well be given by the articles as by the memorandum (i). Indeed, there are many powers given by the Act to a company if it has a provision in that behalf in its regulations (k)—*i.e.*, its articles—and, where this is the case, a provision in the memorandum will be useless (l). Where powers are contained in the memorandum of association they become unalterable (m), unless there is a provision in the memorandum itself or incorporated therein by reference enabling them to be altered, or, possibly, a power in the original articles (n). In this respect powers and rights given by the memorandum, but not by the Act required to be contained therein, differ from those which must be set out therein; a condition enabling them to be altered is not void (o). Further, the original articles may be looked at in construing such provisions (p). However, probably

(e) *Breay* v. *Royal British Nurses' Association*, [1897] 2 Ch. 272.

(f) *Bishop* v. *Balkis Consolidated* (1890), 25 Q. B. D. 512.

(g) *Metropolitan Coal Consumers' Co.* v. *Scrimgeour*, [1895] 2 Q. B. 604.

(h) *Mercantile Trading Co., Schroder's Case* (1870), 11 Eq. 131.

(i) *Southern Brazilian Rio Grande do Sul Railway*, [1905] 2 Ch. 78.

(k) *E.g.* the powers to increase or reduce capital.

(l) *Dexine Patent Packing Co.* (1903), 88 L. T. 791.

(m) *Ashbury* v. *Watson* (1885), 30 C. D. 376.

(n) The question as to whether a power in the original articles is sufficient, is discussed, *post*, pp. 317 and 318.

(o) *Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87.

(p) *Southern Brazilian Rio Grande do Sul Railway*, [1905] 2 Ch. 78; *Andrews* v. *Gas Meter*, [1897] 1 Ch. 361. The cases of *Harrison* v. *Mexican Railway* (1875), 19 Eq. 358; and *The South Durham Brewery Co.* (1885), 31 C. D. 261, can be supported on this ground.

even with regard to these matters, the memorandum of association will, in case of conflict, prevail (*q*).

Of course, any power which is contrary to the letter or spirit of the Act will, even if contained in the memorandum, be void (*r*).

Further, it would seem that a power which is inconsistent with the objects of the company, would be invalid.

But powers enabling a company to sell its entire undertaking for shares in another company, have so long as the company is a going concern, been held to be good (*s*), but a power to sell its whole undertaking and to divide the proceeds; in other words, to sell not only its present business, but any other business it may afterwards acquire is bad (*t*).

A company which is not registered under the Act can, if it has power in its deed, amalgamate or transfer its business (*u*).

Again, where a company had for some years carried on business, without success, a power to lease, was held to authorize a lease of all its property for twenty-one years (*x*).

Again, under an express power a company may take shares in another company (*y*).

Express powers of borrowing (*z*) or of issuing promissory notes (*a*) will enable companies not otherwise entitled to do these things to do them.

It is not unusual for a memorandum of association to contain powers enabling a company to enter into arrangements for sharing profits with other companies, apart from express authority to do so, it is thought a company could not enter into such an arrangement (*b*),

(*q*) *Southern Brazilian Rio Grande do Sul Railway*, [1904] 1 Ch. 87; but see *post*, pp. 317 and 318, and also *post*, p. 445.

(*r*) *E.g.* a power to purchase its own shares, *Mersina, Tarsus and Adana Railway* (1889), 1 Meg. 341.

(*s*) *Mason* v. *Motor Traction*, [1905] 1 Ch. 419; *Bisgood* v. *Nile Valley*, [1906] 1 Ch. 747; *Archer* v. *Normanby Ironworks*, Times newspaper, November 25th, 1911.

(*t*) *Bisgood* v. *Henderson's Transvaal*, [1908] 1 Ch. 743, overruling *Cotton* v. *Imperial, &c., Co.*, [1892] 3 Ch. 454; *Fuller* v. *White Feather Reward Co.*, [1906] 1 Ch. 823; and *Doughty* v. *Lomagunda*, [1902] 2 Ch. 837. The point was not argued in *Re Borax Co.*, [1901] 1 Ch. 326; cp. also *Manners* v. *St. Davids*, [1904] 2 Ch. 593, and *post*, pp. 1282 *et seq.*

(*u*) *Argus Life Assurance Co.* (1888), 39 C. D. 571; *Doman's Case* (1876), 3 C. D. 21. Under such a power a company cannot compel its shareholders to take shares in a new company, *Bagshaw's Case* (1876), 4 Eq. 341.

(*x*) *Featherstonhaugh* v. *Lee Moor Porcelain Clay Co.* (1866), 1 Eq. 318.

(*y*) *Barneds Banking Co.*, *Ex parte Contract Corporation* (1867), 3 Ch. 105.

(*z*) *Cunliffe, Brooks & Co.* v. *Blackburn Benefit Building Society* (1885), 9 A. C. 857; *Agnew* v. *Murray* (1885), 9 A. C. 519.

(*a*) *Peruvian Railway* v. *Thames and Mersey Marine Insurance* (1867), 2 Ch. 617.

(*b*) *Hare* v. *London and North Western Railway* (1861), 2 J. & H. 80; *Colman* v. *Eastern Counties Railway* (1846), 10 Beav. 1—both cases of companies incorporated by special Act; but it is thought the principle would apply to other companies.

and under a general power to borrow money a company cannot usually borrow jointly with other companies (*c*).

Another very common power is a power to apply for special Acts of Parliament. Whether such a power would authorize a company to spend its funds on such an application would seem very doubtful. The authorities on the subject all arose in the cases of companies incorporated by special Act of Parliament (*d*), but they seem to be founded on the principle that it is quite outside the province of a company to undertake to remodel the laws of the realm, even though the company might reap profit thereby. This principle does not apply to opposing proceedings in Parliament, and a company can take this course if it has, or probably if it has not, an express power in that behalf (*e*).

Although it may be that the funds of a company may not be applied in promoting bills, the Court will not restrain the use of a company's name in such proceedings (*f*). The usual course being for individuals to bear the original cost, and to insert a clause in the bill providing for their reimbursement by the company. Of course, this will only become operative if the bill becomes law. The Registrar of Joint Stock Companies will not register a memorandum which contains objects which bring the company within the provisions of the Assurance Companies Act, 1909, unless the requirements of the Act have been complied with or which enable the company to carry on a telephone or telegraph business in the United Kingdom, or which enable it to carry out any unlawful objects such as a lottery, or which authorize it to fly a foreign flag on a ship, or which make it a trade union. A company formed to carry out specified objects and any other objects approved by the signatories to its memorandum was required to insert a proviso referring to section 9 of the Act.

With regard to altering the objects of a company, power is given by the Mortgage Debenture Act, 1865 (*g*), to alter them in the

(*c*) *Johnston Foreign Patents Co.*, [1904] 2 Ch. 234.

(*d*) *Munt* v. *Shrewsbury and Chester Railway* (1850), 13 Beav. 1; *Attorney-General* v. *Corporation of Norwich* (1848), 16 Sim. 225; *Ware* v. *Grand Junction* (1831), 2 Russ. & Mylne, 470; *Attorney-General* v. *Andrewes* (1850), 2 Mac. & G. 225; *Attorney-General* v. *West Hartlepool Commissioners* (1870), 10 Eq. 156; *Cleverton* v. *St. Germains* (1887), 56 L. J. Q. B. 83.

(*e*) *Cp. Munt* v. *Shrewsbury and Chester Railway* (1850), 13 Beav. 1, a case that is all the stronger authority, because the company was incorporated by special Act.

(*f*) *Stevens* v. *South Devon Railway* (1851), 9 Hare 313; *Heathcote* v. *North Staffordshire Railway* (1850), 2 Mac. & G. 100; *Steele* v. *North Metropolitan Railway* (1867), 2 Ch. 237; *London, Chatham, and Dover Railway Arrangement Act* (1870), 5 Ch. 671; *Simpson* v. *Denison* (1852), 10 Hare 51; *Parker* v. *River Dunn Navigation* (1847), 1 D. G. & Sm. 192; *Maunsell* v. *Midland, &c., Railway* (1863), 1 H. & M. 130.

(*g*) Amended by the Mortgage Debenture Act, 1870.

particular cases there specified by special resolution. This power, however, is practically never used, and there is also power to alter the memorandum in this respect with the sanction of the Court under section 9 of the Act (*h*). Where the objects of a friendly society which has been converted into a company include assurance or insurance business of any description, the objects of the company can in no case extend beyond those of the society before conversion, except so far as may be necessary for carrying out contracts, assurances or policies made, entered into, or issued before the 3rd of August, 1910 (*i*).

In the case of a limited company, the memorandum must state it is limited. This rule applies to a company which has obtained a licence from the Board of Trade to dispense with the word "limited" at the end of its name (*k*).

CAPITAL OF A COMPANY.

A company limited by shares is a company having the liability of its members limited by its memorandum to the amount, if any, unpaid on the shares respectively held by them (*l*).

Such a company must state in its memorandum the amount of its capital, and the division thereof into shares of a specified amount (*m*), and its memorandum of association is, as already stated, so far as matters which must be stated in it are concerned, unalterable except where the Act provides for alteration. In the event of such a company being wound up, its members are liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, with this qualification that no contribution can be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a member (*n*).

It will be noticed that this last section cuts down what would be the ordinary liability of a shareholder, and is not a section imposing a fresh liability; further, the liability is the amount unpaid, not the amount due in respect of the members' shares.

It follows that in respect of each share, the full amount, specified in the memorandum, as the amount of such share, must be paid—in other words, it is *ultra vires* of a company to issue shares at a

(*h*) See *post*, pp. 691 *et seq.*

(*i*) Companies (Converted Societies) Act, 1910, s. 1.

(*k*) See *ante*, pp. 55, as to improper use of word "limited."

(*l*) Companies (Consolidation) Act, 1908, s. 2. See *ante*, pp. 43 *et seq.*, as to the fees payable on registration, and as to the stamped statement as to capital.

(*m*) *Ibid.*, s. 3. This section is slightly different in its wording from the repealed s. 8 of the Companies Act, 1862. The result, however, is thought to be the same.

(*n*) Companies (Consolidation) Act, 1908, s. 123.

discount, it cannot issue them at less than their par value (*o*), even where its memorandum gives it power to issue shares at a discount (*p*).

The underwriting provisions of the Act, which are dealt with later, do to a certain extent allow an exception to this rule.

Further, a company cannot contract with a shareholder that no calls shall be made on him for adjusting the rights of contributories among themselves; whether it is a question of making calls for the purpose of paying the debts of the company or the costs of winding it up, or merely for the purpose of adjusting the rights of members, each shareholder will be liable to pay the full nominal value of his shares (*q*). But there are various ways in which shares may be paid for. They may in the first place be paid for in cash or in kind (*r*). If they are to be paid for in kind, there must be a regular agreement by which the company is to receive certain property, and in return is to issue certain shares in consideration for the same.

DEALINGS OF A COMPANY WITH ITS OWN SHARES.

Very soon after the limited liability Acts came into force, it was decided that a company taking the benefit of limited liability could not reduce the nominal value of even its fully paid shares (*s*). There was, however, for some time considerable doubt whether a limited company could or could not purchase its own shares, if it had a power in that behalf given by its memorandum or articles.

In the case of the *Dronfield Silkstone Co.* (*t*), Jessel, M.R., came to the conclusion that such a company could not do so. He pointed out that on the one hand a company could not reduce its issued capital because section 12 of the Companies Act, 1862 (*u*), the section which made the memorandum of association unalterable except as therein mentioned, applied to issued as well as unissued capital, as was shown by the fact that it allowed the conversion of fully paid-up shares into stock; and on the other hand, it could not become a shareholder in itself. On this last point he referred to the section which directs a company to keep a register of its

(*o*) *Ooregum Gold Mining Co.* v. *Roper*, [1892] A. C. 125; *Almada and Tirito Co.* (1888), 38 C. D. 415; *Addlestone Linoleum Co.* (1887), 37 C. D. 191; *New Chili Gold Mining Co.* (1888), 38 C. D. 475, overruling *Plaskynaston, &c., Co.* (1883), 23 C. D. 543; *Ince Hall Rolling Co.* (1882), 23 C. D. 545 n.; cp. also *Bury* v. *Famatina Development Co.*, [1909] 1 Ch. 708; [1910] A. C. 439.

(*p*) *Klenck* v. *East India, &c., Co.* (1888), 16 Rettie 271.

(*q*) *Weymouth and Channel Islands Steam Packet Co.*, [1891] 1 Ch. 66; *Welton* v. *Saffery*, [1897] A. C. 299.

(*r*) *Drummond's Case* (1869), 4 Ch. 772. The question of payment for shares is more fully dealt with *post*, pp. 255 *et seq.*

(*s*) *Droitwich Patent Salt Co.* v. *Curzon* (1867), L. R. 3 Ex. 35; this was the case of a company which was not formed under the Act, but subsequently registered under it as a limited company.

(*t*) (1880), 17 C. D. 76.

(*u*) Replaced by Companies (Consolidation) Act, 1908, ss. 7 and 41 (*a*), (*b*), and (*c*).

members, and the sections which deal with the liability of contributories in a winding up and the mode of enforcing the same (*x*).

In the case in question there was only an article authorizing the company to purchase its own shares, but Sir George Jessel's reasoning applies with equal force to cases where there is a power in the memorandum, and also to a surrender of shares (*y*). Sir George Jessel's decision was reversed, but his view, and not the view of the Court of Appeal (*z*), has since prevailed (*a*), and his reasoning would seem to be the basis of all the law on the subject.

Thus it has since been held that a company cannot purchase its own shares (*a*), even where the purchase is expressly authorized by its memorandum (*b*), and that it cannot accept a surrender of partly paid shares releasing the holders from all further liability in respect of them (*c*), and it would seem that a company cannot accept a surrender of some of its shares, and issue new shares in the place of those surrendered (*d*).

It would appear, however, that a company can accept a surrender of shares, which it is in a position to forfeit, without going through all the formalities necessary for forfeiture (*e*); and it is quite clear that if it has power in that behalf given by its memorandum or as is more usual by its articles, a company may forfeit shares, in respect of which the holder has not paid calls when made, for this is a right expressly recognized by the Act, and by the model articles in the schedule to the Act (*f*).

Again, a company can in all probability accept a surrender of shares from a person who is in a position to annul his contract, *e.g.* where such contract has been induced by misrepresentation (*g*); or as part of an arrangement setting aside an agreement, which the

(*x*) See now Companies (Consolidation) Act, 1908, ss. 25, 123, 166.

(*y*) *Mersina, Tarsus, and Adana Railway* (1889), 1 Meg. 341.

(*z*) 17 C. D. 71, very reluctantly followed by the Irish Court of Appeal. *Balgooley Distillery Co.* (1885), 17 L. R. Ir. 239.

(*a*) *Trevor* v. *Whitworth* (1887), 12 A. C. 409.

(*b*) *Mersina, Tarsus, and Adana Railway* (1889), 1 Meg. 341.

(*c*) *Bellerby* v. *Rowland*, [1902] 2 Ch. 14: this case would seem to overrule the dicta of FITZGIBBON, L.J., in *Balgooley Distillery Co.* (1885), 17 L. R. Ir. 238, at p. 263.

(*d*) *Bellerby* v. *Rowland*, [1902] 2 Ch. 14, overruling *Eichbaum* v. *City of Chicago*, [1891] 2 Ch. 459, and deciding that *Teasdale's Case* (1873), 9 Ch. 54 is inconsistent with *Trevor* v. *Whitworth* (1887), 12 A. C. 409, and is therefore overruled.

(*e*) *Trevor* v. *Whitworth* (1887), 12 A. C. 409.

(*f*) Companies (Consolidation) Act, 1908, s. 26 (2) (*g*), Table A, Clauses 24 *et seq.*

(*g*) Possibly *Wright's Case* (1868), 12 Eq. 334 n., may be supported on this ground; but there is more difficulty in supporting *Snell's Case* (1869), 5 Ch. 22, thus, as that was the case of a signatory to the memorandum. *Maclagan's Case* (1882), 50 L. J. (CH.) 841, would also seem to be an instance of a valid agreement to surrender shares held by a person who was in a position to get rescission.

company is for some other reason in a position to set aside, when the shares surrendered either alone or with goods or money which are returned as further part of such arrangement, formed the consideration for the agreement set aside.

But where there is a doubt whether the member who is seeking to set aside his contract to take shares is entitled to succeed, or whether the company is in a position to rescind, it is thought that the company cannot affirm the contract in part and make an arrangement by which shares forming part only of the consideration for the contract shall be cancelled (*h*). Such a compromise would be neither more nor less than a fresh agreement between the company and the other party to the original agreement, by which the company agrees to purchase its own shares ; and if a compromise of this sort is to be entered into the company should reduce its capital in the ordinary way (*i*).

Dixon v. *Evans* (*k*) is no authority to the contrary, for that was not the case of a limited company, and consequently the same considerations did not apply.

Since *Trevor* v. *Whitworth* (*l*) many of the previous cases on purchases and surrenders of shares must be treated as overruled (*m*). Where there has been an invalid purchase or surrender by a company of its own shares, the Court will, even after a lapse of years, order the register of the company to be rectified by restoring the name of the person whose shares have been purchased or surrendered (*n*).

Where shares have been forfeited it is usual for a company not to treat them as if they had never been issued, but to let them, even before they have been resold, appear amongst the issued shares in the balance-sheet of the company ; this practice would seem to be right.

Persons who have accepted transfers of a company's shares as

(*h*) *British and American Trustee and Investment Corporation* v. *Couper*, [1894] A. C. 399 ; *Mother Lode Consolidated Gold Mines* v. *Hill* (1903), 19 T. L. R. 341. The case of *Gill* v. *Arizona Copper* (1900), 2 Fra. 843, would seem not to be law.

(*i*) See the remarks on the *Denver Hotel Co.*, [1893] 1 Ch. 495, in *British and American Trustee and Investment Corporation* v. *Couper*, [1894] A. C. 399.

(*k*) (1872), L. R. 5 H. L. 606.

(*l*) (1887), 12 A. C. 409.

(*m*) *Bellerby* v. *Rowland*, [1902] 2 Ch. 14 ; *e.g. Marshall* v. *Glamorgan Iron and Coal Co.* (1868), 7 Eq. 129 ; *Snell's Case* (1869), 5 Ch. 22 ; *Teasdale's Case* (1873), 9 Ch. 54 ; *Thomas's Case* (1872), 13 Eq. 437 ; *Colville's Case* (1879), 48 L. J. (CH.), 633 ; and the decision of the Court of Appeal in *Dronfield Silkstone Co.* (1880), 17 C. D. 76 ; but of course *Hope* v. *International Financial Society* (1876), 4 C. D. 327, and *Hall's Case* (1870), 5 Ch. 707, were correctly decided.

(*n*) *Bellerby* v. *Rowland*, [1902] 2 Ch. 14 ; *General Property Investment Co.* v. *Matheson's Trustees* (1888), 16 Rettie 282. The case of *General Finance Co.* (1889), 23 L. R. Ir. 173, would seem overruled.

trustees for the company will be personally liable to be placed on the list of contributories (*o*), and a broker who has received fees for purchasing a company's shares on its behalf will be liable to refund the money so received (*p*).

An unlimited company may, of course, purchase its own shares, where its articles give it power so to do (*q*), though presumably not otherwise (*r*), and a member of a company limited by guarantee which has no share capital may, if the articles so provide, retire. With regard to a shareholder of a company limited by guarantee, but which has a share capital, it would seem probable that the company cannot buy him out ; otherwise why should the memorandum and not the articles state such capital, and what is the meaning of section 56 of the Act, which provides for such a company reducing its share capital ? If this view is correct, it must be admitted that it is very difficult to give any meaning to clauses 1 and 2 of the articles of association in Form C in the Third Schedule to the Act (*s*).

DIVIDENDS.

Even before the passing of the limited liability Acts it was decided that a company which held itself out as having a certain capital could not pay dividends out of the moneys representing such part of its capital as had actually been paid up (*t*).

After the passing of the Act, 1862, it was decided that a company could not apply moneys it had received in respect of its shares in paying dividends where it had not made profits of any sort (*u*), and that it could not sell the assets which it had acquired with such monies and divide the proceeds of sale amongst its shareholders (*x*). Moreover, a company cannot pay debts which are only charged on and payable out of profits, out of capital, for the result of this would be that any amount out of which dividends could in the future be paid would be increased (*y*).

(*o*) *Cree* v. *Somervail* (1879), 4 A. C. 648.

(*p*) *Zulueta's' Claim* (1870), 5 Ch. 444 ; and cp. *London, Hamburg and Continental Co.* v. *Henry* (1869), 7 Eq. 334.

(*q*) *Borough Commercial and Building Society* [*No.* 1], [1893] 2 Ch. 242.

(*r*) See *Spackman* v. *Evans* (1868), L. R. 3 H. L. 171 ; *Houldsworth* v. *Evans* (1868), L. R. 3 H. L. 263 ; *Evans* v. *Smallcombe* (1868), L. R. 3 H. L. 249.

(*s*) These provide for the directors with the sanction of the company in general meeting reducing the amount of the Shares of the company and cancelling any shares belonging to the company—possibly these provisions may be held to apply only to unissued shares.

(*t*) *Evans* v. *Coventry* (1856), 25 L. J. (CH.) 491 ; (1857), 8 D. M. & G. 835.

(*u*) *Guinness* v. *Land Corporation of Ireland* (1882), 22 C. D. 349 ; *Rance's case* (1870), 6 Ch. 104 ; *Macdougall* v. *Jersey Hotel* (1864), 2 H. & M. 528.

(*x*) *Holmes* v. *Newcastle-upon-Tyne Freehold Abattoir Co.* (1875), 1 C. D. 682.

(*y*) *Bury* v. *Famatina Development Corporation*, [1909] 1 Ch. 754, [1910] A. C. 439.

Where a company has sold part of its capital assets at a profit, with the result that the total value of its capital assets is in excess of its paid-up capital, the excess may at the end of the year be carried to profit and loss and be divided amongst its shareholders (*z*).

Further, where a company estimates that it has made a profit, it need not wait to realize all its assets to ascertain whether such profit has actually been made, but may in the ordinary course of its business pay a dividend on the footing of its estimate being a correct one (*a*).

So far the law is tolerably simple; but the question remains whether a company can pay dividends where it has made a profit on its profit and loss account, but has lost part of the assets representing its paid-up capital, without first replacing the assets so lost.

The cases on this subject depend on the fact that a company cannot return the property representing its paid-up capital, and cannot use such moneys for purposes other than those of its business, as has been said a limited company impliedly represents to or contracts with its creditors that it has capital or assets of a certain value, *i.e.* the amount of its paid-up capital, and it cannot by its voluntary act go back from such contract or representation (*b*).

The question really, then, comes back to this: does the company contract or represent that it has a certain amount of capital, *i.e.* moneys or property, representing the amount paid up on its shares, or does it represent or contract that its paid-up capital is represented by a certain amount of assets? If the former is the correct view, it may well be that a company which has funds other than what may be styled capital, *e.g.* profits shown on its profit and loss account, may divide such funds without regard to the state of its capital, for with regard to such other funds the company has made neither contract nor representation; if the latter view is correct, this obviously cannot be done, for, except where a company has assets to the extent of its paid-up capital, it would not be keeping its contract or making good its representation.

(*z*) *Lubbock* v. *British Bank of South America*, [1892] 2 Ch. 198; *Foster* v. *New Trinidad Lake Asphalte Co.*, [1901] 1 Ch. 208; it would seem to follow from this that where shares have been issued at a premium, the premiums are not immediately or necessarily distributable; see also *per* ROMER, L.J., *National Bank of Wales*, [1899] 2 Ch. at p. 655: they may, however, be credited to profit, in the profit and loss account of the company if, when the balance sheet of the company is made up, its assets exceed its liabilities, including the amount paid on its shares.

(*a*) *Stringer's Case* (1869), 4 Ch. 475.

(*b*) *Macdougall* v. *Jersey Hotel* (1864), 2 H. & M. 528; *Flitcroft's Case* (1882), 21 C. D. 519; *Rance's Case* (1870), 6 Ch. 104. In this last case it was said that dividends could only be paid out of profits, though the article of the company said they could be paid out of assets.

In favour of this latter view it might well have been urged that throughout the Acts of 1862 and 1867 the word "capital" is used as meaning the nominal capital or the issued or unissued or the paid-up shares of a company, never as meaning the moneys or other property of the company; these latter are always comprised under the name of property or assets or such like (c); and consequently that the expression that a company cannot pay dividends out of capital would, if it occurred in the Acts, be meaningless.

This view also finds strong support from the fact that the Companies Act, 1877, which enabled a company to write off paid-up capital which had been lost, was notoriously passed to meet the inconveniences caused by the Ebbw Vale case (d), which decided that the paid-up capital of a company could not be written off if there had been a loss—inconveniences which were practically non-existent if a company could pay dividends in spite of such loss.

The earlier cases on the subject do not throw much light on the point. In *Macdougall* v. *Jersey Hotel* (e), *Rance's Case* (f), *Holmes* v. *Newcastle-upon-Tyne Freehold Abattoir Co.* (g) there had been no profit of any sort, and the same remark applies to *Sharpe's case* (h) and *Guinness* v. *Land Corporation of Ireland* (i); in all these cases the payment was not allowed. Payments were also disallowed in *National Funds Assurance Co.* (k), the *Alexandra Palace Co.* (l), the *Oxford Benefit Building and Investment Society* (m), and the *Leeds Estate Building and Investment Co.* v. *Shepherd* (n), all of which cases turned on the articles in the particular case.

Lambert v. *Neuchatel Asphalte Co.* (o), again, was argued and decided on the construction of the company's articles. In *Mills* v. *Northern Railway of Buenos Ayres* (p) a company which had charged certain revenue charges to capital was held entitled to recoup revenue out of capital, but as there is nothing in the report of this case to suggest that the capital of the company was not intact the case does not help in the solution of the question under discussion.

We now come to two cases which it has been said (q) can only

(c) This seems also usually to be the case in the present Act; see especially ss. 123 and 186, which show that the rights of creditors are against the assets of the company.

(d) (1877), 4 C. D. 827. It does not matter for this purpose whether this case was rightly or, as has been thought, wrongly decided.

(e) (1864), 2 H. & M. 528.

(f) (1870), 6 Ch. 104.

(g) (1875), 1 C. D. 682.

(h) [1892] 1 Ch. 154.

(i) (1882), 22 C. D. 349.

(k) (1878), 10 C. D. 118.

(l) (1882), 21 C. D. 149.

(m) (1886), 35 C. D. 502.

(n) (1887), 36 C. D. 787.

(o) (1882), 30 W. R. 913.

(p) (1870), 5 Ch. 621. *Hoole* v. *Great Western Railway* (1867), 3 Ch. 262, where it was decided that under the express words of its Act a company could not pay dividends by issuing shares, and *Bloxam* v. *Metropolitan Railway* (1868), 3 Ch. 337, were not cases under the Companies Act, 1862, and in any case are not important for our purpose.

(q) *Per* COTTON, L.J., *Lee* v.

be reconciled on the assumption that a company has only to look to profit and loss to ascertain if it can pay a dividend. These cases are *Davison* v. *Gillies* (*r*), where Jessel, M.R., restrained a company from paying a dividend on its ordinary shares though its profit and loss showed a sufficient surplus, because its permanent stock was depreciated, and *Dent* v. *London Tramways* (*s*), where the same judge stated that he was not sure that the earlier case decided as much as it was supposed to do, and declined to restrain the same company from paying a dividend on its non-cumulative preference shares. It does not appear whether there would have been sufficient to pay the preference dividend, if in earlier years the company had refrained from paying dividends on its ordinary shares and had kept up its permanent stock. The point of the case was, however, that as the preference shareholders could only look to the profits of each year for their dividend, the company could not set up their earlier misdeeds (if they were misdeeds) as against the preference shareholders. Their remedy, if any, was against the ordinary shareholders; in other words, the case turned on a kind of estoppel, and does not decide the question.

The Irish case of *Kehoe* v. *Waterford and Limerick Railway* (*t*) did decide that a company formed and governed by the Companies Clauses Acts, and not by the Companies Act, 1862, might pay a dividend, though it had not made good depreciation. The first really important case is, however, *Lee* v. *Neuchatel Asphalte Co.* (*u*). This case could have been decided on the fact that the assets of the company did not show any depreciation, and it was decided on this ground in the Court of first instance, but the Court of Appeal went out of their way to say that a company with a wasting property, *e.g.* leaseholds or mines, need not set aside a sum in each year to meet such wastage before declaring a dividend.

This was followed in *Bolton* v. *Natal Land and Colonization* (*x*), where Romer, J., held that a land company could pay dividends though its assets were not equal to its issued capital and it had divided accretions to capital in previous years.

The next important case is *Lubbock* v. *British Bank of South America* (*y*), and this was important rather for the remarks of Chitty, J., than for the actual decision. He distinguished *Lee* v. *Neuchatel Asphalte Co.* (*z*) by saying that that was the case of a company formed to work a wasting property, and seems to have laid down that in other cases a company must replace lost capital; he also pointed out the way in which companies not formed to work wasting properties

Neuchatel Asphalte Co. (1889), 41 C. D. 1, at pp. 18 and 19.

(*r*) (1879), 16 C. D. 347 n., decided on interlocutory injunction.

(*s*) (1880), 16 C. D. 344.

(*t*) (1888), 21 L. R. Ir. 121.

(*u*) (1889), 41 C. D. 1.

(*x*) [1892] 2 Ch. 124.

(*y*) [1892] 2 Ch. 198.

(*z*) (1889), 41 C. D. 1.

should keep their balance sheets. These views, however, do not seem to have found favour in *Verner* v. *General and Commercial Investment Trust* (*a*); the company in this case was formed to make investments in certain specified classes of securities. The securities they held had greatly depreciated, but it was held that, notwithstanding this fact, the company could declare a dividend out of the profits shown by its profit and loss account. In this case Lindley, L.J., draws a distinction between "fixed" and "circulating" capital. A loss of the former, he said, need not be made good; a loss of the latter must. He also says that the rule is not that a dividend can only be paid out of profits (*b*), but (as he said) quite a different thing, that it cannot be paid out of capital. The reason for the rule, however, is, he says, that a dividend presupposes a profit, and that consequently it is necessary to ascertain the profits of each year.

This case was followed perhaps, somewhat reluctantly, in two cases (*c*) in courts of first instance, and also by North, J., in *Bosanquet* v. *St. John D'El Rey Mining Co.* (*d*), and then we come to the *National Bank of Wales Case* (*e*). The complaint in this case was that the bank had paid dividends in spite of the fact that it was treating certain debts as good, which it knew to be bad. Lindley, M.R., in delivering the judgment of the Court of Appeal, lays it down that, excluding obvious cases, there is no hard and fast rule on the subject, and that dividends may be paid though there has been a loss of capital, and that the Court will not interfere to prevent losses being charged to capital, except where they are obviously chargeable to profit and loss, the whole matter being one for business men (*f*). This case went to the House of Lords under the name of *Dovey* v. *Cory* (*g*), but was there decided on a different point. All the law lords, however, guarded themselves from adopting the view of the Court of Appeal on the point. Lord Halsbury doubts if the matter can be treated as an abstract one at all, and says "that the manner in which a business is carried on and what is usual or the reverse may have a

(*a*) [1894] 2 Ch. 239. Cp. *City Property Investment Trust* v. *Thorburn* (1897), 25 Rettie 361.

(*b*) Cp. the definition of profits which Lord SHAND gave in the Scotch case of *City of Glasgow Bank* v. *Mackinnon* (1882), 9 Rettie 535, at p. 602, a case of an unlimited company: "In order to ascertain the profits earned and divisible at any given time the balance sheet must contain a fair statement of the liabilities of the company, including its paid-up capital, and on the other hand a fair or more properly a bona-fide valuation of assets, the balance if in favour of the company being profits." See also *Re Crabtree* (1912), 106 L. T. 49, where a person entitled to the profits arising from a business was held to be only entitled to the profits after sums had been set aside for depreciation to machinery.

(*c*) *Wilmer* v. *McNamara*, [1895] 2 Ch. 245; *Kingston Cotton Mill*, [1896] 1 Ch. 332; the point was not raised in the Court of Appeal, [1896] 2 Ch. 279; cp. also *Peruvian Guano Co.*, [1894] 3 Ch. 690.

(*d*) (1897), 77 L. T. 206. Perhaps this case goes even further, for the company had in past years made revenue payments out of capital.

(*e*) [1899] 2 Ch. 629.

(*f*) [1899] 2 Ch. at pp. 669 and 670. He cites *Gregory* v. *Patchett* (1864), 33 Beav. 595, which was not the case of a limited company.

(*g*) [1901] A. C. 477.

considerable influence in determining what may be treated as capital and what as profits," and he doubts whether the distinction between fixed and floating capital is always an appropriate one. Lord Macnaghten says it is undesirable to lay down any fixed rules, but Lord Davey expressly reserves his opinion as to whether a company which has made a definite and ascertained loss of fixed capital can pay a dividend, and subject to this disapproved of the view taken by the Court of Appeal.

The law as laid down by the case of *Lee* v. *Neuchatel Asphalte Co.* (*h*) and the cases that followed it was summed up by Farwell, J., in *Bond* v. *Barrow Hæmatite Co.* (*i*), and it seems to come to this, a company can pay dividends when its profit and loss is in credit, notwithstanding the fact that it has suffered losses of capital; but the question of what losses may be charged to capital and what must be charged to profit and loss is a matter to be decided by the Court on evidence as to what is usual in the particular trade.

This is the law which is binding on every Court short of the House of Lords, but as the matter can still be reconsidered by that tribunal (*k*), it may be well to make a few remarks on it. It is very true that the Court will not interfere with a company's internal affairs, including its mode of keeping accounts (*l*); but this doctrine is limited by the law that a company cannot do anything *ultra vires*, and it is admittedly *ultra vires* for a limited company, though not for an unlimited one, to pay dividends out of capital. The law as laid down in these cases depends on laying great emphasis on the word "capital" in the rule, but it is difficult to see why there should be any representation to or contract with creditors concerning the capital assets of the company only, seeing that their rights are against all its assets. It is difficult to justify the rule on the ground that the declaration of a dividend presupposes a profit of some sort, for this is true of limited and unlimited companies alike (*m*) if they seek to profit or get credit by saying they have earned a dividend, but otherwise does not apply, it is submitted to either class of company; if, on the other hand, the law depends on the fact that a limited company represents it has assets equal to its capital, as assets, property, etc., are, as already stated, the words which apply to the monies, lands, etc., of a company, there is a reason for the rule which can be found in the acts (*n*) and in the policy of the

(*h*) (1889), 41 C. D. 1.

(*i*) [1902] 1 Ch. 353; cp. also *Spanish Prospecting Co.*, [1911] 1 Ch. 92.

(*k*) Cp. *per* Stirling, L.J., in *Welsbach Co.*, [1904] 1 Ch. 87 at p. 102; and *per* Romer, L.J., *Bagot Pneumatic Tyre* v. *Clipper Pneumatic Tyre Co.*, [1902] 1 Ch. 146, at p. 159.

(*l*) *Hinds* v. *Buenos Ayres, Grand National Tramways Co.*, [1906] 2 Ch. 654; *Jamaica Railway* v. *Attorney-General of Jamaica*, [1893] A. C. 127; *Young* v. *Brownlee & Co.*, [1911] S. C. 677; but cp. *Ashton* v. *Honey* (1907), 23 T. L. R. 253.

(*m*) Cp. *Burnes* v. *Pennell* (1849), 2 H. L. C. 495.

(*n*) See s. 3, and also s. 7 of the Act, which latter section forbids a company's changing the conditions of its memorandum of association.

acts (*o*), and such reason does not apply to unlimited companies which make no such representation. The Court will, however, clearly not constitute itself the valuer of the company's assets, unless there is reason to think they have been improperly valued (*oo*). It remains to consider whether a dividend can be declared on the profit shown by the profit and loss account in one year, although the profit and loss of previous years shows a loss. In *Crichton Oil Co.* (*p*), Wright, J., said it could, but this view does not seem to have been approved by the Court of Appeal in the same case, and it is submitted that in such a case the company will have borrowed from capital to make good its deficiencies in previous years, and must make good its borrowings before it can declare a dividend (*q*).

A company which buys a business with the profits from a date prior to such purchase cannot, it is thought, distribute those profits, as they represent its capital outlay, unless when the time for distributing a dividend comes it has assets in excess of its paid-up capital (*r*).

It has been suggested (*s*) that this point can be met by the vendor first selling the business without the profits, and then giving the profits to the company as a present. It may well be doubted whether even so the profits of the business could be treated as profits of the company, and it would be very difficult to get a court to look upon the two transactions as separate.

Interest payable by reason of the default of a purchaser or profits earned after the date for completion, but before completion, can, it is thought, be credited to profit and loss.

Sometimes a vendor on the sale of a business guarantees that it will produce a certain profit for a year or a number of years, but it would seem that any moneys recovered under such a guarantee must be treated as capital, at all events where they form part of the assets of the company or part of the consideration for the purchase price (*t*). A company can release such a guarantee (*u*).

(*o*) See *Webb* v. *Whiffin* (1872), L. R. 5 H. L. 711.

(*oo*) *Young* v. *Brownlee & Co.*, [1911] S. C. 677.

(*p*) [1901] 1 Ch. 184; [1902] 2 Ch. 86; and see also *Bosanquet* v. *St. John D'El Rey Mining Co.* (1897), 77 L. T. 206.

(*q*) Cp. *Towers* v. *African Tug*, [1904] 1 Ch. 558; cp. also *Famatina Development Corporation* v. *Bury*, [1910] A. C. 439.

(*r*) *Foster* v. *New Trinidad Lake Asphalte Co.*, [1901] 1 Ch. 208.

(*s*) Cp. Palmer, 10th Edition, vol. i. pp. 322 and 323.

(*t*) Cp. *James* v. *Eve* (1875), L. R. 6 H. L. 335; *Stuart's Trusts* (1876), 4 C. D. 213. In *Gelly Deg Colliery Co.* (1878), 38 L. T. 440; *South Llanharran Colliery Co.* (1879), 12 C. D. 503, a case decided by the Court of Appeal, and *Richardson* v. *English Crown Spelter Co.*, W. N. (1885), 31, an interim injunction case, such moneys were held not to be part of the assets of the company and to be divisible among the shareholders. It is suggested in Palmer, vol. i. 10th Edition, pp. 329 and 330, that these cases are inconsistent with *Trevor* v. *Whitworth* (1887), 12 A. C. 409. They certainly seem contrary to principle, but have been followed in Scotland, *Stark* v. *Fife Coal Co.* (1899), 1 Fraser, 1173; *Re Waterford Railway* (1880), 5 L. R. Ir. 102, turned on the words of a special Act. See also *Clifford* v. *Imperial Brazilian Railway* (1889), 60 L. T. 60.

(*u*) *Sheffield Nickel* v. *Unwin* (1877), 2 Q. B. D. 214.

Without express power in its articles a company cannot pay a dividend by distributing debentures (*x*), but if it has power to do this or to pay a share dividend (*y*) the power would seem to be good, but of course in the case of a share dividend the dividend payable would have to be at least equal to the amount credited as paid up on its shares. The rule that a company cannot pay a dividend which it has not earned was found somewhat harsh in the case of companies which issued shares to raise money for construction works or purchasing plant, which could not give any return for a considerable time; in such cases it was considered only reasonable that subject to proper safeguards the company should be at liberty to pay interest on the moneys so raised.

This question was met in the case of Indian Railway Companies by the Indian Railways Act, 1894 (*z*), but the Companies Act, 1907, introduced some fresh provisions which are incorporated in the present Act, and enable other companies to pay such dividends in certain cases.

A company may, if authorized to do so by its articles of association or a special resolution, with the previous sanction of the Board of Trade (*a*), pay interest on the amount for the time being paid up on any shares issued for the purpose of defraying the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period.

The rate of interest may in no case exceed 4 per cent. per annum or such lower rate as may for the time being be prescribed by order in council, and the payment may only be made for such period as may be determined by the Board of Trade, and such period must in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have actually been completed or the plant provided.

(*x*) *Wood* v. *Odessa Waterworks* (1889), 42 C. D. 636.

(*y*) *Hoole* v. *Great Western Railway* (1867), 3 Ch. 262; *Bouch* v. *Sproule* (1887), 12 A. C. 385.

(*z*) See also the Expiring Laws Continuance Act, 1905, and the Indian Railways Amendment Act, 1906. An Indian Railway Company is a company registered under the Companies Acts, 1862 to 1890, or any of them for the purpose of making and working a railway in India, either alone or in conjunction with other purposes (Indian Railways Act, 1894, s. 2). It applies of course to Companies registered under the Companies (Consolidation) Act, 1908; see s. 38 of the Interpretation Act, 1889.

(*a*) In the Indian Railways Act, 1894, the previous sanction of the Secretary of State in Council of India is required (s. 3 (3)), and the memorandum of association or a special resolution must authorize the payment. The interest with the net earnings of the railway, in relation to the construction of which interest is paid, is not to exceed 4 per cent. (*ibid.* s. 3 (4)); no payment may be made unless the Secretary of State is satisfied that two-thirds of the capital on which interest is to be paid has been actually issued and accepted, and is held by persons who, or whose executors or administrators, are liable to the

A company may charge interest so paid to capital as part of the cost of construction of the work or building or the provision of the plant, and the accounts of the company must show the capital on which and the rate at which interest has been paid out of capital during the period to which the accounts relate (*b*).

The payment of such interest does not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

Before sanctioning any such payment the Board of Trade may at the expense of the company appoint a person to inquire and report to them as to the circumstances of the case, and may before making the appointment require the company to give security for payment of the costs of the inquiry (*c*). On an application to the Board of Trade under these provisions the memorandum and articles of association of the company, and every prospectus, balance-sheet, contract, and other document bearing on the matter must be sent to the Board of Trade. A statutory declaration will also usually be required, but it is better not to proceed with this until the Board's requirements in the matter have been ascertained. No advertisement will be required.

These provisions do not affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies (*c*).

Directors who have been rendered liable for wrongfully paying dividends may recover the amounts paid to any shareholders who at the date of payment had full knowledge of all the facts (*d*); and

company (*ibid.* s. 3 (5)). Interest may only be paid for such period as may be determined by the Secretary of State: such period may not extend beyond half a year after the completion and opening for traffic of the railway for the construction of which the capital on which interest is paid was issued (*ibid.* s. 3 (1)), but interest may be paid subject to like restrictions on capital issued for any extension (*ibid.* s. 4). If a company has power to make such payments it must be mentioned on every share certificate, and on every prospectus, advertisement, or other document inviting subscriptions for shares (*ibid.* s. 5). Interest will not accrue in favour of any shareholder while he is in arrear with calls on any of his shares (s. 3 (6)); the payment of such interest is not a reduction of capital (*ibid.* s. 3 (7)).

(*b*) Under the Indian Railways Act, 1894, the accounts must show the amounts on which and the rate at which interest is paid (s. 6), and if the borrowing powers of the company or its directors are limited to an amount bearing any proportion to the company's capital, then the amount of capital applied or to be applied in payment of interest will for the purpose of any borrowing be deducted from capital (*ibid.* s. 7). The Act was originally to come to an end in 1905, but its operation was extended for a year by the Expiring Laws Continuance Act, 1905, and now the limit has been altogether swept away by the Indian Railways Amendment Act, 1906.

(*c*) Companies (Consolidation) Act, 1908, s. 91. For form of resolution, see *infra*, pp. 400 and 401.

(*d*) *Moxham* v. *Grant*, [1900] 1 Q. B. 88.

no such shareholder can, at all events unless he has first repaid such dividend, bring an action to recover the amounts so paid for the company either in his own name or suing on behalf of himself and all other shareholders of the company (*e*). But shareholders and even directors (*f*) who have received such dividends without full knowledge of the facts are not liable to repay the dividends they have received (*g*).

All directors of a company who knowingly take part in the payment of an improper dividend are jointly and severally liable to make good the amounts paid away with interest at 5 per cent. (*h*), and where such amounts have been recovered in misfeasance proceedings under section 215 of the Act, they may not set off any amounts due to them from the company against such payments (*i*), nor may they deduct income tax from the 5 per cent. so to be paid, as it is in the nature of damages (*k*). In the absence of fraud a director can plead the Statute of Limitations to such a claim (*k*). With regard to interim dividends, the directors may declare these without having as full a knowledge of the facts as would be required in the case of a final dividend, for they are necessarily more dependent on estimates (*l*). Even after an interim dividend has been declared and the money to pay it set aside, the directors may decide to make no payment (*m*).

ALTERATIONS OF CAPITAL.

With regard to the various alterations of capital sanctioned by the Act, there is first of all a power to reduce capital which is dealt with by sections 46 to 56, both inclusive of the Act, and a power to reorganize capital dealt with by section 45 of the Act; both of these powers are discussed under the heading of Petitions.

A company limited by shares, if so authorized by its articles, may alter its memorandum as follows; that is to say, it may—

(*e*) *Towers* v. *African Tug Co.*, [1904] 1 Ch. 558. In this case the company was, before the writ was issued, taking steps to put matters right. STIRLING, L.J. (and to a certain extent VAUGHAN WILLIAMS, L.J.), relied on this.

(*f*) *Denham Co.* (1883), 25 C. D. 752.

(*g*) *National Funds Assurance Co.* (1878), 10 C. D. 118; *Alexandra Palace Co.* (1882), 21 C. D. 149; *National Bank of Wales*, [1899] 2 Ch. 629, affirmed on other points, *sub nomine Dovey* v. *Cory*, [1901] A. C. 477.

(*h*) *Flitcroft's Case* (1882), 21 C. D. 519; *Oxford Benefit Building and Investment Society* (1886), 35 C. D. 502; *Leeds Estate Building and Investment Co.* v. *Shepherd* (1887), 36 C. D. 787 (where a manager and an auditor were also held to be liable).

(*i*) *Flitcroft's Case* (1882), 21 C. D. 518.

(*k*) *National Bank of Wales*, [1899] 2 Ch. 629.

(*l*) *Lucas* v. *Fitzgerald* (1903), 20 T. L. R. 17.

(*m*) *Lagunas* v. *Schroeder* (1901), 85 L. T. 22.

(*a*) increase its share capital by the issue of new shares of such amount as it thinks expedient;

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

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

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

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

The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution (*o*), and every copy of the memorandum issued after the date of any alteration under the section must be in accordance with the alteration.

If a company makes default in complying with this provision it will be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorizes or permits the default will be liable to the like penalty.

A cancellation of shares in pursuance of this section is not a reduction of share capital within the meaning of the Act (*p*).

If a company which has a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted any of its shares into stock or reconverted stock into shares, it must give notice to the Registrar of Joint Stock

(*n*) This provision disposes of the doubt as to whether a company could consolidate and subdivide part only of its share capital. Cp. *Wakefield Rolling Stock*, [1892] 3 Ch. 165.

(*nn*) For forms of resolutions for the above purposes, see *infra*, pp. 399 *et seq.*

(*nnn*) For form of resolution for this purpose, see *infra*, p. 689.

(*o*) There is no reason why the articles should not entrust the other powers to the directors—they would seem to be powers relating to the management of the company. *Mosely* v. *Koffyfontein Mines*, [1910] 2 Ch. 382; and see S. C., [1911] 1 Ch. 73; [1911] A. C. 409.

(*p*) Companies (Consolidation) Act, 1908, s. 41. As the powers conferred by the section (other than subdivision) are not necessarily exercisable by special resolution, two meetings will be enough to alter the articles so as to take any such power and to exercise the power so taken; see *Campbell's Case* (1873), 9 Ch. 1, and see also *Sewell's Case* (1868), 3 Ch. 131, where the company issued shares without passing a special resolution for increasing its capital, which was necessary in that case, and it was held that on a special resolution being subsequently passed the issue was good; and cp. *Richmond's Case* (1858), 4 K. & J. 305; and *Platt* v. *Rowe* (1909), 26 T. L. R. 49.

Companies of the consolidation, division, conversion or reconversion, specifying the shares consolidated, divided or converted, or the stock reconverted (*q*).

Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it must give to the Registrar of Joint Stock Companies, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution the confirmation of the resolution authorizing the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members (*r*), and the Registrar must record the increase.

If a company makes default in complying with the requirements of this section, it will be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default will be liable to the like penalty (*s*). It has been held that where the articles empowered the directors to increase the capital with the sanction of a general meeting, and such a meeting authorized the directors to increase the capital to a specified amount, duty was forthwith payable on such amount (*t*).

Companies limited by guarantee and registered on or after the 1st of January, 1901, may, where they have a share capital if so authorized by the articles, increase or reduce their share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce their share capital under the provisions of the Act (*u*).

With regard to companies limited by guarantee or unlimited,

(*q*) Companies (Consolidation) Act, 1908, s. 42. As subdivision must be effected by special resolution, a copy of the resolution must be forwarded to the Registrar under s. 70 of the Act, and see *post*, pp. 313 and 314, as to the effect of converting stock into shares with regard to the register of the company, and the provisions of the Act relating to shares only. The form of notice under this section is Form 28 supplied at Somerset House (cost 2*d*.). It must be signed by a director, manager, secretary, or other authorized officer of the company, and a 5*s*. Companies Registration Stamp must be impressed.

(*r*) The form of notice under this section is for an increase of share capital, Form 10, and for an increase of members, Form 11; supplied by Somerset House (cost 2*d*. each). Form 10 must be signed by the secretary or manager, Form 11 by the secretary.

(*s*) Companies (Consolidation) Act, 1908, s. 44. See *supra*, p. 44, note (*g*), as to the fees payable on an increase of capital, and the statement to be filed.

(*t*) *Attorney-General* v. *Anglo-Argentine Tramways*, [1909] 1 K. B. 676: it is somewhat difficult to understand this case.

(*u*) Companies (Consolidation) Act, 1908, s. 56.

these companies are, except on the points above mentioned, governed by very much the same rules as govern companies limited by shares, if they have a share capital. But there are a certain number of such companies which are formed without any share capital. These companies are useful in cases where there is no intention of the members getting any benefit, or at all events any pecuniary benefit, out of the company in their character of members. They are therefore frequently found in the case of charities, mutual insurance companies, and clubs, social and otherwise. As has already been stated, the articles must provide, for stamp purposes, what the number of members is to be.

They need usually not provide for the division of profits or the assets on a winding-up—in the case of companies entitled to omit the word "limited" under section 20 of the Act there can be no distribution of profits—and the Board of Trade will usually not allow a company which proposes to distribute its assets on a winding-up among its members to dispense with the use of the word "limited" (*x*).

The liability in these cases of the members in respect of their guarantee would appear only to arise on the company going into winding-up (*y*), unless there is some special provision to the contrary. It is therefore usual for the articles to contain provisions enabling the company to receive or demand subscriptions from their members or others so as to enable the objects of the company to be carried out, while the company is a going concern (*z*).

An example of such provisions will be found in the case of a mutual insurance company below, and these provisions may, without much difficulty, be varied to meet the cases of other companies, which do not have a share capital.

In mutual insurance cases the question frequently arises of how far an undisclosed principal can sue or be sued when his agent has joined the association and effected the insurance in his own name.

In some cases he can be sued and can sue (*a*), in others he cannot (*b*), and it would seem that where he can do so he may under the articles find that for some purposes, at all events, he is a member (*c*).

The liability under provisions of this nature would seem, however,

(*x*) See form of Memorandum of Association, *post*, p. 114, and also *ante*, pp. 55 *et seq.*

(*y*) See Companies (Consolidation) Act, 1908, s. 123 (v.); *Irish Club Co.*, [1906] W. N. 127.

(*z*) *Lion Mutual Marine Assurance* v. *Tucker* (1883), 12 Q. B. D. 176.

(*a*) *United Kingdom Mutual Steamship* v. *Nevill* (1887), 19 Q. B. D. 110; *Montgomerie* v. *United Kingdom Mutual Steamship*, [1891] 1 Q. B. 370.

(*b*) *Great Britain* 100 *A* 1 *Steamship Insurance* v. *Wyllie* (1889), 22 Q. B. D. 710; *Ocean Iron Steamship Insurance* (1887), 22 Q. B. D. 722 n.; *British Marine, etc.* v. *Jenkins*, [1900] 1 Q. B. 299.

(*c*) *Great Britain* 100 *A* 1 *Steamship Insurance* v. *Wyllie* (1889), 22 Q. B. D. 710.

usually not to be the liability of a contributory or member (*d*). It would seem that the rights of members of this class of company to transfer their interests is absolute unless there is something in the articles enabling the directors to decline to register transfers or accept members or otherwise restricting the power of transfer (*e*).

ARTICLES OF ASSOCIATION.

There may, in the case of a company limited by shares, and there must in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum (*f*) and prescribing regulations for the company.

Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule to the Act.

In the case of an unlimited company or a company limited by guarantee (*g*), the articles, if the company has a share capital, must state the amount of capital with which the company is to be registered, and, if the company has not a share capital, must state the number of members with which the company is to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration (*h*).

In the case of a company limited by shares, if articles are not registered, or in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule to the Act, those regulations will, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles (*i*).

Articles must—

(*a*) be printed;

(*b*) be divided into paragraphs numbered consecutively;

(*c*) bear the same stamp as if they were contained in a deed; and

(*d*) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and that attestation will be sufficient in Scotland as well as in England and Ireland (*k*).

It will be borne in mind that there are now three different

(*d*) See *Baird's Case*, [1899] 2 Ch. 593, and the other cases cited *post*, p. 1158.

(*e*) See Companies (Consolidation) Act, 1908, s. 22, "shares or other interest," and *Cawley and Co.* (1889), 42 C. D. 209.

(*f*) Articles have been held to be binding on a company, though not so signed, after they have been acted on. *Ho Tung* v. *Man On Insurance Co.*, [1902] A. C. 232.

(*g*) The memorandum of a company limited by guarantee and having a share capital must under s. 4 of the Act state its share capital.

(*h*) Companies (Consolidation) Act, 1908, s. 10.

(*i*) *Ibid.* s. 11.

(*k*) *Ibid.* s. 12.

Table A's (*l*), which apply to different classes: (1) Table A in the First Schedule to the Act of 1862, which applies to all companies registered under that Act without articles before the 1st of October, 1906; (2) Table A revised 1906 in the *London Gazette* of 31st July, 1906, which applies to all other companies registered under that Act without articles; (3) Table A in the First Schedule to the existing Act, which applies to all companies registered under the existing Act without articles.

There are certain powers which a company will not have unless they are conferred by its articles.

These are: (1) The powers conferred on a company limited by shares of altering its share capital, by section 41 of the Act; (2) the power to reduce capital conferred on companies limited by shares, by sections 46 *et seq.* of the Act; (3) the powers of increasing and reducing the share capital of companies limited by guarantee, and having a share capital conferred by section 56 of the Act; (4) the powers of companies limited by shares of issuing share or stock warrants in respect of fully paid-up shares or stock, conferred by sections 37 *et seq.* of the Act (*m*); (5) the power of having a foreign seal for use abroad conferred on companies whose objects require or comprise the transaction of business abroad, by section 79 of the Act; (6) the power of having a colonial register conferred on companies whose objects comprise the transaction of business in a colony (including British India and the Commonwealth of Australia), by sections 34 *et seq.* of the Act; (7) underwriting powers conferred by section 89 of the Act; (8) power to close the register of debentures under section 102 (1) of the Act; (9) the powers conferred by section 39 of the Act, *i.e.* to make arrangements for different amounts being paid on shares, to receive moneys in advance of calls, and to pay dividends in proportion to the amounts paid on shares.

Again, the minimum subscription must be contained in the memorandum or the articles (*n*), and a company may take power to pay interest on its capital under section 91, though this is more usually done by special resolution, without any power in the articles (*nn*). Again, unless the articles otherwise provide, the assets of the company must, under section 186 of the Act, be distributed among the members according to their rights and interests in the company, and a company

(*l*) There is also Table B in the Schedule to the Joint Stock Companies Act, 1856, which applies to companies formed under that Act. S. 286 (1) (*b*) and (*c*), of the Companies (Consolidation) Act, 1908, expressly keeps the tables under the repealed Acts on foot.

(*m*) The Registrar of Joint Stock Companies declines to register private companies with articles containing provisions as to share-warrants—presumably on the ground that once share warrants are issued it will be impossible to restrict the right to transfer the shares comprised therein.

(*n*) Companies (Consolidation) Act, 1908, s. 85.

(*nn*) Where the Indian Railways Act, 1894, applies (see *ante*, p. 80), the power must be conferred by the memorandum or by special resolution; see s. 3 (2) of that Act.

may, under section 182, provide for winding up on the happening of a given event, or on the expiration of a particular period, in which case an ordinary resolution of the company will suffice for the winding-up.

The articles of a private company must—

(*a*) Restrict the right to transfer shares.

(*b*) Limit the number of its members (exclusive of persons who are in the employment of the company) to fifty.

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

With regard to the other matters in the articles, they usually contain a reminder to the company of the date when it can commence business. They deal with the issue of shares, with certificates, with the lien of the company on its shares and the enforcement of such lien, with calls on shares, and the transfer and transmission of such shares ; with the forfeiture of shares ; they usually contain a power to modify the rights of different classes of shareholders ; they always deal with meetings of the company ; with the votes of members ; with directors, their powers, qualification, tenure of office, remuneration, appointment and proceedings, with the use of the seal ; usually with borrowing ; with dividends, accounts audit, though the Act would be sufficient on this ; and with notices.

All these matters are dealt with under their different headings, and so need not be more fully referred to here.

Where an official quotation on the Stock Exchange is required, the articles of association must contain the following provisions : (1) That none of the funds of the company shall be employed in the purchase of or in loans upon the security of its own shares (*p*) ; (2) that directors must hold a share qualification ; (3) that the borrowing powers of the board are limited ; (4) that the non-forfeiture of dividends is secured (*q*) ; (5) that the common form of transfer shall be used ; (6) that all share and stock certificates shall be issued under the common seal of the company, and shall bear the signatures of one or more directors and the secretary (*r*) ; (7) that fully paid-up shares shall be free from all lien ; (8) that the interest of a director in any contract shall be disclosed before execution, and that such director shall not vote in respect thereof (*s*) ; (9) that the directors

(*o*) Companies (Consolidation) Act, 1908, s. 121. Where two or more persons hold one or more shares in a company jointly they will for the purposes of this section be treated as a single member ; and see *ante*, p. 9, as to private companies.

(*p*) This clause is inserted to prevent corners by contangos or otherwise.

(*q*) This rule will be sufficiently complied with, if the articles are silent on the question of forfeiting dividends.

(*r*) The usual article requiring the seal to be affixed in the presence of one or more directors, and the secretary or some other person appointed by the Board will be sufficient.

(*s*) The article may, in practice, allow of directors voting on guarantees or security for guarantees given by themselves, and also where there are subsidiary com-

shall have power at any time and from time to time to appoint any other qualified person as a director either to fill a casual vacancy or as an addition to the Board, but so that the total number of directors shall not at any time exceed the maximum number fixed; but that any director so appointed shall hold office only until the next following ordinary general meeting of the company, and shall then be eligible for re-election; (10) that a printed copy of the report accompanied by the balance-sheet and statement of accounts shall at least seven days previous to the general meeting be delivered or sent by post to the registered address of every member, and that two copies of each of these documents shall at the same time be forwarded to the Secretary of the Share and Loan Department, The Stock Exchange, London; (11) that the charge for a new share certificate issued to replace one that has been worn out, lost, or destroyed, shall not exceed one shilling (*ss*).

In addition, the Stock Exchange authorities usually require (*a*) that a power to increase the capital of the company given by the articles shall be given to and exercisable by the company in general meeting; (*b*) that all directors, whether appointed for life or otherwise, shall be removable by an extraordinary or other resolution of the company in general meeting; (*c*) that there shall be an absolute right to have transfers of fully paid shares registered; (*d*) that there shall be no provision giving a resolution signed by all the shareholders the effect of a resolution of the company in general meeting; and (*e*) that there shall be no provision giving a resolution signed by the majority of the directors the effect of a resolution passed at a Board meeting.

The Stock Exchange authorities do not like a provision that a director who does not acquire his qualification shares within a certain period shall be deemed to have agreed to take them from the company—as, if the shares have gone to a premium, this may confer an advantage on such a director. Such a clause if it exists will, however, not usually be a fatal objection to a quotation being obtained.

Altered articles should, in the case of a company having an official quotation, be sent to the Secretary of the Share and Loan Department of the Stock Exchange. It is always advisable to let the Stock Exchange authorities have an opportunity of looking at the memorandum and articles before they are registered. Where an official quotation for a loan is sought it is important that a power to borrow should be inserted in the memorandum.

Subject to the provisions of the Act and to the conditions contained in its memorandum of association, a company may by special resolution alter or add to its articles, and any alteration so made will

panies may allow them to vote on contracts, etc., with such subsidiary companies, although they may be members or directors of such companies.

(*ss*) Stock Exchange Rules, Appendix 36B, set out in the Appendix to this book. See pp. 1509 *et seq.*

be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution (*t*).

Where there is a slip in articles of association, the Court will not rectify them, and they will have to be altered by special resolution in the ordinary way (*u*).

A company cannot contract itself out of this power of altering its articles—that is clearly established (*x*); but it is not quite so easy to say how far the power goes.

First of all with regard to the contract of membership. There the contract (*y*), being dependent on an alterable document, can be altered; and it will not matter that the alteration retrospectively affects existing rights, if there has been no sinister intention in the background, and the power has been exercised *bonâ fide* with the view of furthering the interests of the company as a whole, and not of benefiting one class of its members at the expense of its other members, and it would seem that the power of making retrospective alterations can in a proper case be so used as to relieve the company from duties which at the time of the alteration it is immediately liable to perform; but it can probably not be so exercised as to affect the validity or invalidity of what has been done in the past by the company (*z*). Thus a company can give itself a lien over fully paid shares for debts due to it, even though this will primarily affect one member who is indebted to it (*a*). If the articles only gave a company power to refuse transfers of shares over which it had a lien, it could probably refuse to register a transfer presented before the alteration (*b*). Again, if shareholders have the right to take a proportion of any increased capital, it would seem probable that this right could be taken away after the capital has actually been increased (*c*). Similarly, a right conferred by the articles only, for the holder of certain shares to nominate a director can be taken away, by an alteration of the articles (*d*).

(*t*) Companies (Consolidation) Act, 1908, s. 13 (1).

(*u*) *Evans* v. *Chapman* (1902), 86 L. T. 381.

(*x*) *Walker* v. *London Tramways* (1879), 12 C. D. 705; *Malleson* v. *National Insurance and Guarantee Corporation*, [1894] 1 Ch. 200; *Punt* v. *Symons*, [1903] 2 Ch. 506.

(*y*) As to this contract, see s. 14 of the Act, which is discussed *post*, p. 92.

(*z*) See *Pepe* v. *City and Suburban Permanent Building Society*, [1893] 2 Ch. 311; *Botten* v. *City and Suburban Permanent Building Society*, [1895] 2 Ch. 441; *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656; *Moir* v. *Thomas Duff and Co.* (1900), 2 Fra. 1265.

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

(*b*) See the opinion of the majority of the Court in *Moir* v. *Thomas Duff & Co.* (1900), 2 Fraser, 1265.

(*c*) See *James* v. *Buena Ventura Syndicate*, [1896] 1 Ch. 456, and the remarks thereon in *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656; it might be otherwise where the new shares had actually been offered to members.

(*d*) *Punt* v. *Symons*, [1903] 2 Ch. 506.

Where the articles confer certain rights on persons answering a particular description, a special resolution purporting to deprive one of those persons of such rights, but not purporting to alter the articles, will be simply invalid (*e*).

With regard to persons who depend on some contract made with reference to the existing articles, it may be doubted whether the company can be prevented by such persons from altering its articles, but it can be prevented from acting on the altered articles in such a manner as to deprive such persons of their contractual rights (*f*). Thus, where a person has a contract, outside the articles, that the profits of the company shall be distributed in a manner provided by the articles, he could probably get an injunction to restrain the company from distributing the profits in another way, but not an injunction to prevent the alteration of the articles (*g*).

The power of altering articles under the section extends in the case of an unlimited company formed and registered under the Joint Stock Companies Acts to altering any regulations relating to the amount of capital or its distribution in shares, even if such regulations are contained in the memorandum of association (*h*).

The memorandum and articles, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of the Act.

All money payable by any member of the company under the memorandum or articles is a debt due from him to the company, and in England and Ireland is of the nature of a specialty debt (*i*).

(*e*) *Imperial Hydropathic Co.* v. *Hampson* (1882), 23 C. D. 1.

(*f*) This view depends on the view that the articles must be considered as giving powers to the company, see *Pritchard's Case* (1873), 8 Ch. 956, and that the company cannot so alter such powers as to affect any exercise of such powers already made. See too *Punt* v. *Symons*, [1903] 2 Ch. 506; *Baily* v. *British Equitable Assurance*, [1904] 1 Ch. 374; [1906] A. C. 35. See also *Swabey* v. *Port Darwin* (1889), 1 Meg. 385, where it was held directors could not be deprived of fees earned before the alteration.

(*g*) *Baily* v. *British Equitable Assurance*, [1904] 1 Ch. 374, reversed on another point, [1905] A. C. 35.

(*h*) Companies (Consolidation) Act, 1908, s. 13 (2). The expression Joint Stock Companies Acts means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability or any one or more of those Acts as the case may require: but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, c. 110, intituled, An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies, *ibid.*, s. 285.

(*i*) *Ibid.*, s. 14.

The exact meaning of the first part of this section is even now perhaps not very easy to say. It would seem quite clear that neither the memorandum nor the articles, whatever their contents, constitute a contract in writing between the company and any person, even though that person be a signatory (*k*); nor, indeed, would they seem to constitute a contract of any sort between the company and any person, other than a member in his character of member. At the same time they would appear to create some sort of a contract between the company and its members and between the members *inter se*, though as between the members *inter se*, such contract is not always an enforceable one (*l*).

The real nature of such a contract would seem to be that it is a contract between the company and its members, and between its members, that the company shall have certain powers, and shall conduct its business in certain ways, and usually at all events persons dealing with the company, in relation to matters dealt with in the memorandum or articles will be taken to have dealt with the company on the footing of the provisions of the memorandum and articles (*m*).

Thus these documents will contain provisions as to shares and the rights conferred by them, and such provisions will define the nature of the shares in the company, and as the company will not have power to issue any other kinds of shares, a person taking shares will have with them the rights mentioned in the memorandum and articles (*n*), which will usually be mentioned in the certificate, which would appear to be his true contract of membership (*o*).

Again, directors will if they have acted be deemed to have done so on the terms of the articles, and on no other terms, and so their contract will be ascertained from the articles (*p*). Some difficulty on this point is caused by *Eley* v. *Positive Government Assurance Co.* (*q*). Why should not the solicitor in that case have said, as I

(*k*) *Pritchard's Case* (1873), 8 Ch. 956; *Dale and Plant, Ltd.* (1889), 1 Meg. 338, 61 L. T. 206; *Eley* v. *Positive Government Assurance* (1876), 1 Ex. Div. 20, 88; *Melhado* v. *Port Alegre Rail. Co.* (1874), 9 C. P. 503; *Browne* v. *La Trinidad* (1887), 37 C. D. 1.

(*l*) See *per* Farwell, L.J., in *Salmon* v. *Quin*, [1909] 1 Ch. 311 at p. 338, referring to the judgment of Stirling, J., in *Wood* v. *Odessa Waterworks* (1889), 42 C. D. 636, and see also the judgment of Cozens-Hardy, L.J., in *Automatic Self-Cleansing Co.* v. *Cuninghame*, [1906] 2 Ch. 34, at p. 44, and *Browne* v. *La Trinidad* (1887), 37 C. D. 1.

(*m*) *Melhado* v. *Port Alegre Rail. Co.* (1874), 9 C. P. 503; *Pritchard's Case* (1873), 8 Ch. 956.

(*n*) *Borland's Trustee* v. *Steel Bros.*, [1901] 1 Ch. 279; *New London and Brazilian Bank* v. *Brocklebank* (1882), 2 C. D. 302.

(*o*) *Artizan's Land Corporation*, [1904] 1 Ch. 796.

(*p*) *Swabey* v. *Port Darwin* (1889), 1 Meg. 385. *Isaac's Case*, [1892] 2 Ch. 158.

(*q*) (1876), 1 Ex. Div. 20, 88. See also *Rhodesian Properties*, [1901] W. N. 130, as to the duty of a solicitor inserting such a clause in the articles.

am a member, I insist that the legal business of the company shall be conducted in manner provided by the articles, until they are altered the company has no power to have it conducted otherwise, and I am entitled to stand on the contract between myself in my character of member, and the other members. If he had taken this line his position would surely have differed little from that of the director in *Imperial Hydropathic Hotel Co.* v. *Hampson* (r). If this line had been taken it would have been very difficult for the Court to have decided the case, as it did, on the ground that any contract there was, was *res inter alios acta*. The answer to this question would seem to be that a solicitor, unlike a director, is a mere agent of the company, and that the company can consequently dispense with his services, when it pleases; but it cannot be said that this answer seems logically very sufficient.

Questions as to the construction of the memorandum and articles can be decided on originating summons under O. 54 A. R. 1 R. S. C.; but in one case (*s*) Buckley, J., declined to appoint a person to represent a class of shareholders under rule 2 of that order or under O. 16, R. 32 (*b*) R. S. C., unless a meeting of the class were first held to appoint a person to represent them.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY SHARES (*ss*).

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Company Limited by Shares.

MEMORANDUM OF ASSOCIATION OF LIMITED.

1.—The name of the Company is

2.—The registered office of the Company will be situate in England.

3.—The objects for which the Company is established are—

(*a*) [Here insert main object.]

(*b*) To purchase take in exchange partition build lease hire construct or otherwise acquire work maintain drain farm plant pave build or improve develop or use any lands easements or other rights in land plantations buildings wharves railways tramways mines minerals ships boats machinery plant and stock-in-trade or other real or personal property and to enter into any arrangements with any shipowners wharfingers or other persons or with any railway shipping or other company which may be necessary or convenient.

(*c*) To purchase or otherwise acquire any concession patent licence or other authority conferring any exclusive or limited right to use any invention and to develop or grant licences in respect of or otherwise to turn to account the same.

(*d*) To purchase or otherwise acquire all or any part of or any interest in the business goodwill assets and liabilities of or to amalgamate with take shares or securities of or enter into partnership or any arrangement for

(*r*) (1882), 23 C. D. 1.

(*s*) *Morgan's Brewery* v. *Crosskill*, [1902] 1 Ch. 898.

(*ss*) This form of memorandum and articles of association is suitable where an official quotation on the Stock Exchange is desired.

sharing of profits or union of interests with any company body or person having objects or engaged in any business or transactions wholly or in part similar to the objects of the Company or any business capable of being conducted so as directly or indirectly to benefit the Company.

(*e*) To lend money to or give or undertake to give any guarantee in respect of the obligations of or otherwise assist any company body or person and to finance or promote any company or undertaking.

(*f*) To procure the Company to be registered or recognized in any country state or place abroad and to comply with any conditions necessary or expedient in order to enable the Company to carry on business in any country state or place abroad and to establish local agencies for the purpose of carrying on any business which the Company is authorized to carry on.

(*g*) To borrow or raise money and to issue bonds debentures debenture stock mortgages or other instruments either to bearer or otherwise and either conferring no charge or conferring a fixed charge or a floating charge or both upon all or any part of the assets and undertaking of the Company including its uncalled capital and so that any such debentures or debenture stock or any deed securing the same may contain a condition making the debentures or debenture stock irredeemable or redeemable only on the happening of any contingency however remote or on the expiration of a period however long.

(*h*) To draw accept indorse discount issue and execute bills of exchange promissory notes bills of lading and other negotiable or transferable instruments or securities.

(*i*) To invest any moneys of the Company in any form of investment which may be considered desirable and from time to time to vary any such investment.

(*j*) To sell or otherwise dispose of or let for any term of years or for a life or lives the whole or any part of the property business or undertaking of the Company as a going concern or otherwise and either for cash or for shares debentures or securities of any other company or for any other consideration.

(*k*) To pay pensions and give gratuities to employees and ex-employees and others connected with the Company and to subscribe to any trade association charitable or other public or private institution in cases where it is for the benefit of the Company to subscribe.

(*l*) To obtain or to make support or oppose any application for any Act of Parliament or any law of any foreign or colonial legislature or any law bye-law or regulation of any local municipal or other public or private authority.

(*m*) To accept any composition or any security for any debt or any property claimed and to allow any time for payment of any debt and to compromise abandon compound submit to arbitration or otherwise settle any debt account claim or thing.

(*n*) To do all or any of the above things in any part of the world and either as principal agent contractor or otherwise and either by agents contractors or otherwise and either alone or in conjunction with others.

(*o*) To do all such other things as may be considered to be conducive to the attainment of the above objects or any of them.

4. The liability of the members is limited.

5. The capital of the Company is £ divided into shares of £ each.

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 descriptions of Subscribers.	Number of Shares taken by each Subscriber.
1.	
2.	
3.	
4.	
5.	
6.	
7.	

Dated 19 .

Witness to the above Signatures—

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Company Limited by Shares.

ARTICLES OF ASSOCIATION OF LIMITED.

1. Table A in the First Schedule to the Companies (Consolidation) Act, 1908, shall not apply to this Company.

2. In the construction of these Articles of Association the following expressions shall where the context admits have the following meanings :—

Words importing the singular number only shall include the plural number ; and words importing the plural number only shall include the singular number ; words importing the masculine gender only shall include females ; and words importing persons shall include corporations.

The word "month" shall mean calendar month.

The expression "the Company" shall mean the above-mentioned Company.

The expressions "the directors" "the board" shall mean respectively the directors and the board of directors of the Company.

The expression "these presents" shall mean these articles of association.

The expression "colony" shall have the same meaning as in section 34 of the Companies (Consolidation) Act, 1908.

The expression "member" shall mean a member of the Company.

The expression "debentures" or "debenture" shall include debenture stock.

BUSINESS.

3. The Company shall not commence any business or exercise any borrowing powers unless it has obtained a certificate that it is entitled to commence business, but nothing herein contained shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

SHARES.

4. For the purposes of section 85 of the Companies (Consolidation) Act, 1908, the minimum subscription upon which the directors may proceed to allotment is fixed at shares.

5. The amount payable on application on each share (*a*) offered to the public for subscription shall not be less than five per cent. of the nominal amount of the share.

6. Subject to the provisions of these presents the shares shall be under the control of the directors who may allot the same to such persons and on such terms and conditions as they in their absolute discretion shall think fit.

7. The Company may pay to any person a commission at a rate not exceeding per cent. or of an amount not exceeding such rate in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares in the Company, or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the Company.

8. The Company may pay a reasonable sum for brokerage and may make any allotment on the terms that the person to whom such allotment is made shall have the right to call for further shares at such time or times and at such price or prices (not being less than par) as may be thought fit.

9. The funds of the Company shall not be applied in the purchase of or in loans upon the security of the Company's own shares.

CERTIFICATES.

10. Each member shall be entitled to a certificate under the common seal of the Company specifying the shares held by him and the amount paid up thereon. Provided that in the case of shares held jointly by several persons the Company shall not be bound to issue more than one certificate, and delivery of a certificate for shares to one of several joint holders shall be sufficient delivery to all.

11. Every certificate shall be complete and ready for delivery within two months after the allotment or the registration of a transfer of the shares therein referred to unless the conditions of issue of such shares otherwise provide.

12. If any certificate be worn out or damaged then the directors shall issue a fresh certificate on the certificate so worn out or damaged being delivered up to be cancelled, and if any such certificate be lost or destroyed then the directors shall issue a fresh certificate on such loss or destruction being proved to their satisfaction and upon a sufficient indemnity being given against any loss or damage which the Company may suffer by reason of the issue of such fresh certificate.

13. On the issue of any certificate the directors may demand a fee not exceeding one shilling.

(*a*) Where no immediate offer to the public is contemplated insert here the words "forming part of the first allotment of share capital payable in cash and on each share."

CALLS.

14. The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit provided that fourteen days' notice at least shall be given of each call and that no call on any share shall be for a greater amount than a quarter of the nominal value of such share and that no call shall be made within one month after the last preceding call was made. This article shall be without prejudice to the rights of any member in respect of any share which has been issued to him on special conditions as to payment by instalments or otherwise.

15. Subject to any special conditions on which any shares have been issued each member shall be liable to pay any call made on him and any instalment presently payable by him at the time and place appointed by the directors.

16. The joint holders of a share shall be jointly and severally liable to pay all calls or instalments in respect thereof.

17. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

18. If before or on the day appointed for payment of any call or instalment any member does not make such payment then he shall be liable to pay such call or instalment together with interest on the same at the rate of five pounds per cent. per annum from the day appointed for payment thereof to the time of actual payment, but the directors shall be at liberty to waive payment of such interest wholly or in part.

19. The directors may accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any share held by him although no call has been made.

20. Upon any moneys paid in advance under the last preceding article and until the same would but for such advance become presently payable the directors may pay interest at such rate as the member paying such sum in advance and the directors may agree upon.

21. The directors may make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls or instalments to be paid and in the time of payment of such calls or instalments.

LIEN.

22. The Company shall have a first and paramount lien on every share not being a fully paid share for all moneys whether presently payable or not called or liable to be called or payable at a fixed time in respect of such share and when a share not being a fully paid share is registered in the name of a single person the Company shall also have a first and paramount lien on such share for all moneys presently payable by such person or his estate either alone or jointly with any other person to the Company and when a share not being a fully paid share is registered in the name of more persons than one the Company shall have a like lien thereon in respect of moneys so payable to the Company by all or any of the holders thereof or the estates of all or any of them either alone or jointly with any other person but the directors may at any time declare any share to be wholly

or in part exempt from the provisions of this clause. The Company's lien if any on a share shall extend to all dividends payable thereon.

23. For the purpose of enforcing any such lien the Company shall at any time when any such debt or liability or any part thereof has become presently payable be entitled to sell any share subject to such lien but before any such sale the Company shall give the registered holder for the time being of such share or the person entitled by reason of his death or bankruptcy to the same notice in writing requiring him to pay all moneys which are presently payable and are so charged on such share such notice shall specify the amount of such moneys and shall state that the Company intends to exercise its power of sale in the event of such amount not being paid by a specified day (not earlier than the expiration of fourteen days from the day of such notice).

24. The purchaser of any share so sold shall be registered as the holder of such share and he shall hold the same subject to any charge in favour of the Company for moneys not presently payable at the date of sale but in the absence of any arrangement to the contrary free from all other charges.

25. No purchaser shall be bound or concerned to inquire into the application of the purchase money or the regularity of the sale but the remedy of any one injured by a sale wrongfully made in purported exercise of such power of sale shall be in damages against the Company only.

26. All moneys received on any such sale shall after payment of any prior incumbrance be applied firstly in payment of all costs of such sale and of any attempted sale and secondly in payment of all moneys charged on the shares by virtue of such lien and presently payable and subject to such payments the balance shall be paid to the person who was entitled to such shares at the date of such sale.

Forfeiture of Shares.

27. If any member fails to pay any call or any instalment on the day appointed for payment thereof the directors may at any time thereafter during such time as the call or instalment remains unpaid serve a notice on him or on the person entitled by reason of his death or bankruptcy to his shares requiring payment of such call or instalment together with interest and any expenses that may have accrued by reason of such non-payment.

28. The notice shall name a further day not earlier than the expiration of fourteen days from the day of such notice on or before which such call or instalment and all interest and expenses that may have accrued by reason of such non-payment are to be paid.

29. The notice shall also state that in the event of non-payment at or before the time appointed the shares in respect of which such call was made or such instalment was payable will be liable to be forfeited.

30. If the requisitions of any such notice as aforesaid are not complied with any share in respect of which such notice has been given may at any time thereafter before the payment required by the notice has been made be forfeited by a resolution of the directors to that effect.

31. Any share so forfeited shall be deemed to be the property of the

Company and may be sold or otherwise disposed of in such manner as the directors think fit but at any time before a sale or disposition the forfeiture may be cancelled on such terms and conditions as the directors think fit.

32. Notwithstanding any forfeiture any member whose shares have been forfeited shall be liable to pay to the Company all calls instalments interest and expenses presently payable in respect of the shares forfeited at the time of forfeiture.

33. A statutory declaration in writing that the declarant is a director of the Company and that a share in the Company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share and such declaration and the receipt of the Company for the price if any given for the share on the sale or disposition thereof shall constitute a good title to such share; and a certificate of proprietorship shall be delivered to a purchaser and his name shall be entered on the register of members and thereupon he shall be deemed the holder of such share discharged from all calls or instalments or other sums due prior to such purchase, and he shall not be bound to see to the application of the purchase money nor shall his title to such share be affected by any irregularity in the proceedings in reference to such forfeiture sale or disposition.

SURRENDER OF SHARES.

34. The directors may accept a surrender of shares where they are in a position to forfeit such shares and in any other case where a surrender of shares is allowed by law.

TRANSFERS AND TRANSMISSION.

35. The instrument of transfer of any share in the Company shall be executed by the transferor and the transferee; and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register in respect thereof. On every transfer the directors may demand a fee not exceeding two shillings and sixpence.

36. Shares in the Company shall be transferred by transfers in the usual common form or in the following form:—

I, A. B. of in consideration of the sum of pounds paid to me by C. D. of do hereby transfer to the said C. D. the share [or shares] numbered standing in my name in the books of the Company Limited to hold unto the said C. D. his executors administrators and assigns subject to the several conditions on which I held the same at the time of the execution hereof; and I the said C. D. do hereby agree to take the said share [or shares] subject to the same conditions, As witness our hands the day of 19 .

37. The directors may decline to register any transfer of any shares which are not fully paid up to any person of whom they do not approve and any transfer of any shares in respect of which the Company has a lien.

38. The transfer books shall be closed during the fourteen days immediately preceding the ordinary meeting in each year.

39. The executors or administrators of a deceased sole holder shall be the only persons recognised by the Company as having any title to his shares and in the case of shares registered in the names of two or more holders the survivors or survivor shall be the only persons recognised by the Company as having any title to the shares.

40. The executor or administrator of a deceased member and any person who has become entitled to any shares in consequence of the bankruptcy of any member may either transfer the shares of such deceased or bankrupt member or may be registered as a member in respect of such shares upon such evidence being produced as may from time to time be required by the directors but the directors shall in either case have the same right to refuse registration as they would have had in the case of a transfer of such shares by the deceased or bankrupt person before his death or bankruptcy.

41. A person becoming entitled to shares by reason of the death or bankruptcy of the holder shall until he transfers or is registered as a member in respect of such shares be entitled to the same right to participate in the dividends and profits of the Company and in the assets on a winding-up or reduction of capital to which he would be entitled if he were the registered holder of such shares but except where otherwise herein provided he shall not without being registered as a member in respect of such shares be entitled in respect of them to receive any notice or to exercise or enjoy any right or privilege conferred by membership.

Modification of Class Rights.

42. Where the capital of the Company is divided into more than one class of shares the rights of the holders of any class of shares may be modified with the consent in writing of the holders of three-fourths of the issued shares of that class and every modification so sanctioned shall bind all the shareholders of that class.

Subdivision and Consolidation of Shares.

43. The Company may by special resolution subdivide its shares or any of them into shares of smaller amount than is fixed by its memorandum of association, provided that in the subdivision the proportion between the amount which is paid and the amount (if any) which is unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

44. The directors may with the sanction of the Company previously given in general meeting consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares.

45. In the event of part only of the capital of the Company being consolidated or subdivided a holder of consolidated or subdivided shares shall at every meeting of the Company have one vote for every entire share in the original capital of the Company which the nominal value of his holding represents.

CONVERSION OF SHARES INTO STOCKS AND RECONVERSION.

46. The directors may with the sanction of the Company previously given in general meeting convert any paid up shares into stock.

47. When any shares have been converted into stock the several holders of such stock may thenceforth transfer their respective interests or any part of such interests in the same manner and subject to the same regulations as and subject to which the shares from which the stock arose might previously to conversion have been transferred or as near thereto as circumstances admit provided always that the directors may from time to time provide that no transfer of stock below a minimum to be fixed by them from time to time shall be made and restrict or forbid transfers of fractions of that minimum but so that such minimum amount shall not be greater than the nominal amount of the shares from which such stock arose.

48. The holders of stock shall according to the amount of stock held by them have the same rights privileges and advantages as regards dividends voting at meetings and other matters as if they held the shares from which the stock arose but so that no right of membership in relation to meetings of the Company shall be conferred by any such aliquot part of stock as would not if existing in the shares from which the stock arose have conferred such rights.

49. Where the Company has converted any of its shares into stock then the directors may with the sanction of the Company previously given in general meeting reconvert such stock into paid up shares of any denomination. Such reconverted shares shall confer the same rights privileges and advantages as the stock from which they were reconverted.

INCREASE OF CAPITAL.

50. The directors may with the sanction of the Company previously given in general meeting increase its capital by the issue of new shares, such aggregate increase to be of such amount and to be divided into shares of such respective amounts as the Company in such general meeting directs or if no direction is given as the directors think expedient and the Company may in such general meeting direct that such new shares or any of them may have such preference or priority over the then existing shares of the Company and such rights and privileges different to those of such existing shares as they may think expedient.

51. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital all new shares shall be offered to the members in proportion as nearly as may be to the existing shares held by them; and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time within which the offer if not accepted will be deemed to be declined, and after the expiration of such time or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered the directors may dispose of the same in such manner as they think most beneficial to the Company. The directors may likewise so dispose of any new shares which by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares cannot in the

opinion of the directors be conveniently offered under this article. For the purposes of this article a person entitled to shares by reason of the death or bankruptcy of any member shall be considered a member.

52. Subject to any direction to the contrary that may be given by the general meeting that sanctions the increase of capital any capital raised by the creation of new shares shall be considered as part of the original capital of the Company and shall be subject to the same provisions with reference to the payment of calls and the forfeiture of shares and otherwise as if it had been part of such capital.

Reduction of Capital.

53. The Company may by special resolution reduce its capital in any manner and with and subject to any incident and consent required by law.

54. The directors may with the sanction of the Company previously given in general meeting cancel any shares which at the date of such resolution have not been taken or agreed to be taken by any person and diminish the amount of the share capital of the Company by the amount of the shares so cancelled.

Share and Stock Warrants.

55. The directors may with the sanction of the Company previously given in general meetings with respect to any share which is fully paid up or with respect to stock issue under their common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified and may provide by coupons or otherwise for the payment of the future dividends on the shares or stock included in such warrant (hereinafter referred to as a share warrant). No such share warrant shall be issued until the directors have received a request in writing from the registered holder of the shares or stock together with the certificate for the same and the amount of stamp duty on the warrant and such fee as the directors may from time to time require.

56. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it and such shares or stock may be transferred by the delivery of such share warrant.

57. The bearer of a share warrant shall on surrendering such warrant for cancellation and on payment of such fee as the directors shall from time to time prescribe be entitled to have his name entered as a member on the register of members in respect of the shares or stock specified in such share warrant.

58. Except for the purpose of participating in the dividends and profits of the Company and as hereinafter provided the bearer of a share warrant shall not be deemed a member of the Company in respect of the shares or stock specified in such warrant.

59. The bearer of a share warrant may deposit such warrant at the registered office of the Company and on his making such deposit and giving his name and address there shall be delivered to him a certificate stating his name and address and the number of shares or the amount of stock represented by the warrant so deposited by him. Until such certificate is returned to the Company the person named therein shall be deemed

to be a member for all purposes in respect of the shares or stock specified in such certificate except that he shall not in respect of such shares or stock be qualified for being a director of the Company and the address mentioned in such certificate shall be deemed to be his registered address. The warrant in respect of which such certificate is given shall be retained by the Company until such certificate is delivered up to it unless the directors are satisfied that such certificate has been lost or destroyed.

60. The directors may from time to time make rules as to the terms on which a new share warrant may be issued in cases of defacement wearing out loss or destruction.

61. Whenever there are any share warrants of the Company outstanding and unsurrendered the Company shall cause every dividend to be advertised in the *Times* within one month after it has been declared.

GENERAL MEETINGS.

62. The statutory general meeting of members of the Company shall be held within a period of not less than one month nor more than three months from the date at which the Company is entitled to commence business.

63. Subsequent general meetings shall be held once at least in each calendar year at such time and place as may be prescribed by the directors but so that no such meeting shall be held at an interval of more than fifteen months from the last preceding general meeting. Such meetings shall be called ordinary meetings.

64. Every general meeting of the Company other than the statutory meeting and an ordinary meeting shall be called an extraordinary meeting.

65. The directors may whenever they think fit and shall on the requisition of the holders of not less than one-tenth of the issued capital of the Company upon which all calls or other sums then due have been paid forthwith proceed to convene an extraordinary meeting.

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

67. If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited the requisitionists or a majority of them in value may themselves convene the meeting but any meeting so convened shall not be held after three months from the date of such deposit.

68. If at any such meeting a resolution requiring confirmation at another meeting is passed the directors shall forthwith convene a further extraordinary meeting for the purpose of considering the resolution and if thought fit of confirming it as a special resolution and if the directors do not convene the meeting within seven days from the passing of the first resolution the requisitionists or a majority of them in value may themselves convene the meeting.

69. Any meeting convened by requisitionists as aforesaid shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.

70. Seven days' notice at the least specifying the place the day and the

hour of the meeting and in case of special business the general nature of such business shall be given to the members in manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company in general meeting; but the accidental omission to give any such notice to any member shall not invalidate the proceedings at any meeting.

71. In the case of a special resolution the notice convening the two meetings may be given at one and the same time and the second meeting shall be deemed to have been properly convened notwithstanding the fact that such notice states that it will only be held in the event of the resolution proposed at the first meeting having been passed by the requisite majority.

72. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend and the consideration of the accounts balance sheets and ordinary reports of directors.

PROCEEDINGS AT GENERAL MEETINGS.

73. Except as hereinafter provided no business shall be transacted at any general meeting except the declaration of a dividend unless a quorum of members is present at the time when the meeting proceeds to business.

74. At any general meeting a quorum shall consist of three members personally present and entitled to vote.

75. If within half an hour from the time appointed for the meeting a quorum is not present the meeting if convened on the requisition of members shall be dissolved in any other case it shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting any two or more members present and entitled to vote shall be a quorum.

76. The chairman of the board of directors shall preside as chairman at every meeting of the Company; but if at any time there is no such chairman or he is not present within fifteen minutes after the time appointed for holding the meeting or if he is unwilling to act the members present shall choose one of the directors who is present and willing to act to be chairman; but if there be no such director then the members present shall choose some one of their own number to be chairman.

77. The chairman may with the consent of the meeting adjourn any meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

78. At any general meeting a resolution put to the vote of the meeting shall be decided by a show of hands of persons present and entitled to vote unless a poll is demanded by at least two persons present and entitled to vote and unless a poll is so demanded a declaration of the chairman that such resolution has been carried or carried by a particular majority or lost shall be deemed to be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

79. If a poll is demanded on any resolution by the requisite number of

persons it shall be taken in such manner as the chairman directs and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes whether on a show of hands or at a poll at any general meeting of the Company the chairman shall be entitled to a casting vote in addition to any vote or votes to which he is otherwise entitled.

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

VOTES.

81. Every member shall have one vote for each share held by him.

82. If any member is an infant or a lunatic or of unsound mind he may vote by his guardian committee *curator bonis* or other legal curator.

83. If a Company is a member it may vote by any person authorised by resolution of its directors to act as its representative at any meeting and such representative shall be entitled on behalf of such Company to exercise the same functions as if he were a member.

84. If two or more persons are jointly entitled to any share the person whose name stands first in the register of members as one of the holders of such share and no other shall be entitled to vote in respect of the same.

85. No member shall be entitled to vote at any meeting of the Company unless all calls or other sums presently payable by him in respect of his shares in the Company have been paid and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting of the Company held after the expiration of three months from the registration of the Company unless he has been registered as the holder of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

86. On a poll votes may be given either personally or by proxy.

87. No person shall act as a proxy unless he is apart from any proxy he holds entitled to be present and vote at the meeting at which he acts as a proxy.

88. Every proxy shall be in writing under the hand of the appointor and shall be deposited at the registered office of the Company not less than two clear days before the day appointed for holding the meeting or adjourned meeting at which the person named in such proxy proposes to vote and in default the proxy shall not be treated as valid.

89. Any instrument appointing a proxy shall be in the following form or as near thereto as circumstances will admit :—

THE COMPANY LIMITED.

I of in the county of being a member of the above-mentioned Company and entitled to votes hereby appoint of or failing him of as my proxy to vote for me and on my behalf

at the (ordinary or extraordinary as the case may be) general meeting of the Company to be held on the day of 19 and at any adjournment thereof. Dated this day of 19

Signed

DIRECTORS.

90. The number of directors shall not be less than or more than but in the event of any casual vacancy occurring and reducing the number of directors to below the aforesaid minimum the continuing directors or director may act for the purpose of filling up such vacancy or vacancies or of summoning a general meeting of the Company.

91. The first directors shall be appointed by the subscribers to the Memorandum of Association.

92. Until directors are appointed the subscribers to the memorandum of association shall have all the powers hereby conferred on directors.

93. The qualification of a director shall be the holding of shares of the nominal value of £ in the capital of the Company either as sole holder or as the one of several joint holders whose name stands first in the register of members [and any person who accepts the office of director and who is not already qualified shall unless he obtain his qualification within one month from the date of his appointment be deemed to have agreed to take his qualification shares from the Company and the Company shall allot the same accordingly] (*a*).

94. Each director shall receive by way of remuneration for his services a sum calculated at the rate of £ per annum.

POWERS AND DUTIES OF DIRECTORS.

95. The business of the Company shall be managed by the directors who may pay all expenses incurred in getting up and registering the Company and may exercise all such powers of the Company as are not by statute or by these articles required to be exercised by the Company in general meeting; but the exercise of all such powers shall be subject to and in accordance with the provisions of any statute in that behalf and of these presents and shall also be subject to and in accordance with any regulations or provisions made by the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

DISQUALIFICATION OF DIRECTORS.

96. The office of director shall be vacated :—

(1) If he becomes bankrupt or insolvent.

(2) If he becomes incapable of acting therein.

(3) If he ceases to hold his qualification shares or if he does not acquire his qualification shares within two months from the date of his appointment.

(4) If at any time subsequently to his election he accepts or continues to hold any office or place of profit under the Company

(*a*) The words in brackets should be omitted where an official quotation on the Stock Exchange is desired.

other than that of managing director or manager or trustee of a trust deed for securing debentures.

(5) If he contracts with or is concerned or interested in or participates in the profits of any contract with the Company or participates in the profits of any work done for the Company without declaring his interest at the meeting of the directors at which such contract is determined upon or work ordered if his interest then exists or in any other case at the first meeting of the directors after the acquisition of his interest. Provided always that the office of director shall in no case be vacated by reason of his being a member of any company which has entered into contracts with or done any work for the Company.

(6) If he gives notice in writing to the Company resigning his directorship.

97. No director shall vote on any contract in which he is either directly or indirectly concerned or interested and if he does so vote his vote shall not be counted. Provided always that the directors or any of them may vote on any contract for indemnifying themselves or any of themselves against any loss they may suffer by reason of becoming or being sureties for the company.

ROTATION OF DIRECTORS.

98. At the first ordinary meeting the whole of the directors (other than the managing director) shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors (other than the managing director) or if their number is not a multiple of three then the number nearest to one-third shall retire from office.

99. The directors to retire in every year shall subject nevertheless as hereinafter provided be those directors (other than the managing director) who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall unless they otherwise agree among themselves be determined by lot.

100. A retiring director shall be eligible for re-election.

101. The Company at the ordinary meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

102. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up the vacating directors or such of them as have not had their places filled up shall continue in office until the ordinary meeting in the next year and so on from time to time until their places are filled up.

103. The Company may from time to time in general meeting increase or reduce the number of directors, but so that such number shall not be increased beyond the maximum number or reduced below the minimum number hereinbefore prescribed, and they may determine the order of rotation in which such increased or reduced number shall go out of office.

104. The Company may by extraordinary resolution remove any director before the expiration of his term of office and may by ordinary resolution appoint another person in his stead. The person so appointed

shall hold office during such time as the director in whose place he is appointed would have held the same if he had not been removed.

105. The directors shall have power at any time to appoint any person a director either to fill a casual vacancy or as an addition to the Board but so that the total number of directors shall not be increased beyond the maximum number hereinbefore prescribed. Any director so appointed shall hold office only until the next ordinary meeting and shall then be eligible for re-election.

Proceedings of Directors.

106. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit and determine the quorum necessary for the transaction of business, questions arising at any meeting shall be decided by a majority of votes ; in case of an equality of votes the chairman shall have a second or casting vote ; a director may at any time summon a meeting of directors.

107. The directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding such meeting the directors shall choose some one of their number to be chairman of such meeting.

108. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit ; any committee so formed shall, in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors. Subject to any such regulations and to the provisions of these presents a committee may elect a chairman and otherwise regulate their meetings ; if no such chairman is elected or if he is not present at the time appointed for holding any meeting the members present shall choose one of their number to be chairman at such meeting.

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

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

111. A resolution in writing signed by all the directors shall have the same effect as a resolution passed at a meeting of directors.

112. The directors shall have power to appoint one or more of their number to be managing director or manager for such term and upon such conditions as they see fit and they may delegate to such managing director or manager such of their powers as they in their absolute discretion shall think fit.

113. Any such managing director or manager shall receive for his services such remuneration whether by way of salary or commission or

participation in profits or partly in one way and partly in another as the directors may think fit. A managing director or manager shall not be liable to retire by rotation while he continues to be a managing director or manager, but if in any other way he ceases to be a director his office of managing director or manager shall *ipso facto* be vacated.

114. The directors may employ any one or more of their number to do any special business for the Company and may remunerate any person so employed and such remuneration may be either in addition to or in substitution for the remuneration to which any such director is entitled as director.

MORTGAGES AND CHARGES.

115. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the Company shall not exceed the amount for the time being of the issued capital of the Company without the sanction of the Company in general meeting.

116. Within two months after the allotment of any debenture or debenture stock and within two months after the registration of a transfer of the same the directors shall complete and have ready for delivery the debentures and the certificates of all debenture stock allotted or transferred unless the conditions of issue of the debentures or debenture stock otherwise provide.

117. The Company shall comply with the provisions of sections 93 100 and 101 of the Companies (Consolidation) Act, 1908.

118. Every register of holders of debentures of the Company may be closed for any periods not exceeding in the whole the maximum period allowed by law in any year. Subject as aforesaid every such register shall be open to the inspection of the registered holder of any such debentures and of any member; but the Company may in general meeting impose any reasonable restrictions so that at least two hours in each day when such register is open are appointed for inspection and every such holder may acquire a copy of such register or any part thereof on payment of sixpence for every one hundred words required to be copied.

119. The Company shall comply with the provisions of section 102 (2) of the Companies (Consolidation) Act, 1908 as to supplying copies of trust deeds for securing issues of debentures.

120. Holders of debentures shall have the same right to receive and inspect the balance sheets of the Company and the reports of the auditors and other reports as are possessed by members of the Company.

MINUTES.

121. The directors shall cause minutes of all resolutions and proceedings of meetings of the Company and of the directors and of every committee of the directors to be duly entered in books to be from time to time provided for the purpose and such minutes shall be signed by the chairman of the meeting at which such resolution was passed or proceeding had or by the chairman of the next succeeding meeting. The minutes of every meeting of the directors or of a committee of the directors shall in addition state what directors were present at such meeting and at every such meeting each director present shall sign his name in a book to be kept for the purpose.

SEAL.

122. The powers conferred by section 79 of the Companies (Consolidation) Act 1908 shall apply to this Company.

123. Every document bearing the common seal of the Company must be signed by at least two directors of the Company and countersigned by the secretary of the Company or some person duly authorised in that behalf by the directors.

COLONIAL REGISTER.

124. The Company may cause to be kept in any colony where it transacts business a branch register of members resident in such colony.

DIVIDENDS.

125. The directors may with the sanction of the Company in general meeting declare a dividend and the directors may from time to time pay such interim dividends as they consider to be justified by the profits of the Company.

126. Subject to the rights of members whose shares have been issued on special terms every dividend shall be paid to the members in proportion to the amount paid up on their shares.

127. No dividend shall be payable except out of the profits arising from the business of the Company.

128. The directors may before recommending any dividend set aside out of the profits of the Company such sum as they think proper as a reserve fund to meet contingencies or for equalising dividends or for repairing or maintaining works connected with the business of the Company or any part thereof or for any other purpose the directors think proper and the directors may invest the sum so set apart as a reserve fund upon such investments as they may select.

129. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

130. Notice of any dividend that may have been declared shall be given to each member and all dividends may be paid by cheque sent through the post to the registered address of the member entitled thereto or to such other address as such member may in writing request. In the case of joint holders of shares the person who is named first in the register of members shall be deemed to be the member entitled to all dividends.

131. Where the Company has earned profits available for dividend hereunder but it is not convenient to pay a dividend in cash the Company may pay a dividend by issuing debentures or fully paid shares to or by distributing any part of its assets in specie among the members entitled to such dividend provided always that nothing herein contained shall be deemed to authorise the issue of any share at a discount.

132. No dividend shall bear interest against the Company but the Company shall not be entitled to forfeit any dividends because they have not been claimed.

ACCOUNTS.

133. The directors shall cause true accounts to be kept of the sums of moneys received and expended by the Company and the matter in respect of which such receipt and expenditure takes place and of the assets and liabilities of the Company.

134. The books of account shall be kept at the registered office of the Company and shall be open to the inspection of any director but except with the sanction of the directors no other person shall be entitled to inspect any book or document or account of the Company unless he is authorised so to do by statute or by these articles or by a resolution of the Company in general meeting.

135. Once at least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year made up to a date not more than six months before such meeting (*t*).

136. The statement so made shall show arranged under the most convenient heads the amount of gross income distinguishing the several sources from which it has been derived and the amount of gross expenditure distinguishing the expense of establishment salaries and other like matters ; every item of expenditure fairly chargeable against the year's income shall be brought into account so that a just balance of profit and loss may be laid before the meeting and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

137. A balance-sheet shall be made out in every year and laid before the Company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the Company's affairs and the dividends which with the sanction of the Company in general meeting the directors propose to declare and of all interim dividends paid since the last ordinary meeting and of the amounts carried to reserve.

138. Every such balance-sheet shall give a summary of the capital and liabilities and assets of the Company (*u*) and shall give such particulars as will disclose the general nature of such liabilities and assets and how the value of the fixed assets have been arrived at and shall state the total amount of the sums paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures or so much thereof as has not been written off until the whole amount

(*t*) This form of Article, coupled with Article 125, seems not to be within the reasoning in *Nicholson* v. *Rhodesia Trading Co.*, [1897] 1 Ch. 434, and a company with such articles may therefore sanction a dividend at a meeting other than an ordinary general meeting.

(*u*) Add "showing the share capital on which, and the rate at which interest has been paid out of capital during the period to which such accounts relate," in cases where any such payment is likely to be made under the provisions of s. 91 of the Companies (Consolidation) Act, 1908, or of the Indian Railways Act, 1894, as amended by the Indian Railways Amendment Act, 1906.

thereof has been written off and every such balance-sheet shall be signed on behalf of the Board by two directors or if there is only one director by such director.

139. The Company shall comply with the provisions of section 26 of the Companies (Consolidation) Act 1908.

140. A printed copy of every such balance-sheet and report and statement of income and expenditure shall seven days previously to the meeting be served on every member in manner in which notices are hereinafter directed to be served (x).

Auditors.

141. The Company shall at each ordinary meeting appoint an auditor or auditors to hold office until the next ordinary meeting.

142. A director or officer of the Company shall not be capable of being appointed an auditor of the Company.

143. A retiring auditor shall be re-eligible but no other person shall be capable of being appointed auditor at an ordinary meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the Company not less than fourteen days before the ordinary meeting and the Company shall send a copy of any such notice to the retiring auditor and shall give notice thereof to the members either by advertisement or in any other mode in which notices are by these presents authorised to be given not less than seven days before the ordinary meeting provided always that if after a notice of the intention to nominate an auditor has been so given an ordinary meeting is called for a date fourteen days or less after that notice has been given the notice though not given in the time required by this provision shall be deemed to have been properly given for the purposes thereof and the notice to be sent or given by the Company may instead of being sent or given within the time required by this provision be sent or given at the same time as the notice of the ordinary meeting.

144. The first auditors of the Company may be appointed by the directors before the statutory meeting and if so appointed shall hold office until the first ordinary meeting unless previously removed by a resolution of the shareholders in general meeting in which case the shareholders at such meeting may appoint auditors to hold office until the first ordinary meeting. In the event of the directors not having appointed auditors before the statutory meeting they shall within three months after such statutory meeting convene an extraordinary meeting of the Company for the purpose of appointing auditors to hold office until the first ordinary meeting of the Company.

145. The directors may fill any casual vacancy in the office of auditor but while any such vacancy continues the surviving or continuing auditor or auditors if any may act.

146. The remuneration of the auditors of the Company shall be fixed by the Company in general meeting except that the remuneration of any

(x) Where an official quotation on the Stock Exchange is desired, add "and two copies of each of the said documents shall at the same time be forwarded to the secretary of the Share and Loan Department, the Stock Exchange, London."

auditors appointed before the statutory meeting or to fill any casual vacancy may be fixed by the directors.

147. Every auditor of the company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the directors and officers of the Company such information and explanations as may be necessary for the performance of his duties as auditor.

148. The auditors shall make a report to the shareholders on the accounts examined by them and on every balance sheet laid before the Company in general meeting during their tenure of office and in every such report shall state whether or not they have obtained all the information and explanations they have required and whether in their opinion the balance-sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs according to the best of their information and the explanations given to them and as shown by the books of the Company.

149. The balance-sheet (signed by two directors or one director as above-mentioned) shall have the auditors' report attached to it or there shall be inserted at the foot of the balance-sheet a reference to the report and the report shall be read before the Company in general meeting and shall be open to inspection by any member. Any member shall be entitled to be furnished with a copy of the balance-sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

NOTICES.

150. Any notice may be served by the Company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered address or (if he has no registered address within the United Kingdom) at the place if any within the United Kingdom supplied by him to the Company for the giving of notices to him.

151. All notices directed to be given to the members shall with respect to any share to which persons are jointly entitled be given to whichever of such persons is named first in the register of members and notice so given shall be sufficient notice to all the holders of such share.

152. Any notice may be given to the persons entitled on the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name or by the title of the representatives of the deceased or trustee of the bankrupt or by any like description at the address if any in the United Kingdom supplied by the persons who have satisfied the Company that they are so entitled. If there are no persons who are or no persons who have satisfied the Company that they are so entitled or if no such address has been supplied them and in either of such cases any notice in respect of the shares of any deceased or bankrupt member may be given in any manner in which the same might have been given if the death or bankruptcy had not occurred.

153. Any notice if served by post shall be deemed to have been served within twenty-four hours from the time when the letter containing the same was put into the post office; and in proving such service it shall

be sufficient to prove that such letter was properly addressed and put into the post office.

WINDING-UP.

154. On a winding-up if there are any assets remaining after satisfaction of all the debts and liabilities of the Company and after payment of the costs of liquidation and repayment to the shareholders of the amounts respectively paid by them on their shares then the assets so remaining shall be divided among the shareholders in proportion to the amounts paid or which ought to have been paid by them at the commencement of the winding-up in respect of their shares; but if after payment of the said debts and liabilities and costs there shall not remain sufficient assets to repay to the shareholders the amounts respectively paid by them on their shares then the loss shall be borne by the shareholders in proportion to the amounts paid by them or which ought to have been paid by them at the commencement of the winding-up in respect of their shares. This article is without prejudice to the rights of persons whose shares are Issued on special terms.

FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION ISSUED BY THE BOARD OF TRADE WHERE AN APPLICATION IS TO BE MADE TO THEM FOR A LICENCE TO OMIT THE WORD "LIMITED" FROM THE NAME OF THE COMPANY UNDER SECTION 20 OF THE ACT (*aa*).

MEMORANDUM OF ASSOCIATION.

1. The name of the Association is "The

2. The registered office of the Association will be situate in [England].

3. The objects for which the Association is established are :—[Here express objects shortly.]

(1) The

(2) The

(3) The doing all such other lawful things as are incidental or conducive to the attainment of the above objects.

Provided that the Association shall not support with its funds or endeavour to impose on or procure to be observed by its members or others any regulation, restriction or condition which if an object of the Association would make it a Trade Union.

Provided also that in case the Association shall take or hold any property subject to the jurisdiction of the Charity Commissioners or Board of Education for England and Wales, the Association shall not sell, mortgage, charge, or lease the same without such authority, approval or consent as may be required by law, and as regards any such property the Managers or Trustees of the Association shall be chargeable for such property as may come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of such property in the same manner and to the same extent as they would as such Managers or Trustees have been if no incorporation had been effected, and the incorporation of the Association

(*aa*) This form is the official form, and can be obtained from the Board of Trade.

shall not diminish or impair any control or authority exercisable by the Chancery Division, the Charity Commissioners or the Board of Education over such Managers or Trustees, but they shall, as regards any such property, be subject jointly and separately to such control or Authority as if the Association were not incorporated. In case the Association shall take or hold any property which may be subject to any trusts, the Association shall only deal with the same in such manner as allowed by law having regard to such trusts.

4. The income and property of the Association, whencesoever derived, shall be applied solely towards the promotion of the objects of the Association as set forth in this Memorandum of Association; and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise howsoever by way of profit, to the members of the Association.

Provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Association, or to any member of the Association, in return for any services actually rendered to the Association, nor prevent the payment of interest at a rate not exceeding five per cent. per annum on money lent or reasonable and proper rent for premises demised or let by any member to the Association; but so that no member of the Council of Management or Governing Body of the Association shall be appointed to any salaried office of the Association, or any office of the Association paid by fees, and that no remuneration or other benefit in money or moneys worth shall be given by the Association to any member of such Council or Governing Body except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent or reasonable and proper rent for premises demised or let to the Association; provided that the provision last aforesaid shall not apply to any payment to any Railway, Gas, Electric Lighting, Water, Cable, or Telephone Company of which a member of the Council of Management or Governing Body may be a member or any other Company in which such member shall not hold more than one-hundredth part of the capital, and such member shall not be bound to account for any share of profits he may receive in respect of any such payment.

5. The fourth paragraph of this Memorandum is a condition on which a licence is granted by the Board of Trade to the Association in pursuance of Section 20 of the Companies (Consolidation) Act, 1908.

6. The liability of the members is limited.

7. Every member of the Association undertakes to contribute to the assets of the Association, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Association contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding [pounds].

8. If upon the winding up or dissolution of the Association there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Association, but shall be given or transferred to some

other institution or institutions, having objects similar to the objects of the Association, and which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Association under or by virtue of Clause 4 hereof, such institution or institutions to be determined by the members of the Association at or before the time of dissolution, or in default thereof by such Judge of the High Court of Justice as may have or acquire jurisdiction in the matter, and if and so far as effect cannot be given to the aforesaid provision then to some charitable object.

9. True accounts shall be kept of the sums of money received and expended by the Association, and the matter in respect of which such receipts and expenditure take place, and of the property, credits, and liabilities of the Association; and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the Association for the time being, shall be open to the inspection of the members. Once at least in every year the accounts of the Association shall be examined, and the correctness of the balance-sheet ascertained by one or more properly qualified Auditor or Auditors.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into an Association in pursuance of this Memorandum of Association.

Names, addresses, and descriptions of subscribers.*

1.—
2.—
3.—
4.—
5.—
6.—
7.—

Dated day of 19 .

Witness to the above signatures,

A.B.

* All the names should be in full, the addresses should be definite, giving where practicable, the name of the street and the number of the house.

ARTICLES OF ASSOCIATION.

(1.) For the purposes of registration, the number of the members of the Association is declared not to exceed [ ].

(2.) These Articles shall be construed with reference to the provisions of the Companies (Consolidation) Act, 1908, and terms used in these Articles shall be taken as having the same respective meanings as they have when used in that Act.

(3.) The chamber † [institute, or society, as the casemay be] is established for the purposes expressed in the Memorandum of Association.

(4.) Qualification of members.

(5.) Admission of members.

(6.) Retirement of members.

(7.) Rights of members.

(8.) Honorary officers and their elections.

(9.) Management of chamber.

(10.) Powers of chamber [or of the council or governing body thereof].

(11.) Meetings, proceedings, etc.

(12.) Accounts, audit, etc., and so forth.

(13.) Notices.

Names, addresses, and descriptions of subscribers [as in Memorandum of Association].

Dated the day of

Witness,

† It is proposed to adopt the style of "chamber," "society," etc., throughout, and to avoid the use of the word "company."

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL (*y*).

MEMORANDUM OF ASSOCIATION.

1st. The name of the company is "The Mutual London Marine Association, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts, and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

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.

Names, addresses, and description of subscribers.

"1. John Jones of	in the county of	merchant
"2. John Smith of	in the county of	
"3. Thomas Green of	in the county of	
"4. John Thompson of	in the county of	
"5. Caleb White of	in the county of	
"6. Andrew Brown of	in the county of	
"7. Cæsar White of	in the county of	

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

(*y*) Form B in the Third Schedule to the Companies (Consolidation) Act, 1908. For form of Articles see *post*, pp. 140 *et seq*.

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL (z).

MEMORANDUM OF ASSOCIATION.

1st. The name of the company is "The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing of all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges, and expenses of winding-up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

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 Shares taken by each Subscriber.
"1. John Jones of	in the county of	200
"2. John Smith of	in the county of	25
"3. Thomas Green of	in the county of	30
"4. John Thompson of	in the county of	40
"5. Caleb White of	in the county of	15
"6. Andrew Brown of	in the county of	5
"7. Cæsar White of	in the county of	10
	Total shares taken	325

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

(z) Form C in the Third Schedule to the Companies (Consolidation) Act, 1908. Articles same as in the case of a company limited by shares except they must state amount of capital

MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL (*a*).

MEMORANDUM OF ASSOCIATION.

1st. The name of the Company is the Patent Stereotype Company.

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are the working of a patent method of founding and casting stereotype plates of which method John Smith of London is the sole patentee.

We, the several persons whose names are subscribed are desirous of being formed into a company in pursuance of this memorandum and to take the number of shares in the capital of the company set opposite our respective names (*b*).

OBJECT CLAUSES FOR THE MEMORANDUM OF ASSOCIATION OF VARIOUS COMPANIES (*bb*).

I. SHIPPING COMPANY.

To convey passengers and goods between such places as the company may from time to time determine and to acquire such ships boats and materials as may be requisite for the above purposes.

II. HOTEL COMPANY.

To carry on in the United Kingdom the trade or business of licensed victuallers hotel or tavern keepers and livery stable keepers and the erection furnishing and maintenance of hotels with suitable stables offices and grounds.

III. MINING COMPANY.

To purchase hire lease or otherwise acquire mines and mineral properties and rights and lands and hereditaments in South Africa or elsewhere and to acquire work develop and turn to account the same.

IV. INVESTMENT COMPANY.

To invest the money of the company on the security or in the acquisition of any stocks shares bonds debentures debenture stock obligations mortgages or securities of any British Foreign or Colonial Government State province or municipality or of any company or corporation whether formed under British Foreign or Colonial Law and to hold and from time to time to sell vary or dispose of the same.

V. BANKING COMPANY.

To carry on the business of banking in all its branches and in particular to advance money upon property and securities of all kinds to discount

(*a*) Form D in the Third Schedule to the Companies (Consolidation) Act, 1908.

(*b*) Here will follow names and addresses, and the number of shares taken by each signatory (as in the last form). The Articles will be the same as those of a limited company, except they must state amount of capital

(*bb*) These clauses contain the main objects of different companies; every memorandum should contain one at least of such clauses. Some or all of the clauses set out on pp. 93 and 94, *supra*, will follow such clause or clauses.

bills and other securities and to receive money on deposit or otherwise at interest or otherwise and to establish and carry on banks branch banks and agencies in such places as may be from time to time determined on (*c*).

VI. TRUSTEE AND EXECUTOR COMPANY.

To undertake and execute either by the company or by an authorised officer thereof either alone or jointly with any other person or persons any trusts and also to act either by the company or by an authorised officer thereof as trustee of any property or as executor or administrator of any deceased person or as treasurer of any institution and the undertaking of any duties in connection therewith.

VII. LAND COMPANY.

To acquire develop farm plant stock reclaim improve cultivate and work lands and hereditaments in   and to hold occupy let underlet mortgage sell or otherwise deal with the same.

VIII. BUILDING COMPANY.

To acquire develop and improve lands and hereditaments and to erect and build thereon houses and other buildings and to hold occupy let underlet mortgage sell or otherwise deal with the same.

IX. COLLIERY, IRON, ETC., COMPANY.

To purchase take on lease or otherwise acquire collieries and iron mines in the county of   or in any neighbouring county and to carry on the businesses of colliery proprietors ironmasters and steel manufacturers and any other business of a similar nature which may usefully be carried on with the foregoing.

X. PORTLAND CEMENT MANUFACTURERS AND LIMEBURNERS.

To establish and work cement manufactories and to carry on the business of cement manufacturers and limeburners and to purchase take on lease or otherwise acquire any lands tenements and hereditaments and rights suitable for the foregoing purposes.

XI. BREWERY AND DISTILLERY COMPANY.

To carry on the business of brewers distillers licensed victuallers hotel-proprietors and innkeepers and any other business which may be conveniently carried on with the foregoing businesses or any of them.

XII. COMPANY TO MANUFACTURE PORCELAIN CLAY.

To work manufacture and prepare porcelain clay and its adjuncts or incidental products and to manufacture bricks tiles and other articles from such adjuncts and incidental products and to sell all or any of the foregoing articles or things.

(*c*) Very often a banking company may usefully add the next form also.

XIII. Insurance Company.

To carry on the business of marine third party burglary and mortgage or other investment insurance or any of them and insurance against every class of risk or liability other than any class which is mentioned in section 1 of the Assurance Companies Act 1909 (*d*).

XIV. Stationers' Business.

To carry on the business of stationers printers engravers account book manufacturers and lithographers and any other business which may be conveniently carried on with the foregoing or any of them.

XV. Tailors' Business.

To carry on the business of tailors' cutters and gentlemen's outfitters and any other business which is usually or may conveniently be combined with the foregoing businesses or any of them.

XVI. Tobacconists' Business.

To carry on the business of a tobacconist in all its branches and to sell make up and manufacture tobacco cigars cigarettes snuff walking sticks and other articles usually sold by tobacconists.

XVII. Swimming Baths.

To purchase lease or otherwise acquire land whereon to construct swimming hot or cold and salt or fresh water baths and Turkish and other baths of every description and to conduct and carry on business as keepers of such baths and any other business of a like nature or kind or usually carried on in connection with such business.

XVIII. To Acquire, etc., a Particular Concession.

(*a*) To acquire and purchase and to use exercise and vend certain inventions for manufacturing   for which a patent has been granted and the English Foreign and Colonial patents relating thereto, and any improvements or modifications thereof and the English Foreign and Colonial patents relating thereto.

(*b*) To manufacture and sell and to grant licences to manufacture and sell the preparations which are the subject of the said inventions.

XIX. Financial Company.

To seek for and secure openings for the employment of capital and with a view thereto to carry on all kinds of exploration business and to obtain options over and purchase take on lease or otherwise acquire and test any lands tenements and hereditaments mining claims mines and mining and other rights and concessions.

(*d*) *I.e.* Life assurance business, fire insurance business, accident insurance business, employers' liability insurance business, or bond investment business. These classes of business should be excluded unless the company is prepared to comply with the provisions of the Assurance Companies Act, 1909. See *ante*, pp. 16 *et seq.*

XX. COMPANY TO FORM FOREIGN COMPANY TO WORK FOREIGN CONCESSIONS.

To form a *societe anonyme* or more than one *societe anonyme* in the Republic of France for the construction of Railways from to in accordance with certain concessions granted by to .

XXI. MOTOR CAR COMPANY.

To carry on the business of Motor Car Manufacturers in all its branches and to make manufacture sell and let out for hire motor cars and parts of and accessories to motor cars.

XXII. RAILWAY COMPANY.

To make manage and work a railway from in the Kingdom of to in the Kingdom of and to acquire such lands and rights as may be necessary or convenient for such purposes and to erect any stations storehouses outbuildings houses or other buildings which may be necessary or convenient for such purposes.

XXIII. GAS COMPANY.

To supply gas to the town of for heating lighting and other purposes and to construct work and maintain such gas-works pipes and other works and things as may be necessary for the above purposes or any of them.

XXIV. LIVERY STABLE KEEPERS.

To carry on the business of livery stable keepers in all its branches and to acquire sell let out on hire and deal in horses carriages carts vans and other articles and to provide accommodation for horses carriages carts vans and other articles belonging to other people.

XXV. MUTUAL INSURANCE.

The mutual insurance of ships belonging to members of the company or in which members have a share or shares (*e*).

XXVI. TRADE PROTECTION.

To protect the interests of persons engaged in the trade of and for that purpose to form clubs for social intercourse between such members and obtain collect and disseminate news and to establish bureaux of information and to do all such other things as may be necessary for the purposes aforesaid or any of them: provided always that nothing herein contained shall authorise the company to do anything which would or might constitute it a Trade Union.

XXVII. POLITICAL CLUB.

To establish a club for the association of gentlemen who belong to the Liberal Unionists party and to purchase take on lease or otherwise acquire a suitable club house (*f*).

(*e*) See also the form given above as an example of the Memorandum of Association of a company limited by guarantee and not having a share capital. *Supra*, p. 117.

(*f*) It will usually be convenient to form companies limited by guarantee where this form and the five succeeding forms are applicable. It will usually be possible for

XXVIII. GOLF CLUB.

To establish a club for persons desirous of playing the game of golf and to purchase take on lease or otherwise acquire and provide a ground for the purpose of playing the said game and a suitable club house.

XXIX. COLLEGE.

To found a school for gentlemen's sons between the ages of seven and fourteen and for such purpose to provide such instruction and to build or take over such houses of residence and other establishments and playing fields and other accessories as may be considered needful.

XXX. CHARITY.

To provide a home for aged and indigent persons and to build or take over and carry on a suitable house with offices and other accessories convenient for the purpose.

Where the company is formed to take over a given business or to enter into a particular contract there should be added a second clause in the following form or in some similar form.

[As a first operation] (*g*) to acquire the business of a tailor heretofore carried on by A.B. at and for that purpose if thought fit to enter into an agreement in the form of a draft agreement which has already been prepared and which is expressed to be made between the said A.B. of the one part and the company of the other part and which for the purpose of identification has been signed by C.D. a solicitor of the Supreme Court.

Or if the agreement has been entered into with a trustee on behalf of the intended company omit the words after the words "if thought fit," and add—

"to adopt and enter into an agreement in the terms of an agreement which has been made between the said A.B. of the one part and C.D. or a trustee on behalf of the intended company of the other part.

FORMS OF CAPITAL CLAUSES IN THE MEMORANDUM OF ASSOCIATION WHERE THE CAPITAL IS DIVIDED INTO SEVERAL CLASSES OF SHARES (*h*).

The capital of the company is £100,000 divided into 50,000 Preference Shares of £1 each, and 50,000 Ordinary Shares of £1 each. The holders of the said preference shares shall be entitled to a dividend at the rate of five per cent. per annum on the amounts paid up on their shares. Such

companies not formed for purpose of gain and having such objects as are set out in forms 26, 29 and 30 to obtain a licence to register without the word "limited" under s. 20 of the Act. See *ante*, pp. 56 *et seq.*

(*g*) The words in square brackets should be added where the business, etc., to be taken over is only one of several operations which the company is formed to undertake [*e.g.*, in the case of a financial company].

(*h*) These forms may easily be varied so as to provide for founders or deferred shares, etc. (*e.g.*, by giving shares of small nominal value the right to half of any fund available for dividend, either subject or not subject to a prior fixed dividend, and to half the surplus assets on a winding-up after payment of debts and costs of winding-up).

dividend to be cumulative and to take precedence and have priority over all dividends payable to the holders of the said ordinary shares or of any other shares which the company may at any time issue.

Where the rights conferred on the holders of different classes of shares are complicated it is best to have a separate clause setting out and defining such rights.

The rights following shall attach to the said preference shares.

(1) The right to a fixed cumulative preferential dividend at the rate of 5 per cent. per annum on the amounts paid up on such shares payable out of any profits which it may be determined to distribute among the members of the company and in priority to any dividend payable to the holders of the said ordinary shares or of any other shares which the company may at any time issue and in addition the right to have one fifth of any balance of any such profits which may remain after payment of the said dividend and after providing a sufficient sum to pay a fixed cumulative dividend at the rate of 10 per cent. per annum on the amounts for the time being paid up on the said ordinary shares and any other shares which the company may at any time issue. Such dividends to be distributed among the holders of the said preference shares in proportion to the amounts paid up on their shares.

(2) The right on a winding-up to have the amounts paid up thereon repaid [and if the assets of the company are more than sufficient for this purpose to have a further sum (hereinafter called the further sum) equal to the difference between the total amount paid by the company by way of dividend on the preference shares issued and outstanding at the date of the winding-up and the amount which would have been paid if the company had paid interest at the rate of 5 per cent. per annum on the amounts paid up in respect of such preference shares on such date from the respective dates when such amounts were respectively paid up to the date of the winding-up] (*i*) in priority to the return of any amount paid up on the ordinary shares of the company or on any other shares which the company may at any time issue and the right to have one-fifth of any surplus which may remain after repayment of all capital paid up at the commencement of the winding-up on all other shares of the company distributed among the holders of the said preference shares (*k*).

(3) [Any moneys available for paying the further sum (after repaying the amount paid up on the preference shares) shall be distributed among the preference shareholders in the proportions in which they would have received such moneys had the same been distributed as a dividend immediately before the commencement of the winding-up but save as aforesaid] all losses shall as between the preference shareholders be borne by and any assets remaining to be distributed among the preference shareholders after repayment of all capital on the other shares of the company shall be distributed among the preference shareholders in proportion to the amounts paid by them or which ought to have been paid by them at the commencement of the winding-up in respect of their shares.

7. The preference and special privileges hereby conferred on the holders of the said preference shares may be modified without the sanction

(*i*) The part of this clause in square brackets is framed to meet *Re W. T. Hall & Co.*, [1909] 1 Ch. 521.

(*k*) These rights should be incorporated, by a reference to them, in the articles of Association Companies (Consolidation) Act, 1908, s. 186 (1), *Birch* v. *Cropper* (1889), 14 A. C. 525; see form, *post*, p. 136.

of the court but save as aforesaid any such modification shall be effected in the same manner in all respects as though the company were proceeding to reorganise its capital under section 45 of the Companies (Consolidation) Act, 1908 (*l*).

Provision making the liability of directors or managers or of the managing director unlimited—pursuant to section 60 of the Companies (Consolidation) Act, 1908.

The liability of every director [managers and managing director] shall be unlimited.

OTHER ARTICLES OF ASSOCIATION.

AGREEMENT.

The directors shall forthwith on behalf of the company enter either with or without modification into an agreement made between A. B. of the one part and the company of the other part a draft whereof has already been prepared and which draft has for the purpose of identification been signed by X. Y. a solicitor of the Supreme Court. No objection shall be raised by reason of the fact that the said A. B. is a director of the company and is reselling to the company at a profit property recently acquired by him nor shall he be precluded from accepting such profit or be liable to account to the company in respect of the same [or notwithstanding anything hereinafter contained from voting as a director in respect of such contract or any modification thereof].

ALTERNATIVE FORM.

The directors shall forthwith on behalf of the company either with or without modification adopt and enter into an agreement in the terms of an agreement dated the day of 19 and made between A. B. of the one part and C. D. as trustee on behalf of the then intended company of the other part.

ADDITIONAL CLAUSES DEALING WITH DIFFERENT CLASSES OF SHARES WHERE THE MEMORANDUM OF ASSOCIATION IS SILENT ON THE POINT.

Without prejudice to any rights previously conferred on the holders of existing shares any share may be issued with such preferred deferred or other special rights or such restrictions whether in regard to dividend voting return of share capital or otherwise as the company may from time to time by special resolution [or as the directors may from time to time] determine.

(*l*) This clause appears to be good (*Welsbach Incandescent Light Co.*, [1904] 1 Ch. 87), but any one advising preference shareholders should object to it, for it takes away from them the protection given by s. 45 of the Companies (Consolidation) Act, 1908, namely the sanction of the court, a very necessary protection in view of the risk of a majority of the preference shareholders being larger holders of ordinary shares than they are of preference shares. A vote at a class meeting seems a right of property the same as any other vote, but of course where the sanction of the court is required the court will bear in mind the fact that certain numbers had ulterior objects to serve. *Alabama, etc., Rail. Co.*, [1891] 1 Ch. 213; *Wedgewood Coal and Iron Co.* (1877), 6 C. D. 627. Section 45 of the Act is so badly drawn that it may be desirable to insert a clause showing in what way the rights are to be varied. For such clauses see Article 42, *ante*, p. 100, and the last form on p. 128.

ANOTHER ALTERNATIVE (NOT OF FREQUENT USE).

The original capital shall be divided into 500 preference shares and 500 ordinary shares.

The holders of the said preference shares shall have the following rights that is to say :—

(1) The right to a cumulative preferential dividend of 5 per cent. per annum on the amounts paid up on such shares payable out of any profits available for dividend in priority to any other dividend or any other shares in the original or any increased capital of the company.

(2) The right on a winding up to be repaid all capital paid up in respect of such shares at the commencement of the winding-up before any sum is repaid in respect of any other shares in the original or any increased capital of the company.

And such shares shall not confer any further or other rights to the profits and dividends of the company or to the assets on a winding-up.

ARTICLE TO BE SUBSTITUTED FOR ARTICLE 37 (*ll*).

TRANSFERS.

The directors may in their absolute discretion decline to register any transfer of any shares

or

Save as hereinafter provided no share in the company shall be transferred to any person who is not either a member at the date of the transfer notice hereinafter mentioned or a descendant or the wife or widow of a descendant of A. B. (*m*) or of C. D.

Any person who is desirous of transferring any share in the company to any person other than a member or other person mentioned in the preceding article must give the company notice of his intention to transfer. Such notice (herein referred to as the transfer notice) must state the price at which and the number of shares which the person giving the transfer notice is willing to transfer and shall be irrevocable without the consent of the company. The price to be named in such transfer notice shall not exceed the amount which has been paid up on such shares plus a sum bearing the same ratio to the total of the reserve fund or funds as shown by the last balance sheet of the company as the amount paid up on the shares proposed to be transferred bears to the total amount paid up on all the shares of the company together with interest on the total sum so ascertained at the rate of 5 per cent. from the time when a dividend was last declared by the company until the date of the transfer notice or for the six months prior to such date whichever shall be the shorter period.

The company shall on the receipt of a transfer notice forthwith give all members other than the member who has given the transfer notice notice of the fact that it has received the transfer notice and of the number of shares therein comprised and of the date when it was received and any such member or members may give to the company at any time before the expiration of twenty-eight days from the date when the transfer

(*ll*) These forms are not suitable where an official quotation on the Stock Exchange is desired.

(*m*) A. B. and C. D. are not necessarily persons in the business, when it is sold to a company, frequently they are the fathers of such persons ; thus letting in a larger class of relatives,

notice was received notice of his willingness to purchase all or any one or more of the shares referred to in the transfer notice. Such notice is hereinafter called a notice of acceptance and shall state the number of shares which the person giving the notice is willing to purchase.

The company shall on the expiration of the period during which notices of acceptance may be given forthwith notify the person who has given the transfer notice and the persons if any who have given notices of acceptance of the names of the members if any who have given notices of acceptance and of the number of the shares comprised in the transfer notice to which each such member is entitled and thereupon each of such members shall be bound to purchase such of the said shares as he is entitled to and subject as hereinafter provided the person giving the transfer notice shall be bound to sell and transfer the same at the purchase price hereinafter mentioned. The purchase price shall be the price mentioned in the transfer notice or if the intending purchaser shall so require by notice in writing given to the company at the same time as his notice of acceptance or within one week thereafter the value of the shares to be transferred such value to be determined (*n*) by arbitration under the Arbitration Act 1889 or any statutory modification thereof.

If no notice of acceptance shall be received within the period hereinbefore limited for the giving of the same or if the notices of acceptance received within the said period shall not include as many shares as the shares comprised in the transfer notice or if any member who has given a notice of acceptance shall fail to pay his purchase money within fourteen days after such notice has been given by the company or as the case may be after the value of the shares to be transferred has been determined in manner aforesaid then the intending transferror shall for a period of three months from the expiration of the said period of twenty-eight days or from the date of such default or failure as the case may be be entitled to transfer to any person whom he selects any shares mentioned in his transfer notice to which no member is entitled under these provisions or which by reason of any such failure or default he has failed to transfer and the directors shall be bound to register such transfer except in the case of a transfer of partly paid or unpaid shares which it is proposed to transfer to some person whom the directors do not consider a desirable member.

[The company may at any time give any member notice requiring him to transfer all or any of his shares at a named price to any named person in which case the person required to transfer shall be bound to transfer such shares at such price unless he shall within ten days after receipt of such notice require as he is hereby authorised to do, that the value of such shares shall be determined by arbitration in manner above provided in which case he shall be bound to transfer such shares at the price which is so ascertained to be their value.]

In the event of more than one member giving notices of acceptance in respect of any shares comprised in a transfer notice and such shares not being sufficient to supply all such members with all the shares mentioned in their notices of acceptance then the shares comprised in the transfer notice shall so far as possible be transferred to such members in proportion to their existing holdings of shares, but so that no member shall be entitled

(*n*) Or, "by the valuation of the auditors of the company."

to a larger number of shares than the number mentioned in his notice of acceptance.

The directors may rectify the register and do all such other things as they may consider necessary for carrying out the foregoing provisions.

CLAUSE 41.—ALTERNATIVE FORM.

TRANSMISSION OF SHARES ON DEATH, ETC.

No person becoming entitled to any shares by reason of the death or bankruptcy of the holder of any shares shall until he transfers or is registered as a member in respect of such shares be entitled to participate in the dividends and profits of the company (*o*).

In case any person who shall become entitled to any shares by reason of the death or bankruptcy of any member shall not transfer such shares or apply to be registered as a member in respect of such shares for six months after the company shall have served on him a notice in writing requiring him so to do it shall be lawful for the directors to sell or to forfeit any shares which are at the expiration of such period still standing in the name of the deceased or bankrupt person and in such case the proceeds of sale of any share so sold and every share so forfeited shall be deemed to be the property of the company and in the case of a forfeited share the company may dispose of it in all respects as if it had been forfeited under the provisions hereinbefore contained (*p*).

IN SUBSTITUTION FOR CLAUSE 42.

MODIFICATION OF CLASS RIGHTS.

If at any time the share capital of the company is divided into different classes of shares the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class (*q*) or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these presents relating to general meetings shall *mutatis mutandis* apply but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

(*o*) This form will require an alteration in Clause 41. It was apparently usually inserted in charters from the Crown, see *per* Kekewich, J., *Allen* v. *Gold Reefs of West Africa, Ltd.*, [1899] 2 Ch. 48; and it is in the Companies Clauses Act, 1845, s. 18. It is, however, not very common now.

(*p*) So far as regards forfeiture, a somewhat similar clause may be found in the case of the company in *Heward* v. *Wheatley* (1853), 3 De G. M. & G. 628, but that was a company formed under 7 Geo. IV. c. 46, and it is doubtful whether forfeiture is allowable in the case of a limited company except for non-payment of calls seeing that forfeiture is an exception to the rule that a limited company cannot be a shareholder in itself and presumably proceeds on the footing that the owner of the shares forfeited is not worth suing. See *ante*, p. 71, and *infra*, p. 275 as to this.

(*q*) These clauses apply where the rights are not given by the memorandum and, probably, if contained in the original articles even where the rights are given by the memorandum; this point is discussed below, pp. 317 and 318. They are liable to abuse in cases where persons hold a larger number of shares in other classes of shares, or have some interest adverse to that of the class they represent.

Share Warrants.

In Substitution for Clauses 57 *et seq.*

The directors may on the issue of any share-warrant make such conditions as to the terms upon which the same may be surrendered and as to which if any of the rights of a member are to be conferred thereby and generally in relation to such share-warrant as they think fit.

Voting.

In Substitution for Clause 81.

Every ordinary share shall confer one vote and every founders share shall confer two votes.

or

Every member shall have one vote for every share up to ten and an additional vote for every five shares beyond ten shares up to one hundred and an additional vote for every ten shares beyond the first hundred.

The directors may on the issue of any debentures provide that the holders of such debentures shall be entitled to such votes at any general meeting of the company as may be thought fit but nothing herein contained shall be deemed to authorize the directors to make any provision enabling any person to vote in respect of any debenture held by him on a special or an extraordinary resolution.

Every ordinary share shall confer one vote and every preference share shall confer one vote on any resolution affecting the rights of the preference shareholders or authorizing the issue of any debentures or the giving of any security or for the winding-up of the company.

Form to be added to Clause 88 in the Case of Companies Carrying on Business in a Foreign Country, for the Purpose of Enabling Non-Residents to Vote.

Any member who is resident in Egypt (*r*) may give his proxy to vote for or against any resolution to the chairman of the board of directors or other the chairman of the meeting at which it is proposed that such proxy shall be used by depositing the same at any office of the company in Egypt not less than three days prior to the holding of such meeting and particulars of the proxies so deposited shall be communicated by telegram to such chairman for use at such meeting.

Directors.

Alternative for Clauses 91 and 92 (First Directors).

The first directors shall be A. B. of C. D. of E. F. of etc.

Alternative for Clause 94 (Remuneration of Directors).

The remuneration of the directors shall from time to time be determined by the company in general meeting (*s*).

or

The directors shall be entitled to receive by way of remuneration

(*r*) The stamp on these proxies would now appear to be 1*d*., and they may be stamped before the expiration of thirty days after it is first received in England: Finance Act, 1907, s. 9.

(*s*) The remuneration will, unless the resolution otherwise provides, run from the date when such resolution is passed: *London Gigantic Wheel Co.* (1908), 24 T. L. R. 618.

£5000 per annum. Such remuneration shall be divided among the directors in such proportions and manner as they shall from time to time agree upon and in default of agreement the same shall be divided among them equally (*t*).

ANOTHER ALTERNATIVE FOR ARTICLE 94.

Each of the directors shall receive as a remuneration for his services and there shall be allowed to each of them from the date of the incorporation of the company a sum calculated at the rate of £200 per annum with a sum calculated at the rate of £50 per annum extra for the chairman and such sums shall be paid at such times as the directors may determine (*u*) and they shall also be entitled to receive and be paid a sum equal to 5 per cent. of the dividends distributed in each year: such percentage shall be divided equally between them but so that any director who has not held office for the whole year shall only receive a sum proportionate to the time during which he has served.

ARTICLE TO BE ADDED AFTER ARTICLE 94, WHEN REQUIRED.
(EXPENSES OF DIRECTORS.)

Each director shall in addition to any other remuneration be entitled to be recouped all travelling hotel and other expenses properly incurred by him for the purpose of attending meetings of the directors or of any committee of the directors [or any general meeting of the company] or otherwise in the course of the company's business (*x*).

TO BE ADDED AFTER CLAUSE 94 (WHERE DESIRED).
(POWER TO FOREGO REMUNERATION.)

A resolution of the directors providing that directors shall not be paid any remuneration which has not actually been paid whether the same shall have become payable or not or that the directors shall not be entitled to any remuneration for a period or postponing the payment of any such remuneration shall be valid and binding on all the directors (*y*).

TO BE ADDED AFTER CLAUSE 95 WHERE THE COMPANY CARRIES ON BUSINESS ABROAD. (LOCAL BOARDS.)

The directors may provide for the management of the affairs of the company in England [or abroad] (*z*) in such manner as they may think fit and in particular they may appoint any person or persons to be directors in England [or abroad] (*z*) and may provide that such person or persons shall receive such remuneration and shall require such qualification, if any, and shall hold office for such period as the directors think fit and shall have all the powers rights and duties hereby conferred on

(*t*) In this case nothing will be received for any part of a whole year. *Salton* v. *New Beeston Cycle Co.*, [1899] 1 Ch. 775, where this is not desired it is best to give each director his share of remuneration as in Clause 94.

(*u*) The determination of a time for payment is a condition precedent to any payment, *Caridad Copper Mining Co.* v. *Swallow*, [1902] 2 K. B. 44. The case of *Nell* v. *Atlanta Gold and Silver Mines*, (1895), 11 T. L. R. 407, depended on very special wording.

(*x*) If such expenses are to be allowed there must be such an article. *Young* v. *Naval, Military and Civil Service Co-operative Society of South Africa*, [1905] 1 K. B. 687.

(*y*) This clause gets over the difficulty felt in *Lambert* v. *Northern Railway of Buenos Ayres* (1870), 18 W. R. 180, and referred to in *McConnell's Claim*, [1901] 1 Ch. 728.

(*z*) To be inserted if the ordinary place for holding directors' meetings is in England, in which case the words "in England" will be omitted.

directors or some only of such powers rights and duties but any such appointment shall provide that such powers rights and duties shall be exercised only in England [or abroad] (z).

INSERT IN CLAUSE 96 AFTER SUB-CLAUSE 4 WHERE DESIRED.

(5) If he be absent from six consecutive meetings of the directors without the leave of his co-directors.

ALTERATIONS TO ARTICLES 101 *et seq.*, (WHERE SOME OF THE DIRECTORS ARE TO BE APPOINTED BY THE PROMOTERS OR DEBENTURE HOLDERS, ETC., OF THE COMPANY).

Add at the end of Article 98.

For the purposes of this and the next succeeding article no nominated director shall be deemed to be a director.

Substitute for Article 101.

The company at the ordinary meeting at which any director other than the said A.B. or C.D. or any person nominated to fill the place of either of them under the provisions hereinafter contained shall retire shall fill up the office vacated by the retirement of such director by electing another director. On the retirement of the said A.B. or of the said C.D. (*a*) or of any person appointed to fill the place of either of them (all of which persons are herein referred to as the nominated directors) X.Y. of shall during his life and after his death his executors or administrators or the trustees of his will while they hold shares in the company shall have power to appoint a new director to fill up the office of the nominated director so retiring.

[Then will follow Clause 102. Clauses 103 and 105 will in many cases be omitted.]

For Clause 104.

The company may by extraordinary resolution remove any director other than a nominated director before the expiration of his term of office and the person (if any) entitled to appoint a nominated director (hereinafter called the nominator) may by writing under his hand remove a nominated director before the expiration of his term of office, and in such case the company or the nominator as the case may be may in the case of the company by ordinary resolution and in the case of the nominator by writing under his hand appoint another person in place of the person so removed by them or him. The person so appointed shall hold office during such time as the director in whose place he is appointed would have held the same if he had not been removed.

(z) To be inserted if the ordinary place for holding directors' meetings is in England, in which case the word "England" will be omitted.

(*a*) The Articles will contain a provision that A.B. and C.D. shall be two of the first directors; the directors will fill casual vacancies other than those caused by a nominated director ceasing to act, the nominator will appoint in the case of casual vacancies among the nominated directors.

Upon the executors administrators and the trustees of the will of the said X.Y. ceasing to have the powers of nomination hereinbefore given to them any director nominated by them shall forthwith cease to be a director [or shall for the purposes of these presents be deemed to be a director appointed otherwise than by nomination and the date when he was last nominated shall be deemed to be the date of his last election.]

The following article is sometimes added (Alternate directors)—

It shall be lawful for any director by writing under his hand to appoint any other person to act as a director in his place and any person so appointed shall while his appointment shall continue have all the powers rights and duties which but for such appointment the person appointing him would have had: but so that if for any reason the director making the appointment shall cease to hold office the powers rights and duties of the person so appointed shall forthwith cease, and so that such last-mentioned person shall not require any qualification or receive any remuneration from the company.

Sometimes there is an article appointing some person or persons to be a governing director or governing directors (*b*). (Governing director.)

A.B. of   and C.D. of   shall be governing directors of the company and each of them shall hold such office during his life or until he shall give notice to the company resigning such office or shall cease to hold his qualification shares.

A governing director shall in addition to any casting vote he may have, have two votes at every meeting of the directors—or of a committee of the directors—and he shall have power to veto any act done or resolution passed at a meeting of directors in all cases where the directors have a discretion as to whether they will or will not do a particular thing or pass a particular resolution. Such power of veto must be exercised within fourteen days after the act or resolution vetoed was done or passed and within such period notice in writing of such exercise must be given to the company [provided always that if any governing director shall exercise the power of veto hereby given to him and the other governing director and two-thirds of the directors other than governing directors shall within fourteen days after notice of such exercise has been given to the company as hereinbefore provided sign a resolution declaring that it is not desirable that such veto shall take effect then and in such case such veto shall be void and of no effect] (*c*).

For Clause 111 is (occasionally) substituted (Resolution signed by majority of directors)—

A resolution in writing signed by a majority [or by two-thirds] of the directors shall have the same effect as a resolution passed at a meeting of directors.

Mortgages and Charges.

Amongst the clauses dealing with mortgages or charges is occasionally a clause in the following form:—

The company shall not mortgage or charge any of its property or assets

(*b*) If there is a governing director the provisions dealing with the vacation of the office of directors, retirement by rotation, removal of directors, etc., should be made to apply to directors other than governing directors.

(*c*) The words in brackets may be added to avoid a deadlock where there is more than one governing director.

without the consent of the preference shareholders to be obtained in the same way in all respects as is hereby provided in cases where it is proposed to modify the rights of such preference shareholders (*d*).

DIVIDENDS, ETC. (*e*).

Substitute for Article 126.

Subject to the rights of members whose shares have been issued on special terms all dividends shall be paid to the members in proportion to their shares (*f*).

Subject to the rights of persons if any entitled to shares with special rights as to dividends all dividends shall be declared and paid according to the amounts paid on the shares but if and so long as nothing is paid up on any of the issued shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall while carrying interest be treated for the purpose of this article as paid on the share (*g*).

Clause to be used with Article 126, that clause being varied by inserting the word " ordinary " before the word " shares " at the end of the clause (vendors' shares to be treated as paid in advance of calls).

The Shares numbered to in the capital of the company shall be called vendors shares and any amount which is paid up or deemed to be paid up on any such share and which is in excess of the amount which has been paid up upon the ordinary shares of the company shall be deemed to be paid up in advance of calls and shall bear interest at the rate of 5 per cent. per annum. No amount paid up in advance of calls shall while carrying interest be treated as paid up for the purpose of any dividend or for the purpose of ascertaining the amount paid up on any ordinary share. If at any time different amounts shall be paid up on different ordinary shares then for the purpose of this Article the amount paid up on the ordinary shares of the company shall be deemed to be the amount paid up on the largest number of ordinary shares of the company and in case there are two or more sets of ordinary shares which are equal in numbers but have different amounts paid up the one of such sets which has the largest amount paid up shall for the purpose of this article be deemed to be the largest in number (*gg*).

(*d*) This clause may prove a great inconvenience, and very careful consideration should be given to all the facts of the case before adding it.

(*e*) The forms given for use in the memorandum may in many cases be adapted for use in the articles.

(*f*) The result of this clause is that fully paid shares get the same dividend as shares which are partly paid or on which nothing has been paid: *Oakbank Oil Co.* v. *Crum* (1883), 8 A. C. 65. For a case where shares have been consolidated, *Wakefield Rolling Stock Co.*, [1892] 3 Ch. 165.

(*g*) This is the form of Article in Table A. It is thought that the last sentence of the article is quite unnecessary, for moneys paid in advance of calls would not appear to be moneys paid up on shares. They would appear rather to constitute a debt from the company to the shareholder: *Lock* v. *Queensland*, [1896] A. C. 461; *Dale* v. *Martin* (1883), 11 L. R. Ir. 371.

(*gg*) This clause will affect the rights on a winding-up if the articles contain clauses as to winding-up like the one on p. 114, *supra*.

Another Clause in lieu of 126 (one class to receive a fixed dividend—the other the balance of dividend).

Subject to the rights of members whose shares have been issued on special terms all funds available for dividend shall be distributed as follows in the first place in the payment of a cumulative [or non-cumulative] dividend at the rate of per cent. per annum to the members [or holders of preference shares] on the amounts paid up on their shares and the balance if any in the payment of a dividend to the members [or holders of ordinary shares] in proportion to their shares.

Another Form (each class to receive a fixed dividend, the balance to be distributed between the classes).

Any profits which the company may determine to distribute shall be applied and paid as follows—first in paying a non-cumulative dividend at the rate of 5 per cent. per annum on the amount paid up on the preference shares, secondly in paying a non-cumulative dividend at the rate of 7 per cent. per annum on the amounts paid up on the ordinary shares; thirdly in paying a further dividend on the amounts paid up on the preference and ordinary shares *pari passu* as one class of shares [or and the balance of such profits shall be distributed as to one-third thereof among the holders of preference shares in proportion to the amounts paid up on their shares and as to two-thirds thereof among the holders of ordinary shares in proportion to the amounts paid up on their shares.]

Clauses to be substituted for Clause 127 (Interest out of capital).

The company may with the previous sanction of the Board of Trade pay interest at such rate and for such period as may be sanctioned by the Board of Trade on the amount for the time being paid up on any shares of the company issued or to be issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period and any interest so paid shall be charged to capital as part of the cost of construction of such work or building or the provision of such plant (*h*).

Except in the cases provided for in the foregoing article no dividend shall be payable except out of the profits arising from the business of the company.

(*h*) This power may be given by special resolution or by the Articles (Companies (Consolidation) Act, 1908, s. 91). It obviously applies only to companies having some sort of an undertaking (*e.g.* a factory). In such companies even if this article is omitted it may be well to preface Article 127, or the Article corresponding to it, with words such as "Except in cases provided "by s. 91 of the Companies (Con-"solidation) Act, 1908, or any "statutory modification thereof for "the time being in force." A similar provision is made in the case of Indian Railways by the Indian Railways Act, 1894 (extended by 5 Ed. 7, c. 21), and amended by Indian Railways Amendment Act, 1906. There the power must be by special resolution or in the memorandum, and the sanction of the Secretary of State in Council of India, not of the Board of Trade, must be obtained. Section 91 of the Companies (Consolidation) Act, 1908, does not apply to companies coming under these enactments. As to these provisions, see *ante*, pp. 80 and 81.

Another clause substituted for Clause 127 (Fund available for dividend).

No dividends shall be paid except out of the profits of the company [or the realized profits of the company].

Another clause which may be substituted for Clause 127.

No dividends shall be paid out of capital.

Form of article giving the shareholders an absolute right to the profits of the company. Omit Clauses 125, 126, 127, and 128, and continue.

No dividends shall be paid except out of the profits of the company.

The directors may in priority to any dividend set aside out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies or for equalizing dividends or for repairing or maintaining works connected with the business of the company or any part thereof or for any other purpose the directors think proper and the directors may invest the sum so set apart as a reserve fund upon such investments as they may select.

Subject to the last preceding article and subject to any arrangement which may from time to time have been entered into relative to the remuneration of any manager or other officer of the company by way of commission or a percentage on the net profits of the company or any part thereof the entire net profits of each year shall be divided among the shareholders of the company in proportion to their shares (*i*).

The directors may from time to time declare *interim* dividends.

Clause to be substituted for Article 132 (Forfeiture of dividends).

No dividend shall bear interest against the company and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company (*k*).

SECRET RESERVE FUND.

Clause to be added after Article 138.

If the directors shall set apart all or any part of the reserve fund to a secret reserve fund which they are hereby empowered to do such reserve fund need not except so far as is hereinbefore otherwise provided be shown or disclosed in the balance sheet or except so far as otherwise provided by the Companies (Consolidation) Act 1908 in the summary required by section 26 of that Act (*kk*), nor save as aforesaid need the directors give any information to the shareholders as to the amount invested or application thereof but all particulars relating thereto shall be disclosed to the auditors of the company whose duty it shall be to see that the same is applied for the purposes of the company but except where they consider it necessary for the

(*i*) The effect of an article of this kind in a winding-up is shown by *Bridgewater Navigation Co.*, [1891] 2 Ch. 317. It is, however, very unusual, as to the effect of the usual form of Article. *Crichton's Oil Co.*, [1902] 2 Ch. 86.

(*k*) This form not to be used where a Stock Exchange quotation is desired.

(*kk*) In the case of a private company, as section 26 of the Act does not apply, the words "except so far as is hereinbefore" to "save as aforesaid" may be omitted, and in their place the words, "notwithstanding anything hereinbefore contained" may be inserted.

proper fulfilment of their duties as auditors they shall not give any information with regard to the same to the members or otherwise (*l*).

NOTICES.

Sometimes in the notices clauses is added a clause in somewhat the following form:—

In cases not herein otherwise provided for any notice may be given by advertisement in a newspaper circulating in the neighbourhood of the registered office of the company and any such notice shall be deemed to be duly given on the day on which the advertisement appears.

WINDING-UP.

Variations of Article 154.

Where the original capital consists of two classes of shares.

Subject to the rights conferred on the holders of preference shares in the original capital of the capital of the company by the company's memorandum of association and to any rights which may be conferred on the holders of any shares which may be issued on special terms the assets of the company remaining after satisfaction of the debts and liabilities of the company and after payment of the costs of liquidation shall on a winding-up be divided among the holders of the ordinary shares of the company.

Or in cases where the preference or founder's shares are to have a preference as to capital and the memorandum of association does not deal with the point (*m*).

On a winding-up the assets remaining after satisfaction of the debts and liabilities of the company and after payment of the costs of liquidation shall be paid and applied as follows. First in repayment to the preference shareholders of the amounts paid up on their shares [together with a bonus of 10*s*. per share]. Secondly in repayment to the ordinary shareholders of the amounts paid up on their shares and the balance shall be distributed [as to one-third thereof among the preference shareholders and as to the remaining two-thirds] among the ordinary shareholders. This clause is without prejudice to the rights of persons whose shares are issued on special terms.

PROVISION WHERE CAPITALISTS HAVE PUT MONEY INTO THE CONCERN ON THE TERMS THAT SUCH MONEY IS TO BE REPAID BEFORE ANYTHING IS RETURNED IN RESPECT OF PAYMENTS MADE OTHERWISE THAN IN CASH.

On a winding-up the assets remaining after satisfaction of all the debts and liabilities of the company and after payment of the costs of liquidation shall be paid and applied as follows. First in repayment to such members as have paid for their shares either wholly or partly in cash of the cash so paid by them. Secondly in repayment to such members as

(*l*) This clause gives effect to the law laid down by *Newton* v. *Birmingham Small Arms*, [1906] 2 Ch. 378, as altered by s. 26 (3) of the Companies (Consolidation) Act, 1908, which does not apply to private companies. It is doubtful whether the amount of the fund would have to be disclosed. See *post*, pp. 409 and 410 as to this case.

(*m*) The fact of shares conferring on their holders a preference as to dividend, does not cause them to confer a preference as to capital on winding-up. *London India-rubber Co.* (1867), 5 Eq. 519.

have paid for their shares either wholly or partly otherwise than in cash of the amounts which they are credited as having paid otherwise than in cash and the balance shall be distributed among the members in proportion to the amounts paid or which ought to have been paid by them at the commencement of the winding-up in respect of their shares without making any distinction as to the manner in which such payment was made and if there shall not be sufficient assets to repay the whole of the cash paid or as the case may be the whole amount credited as having been paid in respect of the shares of the company then all losses shall be borne as follows that is to say in the first case in proportion to the amount of cash paid or agreed to be paid in respect of the shares and in the second case in proportion to the amount credited as having been paid otherwise than in cash in respect of the shares.

This clause is without prejudice to the rights of persons whose shares have been issued on special conditions.

PROVISION TO BE ADDED WHERE THERE ARE DIFFERENT CLASSES OF SHARES IN LIEU OF PART OF CLAUSE 154.

Any assets divisible among any class of shareholders under the provisions hereinbefore contained shall be divided among them in proportion to the amounts or which ought to have been paid by them at the commencement of the winding-up in respect of their shares. This clause is without prejudice to the rights of persons whose shares are issued on special terms.

ARTICLES OF ASSOCIATIONS.

(*Short Form Incorporating Table A.*)

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Company Limited by Shares.

ARTICLES OF ASSOCIATION OF THE COMPANY, LIMITED.

1. The regulations contained in Table A. in the First Schedule to the Companies (Consolidation) Act 1908 (hereinafter called Table A.) shall except so far as they are hereinafter varied apply to the company.

2. The following expressions shall when they occur in Table A. or in these presents have the following meanings.

The expression "the company" shall mean the above mentioned company.

The expressions "the directors" "the Board" mean respectively the directors and the Board of Directors of the Company and the definition of the word director contained in section 285 of the Companies (Consolidation) Act 1908 is excluded.

The expression "month" shall mean calendar month.

3. The directors may proceed to allotment upon a minimum subscription of shares.

4. The company may pay to any person a commission at a rate not

exceeding   per cent. in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares in the company or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the company.

5. Clause 9 of Table A. shall be varied by inserting after the word "called" the words "or liable to be called" and after the words "presently payable by him or his estate" the words "either alone or jointly with any other person," and between the words "the company" and the words "but the directors" the words "and the company shall have a like lien on all shares other than fully paid shares (*n*) standing registered in the name of more persons than one for all moneys presently payable by them or any one or more of them or the estates of all or any one or more of them either alone or jointly with any other person to the company."

6. Clause 11 shall be varied by striking out the words "subject to a like lien for sums not presently payable as existed on the shares prior to the sale."

7. Clause 12 shall be varied by adding at the end of the words "This Article shall be without prejudice to the rights of any member in respect of any share which has been issued to him on special conditions."

8. Clause 13 of Table A. shall be varied by insertion of the words "and instalments" after the words "all calls" and Clause 25 by the insertion of the words "or the instalment became payable" after the words "the call was made."

9. Clause 33 shall be varied by adding the words "and in the assets on a winding-up" after the words "dividends and profits of the company" and Clause 34 by striking out the words "other than those relating to share warrants."

10. Clause 43 of Table A. shall be varied by inserting at the beginning thereof the words "subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share-capital."

11. Clause 46 of Table A. shall be varied by omitting the words "at such time in the month following that in which the anniversary of the company's incorporation occurs and at such place," and by omitting all words after the words "as the directors shall approve."

12. Clause 47 of Table A. shall be varied by striking out the words "above mentioned" and adding after the words "general meetings" where they first occur the words "in the last preceding clause hereof mentioned."

13. Clause 49 of Table A. shall be varied by substituting the words "the accidental omission to give any such notice" for the words "the non-receipt of the notice by any member."

14. Clause 68 of Table A. shall be varied by inserting after the words "the number of the directors" the words "shall be not more than   or less than   ," and by adding at the end the words "and until directors are appointed the subscribers to the memorandum of association

(*n*) Where a quotation on the Stock Exchange is not desired the words "other than fully paid shares" may be omitted here, in which case the words "not being a fully paid share," and "other than fully paid shares" where they occur in the said Clause 9, will be omitted.

shall have all the powers by these presents or by Table A. conferred on directors."

15. The qualification of a director shall be the holding of shares of the nominal value of £ in the capital of the company either as sole holder or as the one of several joint holders whose name stands first in the register of members and any person who accepts the office of director and who is not already qualified shall unless he obtain his qualification within one month from the date of his appointment be deemed to have agreed to take his qualification shares from the company and the company shall allot the same accordingly. Clause 70 of Table A. shall not apply to this company.

16. Clause 77 of Table A. shall be varied by inserting in sub-clause (*e*) thereof after the words "any contract with the company" the words "without declaring his interest at the meeting of the directors at which such contract is determined upon if his interest then exists or in any other case at the first meeting of the directors after the acquisition of such interest" and by the substitution in the proviso to such clause of the words "any contract or work in which he is either directly or indirectly concerned or interested" for the words "any such contract or work."

17. Clause 78 of Table A. shall be varied by inserting the words "other than any managing director or manager after the words "the whole of the directors" and also after the words "one-third of the directors for the time being."

18. Clause 94 of Table A. shall be varied by adding the words "or a managing director or manager" after the words "acting as a director" and also at the end of the clause.

19. Clause 98 of Table A. shall be varied by striking out the words "but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amount of the shares."

20. Clause 110 of Table A. shall be varied by omitting the words "unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post" and substituting the words "any such notice shall be deemed to have been served within twenty-four hours from the time when the letter containing the same was put into the post office."

21. On a winding-up if there are any assets remaining after satisfaction of all the debts and liabilities of the company and after payment of the costs of liquidation and repayment to the shareholders of the amounts respectively paid by them on their shares then the assets so remaining shall be divided among the shareholders in proportion to the amounts paid or which ought to have been paid by them at the commencement of the winding-up in respect of their shares; but if after payment of the said debts and liabilities and costs there shall not remain sufficient assets to repay to the shareholders the amounts respectively paid by them on their shares then the loss shall be borne by the shareholders in proportion to the amounts paid by them or which ought to have been paid by them at the commencement of the winding-up in respect of their shares. This article is without prejudice to the rights of persons whose shares are issued on special conditions.

ARTICLES OF ASSOCIATION FOR PRIVATE COMPANY (*o*).

Use ordinary form (pp. 95 *et seq.*) except as herein varied. Omit Clauses 3 and 4, and Clause 5, and insert instead of 3—

PRIVATE COMPANY.

3. (1) The number of members exclusive of persons who are in the employment of the company shall not exceed fifty. For the purpose of this Article two or more persons holding one or more shares jointly shall be treated as a single member.

(2) The public shall not be invited to subscribe for any shares or debentures of the company.

(3) The right to transfer shares of the company shall be restricted in manner hereinafter provided.

Clause 8 and 9 may be omitted.

In Clause 22 omit if thought fit, the words "not being a fully paid share" in each case where they occur.

Clause 37—omit everything after the words "The directors may decline to register any transfer of any shares" (*p*), or insert one of the clauses on pp. 126 *et seq.*

Clause 51. Strike out the words "in such manner as they think most beneficial to the company" and substitute "in any manner which they think beneficial to the company and which does not contravene the provisions of Article 3 (*q*) of these presents.

Clauses 55 to 61. The registrar declines to register as a private company a company whose articles allow of share-warrants and it will therefore usually be necessary to omit these provisions altogether.

Clause 120. Omit.

Clause 138. Strike out everything between the words "Every such balance sheet" and the words "shall state the total amount of the sums paid by way of commission."

Clause 139 must be omitted and Clause 140 may be omitted if desired.

In very small companies the provisions as to the numbers required for a quorum and for demanding a poll will sometimes have to be altered (*qq*).

ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Company Limited by Guarantee and not having a Capital divided into Shares.

ARTICLES OF ASSOCIATION OF LIMITED.

NUMBER OF MEMBERS.

1. The Company for the purpose of registration is declared to consist of members, but the directors may at any time register an increase of members.

(*o*) These companies need only have two members. Companies (Consolidation) Act, 1908, s. 2.

(*p*) It is thought that the restriction must apply to all shares, but there is nothing to prevent one restriction being made applicable to one set of shares, and another to another set.

(*q*) The Articles restricting the number of members and forbidding an offer of shares or debentures to the company.

(*qq*) It will sometimes also be desirable to allow non-members to act as proxies. This will be expressly provided for.

2. In the construction of these Articles of Association the following expressions shall where the context admits have the following meanings :—

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number; words importing the masculine gender only shall include females; and words importing persons shall include corporations.

The word "month" shall mean calendar month.

The expression "the Company" shall mean the above-mentioned Company.

The expressions "the directors" "the board" shall mean respectively the directors and the board of directors of the Company.

The expression "member" shall mean a member of the Company.

The expression "these presents" shall mean these Articles of Association.

Members.

3. Every person who insures any ship or share in a ship with the Company shall be deemed to have agreed to become a member.

4. The directors may decline to accept any person as a member.

5. Any member may give the Company three months' notice of his intention to resign his membership, and on the expiration of such period he shall cease to be a member.

6. The Company in general meeting in all cases and the directors in the cases hereinafter specified may exclude any person from membership.

7. Any person who has ceased to be a member shall continue liable in respect of all claims incurred up to the time of his ceasing to be a member.

8. Any person who has ceased to be a member shall be entitled to all rights which have accrued to him while a member under any policy of insurance effected with the Company; but from the date of his ceasing to be a member he shall be excluded from all benefits to which members are entitled under these presents and as from such date every such policy shall be deemed to have come to an end.

Business.

9. Every contract of insurance shall be made in the name and under the common seal of the Company.

10. The Company shall not be liable to any member or other person for the amount of any loss except to the extent of the funds which it is able to recover from the members or other persons liable for the same, and which are applicable for the purpose.

11. Every engagement or liability of a member in respect of any insurance shall for all purposes relative to enforcing such engagement or liability be deemed to be an engagement or liability by or on the part of such member to the Company and not to any other member or members and all moneys payable thereunder shall be paid to the Company.

Calls and Subscriptions.

12. There shall be paid to the Company for each ship on admission

an entrance fee of 1*s.* per cent. on the amount insured and on or before January 1st in each succeeding year a like sum of 1*s.* per cent.

13. The directors may from time to time make such calls upon the members in respect of allowed claims and current expenses as they think fit provided that fourteen days' notice at least shall be given of each call.

14. Every such call shall be made on all the members rateably in the proportions which the sums insured by them respectively bear to the amount of all the sums insured by the Company at the respective times of the losses giving rise to the claims.

15. Each member shall be liable to pay any call made on him and any subscription presently payable by him at the time and place appointed by the directors.

16. A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

17. If before or on the day appointed for payment of any call or subscription any member does not make such payment then he shall be liable to pay such call or subscription together with interest on the same at the rate of five pounds per cent. per annum from the day appointed for payment thereof to the time of actual payment but the directors shall be at liberty to waive payment of such interest wholly or in part.

18. In the event of any sums for the time being payable by any member of the Company not being duly paid the amount of such deficiency shall be borne and made good rateably in the proportions before-mentioned by the other members of the Company. For the purposes of ascertaining the rateable amount payable by any member under this article the member in default shall be deemed to have ceased to be a member.

19. Each member who may for the time being be entitled to receive from the Company any loss claim or demand shall bear and contribute his own proportion thereof as a member.

Forfeiture.

20. If any member fails to pay any call or any subscription on the day appointed for payment thereof the directors may at any time thereafter during such time as the call or subscription remains unpaid serve a notice on him or on his personal representative requiring payment of such call or subscription together with interest and any expenses that may have accrued by reason of such non-payment.

21. The notice shall name a further day not earlier than the expiration of fourteen days from the day of such notice on or before which such call or subscription and all interest and expenses that may have accrued by reason of such non-payment are to be paid.

22. The notice shall also state that in the event of non-payment at or before the time appointed the member to whom the notice is sent will be excluded from membership.

23. If the requisitions of any such notice as aforesaid are not complied with the member to whom such notice has been given may at any time thereafter before the payment required by the notice has been made be excluded from membership by a resolution of the directors to that effect.

24. If any member shall become bankrupt he shall forthwith cease to be a member.

General Meetings.

25. The first general meeting of members of the Company shall be held within a period of not less than one month nor more than three months from the date at which the Company is incorporated.

26. Subsequent general meetings shall be held once at least in each calendar year at such time and place as may be prescribed by the directors but so that no such meeting shall be held at an interval of more than fifteen months from the last preceding general meeting. The meetings in this and the last preceding article referred to shall be called ordinary meetings.

27. Every general meeting of the Company other than an ordinary meeting shall be called an extraordinary meeting.

28. The directors may whenever they think fit and shall on the requisition of not less than five members who have paid all calls or other sums then due from them forthwith proceed to convene an extraordinary meeting.

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

30. If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited the requisitionists or a majority of them may themselves convene the meeting but any meeting so convened shall not be held after three months from the date of such deposit.

31. If at any such meeting a resolution requiring confirmation at another meeting is passed the directors shall forthwith convene a further extraordinary meeting for the purpose of considering the resolution and if thought fit of confirming it as a special resolution and if the directors do not convene the meeting within seven days from the passing of the first resolution the requisitionists or a majority of them may themselves convene the meeting.

32. Any meeting convened by requisitionists as aforesaid shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.

33. Seven days' notice at the least specifying the place the day and the hour of the meeting and in case of special business the general nature of such business shall be given to the members in manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company in general meeting; but the accidental omission to give any such notice by any member shall not invalidate the proceedings at any meeting.

34. In the case of a special resolution the notice convening the two meetings may be given at one and the same time and the second meeting shall be deemed to have been properly convened notwithstanding the fact that such notice states that it will only be held in the event of the resolution proposed at the first meeting having been passed by the requisite majority.

35. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting with

the exception of the consideration of the accounts balance sheets and ordinary reports of directors.

PROCEEDINGS AT GENERAL MEETINGS.

36. Except as hereinafter provided no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

37. At any general meeting a quorum shall consist of three members personally present and entitled to vote.

38. If within half an hour from the time appointed for the meeting a quorum is not present the meeting if convened on the requisition of members shall be dissolved in any other case it shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting any two or more members present and entitled to vote shall be a quorum.

39. The chairman of the board of directors shall preside as chairman at every meeting of the Company; but if at any time there is no such chairman or he is not present within fifteen minutes after the time appointed for holding the meeting or if he is unwilling to act the members present shall choose one of the directors who is present and willing to act to be chairman; but if there be no such director then the members present shall choose some one of their own number to be chairman.

40. The chairman may with the consent of the meeting adjourn any meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

41. At any general meeting a resolution put to the vote of the meeting shall be decided by a show of hands of persons present and entitled to vote unless a poll is demanded by at least two persons present and entitled to vote and unless a poll is so demanded a declaration of the chairman that such resolution has been carried or carried by a particular majority or lost shall be deemed to be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

42. If a poll is demanded on any resolution by the requisite number of persons it shall be taken in such manner as the chairman directs and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes whether on a show of hands or at a poll at any general meeting of the company the chairman shall be entitled to a casting vote in addition to any vote or votes to which he is otherwise entitled.

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

VOTES.

44. Every member shall have one vote.

45. If any member is an infant or a lunatic or of unsound mind he

may vote by his guardian committee *curator bonis* or other legal curator.

46. If a Company is a member it may vote by any person authorized by resolution of its directors to act as its representative at any meeting and such representative shall be entitled on behalf of such Company to exercise the same functions as if he were a member.

47. No member shall be entitled to vote at any meeting of the Company unless all calls or other sums presently payable by him to the Company have been paid.

48. On a poll votes may be given either personally or by proxy.

49. No person shall act as a proxy unless he is apart from any proxy he holds entitled to be present and vote at the meeting at which he acts as a proxy.

50. Every proxy shall be in writing under the hand of the appointor and shall be deposited at the registered office of the Company not less than two clear days before the day appointed for holding the meeting or adjourned meeting at which the person named in such proxy proposes to vote and in default the proxy shall not be treated as valid.

51. Any instrument appointing a proxy shall be in the following form or as near thereto as circumstances will admit:—

THE COMPANY LIMITED.

I of in the county of being a member of the above-mentioned Company hereby appoint of or failing him of as my proxy to vote for me and on my behalf at the (ordinary or extraordinary as the case may be) general meeting of the company to be held on the day of 19 and at any adjournment thereof. Dated this day of 19 .

Signed

DIRECTORS.

52. The number of directors shall not be less than or more than but in the event of any casual vacancy occurring and reducing the number of directors to below the aforesaid minimum the continuing directors or director may act for the purpose of filling up such vacancy or vacancies or of summoning a general meeting of the Company.

53. The first directors shall be appointed by the subscribers to the Memorandum of Association.

54. Until directors are appointed the subscribers to the Memorandum of Association shall have all the powers hereby conferred on directors.

55. Each director shall receive by way of remuneration for his services a sum calculated at the rate of £ per annum.

POWERS AND DUTIES OF DIRECTORS.

56. The business of the Company shall be managed by the directors who may pay all expenses incurred in getting up and registering the Company and may exercise all such powers of the Company as are not by statute or by these articles required to be exercised by the Company in

general meeting; but the exercise of all such powers shall be subject to and in accordance with the provisions of any statute in that behalf and of these presents and shall also be subject to and in accordance with any regulations or provisions made by the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

DISQUALIFICATION OF DIRECTORS.

57. The office of director shall be vacated:—

(1) If he becomes bankrupt or insolvent;

(2) If he becomes incapable of acting therein;

(3) If at any time subsequently to his election he accepts or continues to hold any office or place of profit under the Company other than that of managing director or manager or trustee of a trust deed for securing debentures;

(4) If he contracts with or is concerned or interested in or participate in the profits of any contract with the Company or participate in the profits of any work done for the Company without declaring his interest at the meeting of the directors at which such contract is determined upon or work ordered if his interest then exists or in any other case at the first meeting of the directors after the acquisition of his interest. Provided always that the office of director shall in no case be vacated by reason of his being a member of any Company which has entered into contracts with or done any work for the Company;

(5) If he gives notice in writing to the Company resigning his directorship.

58. No director shall vote on any contract except a contract for indemnifying him against any loss he may suffer by reason of his becoming or being surety for the Company in which he is either directly or indirectly concerned or interested and if he does so vote his vote shall not be counted.

ROTATION OF DIRECTORS.

59. At the first ordinary meeting the whole of the directors (other than the managing director) shall retire from office, and at the first ordinary meeting in every subsequent year one-third of the directors (other than the managing director) or if their number is not a multiple of three then the number nearest to one-third shall retire from office.

60. The directors to retire in every year shall subject nevertheless as hereinafter provided be those directors (other than the managing director) who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall unless they otherwise agree among themselves be determined by lot.

61. A retiring director shall be eligible for re-election.

62. The Company at the ordinary meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

63. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up the vacating

directors or such of them as have not had their places filled up shall continue in office until the ordinary meeting in the next year and so on from time to time until their places are filled up.

64. The Company may from time to time in general meeting increase or reduce the number of directors, but so that such number shall not be increased beyond the maximum number or reduced below the minimum number hereinbefore prescribed, and they may determine the order of rotation in which such increased or reduced number shall go out of office.

65. The Company may by extraordinary resolution remove any director before the expiration of his term of office and may by ordinary resolution appoint another person in his stead. The person so appointed shall hold office during such time as the director in whose place he is appointed would have held the same if he had not been removed.

66. The directors shall have power at any time to appoint any person a director either to fill a casual vacancy or as an addition to the Board but so that the total number of directors shall not be increased beyond the maximum number hereinbefore prescribed. Any director so appointed shall hold office only until the next ordinary meeting.

PROCEEDINGS OF DIRECTORS.

67. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit and determine the quorum necessary for the transaction of business, questions arising at any meeting shall be decided by a majority of votes ; in case of an equality of votes the chairman shall have a second or casting vote ; a director may at any time summon a meeting of directors.

68. The directors may elect a chairman of their meetings and determine the period for which he is to hold office but if no such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding such meeting the directors shall choose some one of their number to be chairman of such meeting.

69. The directors may delegate any of their powers to committees, consisting of such member or members of their body as they think fit ; any committee so formed shall, in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors. Subject to any such regulations and to the provisions of these presents a committee may elect a chairman and otherwise regulate their meetings if no such chairman is elected or if he is not present at the time appointed for holding any meetings the members present shall choose one of their number to be chairman at such meeting.

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

71. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director or as a managing director or as a manager shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid or that they or any of them were disqualified

be as valid as if every such person had been duly appointed and was qualified to be a director or a managing director or a manager.

72. A resolution in writing signed by all the directors shall have the same effect as a resolution passed at a meeting of directors.

73. The directors shall have power to appoint one or more of their number to be managing director or manager for such term and upon such conditions as they see fit and they may delegate to such managing director or manager such of their powers as they in their absolute discretion shall think fit.

74. Any such managing director or manager shall receive for his services such remuneration whether by way of salary or commission or participation in profits or partly in one way and partly in another as the directors may think fit. A managing director or manager shall not be liable to retire by rotation while he continues to be a managing director or manager, but if in any other way he ceases to be a director his office of managing director or manager shall *ipso facto* be vacated.

75. The directors may employ any one or more of their number to do any special business for the Company and may remunerate any person so employed and such remuneration may be either in addition to or in substitution for the remuneration to which any such director is entitled as director.

MINUTES.

76. The directors shall cause minutes of all resolutions and proceedings of meetings of the Company and of the directors and of every committee of the directors to be duly entered in books to be from time to time provided for the purpose and such minutes shall be signed by the chairman of the meeting at which such resolution was passed or proceeding had or by the chairman of the next succeeding meeting. The minutes of every meeting of the directors or of a committee of the directors shall in addition state what directors were present at such meeting and at every such meeting each director present shall sign his name in a book to be kept for the purpose.

SEAL.

77. Every document bearing the common seal of the Company must be signed by at least two directors of the Company and countersigned by the secretary of the Company or some person duly authorized in that behalf by the directors.

ACCOUNTS.

78. The directors shall cause true accounts to be kept of the sums of moneys received and expended by the Company and the matter in respect of which such receipts and expenditure take place and of the assets and liabilities of the Company.

79. The books of account shall be kept at the registered office of the company and shall be open to the inspection of any director but except with the sanction of the directors no other person shall be entitled to inspect any book or document or account of the Company unless he is authorized so to do by statute or by these articles or by a resolution of the Company in general meeting.

80. Once at least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year made up to a date not more than six months before such meeting.

81. The statement so made shall show arranged under the most convenient heads the amount of gross income distinguishing the several sources from which it has been derived and the amount of gross expenditure distinguishing the expense of establishment salaries and other like matters; every item of expenditure fairly chargeable against the year's income shall be brought into account so that a just balance of profit and loss may be laid before the meeting and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

82. A balance-sheet shall be made out in every year and laid before the Company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the Company's affairs.

83. A printed copy of every such balance-sheet and report and statement of income and expenditure shall seven days previously to the meeting be served on every member in manner in which notices are hereinafter directed to be served.

AUDITORS.

84. The Company shall at each ordinary meeting appoint an auditor or auditors to hold office until the next ordinary meeting.

85. A director or officer of the Company shall not be capable of being appointed an auditor of the Company.

86. A retiring auditor shall be re-eligible but no other person shall be capable of being appointed auditor at an ordinary meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the Company not less than fourteen days before the ordinary meeting and the Company shall send a copy of any such notice to the retiring auditor and shall give notice thereof to the members in any mode in which notices are by these presents authorized to be given not less than seven days before the ordinary meeting provided always that if after a notice of the intention to nominate an auditor has been so given an ordinary meeting is called for a date fourteen days or less after that notice has been given the notice though not given in the time required by his provision shall be deemed to have been properly given for the purposes thereof and the notice to be sent or given by the Company may instead of being sent or given within the time required by this provision be sent or given at the same time as the notice of the ordinary meeting.

87. The first auditors of the Company may be appointed by the directors before the statutory meeting and if so appointed shall hold office until the first ordinary meeting unless previously removed by a resolution of the members in general meeting in which case the shareholders at such meeting may appoint auditors to hold office until the first ordinary meeting. In the event of the directors not having appointed auditors

before the statutory meeting they shall within three months after such statutory meeting convene an extraordinary meeting of the Company for the purpose of appointing auditors to hold office until the first ordinary meeting of the Company.

88. The directors may fill any casual vacancy in the office of auditor but while any such vacancy continues the surviving or continuing auditor or auditors if any may act.

89. The remuneration of the auditors of the Company shall be fixed by the Company in general meeting except that the remuneration of any auditors appointed before the statutory meeting or to fill any casual vacancy may be fixed by the directors.

90. Every auditor of the company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the directors and officers of the Company such information and explanations as may be necessary for the performance of his duties as auditor.

91. The auditors shall make a report to the members on the accounts examined by them and on every balance sheet laid before the Company in general meeting during their tenure of office and in every such report shall state whether or not they have obtained all the information and explanations they have required and whether in their opinion the balance-sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company.

92. The balance-sheet (signed by two directors or one director as above-mentioned) shall have the auditors' report attached to it or there shall be inserted at the foot of the balance-sheet a reference to the report and the report shall be read before the Company in general meeting and shall be open to inspection by any member who shall be entitled to be furnished with a copy of the balance-sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

NOTICES.

93. Any notice may be served by the Company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered address (or if he has no registered address within the United Kingdom) at the place if any within the United Kingdom supplied by him to the Company for the giving of notices to him.

94. Any notice if served by post shall be deemed to have been served within twenty-four hours from the time when the letter containing the same was put into the post-office ; and in proving such service it shall be sufficient to prove that such letter was properly addressed and put into the post office.

CHAPTER III.

Promoters.

The expression "promoter" is one, not infrequently found in the Companies (Consolidation) Act. It is, however, not an expression which lends itself to an exact definition. It is not a term of law but of business, usefully summing up in a single word a number of business operations familiar to the commercial world by which a company is generally brought into existence (*a*). The term "promoter" has been said to be a short and convenient way of designating those who set in motion the machinery by which the Companies Act enables an incorporated company to be created (*b*).

In another case it was stated that "a promoter is one who undertakes to form a company with reference to a given project, and who takes the steps necessary to accomplish that purpose" (*c*).

At the same time, it must be pointed out that a person who merely acts as servant or agent for a promoter, does not thereby himself become a promoter. To become a promoter he must act more or less on his own account. Thus a solicitor doing the legal work necessary for the promotion of a company, is not a promoter (*d*). Persons who are really promoters cannot by registering a sham company, and using its name instead of their own in all acts connected with the promotion, evade liability as promoters (*e*).

The business of a promoter consists in preparing and registering the memorandum and articles of the proposed company, in underwriting or procuring underwriters or subscribers for any shares or debentures which it is proposed the company shall issue on its incorporation, in preparing the prospectus, and generally in doing all

(*a*) *Per* Bowen, J., *Whaley Bridge Printing Co.* v. *Green* (1879), 5 Q. B. D. 109.

(*b*) See *per* Lord Blackburn, *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 A. C. 1218, at p. 1268.

(*c*) *Per* Cockburn, C. J., *Twycross* v. *Grant* (1877), 2 C. P. D. 469, at p. 511. For yet another description of what constitutes a promoter, see *Emma Silver Mining Co.* v. *Lewis* (1879), 4 C. P. D. 396.

(*d*) *In re Great Wheal Polgooth* (1883), 53 L. J. (ch.) 42.

(*e*) *Re Darby*, [1911] 1 K. B. 95, on this case the Judge held that the company was an "alias" for the persons who were alleged to be promoters.

preliminary work necessary for the formation of the company. In each case the time when a person first becomes a promoter is a question of fact, as also is the question when he ceases to be one. Usually, the mere fact that a person acquires property with a more or less indefinite view of selling it to a company, is not enough to constitute him a promoter (*f*).

A promoter is said to be in a fiduciary relation to the company when it is formed.

The meaning of this will perhaps be most conveniently discussed by dividing promoters into two classes, namely: (1) promoters who are selling property to the company; and (2) promoters who are not selling property to the company, but are simply rendering promotion services to it.

Turning to the first class of promoters, they are not agents for the company in purchasing any property which it is proposed that the company shall acquire, for a company which has not yet come into existence cannot have an agent (*g*).

Further, they are rarely, if ever, trustees for the intended company (*h*); but by an extension of the principles which apply to trustees and *cestuis qui trustent*, to principals and agents, and to other relations of this sort, promoters cannot deal with a company they are promoting without most fully disclosing all facts which it is material for it to know, and in particular a vendor, who has just bought property, which he is selling to a company at an enhanced price, must clearly state not only the fact, that he is making a profit, but the exact nature of the profit he is making (*i*).

Promoters are not bound to provide the company they are forming with an independent board of directors (*k*), but there can be no disclosure to a company unless there has been disclosure either to an independent board of directors (*l*) or to the company as a whole (*m*).

(*f*) *Foss* v. *Harbottle* (1843), 2 Hare, 461; *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 A. C. 1218.

(*g*) *Natal Land, etc. Co.* v. *Pauline Colliery Syndicate*, [1904] A. C. 120, and cases cited, *post*, pp. 158 and 159.

(*h*) *Gluckstein* v. *Barnes*, [1900] A. C. 240, may have been a case where the promoters were agents, but see *Re Leeds and Hanley Theatres of Varieties*, [1902] 2 Ch. 809.

(*i*) *Emma Silver Mining Co.* v. *Grant* (1879), 11 C. D. 918; Lady *Forrest* (*Murchison*) *Gold Mine*, [1901] 1 Ch. 582; *Dunne* v. *English* (1874), 18 Eq. 524; some distinction seems to have been drawn between the cases where the consideration is payable in cash and those where it is payable wholly or partly in shares of the company, see *Brazilian Rubber Plantations and Estates*, [1911] 1 Ch. 425, citing the remarks of Lord Macnaghten in *Bentinck* v. *Fenn* (1887), 12 A. C. 652, at p. 671.

(*k*) *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392; *Salomon* v. *Salomon & Co.*, [1897] A. C. 22.

(*l*) Cp. *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 A. C. 1218.

(*m*) *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392; *British Seamless Paper Box* (1881),

Where shares have been or are to be issued to the public, this disclosure should always be made by the prospectus. In fact, from one case (*n*) it would appear that where a prospectus is prepared, and no shares are taken on the strength of it, omissions in the prospectus may make a matter, which every shareholder knew of, undisclosed. In this connection it may be that a person who has in a prospectus fully complied with all the requirements of the Companies (Consolidation) Act, may yet find that his prospectus has not, having regard to his fiduciary character, made full enough disclosure to the company. It would appear that section 81, and the repealed sections of the Companies Act, 1900, and of the Companies Act, 1907, in no way derogate from the duties of a promoter who has framed a prospectus, and indeed they expressly declare that they do not limit or diminish any liability under the general law.

If a promoter fails to make disclosure of, or misstates any material fact, the company will usually be entitled to have the contract rescinded and set aside (*o*). This relief is equitable, and therefore it will not be necessary, as was formerly the case at law (*p*), to show that there is either fraud or a complete difference in substance between the thing bargained for and the thing sold.

The relief, however, being equitable, the Court will consider all the facts, to see whether it is just and equitable to grant it. The mere fact of the contract having been completed and the property having been conveyed is not, even where there is no case of fraud, fatal to the case of a plaintiff seeking rescission ; but this is a material fact (*q*). The real question, in these cases, is can the plaintiff restore the property he has obtained under the contract he is seeking to set aside, in the same, or something like the same, condition as it was when he got it (*r*). If not he cannot have rescission—and this, in the absence of fraud, would appear to be the case, where the property has been worked by directors nominated and dependent on the promoters, and has by such working had its whole character so altered that it cannot be restored in its original condition (*s*). Mere delay in taking proceedings for relief, will usually not be sufficient, unless the delay has occurred after full knowledge of the true facts (*t*).

17 C. D. 467 ; *Attorney-General for Canada* v. *Standard Trust Co. of New York*, [1911] A. C. 498.

(*n*) *Postage Stamp Automatic Delivery Co.*, [1892] 3 Ch. 566 ; and see also *Re Darby*, [1911] 1 K. B. 95, referring to *Society of Practical Knowledge* v. *Abbott* (1840), 2 Beav. 559 ; the first and last of these cases must be supported it is thought on the ground that shares were always intended to be issued to persons other than the original members.

(*o*) *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392.

(*p*) *Kennedy* v. *Panama New Zealand and Australian Mail Co.* (1867), L. R. 2 Q. B. 580.

(*q*) *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392.

(*r*) See *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392 ; *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 A. C. 1218.

(*s*) *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392.

(*t*) *Lindsay Petroleum Co.* v. *Hurd* (1874), L. R. 5 P. C. 221.

This last proposition would appear to be true in all cases, though it was laid down in a case of fraud, and in cases of fraud it is easier to get rescission after alterations to the property, than in cases where the only ground for relief is non-disclosure or innocent misrepresentation (*u*).

But once a company's title to claim rescission is gone, it cannot usually in the absence of fraud get any relief against the promoter who has sold property to it (*x*), for the Court cannot make a new contract for the parties, or order the promoter to part with his property at a price at which he is not willing to part with it.

The cases where damages can be obtained though rescission is no longer possible, may perhaps be classed under four heads. In the first place, where a vendor or promoter has induced the company to buy by fraud. There the company will be entitled to keep its bargain, and to get damages for the fraud (*y*). The measure of damages where the promoter has fraudulently made a secret profit will usually be the amount of such profit (*z*).

In other cases, the rule would appear to be to take the value of the property the company would have acquired if all the statements had been true, as being worth the precise sum the company paid for such property, and to give as damages the difference between that sum and the real value of the property at the time of purchase (*a*). It would, however, appear that it would be open to a promoter to show that even with the additional advantages which the property would have had, if such statements had been true, it would not have been worth what was paid for it (*b*). Besides damage, it is necessary to prove in an action for fraud that a false representation has been made either (1) knowingly; or (2) without belief in its truth; or (3) recklessly, careless whether it be true or false (*c*). Mere non-disclosure will not where there is no duty to disclose amount to fraud

(*u*) *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392.

(*x*) *Ambrose Lake Tin and Copper Mining Co.* (1880), 14 C. D. 390; *Lady Forrest* (*Murchison*) *Gold Mine*, [1901] 1 Ch. 582; *Cape Breton Co.* (1885), 29 C. D. 795; *Ladywell Mining Co.* v. *Brookes* (1887), 35 C. D. 400; and see *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 A. C. 1218, 1235; *Gover's case* (1875), 1 C. D. 182. Cp. also *Burland* v. *Earle*, [1902] A. C. 83.

(*y*) *Gluckstein* v. *Barnes*, [1900] A. C. 240; *Hichens* v. *Congreve* (1831), 4 Sim. 420; *Leeds and Hanley Theatres of Varieties*, [1902] 2 Ch. 809.

(*z*) *Leeds and Hanley Theatres of Varieties*, [1902] 2 Ch. 809.

(*a*) *Peek* v. *Derry* (1887), 37 C. D. 541; *Arkwright* v. *Newbould* (1881), 17 C. D. 301; *Twycross* v. *Grant* (1877), 2 C. P. D. 469, 544; *Exploring Land and Minerals Co.* v. *Kolckmann* (1905), 94 L. T. 234; *Broome* v. *Speak*, [1903] 1 Ch. 586.

(*b*) *McConnel* v. *Wright*, [1903] 1 Ch. 546.

(*c*) *Peek* v. *Derry* (1889), 14 A. C. 337. The third case is really but an instance of the second.

unless it be of such a character as to render what is stated untrue (*d*), but a promoter or other person in a fiduciary character who conceals or does not disclose the fact that he has any interest in the property sold to the company, in effect states that he has no such interest, and is guilty of fraud (*e*). Promoters and other persons who are guilty of fraud are jointly and severally liable (*f*), and until the fraud has been discovered no statute of limitations will begin to run (*g*). Once the statute has begun to run six years would appear to be the period of limitation (*h*).

(2) Another case where damages can be obtained though rescission has become impossible, would appear to exist where the promoters have in the prospectus made definite, though innocent, misrepresentations of fact. In such case it would appear that damages can be given (*i*) presumably on some ground of equitable estoppel (*k*).

(3) A third exception to the rule has been stated to exist in the cases where a promoter has actually started promoting the intended company at the time when he acquires the property he ultimately sells to the company. In some of these cases (*l*) it has been said that he acquires the property as trustee for the intended company, and must account to it for any profit he makes on the resale, unless he fully performs his duty of disclosing the exact nature of the interest he takes. These cases, however, were cases of fraud, and in the *Leeds and Hanley Theatres of Varieties case* (*m*) the Court of Appeal expressly refused to deal with the case on this ground (*n*).

(4) Yet a fourth exception to the general rule has been suggested. It has been said that where a promoter sells to the company property having a definite market value at a price above that value, there it may be that, in the absence of full disclosure, the company could recover the difference between the two prices (*o*).

This proposition, however, seems to ignore the rule that the Court cannot make a contract for the parties.

(*d*) *Arkwright* v. *Newbold* (1881), 17 C. D. 301; *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377; *Delany* v. *Keogh*, [1905] 1 Ir. 267.

(*e*) *Leeds and Hanley Theatres of Varieties*, [1902] 2 Ch. 809; *Bentinck* v. *Fenn* (1887), 12 A. C. 652.

(*f*) *Phosphate Sewage Co.* v. *Hartmont* (1877), 5 C. D. 394.

(*g*) *Metropolitan Bank* v. *Heiron* (1880), 5 Ex. D. 319.

(*h*) Cp. *Cape Breton Co.* (1885), 29 C. D. 795; *Fitzroy Bessemer Steel Co.* (1884), 50 L. T. 144.

(*i*) *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392.

(*k*) See *Low* v. *Bouverie*, [1891] 3 Ch. 82.

(*l*) *Olympia Ltd.*, [1898] 2 Ch. 153, and on appeal *sub nom.*; *Gluckstein* v. *Barnes*, [1900] A. C. 240; *Tyrell* v. *Bank of London* (1862), 10 H. L. C. 26.

(*m*) [1902] 2 Ch. 809.

(*n*) *Mann* v. *Edinburgh Northern Tramways*, [1893] A. C. 60, was the case of a company incorporated by special act of Parliament, and turned on the terms of the statute.

(*o*) Cp. *Cape Breton Co.* (1885), 29 C. D. 795.

The next consideration is the position of promoters, who have not sold property to the company (*p*), but who have rendered it promotion services. In this case it would appear clear that, even where rescission has become impossible, the company can recover from the promoter any moneys he has received under a secret agreement (*q*).

It has been held that the amount recoverable is not the total amount paid over to the promoter, but such amount less the amount of any legitimate expenses incurred by him in forming and getting up the company (*r*), the principle on which such amount is recoverable being that a promoter cannot make a profit out of his position. In this case a promoter will apparently be liable, even though there has been no concealment of the fact that he has made some profit, though the amount is not stated (*s*).

These cases for the most part depend in part on fraud, but there is also in them the element of breach of trust (*t*).

But even where there is full disclosure there is often great difficulty in the way of this class of promoter recovering anything, even it would appear out of pocket expenses. Of course, if the promoter who is selling property to the company makes it a term of his bargain that the company shall pay his co-promoters for their services and expenses, and if they are parties to the agreement, they can recover (*u*).

Further, if they are not parties to the agreement, but they are, according to the terms of the agreement, to be paid out of the consideration money, there may be a trust or charge in their favour (*x*), and they may be able to sue the company on the agreement. But if the agreement simply contains a clause providing they are to be paid, a promoter who is not a party cannot sue on the agreement (*y*). If

(*p*) In this class are included promoters who purport to sell property to the company though they are not in fact really entitled to any interest in the property, *Bland's Case*, [1893] 2 Ch. 612.

(*q*) *Beck* v. *Kantorowicz* (1857), 3 K. & J. 230; *Emma Silver Mining Co.* v. *Lewis* (1879), 4 C. P. D. 396; *Bagnall* v. *Carlton* (1877), 6 C. D. 371; *Whaley Bridge Calico Printing Co.* v. *Green* (1879), 5 Q. B. D. 109; *Emma Silver Mining Co.* v. *Grant* (1879), 11 C. D. 918; *Lydney and Wigpool Iron Ore Co.* v. *Bird* (1886), 33 C. D. 85.

(*r*) *Lydney and Wigpool Iron Ore Co.* v. *Bird* (1886), 33 C. D. 85; *Bagnall* v. *Carlton* (1877), 6 C. D. 371; *Emma Silver Mining Co.* v. *Grant* (1879), 11 C. D. 918; *Re Darby*, [1911] 1 K. B. 95; and compare with these cases the decisions of the Court of Appeal, *English and Colonial Produce*, [1906] 2 Ch. 43; *Clinton's Claim*, [1908] 2 Ch. 515.

(*s*) *Emma Silver Mining Co.* v. *Grant* (1879), 11 C. D. 918, citing *Imperial Mercantile Credit Association* v. *Coleman* (1873), L. R. 6 H. L. 189.

(*t*) *Emma Silver Mining Co.* v. *Grant* (1880), 17 C. D. 122.

(*u*) Such a case would appear to be *Sale Hotel* v. *Botanical Gardens* (1898), 78 L. T. 368, which is, however, not very clearly reported. Possibly this very difficult case turns on the fact that misfeasance proceedings and not an action were brought, see *per* Rigby, L. J. S. C., 46 W. R. 617.

(*x*) *Touche* v. *Metropolitan Railway, etc., Co.* (1871), 6 Ch. 671, and *Gregory* v. *Williams* (1817), 3 Mer. 582, as explained in *Empress Engineering Co.* (1880), 16 C. D. 125.

(*y*) *Empress Engineering Co.* (1880), 16 C. D. 125.

the agreement contains nothing about paying any one but the vendor, the question remains whether his co-promoters can recover on a *quantum meruit*. It is clear that in the absence of a resolution by the company solicitors and other agents retained by the promoters cannot (*z*), they must look to the promoters alone, and it would now seem to be clearly established that in such case the company will not be liable to its promoters (*a*).

These cases would seem to overrule the dicta in some of the earlier cases (*b*). This rule holds good even where the promoters have paid expenses which the company is bound by statute to pay (*c*).

Directors can apparently with express power on that behalf in the articles, pay the expenses of getting up and registering the company (*d*), but with regard to any other payment to a promoter, even where the articles give express power, there is difficulty in supporting the transaction (*e*), for in almost all these cases when the company is in a position to make an agreement, the consideration is wholly a past, and consequently not a valuable, consideration, and, as has been stated, the company cannot ratify acts done before its incorporation (*f*). The reasoning of Lord Cottenham, in *Edwards* v. *Grand Junction Canal Co.* (*g*), which might be cited as contrary to his view, has not been approved in later cases (*h*), and would appear only to apply to companies incorporated by special Act of Parliament. The dicta in *The Madrid Bank, Ex parte Williams* (*i*), appear to proceed on what has now been decided to be a mistaken ground, viz. that the articles amount to a contract between a company and its members (*k*). Moneys recoverable from a promoter can be proved for in his bankruptcy, and where there is fraud a discharge will not release such a liability (*l*). It would

(*z*) *Rotherham Alum and Chemical Co.* (1883), 25 C. D. 103; *Hume* v. *Record Reign Syndicate* (1899), 80 L. T. 404.

(*a*) *English and Colonial Produce*, [1906] 2 Ch. 435; *Clinton's Claim*, [1908] 2 Ch. 515.

(*b*) *E.g. Hereford and South Wales Waggon and Engineering Co.* (1876), 2 C. D. 621. See also *Empress Engineering Co.* (1880), 16 C. D. 125; *Re Darby*, [1911] 1 K. B. 95.

(*c*) *Clinton's Claim*, [1908] 2 Ch. 515, overruling the decision of BUCKLEY, J., in *English and Colonial Produce Co.*, [1906] 2 Ch. 435.

(*d*) Table A, clause 71, and see *Englefield Colliery Co.* (1878), 8 C. D. 388, where it was held that the directors had exercised their powers improperly.

(*e*) See *Anglo-French Co-operative Society, Ex parte Pelly* (1882), 21 C. D. 492.

(*f*) *Spiller* v. *Paris Skating Rink* (1878), 7 C. D. 368, appears clearly not to be law, see *Empress Engineering* (1880), 16 C. D. 125.

(*g*) (1836) 1 My. & Cr. 650.

(*h*) See cases collected, *Shrewsbury* v. *North Staffordshire Rail. Co.* (1866), 1 Eq. 593.

(*i*) (1866) 2 Eq. 216.

(*k*) See *Eley* v. *Positive Government* (1876), 1 Ex. D. 20, 88; *Melhado* v. *Port Allegre Rail. Co.* (1874), L. R. 9 C. P. 503.

(*l*) *Emma Silver Mining Co.* v. *Grant* (1880), 17 C. D. 122.

appear that an action of this nature can be brought against the executors of a deceased promoter (*m*).

Not only can actions of this sort be brought by the company or its liquidator, but where the majority of the company is under the influence of the promoters, a minority suing on behalf of themselves and all others can sue (*n*).

Transfers to a company have in some cases been set aside either as being fraudulent and acts of bankruptcy (*o*), or under 13 Eliz. c. 5 (*p*).

AGREEMENTS FOR SALE OF PROPERTY.

It is not at all uncommon for the promoters to enter into a contract before the formation of the company, with a trustee for the intended company, setting forth the terms upon which the company is to take over the property. This agreement, once the company is formed, should not be relied upon, but a fresh agreement should, when the company is formed, be entered into between the company and the vendors and all promoters (*q*), who are to be paid for services rendered before incorporation. If this is not done such persons may find themselves in great difficulty, when it comes to getting payment for their services, or for the property.

It is impossible for the company to ratify acts done before its incorporation, for it is now well settled that no one can be agent for a company not in existence (*r*). In some cases no doubt, where the company has, with the knowledge and consent of the vendors, taken possession, the Court will infer a new agreement between the company and the vendors, and that possession was taken pursuant to such agreement (*s*). But there are many cases where the Court will

(*m*) *New Sombrero* v. *Erlanger* (1877), 5 C. D. 73; *Bagnall* v. *Carlton* (1877), 6 C. D. 371, 389. See also *Concha* v. *Murrietta* (1889), 40 C. D. 543.

(*n*) *Mason* v. *Harris* (1879), 11 C. D. 97.

(*o*) *Re Carl Hirth*, [1899] 1 Q. B. 612; *Re Slobodinsky*, [1903] 2 K. B. 517; *Re Goldburg*, [1912] 1 Ch. 384. The two latter cases deal with the position of persons who have *bonâ fide* contracted with the bankrupt for valuable consideration.

(*p*) *Gomville's Trustee* v. *Patent Caramel Co.*, [1911] 1 K. B. 599.

(*q*) The mere adoption of the original agreement by the company when formed will not create any contractual relation between the company and the other parties to the agreement: *North Sydney Investment, etc., Co.* v. *Higgins*, [1899] A. C. 263; *The Johannesburg Hotel Co.*, [1891] 1 Ch. 119.

(*r*) *Kelner* v. *Baxter* (1867), L. R. 2 C. P. 174; *Scott* v. *Ebury* (1867), L. R. 2 C. P. 255; *Melhado* v. *Port Allegre Rail. Co.* (1874), L. R. 9 C. P. 503; *Natal Land, etc., Co.* v. *Pauline Colliery*, [1904] A. C. 120; *Spiller* v. *Paris Skating Rink* (1878), 7 C. D. 368, and the decision of the judge of first instance in *Mason* v. *Harris* (1879), 11 C. D. 97, so far as they decided that there was any distinction between law and equity on these points must be taken to be overruled by *Empress Engineering Co.* (1881), 16 C. D. 125.

(*s*) *Howard* v. *Patent Ivory, etc.*

decline to make such an inference. Thus it declined to do so in one case where it was clear that the company took possession under the mistaken notion that it was bound by an agreement between the vendor, and a trustee for the company before its incorporation (*t*), and in another case (*u*), where an agreement for sale had been made between the real vendor and a promoter who had subsequently entered into an agreement with the company it was held that as the company's possession could be referred to the second agreement, the Court could not infer that the company's possession depended on the agreement with the vendor, and consequently that the vendor could not sue the company. In yet another case (*x*) the Court declined to infer a fresh agreement after the incorporation of the company on the ground that the acts of possession were slight, and the company's local agent was not authorized to enter into an agreement. The mere fact that the company's articles state that the company shall enter into an agreement in the terms of an agreement already entered into, does not amount to an agreement between the company and the persons, who are parties to such an agreement (*y*); such an article simply empowers the company to enter into such an agreement, but coupled with acts of part performance, it may be evidence of a new agreement in the terms of the agreement referred to in the articles (*z*). If no fresh agreement can be inferred the vendor will not get any rights against the company because it has used his property, with full knowledge of an agreement conferring certain rights on him, made between himself and the person who entered into the agreement with the company (*a*), unless he can make out that such rights created a charge or a trust in his favour (*b*).

There seems to be little object in having an agreement with a trustee for an intended company except perhaps in very exceptional circumstances—the better plan being to prepare an agreement, which the company, when it is incorporated, will enter into.

The Court will very rarely, if ever, grant specific performance of a contract to form a company (*c*). Where matters which are not mere matters of form have been left open, there will be no binding agreement and not even damages will be given (*cc*).

Co. (1888), 38 C. D. 156; *Gregory* v. *Mighell* (1811), 18 Ves. 328; *Wilson* v. *West Hartlepool Rail. Co.* (1865), 2 De G. J. & S. 475, and Fry on Specific Performance, 5th Ed., p. 301.

(*t*) *Northumberland Avenue Co.* (1883), 23 C. D. 16.

(*u*) *Bagot Pneumatic Tyre Co.* v. *Clipper Pneumatic Tyre Co.*, [1902] 1 Ch. 146.

(*x*) *Natal Land, etc., Co.* v. *Pauline Colliery*, [1904] A. C. 120.

(*y*) *Melhado* v. *Port Allegre Rail. Co.* (1874), L. R. 9 C. P. 503.

(*z*) Cp. *Touche* v. *Metropolitan Rail., etc., Co.* (1871), L. R. 6 Ch. 671.

(*a*) *Bagot* v. *Pneumatic Tyre Co.* v. *Clipper Pneumatic Tyre Co.*, [1902] 1 Ch. 146, citing *Cox* v. *Bishop* (1857), 8 De G. M. & G. 815; *Dale and Plant, Ltd.* (1889), 1 Meg. 338, 61 L. T. 206.

(*b*) *Werdermann* v. *Société Générale d'Electricité* (1882), 19 C. D. 246; *Dansk Rekylriffel Syndikat* v. *Snell*, [1908] 2 Ch. 127.

(*c*) *Stocker* v. *Wedderburn* (1857), 3 K. & J. 393; see also *Byrne* v. *Reid*, [1902] 2 Ch. 735; Lindley on Companies, Vol. 1, 6th Ed. p. 786.

(*cc*) *Waring & Gillow* v. *Thompson*, [1912] Times newspaper, February 9th, 1912. In this case neither the articles of association nor the borrowing powers of the company had been agreed.

Not unfrequently where a business is settled and it is desirable to sell it to a company for shares or debentures, but the settlement contains no power to do so, the Court will sanction the sale (*d*), but it will usually limit the time during which the trustees may (if the limit is not extended) hold the shares or debentures. In such case a contract will be made between the trustees and all parties who are *sui juris*, it will recite the material trusts and the facts in full, will, so far as necessary, provide for the distribution of the purchase money, and will be made subject to the sanction of the Court being obtained. The contract which it is proposed to enter into with the company will be set out in the schedule. The sanction of the Court will usually be obtained by originating summons.

STAMPS.

Any contract or agreement made in England or Ireland under seal or under hand only or made in Scotland with or without any clause of registration for the sale of any equitable estate or interest in any property whatsoever or for the sale of any estate or interest in any property except lands tenements hereditaments or heritages or property situate out of the United Kingdom or goods wares or merchandise or stock or marketable securities or any ship or vessel or part interest share or property of or in any ship or vessel (*e*) is charged with the same *ad valorem* duty to be paid by the purchaser as if it were an actual conveyance on sale of the estate interest or property contracted or agreed to be sold (*f*). Section 7 of the Revenue Act, 1909, removes the limitation contained in this section to contracts or agreements made in England Scotland or Ireland.

Goodwill is property for the purposes of this section, but it may be locally situate abroad (*g*); it has, however, been held that an exclusive licence to use a patent in Australia, and an option to purchase from a foreigner land abroad are not locally situate out of

(*d*) *Re New*, [1901] 2 Ch. 534; *Re Tollemache*, [1903] 1 Ch. 457, 955; *Re Patrick MacFadyen* (1907), 52 Sol. J. 134 (a bankruptcy case), and see *Re Wells*, [1903] 1 Ch. 848; *West of England and South Wales District Bank* v. *Murch* (1883), 23 C. D. 138; *Re Crawshay* (1889), 60 L. T. 357; and *Re Morrison*, [1901] 1 Ch. 707. The last cited cases are explained in *Re Tollemache*, [1903] 1 Ch., at pp. 462 *et seq.*

(*e*) Instruments for the sale, transfer, or other disposition either absolutely or by way of mortgage or otherwise, of any ship or vessel or any part, interest, share, or property of or in any ship or vessel—are expressly exempted from all stamp duty by the second general exemption to the Stamp Act, 1891.

(*f*) Stamp Act, 1891, s. 59.

(*g*) *Inland Revenue Commissioners* v. *Muller & Co.'s Margarine*, [1901] A. C. 217; the word property in this section had been given a very wide construction. Goodwill will usually have to be assessed separately from any land and so a contract will have to be stamped in respect of it. *West London Syndicate* v. *Inland Revenue Commissioners*, [1898] 2 Q. B. 507.

the United Kingdom (*h*). Equitable interests even in foreign land are within the section, the exception not applying to such interests (*i*).

An agreement by which members of an unlimited company were to receive cash and shares in a new company, and were in return to hold their shares in the unlimited company in trust for the new company—it being a term of the agreement that the old company was to be wound up was held to be within the section as being a sale of an equitable interest in the shares of the unlimited company (*k*).

A contract to give a declaration of trust would seem to be within the section (*l*), but a contract on the sale of leaseholds that if the landlord's assent cannot be obtained, the vendor will at the option of the purchaser execute a declaration of trust is not within it (*m*), though the declaration of trust may amount to a conveyance on sale (*l*).

Tenants and trade fixtures cannot be disposed of as goods or chattels because they are not severed from the freehold, on the other hand it would seem that they are not an interest in land (*n*), contracts for the sale of fixtures must therefore be stamped—and the purchase money in a proper case apportioned; but it would seem that these remarks would not hold good where there is a sale of fixtures with freehold or copyhold land—the fixtures in such case constituting an interest in land (*n*).

Where the contract contains provisions for the payment of the debts of the vendor, the amount of such debts must be ascertained, and for stamping purposes added to the consideration (*nn*), but this will not be so where the business is taken on from a prior date, and the debts incurred after that date only are payable by the purchaser (*o*).

Where money is payable under a contract if certain dividends are earned—there the contract will have to be stamped on the assumption of such dividends being earned—the exact amount payable being

(*h*) *Smelting Co. of Australia* v. *Inland Revenue Commissioners*, [1897] 1 Q. B. 175; *Danubian Sugar Factories* v. *Inland Revenue Commissioners*, [1901] 1 Q. B. 245; these cases seem scarcely consistent with the one first cited in the last note. It would seem, however, that an agreement to sell foreign property for shares in an English company may possibly be within the section because the shares are situate here: *Inland Revenue Commissioners* v. *Maple & Co.* (Paris), [1908] A. C. 22, 26.

(*i*) *Farmer & Co.* v. *Inland Revenue Commissioners*, [1898] 2 Q. B. 141.

(*k*) *Chesterfield Brewery* v. *Inland Revenue Commissioners* (1899), 68 L. J. (Q. B.) 204.

(*l*) See *per* CHANNELL, J., *West London Syndicate* v. *Inland Revenue Commissioners*, [1898] 1 Q. B. 226, at p. 240; *Chesterfield Brewery* v. *Inland Revenue Commissioners* (1899), 68 L. J. (Q.B.) 204.

(*m*) *West London Syndicate* v. *Inland Revenue Commissioners*, [1898] 2 Q. B. 508.

(*n*) See *Lee* v. *Gaskell* (1876), 1 Q. B. D. 700; Piper's Stamp Law and Duties, p. 220; Alpe's Law of Stamp Duties, 12th Ed. p. 131; see also Form 52. See also particulars under section 88 (2) of the Act, prescribed by the Order of the Board of Trade of March 29, 1909, *post*, pp. 270 and 271.

(*nn*) *Measures Bros.* v. *Inland Revenue Commissioners* (1900), 82 L. T. 689. In this case the debts in question were debts existing on a date previous to the agreement and had been collected at the date of the agreement.

(*o*) Stamp Act, 1891, s. 57; Alpe's Law of Stamp Duties, 12th Ed. 132.

ascertained by means of the rules laid down in section 56 of the Act (*p*).

It would seem that where there is a provision that the purchase money shall be payable by instalments the agreement will be liable to be stamped on the whole consideration—under the heading of Bond Covenant or Instrument of any kind whatsoever being the only or principal or primary security for sums of money at stated periods for a definite period (*q*), unless it is an agreement which is subject to section 59 of the Stamp Act, 1891, and is consequently already chargeable with *ad valorem* duty in respect of periodical payments (*r*).

An agreement to sell to a company consisting only of the vendors is within the section (*s*). With certain exceptions which do not seem material for the present purpose, other agreements if under hand only are chargeable with a duty of 6*d*., and if under seal, with a duty of 10*s*. as a deed (*t*).

Where the purchaser has paid the *ad valorem* duty and before having obtained a conveyance or transfer of the property, enters into a contract or agreement for the sale of the same, the contract or agreement will be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the *ad valorem* duty payable in respect of such excess consideration, and in any other case with the fixed duty of 10*s*. or of 6*d*., as the case may be.

Where duty has been duly paid in conformity with these provisions, the conveyance or transfer made to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, will not be chargeable with any duty, and the Commissioners, upon application, must either denote the payment of the *ad valorem* duty upon the conveyance or transfer, or transfer the *ad valorem* duty thereto upon production of the contract or agreement, or contracts or agreements, duly stamped.

If any contract or agreement is stamped with the fixed duty of 10*s*. or of 6*d*., as the case may require, the contract or agreement will be regarded as duly stamped for the mere purpose of proceedings to enforce specific performance or recover damages for the breach thereof (*u*); but this proviso does not make a contract which bears a 10*s*. or 6*d*. stamp, duly stamped so as to enable it to be filed with the Registrar of Joint Stock Companies on the returns

(*p*) *Underground Electric Railways* v. *Inland Revenue Commissioners*, [1906] A. C. 21.

(*q*) *County of Durham Electrical Power Distribution* v. *Inland Revenue Commissioners*, [1909] 2 K. B. 604; following *National Telephone Co.* v. *Inland Revenue Commissioners*, [1899] 1 Q. B. 250; [1900] A. C. 1. This duty will usually be 2*s*. 6*d*. per £100.

(*r*) Stamp Act, 1891, s. 56 (4).

(*s*) *Foster (John) & Sons* v. *Inland Revenue Commissioners*, [1894] 1 Q. B. 516; *Coats* v. *Inland Revenue Commissioners*, [1897] 2 Q. B. 423.

(*t*) Stamp Act, 1891. Schedule, Title, Agreement, or Memorandum of Agreement and Deed.

(*u*) Stamp Act, 1891, s. 59 (2), (3) and (4).

of allotments required by section 88 (*x*) of the Act—*i.e.* where shares have been issued as fully or partly paid for consideration other than cash (*y*)—if the Registrar declines to register such a contract on the ground that it is insufficiently stamped, the proper remedy is to obtain the opinion of the Inland Revenue Commissioners on the point, and, if necessary, to appeal from that, and so a mandamus will not lie against the Registrar if he declines to register a contract on this ground (*y*). Where a contract which would require to be registered under the section is not reduced to writing, there the particulars prescribed by the Board of Trade must be registered (*z*), and in such case the Registrar may as a condition of filing the particulars require that they shall be adjudicated under section 12 of the Stamp Act, 1891 (*a*).

Where any contract or agreement is stamped with the fixed duty, and a conveyance or transfer made in conformity with the contract or agreement is presented to the Commissioners for stamping with the *ad valorem* duty chargeable thereon within the period of six months after the first execution of the contract or agreement, or within such longer period as the Commissioners may think reasonable in the circumstances of the case, the conveyance or transfer must be stamped accordingly, and the same, and the contract or agreement will be deemed to be duly stamped. These provisions do not alter or affect the provisions of the Act as to the stamping of a conveyance or transfer after the execution thereof.

Any *ad valorem* duty paid upon any such contract or agreement must be returned by the Commissioners in case the contract or agreement be afterwards rescinded or annulled, or for any other reason be not substantially performed or carried into effect so as to operate as or be followed by a conveyance or transfer (*b*).

Turning to the other provisions as to conveyances contained in the Act, they are contained in sections 54 to 58 (both inclusive), and sections 60 and 61 of the Act, and are as follows:—

(*x*) Companies (Consolidation) Act, s. 88 (1) (*b*).

(*y*) *Reg.* v. *Registrar of Joint Stock Companies* (1888), 21 Q. B. D. 131.

(*z*) Order of Board of Trade of March 29, 1909. Form 52, *post*, pp. 270 and 271.

(*a*) Companies (Consolidation) Act, 1908, s. 88 (2).

(*b*) Stamp Act, 1891, s. 59 (5) and (6). This section must be read with s. 14 (4) of the Stamp Act, 1891, and accordingly any instrument executed in any part of the United Kingdom or relating, wheresoever executed, to any property situate or to any matter or thing done or to be done in any part of the United Kingdom is liable to duty under it; it follows that an instrument by which foreign property is conveyed in consideration of shares in an English Company will be within the section as relating to something to be done in England and possibly also as relating to property (*i.e.*, the shares) situate in England; *Inland Revenue Commissioners* v. *Maple & Co.* (Paris), [1908] A. C. 22.

54. For the purposes of this Act the expression "conveyance on sale" includes every instrument, and every decree or order of any court or of any commissioners, whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction.

55.—(1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, the conveyance is to be charged with *ad valorem* duty in respect of the value of the stock or security (*d*).

(2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a marketable security, the conveyance is to be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon the security.

56.—(1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period not exceeding twenty years, so that the total amount to be paid can be previously ascertained, the conveyance is to be charged in respect of that consideration with *ad valorem* duty on such total amount.

(2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding twenty years or in perpetuity, or for any indefinite period not terminable with life, the conveyance is to be charged in respect of that consideration with *ad valorem* duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of the instrument.

(3) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically during any life or lives, the conveyance is to be charged in respect of that consideration with *ad valorem* duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the day of the date of the instrument.

(4) Provided that no conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments, and containing also provision for securing the payments, is to be charged with any duty in respect of such provision, and no separate instrument made in that case for securing the payments is to be charged with any higher duty than ten shillings.

57. Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, the debt, money, or stock, is to be deemed the whole or part, as the case may be, of the consideration is respect whereof the conveyance is chargeable with *ad valorem* duty (*dd*).

58.—(1) Where property contracted to be sold for one consideration

(*d*) Shares in a new company will usually be taken at their face value; cp. Alpe's Law of Stamp Duties, 12th Edition, p. 132, and s. 6 of the Stamp Act, 1891. Cp. *Stamp Duties Commissioners* v. *Broken Hill South Extended*, [1911] A. C. 439, a case turning on a colonial statute.

(*dd*) See also s. 10 of the Finance Act, 1900, as to covenants to do substantial repairs or relating to property conveyed. No extra duty is chargeable in respect of such covenants.

for the whole is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration is to be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with *ad valorem* duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel is to be charged with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where there are several instruments of conveyance for completing the purchaser's title to property sold, the principal instrument of conveyance only is to be charged with *ad valorem* duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but the last-mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument.

(4) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance is to be charged with *ad valorem* duty in respect of the consideration moving from the sub-purchaser.

(5) Where a person having contracted for the purchase of any property but, not having obtained a conveyance, contracts to sell the whole, or any part or parts thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel is to be charged with *ad valorem* duty in respect only of the consideration moving from the sub-purchaser thereof, without regard to the amount or value of the original consideration.

(6) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration moving from him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable only with such other duty as it may be liable to, but the last-mentioned duty shall not exceed the *ad valorem* duty.

60. Where upon the sale of any annuity or other right not before in existence such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments, if there be more than one, is to be charged with the same duty as an actual grant or conveyance, and is for the purposes of this Act to be deemed an instrument of conveyance on sale.

61.—(1) In the cases hereinafter specified the principal instrument is to be ascertained in the following manner :—

(*a*) Where any copyhold or customary estate is conveyed by a deed,

no surrender being necessary, the deed is to be deemed the principal instrument;

(*b*) In other cases of copyhold or customary estates, the surrender or grant, if made out of court, or the memorandum thereof, and the copy of court roll of the surrender or grant, if made in court, is to be deemed the principal instrument;

(*c*) Where in Scotland there is a disposition or assignation executed by the seller, and any other instrument is executed for completing the title, the disposition or assignation is to be deemed the principal instrument.

(2) In any other case the parties may determine for themselves which of several instruments is to be deemed the principal instrument, and may pay the *ad valorem* duty thereon accordingly.

The *ad valorem* rates of duty payable on a conveyance on sale were originally fixed by the schedule to the Stamp Act, 1891 (Title Conveyance or Transfer on Sale), and were as follows:—

			£	s.	d.
Where the amount or value of the consideration for the sale does not exceed £5			0	0	6
Exceeds £5 and does not exceed		£10	0	1	0
,, £10	,,	£15	0	1	6
,, £15	,,	£20	0	2	0
,, £20	,,	£25	0	2	6
,, £25	,,	£50	0	5	0
,, £50	,,	£75	0	7	6
,, £75	,,	£100	0	10	0
,, £100	,,	£125	0	12	6
,, £125	,,	£150	0	15	0
,, £150	,,	£175	0	17	6
,, £175	,,	£200	1	0	0
,, £200	,,	£225	1	2	6
,, £225	,,	£250	1	5	0
,, £250	,,	£275	1	7	6
,, £275	,,	£300	1	10	0
,, £300					
For every £50, and also for any fractional part of £50, of such amount or value			0	5	0

They have now been doubled by section 73 of the Finance (1909–10) Act, 1910 (*e*), but that section does not apply to the conveyance or transfer of any stock or marketable security as defined by section 122 of the Stamp Act, 1891, or to a conveyance or transfer where the amount or value of the consideration for the sale does not exceed £500, and the instrument contains a statement certifying that the transaction thereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500.

(*e*) See also s. 74 of the same Act, imposing duties on voluntary conveyances, and s. 75 as to stamp duties on leases.

FORM OF AGREEMENT FOR SALE OF A BUSINESS TO A COMPANY (*f*).

AN AGREEMENT made the day of 19 *Between* A.B. of in the county of C.D. of in the county of and E.F. of in the county of (hereinafter called the vendors) of the one part and The Company Limited a company having its registered office at in the county of (hereinafter called the company) of the other part WHEREAS the vendors have for many years past carried on the business of Motor Car Manufacturers at aforesaid in co-partnership AND WHEREAS the company was incorporated under the Companies (Consolidation) Act 1908 on the day of 19 AND WHEREAS the objects of the company as set forth in its memorandum of association are to carry on the business of Motor Car Manufacturers in all its branches and to make manufacture and sell motor-cars and parts of and accessories to motor-cars, and to acquire the business of motor-car manufacturers heretofore carried on by the vendors at and for that purpose to enter with or without modification into an agreement in the said memorandum of association referred to and being this agreement and certain other objects.

NOW IT IS HEREBY AGREED between the parties hereto as follows :—

1. The vendors shall sell and the company shall purchase

(1) All the freehold and leasehold hereditaments respectively specified in the freehold and leasehold schedules hereto—but subject as to the freehold hereditaments in the second part of the said freehold schedule to the mortgage therein specified ; and

(2) All the goodwill of the said business and the full benefit of all trade-marks and the exclusive right to use the name of as part of the name of the company.

(3) All plant machinery stock in trade furniture implements tools chattels and effects now in or about the premises or belonging to the vendors in connection with the said business.

(4) The full benefit of all contracts made by or on behalf of the vendors or either of them in connection with the said business and now existing.

(5) All the cash standing to the credit of the vendors jointly at the Bank Ld and now on current account (*g*).

2. The said sale shall take effect as from the 1st day of January 19 and as from that date until the date of actual completion the vendors shall be deemed to have carried on and shall carry on the business on behalf of the company and the company shall accordingly on completion be entitled to the benefit of all contracts entered into on or after and to all the rents and profits of the said business and premises from the said 1st of January and shall bear discharge and indemnify the vendors against

(*f*) This agreement must be filed with the Registrar of Joint Stock Companies (Companies (Consolidation) Act, 1908, s. 88 (1), (*b*)).

(*g*) The Stamping Authorities require that agreements for sale of moneys on deposit account shall be stamped in respect of such moneys ; but they do not require agreements for the sale of moneys on current account to be so stamped.

all claims and liabilities in respect of any such contract and against losses and outgoings of the said business and premises as from such date (*h*).

3. The consideration for the said sale shall be the sum of £50,000 which is made up as follows that is to say—the sum of £10,000 for the said freehold and leasehold hereditaments other than the freehold hereditaments specified on the second part of the freehold schedule hereto the sum of £5000 for such last-mentioned freehold hereditaments the sum of £25,000 for the goodwill of the said business and the benefit of the above-mentioned trade-marks and contracts and the right to use the name of the sum of £1000 for the fixtures affixed to the said leasehold premises and the sum of £9000 for the rest of the property forming the subject of this agreement.

4. The said sum of £50,000 shall be paid and satisfied as follows as to £18,000 part thereof by the issue of 60 debentures for £100 each in a form which has already been agreed upon and a copy of which has for the purpose of identification been signed by of to each of the vendors as to £21,000 further part thereof by the allotment of 7000 fully paid shares of £1 each in the capital of the company to each of the vendors as to £11,000 being the balance of the consideration by the payment of the following sums of cash to the said A.B. the sum of £5000 and to each of the said C.D. and E.F. the sum of £3000.

5. The title to all the freehold hereditaments shall commence with an indenture of conveyance on sale dated the day of 18 and the title to the leasehold hereditaments shall commence with an indenture of assignment dated the day of 18 and the purchaser shall not require the production of or investigate or make any requisition or objection in respect of the prior title.

6. The company shall within 14 days after the delivery of his abstract of title deliver a statement in writing of his objections and requisitions to or on the title or evidence of title or the abstract or this agreement to Messrs. the vendors' solicitors at their office at No. in the county of and a statement in writing of any further objection or requisition arising out of any answer to any objection or requisition shall be delivered to the vendors' solicitors within seven days after such answer has been delivered. Subject to any such requisitions and objections as are delivered in the manner and within the time or times aforesaid the title shall be deemed to be accepted and every answer to an objection or requisition is to be deemed satisfactory and any objection or requisition not delivered as aforesaid shall be deemed to be waived. For the purposes of this condition time shall be deemed to be of the essence of the contract and every abstract though in fact imperfect shall be deemed perfect except for the purpose of any further objection or requisition which could not have been taken or made on the information therein contained. If the company shall make any objection or requisition or raise any question as to conveyance which the vendors are unable or on the ground of expense unwilling to remove, or comply with, then

(*h*) Sometimes the purchaser takes over all the liabilities of the business; as to stamping in such case, see *supra*, p. 161.

the vendors may give the company notice in writing requiring it to withdraw or waive such objection requisition or question and if the company shall within 14 days after the delivery of such notice fail to comply therewith then the contract shall notwithstanding any intermediate negotiation or litigation be determined and the company shall return to the vendors all abstracts and other documents relating to the premises and shall not have any claim against the vendors for costs or otherwise.

7. The company shall on or before the day of next issue and allot the said shares and debentures to each of the vendors as hereinbefore provided or as he shall direct and on the said day the purchase shall be completed at the said offices of the vendors' said solicitors and on the company showing that such allotment and issue as aforesaid has been made and paying the balance of the purchase money as hereinbefore provided the vendors shall execute and do all such documents and things as may be requisite for effectually vesting in the company the property comprised in this agreement. If for any reason other than the wilful default of the vendors or either of them the purchase is not completed on the said day the company shall pay interest on the purchase money or on so much thereof as shall from time to time be unpaid at the rate of 5 per cent. per annum from such day until the date of actual completion.

8. No further or other evidence is to be required of the identity of the property comprised in this agreement with that to which title is shown by the abstract than the descriptions in the documents themselves but the vendors will if required at the company's expense make a statutory declaration that they have for twelve years and upwards last past held and enjoyed the property in manner shown by the abstracts.

9. The property is sold subject to all easements quit and other rents and to all incidents of tenure affecting the same.

10. The company having had an opportunity of inspecting the several leases and tenancy agreements now affecting the property comprised in this agreement shall be deemed to purchase with full notice of the contents thereof.

11. If any error mis-statement or misdescription of the parcels shall have been made such error mis-statement or misdescription shall not entitle the company to rescind the sale nor shall it be entitled to any compensation [or but compensation shall be made to the company the amount of such compensation in case the parties differ to be settled by X.Y. of or failing him by Z. of].

12. Any insurance subsisting on any property comprised in this agreement or effected for the purpose of the said business shall be held for the benefit of the company subject to the consent of the office and to the purchase being completed and to the company paying a proportionate part of the premium but the company shall not be bound to keep up or renew any insurance.

13. For a period of years from the date of these presents the vendors shall not nor shall either of them whether solely or jointly with any other person or persons except on behalf of the company carry on either directly or indirectly or be engaged or concerned or interested in any business, having for its object or one of its objects the manufacture

of motor-cars or parts of or accessories to motor-cars within the United Kingdom (*i*).

14. The company shall comply with the provisions of sections 88 and 93 of the Companies (Consolidation) Act, 1908, so far as the debentures to be issued and the shares to be allotted pursuant to this agreement are concerned.

15. If the company fail to comply with any of these conditions the vendors shall be at liberty without being obliged to tender a conveyance to resell the property comprised in this agreement either by public auction or private contract and the deficiency if any on such resale and all expense attending the same or any attempted resale shall be made good and paid by the company as liquidated damages; and any increase of price on such resale shall belong to the vendors. IN WITNESS etc.

THE FREEHOLD SCHEDULE HEREINBEFORE REFERRED TO.

PART I.

[Set out particulars of freeholds other than the freehold property subject to the mortgage.]

PART II.

[Set out particulars of freehold property subject to the mortgage with particulars of mortgage.]

THE LEASEHOLD SCHEDULE HEREINBEFORE REFERRED TO.

[Set out particulars of leasehold property.]

AGREEMENT BETWEEN THE VENDORS OF PROPERTY AND A TRUSTEE ON BEHALF OF A COMPANY WHICH IT IS PROPOSED TO FORM (*k*).

AN AGREEMENT made this day of 19 . Between A.B. of in the county of and C.D. of in the county of (hereinafter called the vendors of the one part and E.F. of in the county of a trustee on behalf of a company which is hereinafter called the company and which it is proposed to form as hereinafter recited of the other part. WHEREAS the vendors have for many years past carried on the business of at in the county of in co-partnership AND WHEREAS it is proposed to form a company under the Companies (Consolidation) Act, 1908, with a capital of £ divided into shares of £ each, and a memorandum and articles of association in a form which has already been approved by the parties for the purpose of acquiring and carrying on the said business and for other

(*i*) The vendors may not solicit their old customers even without such a condition, *Trego* v. *Hunt*, [1896] A. C. 7, even where such customers have dealt with them after the sale, *Curl Brothers* v. *Webster*, [1904] 1 Ch. 685.

(*k*) It is very rarely of much use having an agreement in this form; the best plan is to have an agreement prepared to which the company is expressed to be a party, and then let the company become a party when incorporated. This agreement must be filed with the Registrar of Joint Stock Companies (Companies (Consolidation) Act, 1908, s. 88 (1), (*b*)).

purposes. NOW IT IS HEREBY AGREED between the parties hereto as follows that is to say,

1. The vendors shall sell and the company when incorporated shall purchase (here set out parcels as in last form).

[Then will follow Clauses 2 to 15 both included with such variations additions and omissions as may be thought proper.]

16. On the company entering into an agreement in this the terms of this agreement the liability of the said E.F. hereunder shall cease provided always that if the company shall not on or before the 19 enter into such an agreement then either party may give the other notice determining this agreement and thereupon the liability of all parties hereto shall cease. IN WITNESS etc.

AGREEMENT TO BE ENDORSED ON ABOVE AGREEMENT FOR THE PURPOSE OF MAKING IT BINDING ON THE COMPANY WHEN FORMED (*l*).

AN AGREEMENT made the day of 19 . Between the within named A.B. and C.D. of the first part the within named E.F. of the second part and the Company a company having its registered office at in the County of (hereinafter called the Company) of the third part. WHEREAS since the date of the within written agreement the company being the company referred to in the within agreement has been formed.

NOW IT IS HEREBY AGREED between the parties hereto as follows :—

1. Subject to the modifications hereinafter mentioned the several parties hereto hereby enter into an agreement in the terms of the within written agreement and the provisions of the within written agreement accordingly shall be binding on the parties hereto in all respects as if the company had been in existence at the time of and a party to the said agreement but subject nevertheless to the following modifications, the date fixed for completion by clause of the within written agreement shall be altered to the day of 19 and clause of the within written agreement shall be so modified as to provide that the company shall have the option of allotting fully paid shares in the capital of the company to each of them, the said A.B. and C.D. in lieu of making the payments of cash provided by the said clause.

2. All liability of the said E.F. under the presents or the within written agreement shall henceforth cease and determine and he is hereby released from all claims and demands in respect of the said agreements or either of them. IN WITNESS etc.

OPTION TO PURCHASE MINING RIGHTS WITH A VIEW TO SELL TO A COMPANY INTENDED TO BE FORMED (*m*).

AN AGREEMENT made the day of 19 . Between A.B. of in the county of of the

(*l*) This agreement must be filed with the Registrar of Joint Stock Companies (Companies Consolidation) Act, 1908, s. 88 (1), (*b*)).

(*m*) This form may be easily modified so as to meet the case

one part and C.D. of in the county of of the other part. WHEREAS the said A.B. is seised of or otherwise entitled to the mining rights specified in the first schedule hereto. NOW IT IS HEREBY AGREED between the parties hereto as follows :—

1. In consideration of the sum of £ now paid to the said A.B. by the said C.D. (the receipt whereof the said A.B. doth hereby acknowledge) the said A.B. doth hereby grant unto the said C.D. the option of purchasing the said mining rights for himself or his nominees.

2. The said option may be exercised at any time before the expiration of six calendar months from the date of these presents by the said C.D. sending through the post in a registered letter addressed to the said A.B. at his above mentioned address notice of his the said C.D.'s intention to exercise the same.

3. At any time before the expiration of the said period the said C.D. may at his own expense send any mining engineer or other expert to prospect examine and test the said mining rights and the said A.B. shall render and cause to be rendered to every such mining engineer and other expert every facility so as to enable him to properly prospect examine and test the said mining rights and to give a sufficient report as to the value of the same to the said C.D.

4. In the event of the said C.D. exercising such option the purchase price to be paid to the said A.B. shall be £ which shall be paid and satisfied by the allotment of fully paid ordinary shares of £ each in the capital of a company which the said C.D. proposes to form and the purchase shall be made subject to the conditions specified in the second schedule hereto.

5. (1) The said intended company (hereinafter called the company) shall be named the Company Limited or by some similar name.

(2) The Company shall be registered under the Companies (Consolidation) Act, 1908, as a company limited by shares with a memorandum of association enabling it to acquire the said mining rights.

(3) The original capital of the company shall be £ divided into preference shares of £1 each and ordinary shares of £1 each.

(4) The said preference shares shall confer a cumulative preferential dividend at the rate of 5 per cent. per annum payable out of any profits which may be set aside for dividend and shall also be entitled to priority on a return of capital on a winding-up, but they shall not confer any further or other right to dividends or to participation in the assets of the company on winding-up.

(5) The ordinary shares of the company shall each confer one vote, but the preference shares shall not confer any vote.

(6) The articles of the company shall provide that the minimum

of a firm offer by one to sell to a person with a view of a company being formed. If the company is formed this agreement must be filed with the Registrar of Joint Stock Companies (Companies (Consolidation) Act, 1908, s. 88 (1), (*b*)).

subscription of the company shall be shares of £ each in the capital of the company.

(7) The articles of the company shall provide that the company may pay a commission at a rate not exceeding per cent. to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares in the company or procuring or agreeing to procure subscriptions whether absolute or conditional for shares in the company.

(8) The articles of the company shall not contain any restriction on the power of the holders of ordinary shares to transfer the same except in cases where the company has a lien on such shares and they shall not confer on the company any lien on fully paid shares.

6. The consideration to be paid by the company for the said mining rights shall not exceed £ of which not more than £ shall be payable in cash and the balance in fully paid ordinary shares and the company shall not except so far as they may be included in the above consideration pay any underwriting or other expenses down to the first allotment of its shares to the public.

7. At least copies of a prospectus complying with the provisions of the Companies (Consolidation) Act, 1908, and offering not less than shares of the company to the public for subscription shall be issued not later than one month after the incorporation of the company.

THE FIRST SCHEDULE HEREINBEFORE REFERRED TO.

[Here set out particulars of mining rights.]

THE SECOND SCHEDULE HEREINBEFORE REFERRD TO.

[Here set out conditions dealing with title time for completion etc.]

ALTERNATIVE FORMS OF CLAUSES FOR AGREEMENT.

For Clause 2 of the Agreement.

The company paying and satisfying the purchase consideration is as from the day fixed for completion by this agreement to be let into possession or receipt of the rents and profits and is as from such date to pay and indemnify the vendors against all outgoings and liabilities of the property and business comprised in this agreement. If for any reason possession is not given on the said day then the vendor shall as from such day carry on the business as it has been heretofore carried on but at the expense and risk and on behalf of the company. If any question should arise under this clause then the same is to be determined by the arbitration of two arbitrators one to be appointed by the vendors and the other by the company and their umpire in accordance with the provisions of the Arbitration Act, 1889.

Clause to be added after Clause 3 *in cases where part of the property purchased e.g. the stock-in-trade is to be ascertained by valuation* (*n*).

The stock-in-trade of the said business shall be valued as on the said day (*o*) of by of or failing him by and the sum ascertained to be the value thereof shall be paid in cash on the date fixed for completion by the company to the vendors and shall for all the purposes of this agreement be deemed to be part of the purchase consideration.

Clause to be added after Article 3 *where the Book-debts are estimated as being of a certain Value.*

The book-debts comprised in this agreement are estimated at £ . The company shall use all diligence for the purpose of getting them in but if before the expiration of from the date of these presents the company shall not have got in book-debts to the said amount then the vendors shall pay the company the difference between the sum actually got in and the said amount and on such payment or if the company shall get in book-debts comprised in this agreement to the said amount without any such payment being made the company shall reassign and reassure to the vendors all the then outstanding book-debts being part of those comprised in this agreement and shall do all things necessary for vesting in them the right to sue for and recover the same, and the vendors shall be entitled to get in and retain the same for their own benefit.

Clause indemnifying the Vendors against Debts.

The company shall pay discharge and indemnify the vendors against all debts and liabilities of or in connection with the said business existing on the said day (*p*) of 19 .

Clause as to Title to be substituted for Clauses 5, 6, 8, 9, 10, *and* 11.

The company shall accept without investigation such title as the vendors have to the property comprised in this agreement and they shall not be entitled to take or make any requisition or objection in respect of title or evidence of title or any conveyance or an abstract of title or this agreement or otherwise.

Clause as to Title where Property Foreign Land substituted for Clauses 5, 8, 9, 10, *Clause* 6 *being varied to suit the circumstances.*

The vendor shall make a good marketable title to the property described in the schedule hereto according to the law of .

(*n*) Clause 3 must be varied so as to exclude the property to be valued.

(*o*) The day from which the business is to be taken over.

(*p*) The day fixed as that from which the company is to take over the assets. Whether this clause is or is not inserted is of course a matter to be decided by the parties. The purchaser of an equity of redemption is, apart from any such clause bound to indemnify his vendor against the mortgage debt. *Waring* v. *Ward* (1802), 7 Ves. 332, 337 ; *Dodson* v. *Downey*, [1901] 2 Ch. 620. See also *Mills* v. *United Counties Bank*, [1911] 1 Ch. 669.

Clause as to Title where part of the Property is Leaseholds which can only be assigned with the Lessors' consent (*pp*).

As to such of the leasehold property comprised in this agreement as is subject to leases which can only be assigned with the lessors' consent the vendors shall use their best endeavours to obtain such consent from the lessors but if in any case or cases they shall fail to do so then they shall hold the lease or leases in question as trustees for the company and no objection or requisition shall be made by reason of such lease or leases not being assigned to the company (*q*).

Clause requiring Company to pay Expenses preliminary to its Incorporation.

As a further part of the consideration for the premises the company shall pay the costs of all parties of and incidental to this agreement and all expenses of the promotion formation and incorporation of the company including underwriting and brokerage commissions and registration and other fees and shall indemnify the vendors [and all other persons] against the same (*r*).

WHERE THERE IS TO BE A PROVISION FOR THE VENDORS TO BE DIRECTORS.

The vendors shall be two of the first directors at a salary calculated at the rate of £ per annum each, and each of them shall hold such office during the term of his life and all the provisions of the articles of association of the company relating to directors are hereby incorporated except such of them as are expressly made inapplicable to the vendors or either of them (*s*).

MANAGING DIRECTOR (*t*).

The said A.B. shall be the first managing director of the company and he shall hold such office for a period of years and he shall not be liable to retire by rotation during such period, but if he ceases to be a director in any other way under the provisions of the company's articles of association he shall *ipso facto* cease to be managing director. The said A.B. shall in addition to his remuneration as a director receive

(*pp*) A company may be a responsible and respectable person within the meaning of such a clause or a lease, *Willmott* v. *London Road Car Co.*, [1910] 2 Ch. 525.

(*q*) For other forms of conditions as to title see the ordinary conveyancing precedent books.

(*r*) See *ante*, p. 156, as to the necessity of this clause; only parties to the agreement can sue on it; see *ante*, p. 156.

(*s*) There should always, in the case of clauses like this clause, and the next series of clauses, be, in addition to provision, in the articles enabling them to be carried out, an agreement. This course has two distinct advantages. Firstly, because where the agreement is to last for more than a year it satisfies the Statute of Frauds, while the articles, even when signed by the party to be charged, do not do so. *Eley* v. *Positive Government, etc., Co.* (1876), 1 Ex. Div. 20, 88; *Dale and Plant* (1890), 61 L. T. 206, and secondly, because the articles of association are revocable and capable of alteration and it is desirable to have an agreement which cannot be altered. Cp. *Baily* v. *British Equitable Assurance*, [1904] 1 Ch. 374, reversed, but not on this point, [1906] A. C. 35, and see also *Punt* v. *Symons*, [1903] 2 Ch. 506.

(*t*) A separate agreement is often desirable.

as his salary as managing director remuneration calculated at the rate of £ per annum and also a commission at the rate of per cent. on the net profits available in each year for dividend. The said A.B. shall exercise and do such powers and things as the directors of the company may from time to time direct him to do and shall conform to such regulations as the directors may from time to time make (*u*) and he shall honestly and diligently serve the company and devote his whole time and attention to its business.

If the company shall wrongfully dismiss the said A.B. during the continuance of this agreement then it shall pay him by way of liquidated damages (*x*) a sum of £ for each complete year of the said five years unexpired at the time of such wrongful dismissal and a proportionate amount for any fraction of a year then unexpired.

CLAUSE WHERE THERE IS A DOUBT AS TO WHETHER THE CONTRACT WILL BE GOVERNED BY ENGLISH OR FOREIGN LAW.

This agreement shall for all purposes be deemed an English agreement and it shall be given effect to and construed accordingly (*y*) [and any proceedings hereunder may be served on the said A.B. notwithstanding he is not within the jurisdiction of the English Courts by leaving the same at the registered office of the company and posting a copy of the same to him at his usual or last known address] (*z*).

(*u*) Very frequently there is a clause restraining the managing director from carrying on business otherwise than on behalf of the company.

(*x*) It is inadvisable to have a clause imposing a sum as liquidated damages for the breach of all or any of the covenants in the agreement. The courts sometimes look upon such a sum as a penalty and not as liquidated damages at all. The fact that the sum is stated to be liquidated damages or a penalty, as the case may be, raises a presumption that such sum is what it is stated to be. *Diestal* v. *Stevenson*, [1906] 2 K. B. 345, but this presumption may be displaced as, *e.g.*, in cases where the same sum is stated to be liquidated damages for breaches of the contract which are of varying degrees of importance. Where the sum is fixed for one particular breach and is in proportion to the amount of non-performance and is not very exorbitant it will usually be looked on as liquidated damages: *Clydebank Engineering, etc., Co.* v. *Don Jose Ramos*, [1905] A. C. 6, *per* Lord DAVEY at p. 16. For other cases on the subject, *Commissioner of Public Works* v. *Hills*, [1906] A. C. 368; *Pye* v. *British Automobile, etc., Co.*, [1906] 1 K. B. 425; *Willson* v. *Love*, [1896] 1 Q. B. 626; *Elphinstone (Lord)* v. *Monkland Iron, etc., Co.* (1886), 11 A. C. 332; *Wallis* v. *Smith* (1882), 21 C. D. 243; *Law* v. *Local Board of Redditch*, [1892] 1 Q. B. 127.

(*y*) It is perfectly competent for the parties to decide by what law the contract is to be construed. *Spurrier* v. *La Cloche*, [1902] A. C. 446; *Hamlyn* v. *Talisker Distillery*, [1894] A. C. 202; *South African Breweries* v. *King*, [1900] 1 Ch. 273; *British South Africa Co.* v. *De Beers Consolidated Mines*, [1910] 1 Ch. 354, [1910] 2 Ch. 502; reversed on other grounds, [1912] A. C. 52.

(*z*) The company can be served under s. 116 of the Companies (Consolidation) Act, 1908: *Watkins* v. *Scottish Imperial Insurance Co.* (1889), 23 Q. B. D. 285, decides that a company registered in Scotland or Ireland cannot be served in England even when it carries on

ARBITRATION CLAUSE.

If any doubt or difficulty shall arise in the construction or carrying out of or otherwise in relation to this agreement the same shall be determined by the arbitration of two arbitrators one to be appointed by the vendors and the other by the company and their umpire in accordance with the provisions of the Arbitration Act 1889.

CLAUSE GIVING EITHER PARTY POWER TO DETERMINE AGREEMENT IN THE EVENT OF INSUFFICIENT SHARES BEING TAKEN UP.

If at least shares in the company reckoned exclusively of any shares [underwritten or] payable wholly or partly otherwise than in cash have not been allotted before the day of next then either party may determine this agreement by notice in writing to the other and thereupon the company shall return to the vendors all documents in its possession relating to the premises and neither party shall have any claim against the other for costs or otherwise under or by virtue of this agreement (*a*).

UNDERWRITING.

Underwriting in connection with shares means agreeing to place (*b*), *i.e.* find subscribers for, or take so many of the shares specified in the underwriting letter, as are not before a certain date or event otherwise subscribed for. In return for this agreement the underwriter receives a certain sum, or more usually, a commission calculated on the total number of shares underwritten (*c*).

Before the Companies Act, 1900, came into force, there was some doubt whether a limited company could make such payments—it was settled law that it could not issue shares at a discount—and it was doubtful whether it was not *ultra vires* for a company to apply its capital in paying for the issue of its own shares (*d*).

Then came section 8 of the Act of 1900, which differed from the existing section in that it only applied on an offer of shares to the

business there, probably a company could not contract itself out of this position. A person may agree for service on himself here in England even when he is out of the jurisdiction: *Montgomery* v. *Liebenthal*, [1898] 1 Q. B. 487; but he cannot empower any one to serve him out of the jurisdiction: *British Wagon Co.* v. *Gray*, [1896] 1 Q. B. 35.

(*a*) Having regard to the provisions as to minimum subscription and restricting a company's right to commence business contained in the Companies (Consolidation) Act, 1908, ss. 85 and 87, this clause will very rarely be required now.

(*b*) See *Gorrissen's Case* (1873), 8 Ch. 507.

(*c*) *Licensed Victuallers' Mutual Trading Association* (1889), 42 C. D. 1.

(*d*) See *per* Lord DAVEY in *Hilder* v. *Dexter*, [1902] A. C. 474, at p. 478; *Lydney and Wigpool Iron Ore Co.* v. *Bird* (1886), 33 C. D. 85, 95; and *Faure Electric Accumulator Co.* (1886), 40 C. D. 141.

public for subscription (*e*). This section was amended by section 8 of the Act of 1907, which altered the law into its present shape.

It is now lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorized by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent. of the commission paid or agreed to be paid is—

(*a*) In the case of shares offered to the public for subscription, disclosed in the prospectus ; or

(*b*) In the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed (*f*) form signed in like manner as a statement in lieu of prospectus and filed with the Registrar of Joint Stock Companies, and where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.

Except in the cases above mentioned, no company may apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise (*g*).

Possibly if the original articles do not authorize payments for underwriting, payments made for that purpose may be retrospectively ratified by altering the articles, and by passing a resolution adopting the payments (*gg*).

A vendor to, or promoter of, or any other person who receives money or shares from a company has, and is deemed always to have had, power to apply any part of the money or shares so received in payment of any commission the payment of which if made directly by the company would have been legal under the section (*g*). Whether any particular payment does or does not amount to a payment

(*e*) For the meaning of these words, see the judgment of FARWELL, J., in *Burrows* v. *Matabele Gold Reefs and Estates Co.*, [1901] 2 Ch. 23, at p. 27, and on the old section generally, see *Booth* v. *New Afrikander Gold Mining Co.*, [1903] 1 Ch. 295.

(*f*) This would apply to private companies, as the section applies to them: *Dominion of Canada General Trading and Investment Co.* v. *Bregstock*, [1911] 2 K. B. 648. Prescribed means prescribed by the Board of Trade, see Companies (Consolidation) Act, 1908, s. 285 ; for form, see *post*, p. 182.

(*g*) Companies (Consolidation) Act, 1908, s. 89.

(*gg*) Cp. *Sewell's Case* (1868), 3 Ch. 131 ; *Phosphate of Lime Co.* v. *Green* (1871), L. R. 7 C. P. 43 ; *Normanby* v. *Ind, Coope & Co.*, [1908] 1 Ch. 84. In such a case the registrar has declined to file a statement.

within the section, where there is a sale to an intermediary, and then a resale by him at a profit to the company, would seem in all cases to be a question depending on the facts of the particular case (*h*). Where the articles provide for payment of commission at a certain rate, that will usually have to be calculated on all the shares underwritten (*i*). Such an article will not apparently authorize the payment of a lump sum, even where such sum amounts to less than the rate authorized (*k*).

The section does not authorize the sale of shares at a discount, and it has been held that a company which could pay a commission of 90 per cent., could not make an issue of 10*s*. shares, on the terms that each person who took shares was to be entitled to receive a bonus or payment of 7*s*. for each share taken (*l*). The reason of the decision was that the scheme was a colourable attempt to bring what was really an issue of shares at a discount within the section. It is very difficult, however, to see why the transaction was not protected by the section, seeing that it was within the express words of the section.

It was recognized in this case that the section protects transactions which cannot be described either as placing or underwriting shares (*l*).

An agreement on a reconstruction under which underwriters are to take shares not applied for by members of the old company, and are to receive a commission for so doing, is protected by the section, and it is no objection to such a scheme that such shares will be credited as paid up to the same extent as they would have been in the hands of the members of the old company, even though such amount works out to a larger amount per share than the company can pay in underwriting commissions (*m*).

An agreement by which a person is, in consideration of taking shares, entitled to an option to take further shares at a price not less than par was good before the Act of 1900 (*n*) and is not affected by the section (*o*). Such an agreement will not prevent a company

(*h*) *Booth* v. *New Afrikander Gold Mining Co.*, [1903] 1 Ch. 295.

(*i*) *Licensed Victuallers' Mutual Trading Association* (1889), 42 C. D. 1.

(*k*) *Booth* v. *New Afrikander Gold Mining Co.*, [1903] 1 Ch. 295; see also *Barrow* v. *Paringa Mines*, [1909] 2 Ch. 658. Article 7, p. 96, *supra*, will allow either form of payment.

(*l*) *Keatinge* v. *Paringa Consolidated Mines* (1902), 18 T. L. R. 266.

(*m*) *Barrow* v. *Paringa Mines*, [1909] 2 Ch. 658, a point was also attempted to be made of the fact that the underwriters had to make a payment to the liquidator of the old company in respect of each share taken up.

(*n*) *South African Trust and Finance* (1896), 74 L. T. 769, affirmed *sub nom. Hirsch* v. *Burns* (1898), 77 L. T. 377; cp., however, the remarks of RIGBY, L.J., in *Shaw* v. *Holland*, [1900] 2 Ch. 305, at pp. 310, 311.

(*o*) *Hilder* v. *Dexter*, [1902] A. C. 474; it is thought that this case clearly overrules *Burrows* v.

going into liquidation, or entering into a reconstruction scheme before the option is exercised, and if the person who has the option exercises it he will only be entitled to have the shares in the form they are in at the date when he does so, and with the rights they then confer (*p*). In the case of *Shorts* v. *Colwill* (*q*) a person agreed to find persons who would take up the unissued shares of a company at a premium of £1 per share, he receiving in return a commission of 10*s*. per share, which was ultimately payable in shares. Warrington, J., held the transaction to be bad, because there was no offer of shares to the public. The section further provides that nothing therein contained is to affect the power of the company to pay such brokerage as was previously lawful (*r*). It was settled before the Act that a company could pay a reasonable brokerage to a person for placing its shares for it (*s*).

It may be here stated that as a company cannot purchase its own shares, any brokerage paid to a broker on such a purchase will be an illegal payment, and the broker can not only not recover moneys actually expended in the purchase, but it would seem that if he has been paid he can be required to recoup the moneys paid (*t*).

Underwriting contracts, like other contracts, require not only an offer and acceptance, but also that the acceptance shall be notified to the person making the offer (*u*); but there may, no doubt, be cases where from the conduct of the parties, it will be presumed that notice of acceptance was inferred or waived by the person making the offer (*x*), and it would seem to be sufficient if the underwriting

Matabele Gold Reefs and Estates Co., [1901] 2 Ch. 23, though Lord BRAMPTON said they were "materially distinguishable."

(*p*) *Hirsch* v. *Burns* (1898), 77 L. T. 377.

(*q*) (1909) 101 L. T. 598. The articles only allowed payment of commission on an offer of shares to the public.

(*r*) Companies (Consolidation) Act, 1908, s. 89 (3).

(*s*) *Metropolitan Coal Consumers' Association* v. *Scrimgeour*, [1895] 2 Q. B. 604, which explains *Faure Electric Accumulator Co.* (1888), 40 C. D. 141, on the ground that the payments there made were not *bonâ fide* payments. In *Marzettis's Case* (1880), 28 W. R. 541, the brokerage and commission were improper because they were made with a view to rigging the market. In *Ex parte Chatteris* (1880), 49 L. J. (CH.) 253, the brokerage was improper because the transaction was not *bonâ fide* and was made to a person in a fiduciary position, without full disclosure; see also *West of England Paper Mills Co.* v. *Gilbert* (1892), 61 L. J. (CH.) 92; *Imperial Mercantile Credit Association* v. *Chapman* (1871), 19 W. R. 379.

(*t*) See *Zulueta's claim* (1870), 5 Ch. 444, and cp. *London, Hamburg and Continental Exchange Bank* v. *Henry* (1869), 7 Eq. 334.

(*u*) *Ex parte Stark*, [1897] 1 Ch. 575; *Gutta Percha Co.* (1899), 15 T. L. R. 183.

(*x*) See *Bultfontein Sun Diamond Mines* (1897), 75 L. T. 669.

contract has been acted on, and shares have been allotted under its provisions, before the offer is withdrawn (*y*).

In one case a person after offering to underwrite shares by a private letter made such offer conditional on its being accepted before a certain date; he was never notified of its acceptance, but was held to be estopped from denying that he was a shareholder, as the company without knowing of the letter had put him on its list of shareholders (*z*), and, of course, a person after shares have been allotted to him can by acting as a shareholder, prevent himself from setting up any defence there may have been on his contract (*a*).

Underwriting contracts usually contemplate an application by the underwriter for any shares he may have to take (*b*), and he usually irrevocably authorizes the person with whom he contracts to apply for the shares in his name, or sends an application form which he agrees shall be irrevocable, in such cases the authority being coupled with an interest is irrevocable (*c*); but where the agreement is to take or find persons to take shares when called upon, and in default the company is authorized to apply in the name of the underwriter for shares, there the company cannot allot the shares, until it has called upon the underwriter to apply for them (*d*). It would seem that where some of the underwriters make an application to have some of the shares underwritten by them allotted to them firm—*i.e.*, unconditionally—this will relieve the other underwriters (*e*).

The section only applies to the underwriting of shares, and not of debentures, as there was never any legal objection to the underwriting of debentures; but sums paid for underwriting of shares or debentures, or allowed by way of discount in respect of debentures, or so much thereof as has not been written off, must be stated in every balance sheet of the company, until the whole amount has been written off (*f*).

(*y*) *Ex parte Stark*, [1897] 1 Ch. 575; *Hindley's Case*, [1896] 2 Ch. 121.

(*z*) *Ex parte Harrison* (1894), 69 L. T. 204, but this case has been so explained away in *Ex parte Stark*, [1897] 2 Ch. 575, as to make it of very little authority.

(*a*) *Hindley's Case*, [1896] 2 Ch. 121.

(*b*) *Licensed Victuallers' Mutual Trading Association* (1889), 40 C. D. 1.

(*c*) *Carmichael's Case*, [1896] 2 Ch. 643.

(*d*) *Ormerod's Case*, [1894] 2 Ch. 474; *Brussels Palace of Varieties* v. *Procter* (1894), 10 T. L. R. 72; *Bultfontein Sun Diamond Mines* (1897), 75 L. T. 669.

(*e*) *Sydney Harbour Collieries* v. *Earl Grey* (1898), 14 T. L. R. 373, and see *Paul Boyer, Ltd.* v. *Edwardes* (1909), 18 L. T. R. 3.

(*f*) Companies (Consolidation) Act, 1908, s. 90, it will be remembered that the expression debenture includes debenture stock, *ibid.* s. 285: and see as to what must be stated in the prospectus, *ibid.*, s. 81 and *post*, p. 216, under prospectus, and in a statement in lieu of a prospectus, *ibid.*, s. 82, and the form in the second schedule to the Act, and *post*, p. 220.

FORM TO BE FILED WITH THE REGISTRAR OF JOINT STOCK COMPANIES BY A COMPANY WHICH IS NOT OFFERING SHARES TO THE PUBLIC FOR SUBSCRIPTION ON PAYING AN UNDERWRITING COMMISSION ON SHARES (*g*).

Certificate No. Form No. 58.

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

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Statement by a Company of the amount or rate paid or agreed to be paid by way of commission in respect of shares.

(Pursuant to Section 89.)

Presented for filing
by

Statement by a Company pursuant to section 89 of the Companies (Consolidation) Act 1908, of the amount or rate paid, or agreed to be paid, by way of Commission in respect of Shares.

Name of Company	______ Limited.
Article of Association authorizing Commission	No. ______
Particulars of amount paid or payable as Commission for subscribing, or agreeing to subscribe, or procuring or agreeing to procure, subscriptions for any Shares in the Company; or	Paid £ ______ Payable ______
Rate of such Commission	Rate per cent. ______
Date of Circular or Notice, if any (not being a prospectus) inviting subscriptions for the shares and disclosing the amount or rate of the Commission.	Date ______
Signatures of the Directors or of their agents authorised in writing. Date.	______

FORM OF UNDERWRITING AGREEMENT (*gg*).

AN AGREEMENT made the day of 19 BETWEEN a Company registered under the Companies (Consolidation) Act 1908 and having its registered office at (hereinafter called the Company) of the one part and the several persons whose

(*g*) Form prescribed by order of the Board of Trade of 29th March, 1909. A 5*s*. registration fee stamp must be impressed. See Companies (Consolidation) Act, 1908, s. 244, and Table B, in the first schedule to the Act.

(*gg*) A 6*d*. stamp if not under seal, otherwise a 10*s*. stamp.

names descriptions and addresses are set out in the first column of the schedule hereto (hereinafter called the underwriters) of the other part.

Whereby it is agreed between the parties hereto as follows—

1. Subject as hereinafter provided each of the underwriters hereby agrees to subscribe upon the terms of the prospectus hereinafter referred to for the number of shares of £ each in the Company set opposite his name in the second column of the schedule hereto.

2. Any shares in the company (other than shares which shall be allotted as fully or partly paid up otherwise than in cash and shares which shall be allotted under this agreement) which the company shall be entitled to and shall allot on or before the day of next shall be taken as being in relief of the liability of the underwriters hereunder and such liability shall accordingly be extinguished or reduced as the case may be and in the event of such liability being reduced then each of the underwriters shall as far as possible share in the benefit of such reduction rateably in the proportion which the shares set opposite his name in the second column of the schedule hereto bear to the total number of shares hereby underwritten.

3. As soon as the company has ascertained the number of shares which any one of the underwriters is liable to subscribe for hereunder it shall apply for and accept an allotment of such shares in the name and on behalf of such underwriter and each of the underwriters hereby authorizes the company to make such allotment and irrevocably appoints the company his attorney in his name and on his behalf to make such application and accept such allotment. Where any shares have been allotted under this clause the company shall forthwith notify the underwriter to whom they have been allotted of such allotment but the omission to give any such notice shall not invalidate any allotment.

4. Each of the underwriters has before the execution of this agreement paid to the company a sum equal to the sum payable on application on the shares set opposite his name in the second column of the schedule hereto. In the event of an allotment being made to any one of the underwriters hereunder the sum so paid by him shall in the first instance be applied in or towards the payment of the moneys payable on application and allotment on the shares so allotted to such underwriter and the balance if any of such sum shall be repaid to him. In the case of no allotment being made to any of the underwriters hereunder the sum so paid by him shall be repaid to him.

5. In consideration of the premises the company shall as soon as may be after the said day of next pay to each underwriter a commission at the rate of 5 per cent. on the nominal value of the shares set opposite his name in the second column of the schedule hereto.

6. If any underwriter shall put forward a responsible nominee or responsible nominees to subscribe for all or any of the shares which such underwriter is liable to subscribe for under this agreement then if such nominee or nominees shall apply for and pay the sum payable on application in respect of the shares for which he is or they respectively are so nominated the company shall out of the shares which such underwriter is liable to subscribe for hereunder allot to such nominee or nominees the shares so applied for or if such underwriter is not liable under this

agreement to subscribe for that number of shares then all the shares for which such underwriter is so liable to subscribe and so that any such deficiency shall be borne so far as possible by such nominees rateably according to the number of shares they have respectively applied for. On any such nominee accepting any such allotment as aforesaid the underwriter who has nominated him shall to the extent of the allotment so accepted be released from his liability hereunder.

7. Any notice to be served by the company on any underwriter may be served either personally or by prepaid letter addressed to him at the address set opposite his name in the schedule hereto and every such notice shall be deemed to have been served within twenty-four hours after the letter containing the same was put into the post office and in proving such service it shall be sufficient to prove that such letter was properly addressed and put into the post office.

8. It is a condition precedent to this agreement that at least copies of a prospectus which has been approved by the parties and a copy of which has for the purpose of identification been signed by shall be issued to members of the public before the day of next.

THE SCHEDULE HEREINBEFORE REFERRED TO.

Names.	Addresses.	Descriptions.	No. of Shares.

IN WITNESS etc.

SUB-UNDERWRITING LETTER (*hh*).

(Address)

19

To Esq. (one of the underwriters)

Dear Sir,

I have read the prospectus of the Company Limited referred to in an underwriting agreement dated 19 and made between the said company of the one part and certain persons of whom you were one whose names were mentioned in the schedule to such agreement of the other part and I have also read the said agreement and paid you the sum of £ being the amount payable on application on the shares of the said company, which I am or may be liable to take under this letter. In consideration of your agreeing to pay to me the

(*hh*) A 6*d*. stamp.

sum of £ out of the commission payable to you under the said agreement I agree to take and I hereby irrevocably appoint you my attorney in my name and on my behalf to apply for and to accept an allotment of one-third (or the number nearest thereto) of the number of shares (if any) which you may eventually be liable to subscribe for under such agreement. It is a term of this agreement that the sum of £ so paid by me to you is to be applied in or towards the payment of all moneys payable on application and allotment in respect of such shares as are allotted to me under this agreement the balance of such sum to be repaid to me. All notices in relation to this matter may be sent to me at the above address.

Signed (the sub-underwriter).

I accept the terms contained in the above letter.

Signed (the under-writer).

AGREEMENTS FOR LOANS ON THE SECURITY OF SHARES OR DEBENTURES OF A COMPANY.

Very commonly there is in these cases a simple deposit of the shares and debentures, with a verbal agreement that they are to be treated as security for the money advanced. Where no time is fixed for payment of the mortgage debt it is payable on demand (*h*), and apparently the mortgagee can sell at any time after the mortgage money is payable if it is payable at a fixed time (*i*), or if there is no time fixed, after reasonable notice. It would seem that such notice need not state that the mortgagee intends to sell on default, it will be sufficient that it requires payment of the purchase money (*k*), nor will such a sale be invalidated by the fact that the mortgagee has without fraudulent intent previously sold part of the property comprised in the security under the mistaken belief that he was the owner, or has sold all the property comprised in the security to a nominee for himself under the mistaken belief that he had power to do so (*k*).

It would seem that foreclosure can be obtained in cases where shares or debentures have been deposited (*l*), at all events, where the shares or debentures deposited are not transferable by mere

(*h*) *Deverges* v. *Sandeman, Clark & Co.*, [1902] 1 Ch. 579, VAUGHAN-WILLIAMS, L.J. (who dissented from the majority of the Court of Appeal on the question of notice), took the view that where the mortgage was by deed, and the provisions of the Conveyancing and Law of Property Act, 1881, as to sale consequently applied, they would not derogate from the power of sale established by the previous law. The case was decided on the authority of *Ex parte Hubbard* (1886), 17 Q. B. D. 690, and *Re Morritt* (1887), 18 Q. B. D. 222, both cases of pledges. See also *Stubbs* v. *Slater*, [1910] 1 Ch. 632.

(*i*) *Tucker* v. *Wilson* (1714), 1 P. Wms. 261; 5 Bro. P. C. 193.

(*k*) *Henderson* v. *Astwood*, [1894] A. C. 150.

(*l*) *Harrold* v. *Plenty*, [1901] 2 Ch. 314; *General Credit Co.* v. *Glegg* (1883), 22 C. D. 549. The identical stock, shares or debentures

delivery, as is the case with share warrants or bearer bonds. In the latter case it has been said that the deposit of the bonds amounts to a pledge and not to a mortgage (*m*), and that consequently only a special property and not the property in the shares or debentures is given, with the result that sale and not foreclosure is the depositor's remedy (*n*). If the contract in such case is one of pledge, as it has been treated in several cases (*o*), this is no doubt the law; but it seems extremely difficult to consider the contract to be different to that entered into in the case of a deposit of the certificates of shares or of debentures, which pass by transfer, both being dealings with choses in action, but the latter requiring to be completed by a transfer, while the former does not (*p*).

The question of how far a blank transfer may be filled in after execution is dealt with later (*pp*), as is also the question of notices to the company (*ppp*).

Specific performance of an agreement to lend money on shares will not be given (*q*), and it is thought that an agreement, even when it is made with the company, for the deposit of debentures to secure a debt, is not an agreement to take up and pay for debentures within the meaning of section 105 of the Act, and consequently that it cannot be enforced by an order for specific performance (*q*); it follows that it will usually be desirable, in transactions of this nature, to advance the money and deposit the shares, etc., in the first instance, and then to vary the agreement in the text by reciting that this has been done, and providing for the terms of the loan, and the powers of the parties as is done by such agreement. Transactions of this sort are also not within section 103 of the Act, and a condition which renders the security irredeemable or prevents the mortgagor from dealing with the property as freely after he has paid his debt, as he could before he contracted it, would therefore still offend against the rule which prohibits the clogging of the equity of redemption and be void (*r*).

mortgaged must be returned on redemption, and there is no Stock Exchange custom to the contrary: *Langton* v. *Waite* (1868), 6 Eq. 165.

(*m*) *Carter* v. *Wake* (1877), 4 C. D. 605; *Gilligan* v. *National Bank*, [1902] 2 Ir. 513.

(*n*) *Carter* v. *Wake* (1877), 4 C. D. 605; *Fraser* v. *Byas* (1895), 13 Reports, 452.

(*o*) See *Donald* v. *Suckling* (1866), L. R. 1 Q. B. 585; *Haliday* v. *Holgate* (1868), L. R. 3 Ex. 299.

(*p*) In *Deverges* v. *Sandeman, Clark & Co.*, [1901] 1 Ch. 70, FARWELL, J., says at p. 74 that movable chattels capable of manual delivery as opposed to choses in action are the proper subjects of a pledge.

(*pp*) *Post*, pp. 288 *et seq.*

(*ppp*) *Post*, pp. 192 *et seq.*; pp. 291 *et seq.*

(*q*) See *South African Territories* v. *Wallington*, [1898] A. C. 309.

(*r*) *Bradley* v. *Carritt*, [1903] A. C. 253, where a clause, in an agreement for a loan on the security of shares, that the mortgagor would always thereafter use his best endeavours to secure that the mortgagee (a tea broker) should have the sale of the company's tea, was held to be bad after the mortgagor had paid his debt: *Jarrah Timber Co.* v. *Samuel*, [1904] A. C. 323,

The question of the reissue of debentures which have been deposited under such an agreement is dealt with by section 104 of the Act, and discussed under the heading of debentures. That section certainly applies to the sort of transaction now under discussion (*rr*).

AGREEMENT FOR LOAN ON SECURITY OF SHARES AND DEBENTURES (*rrr*).

THIS AGREEMENT made the day of 19 BETWEEN A.B. (hereinafter called the borrower) of the one part and C.D. (hereinafter called lender) of the other part.

1. The borrower shall forthwith hand to the lender (1) his certificate for the 1000 shares of £1 each numbered to in the capital of the Company Limited (hereinafter called the company) and now registered in the name of the borrower (2) the 10 debentures numbered to which are now registered in the name of the borrower and form part of an issue made by the company of 100 debentures each for securing £100 and interest as therein mentioned and (3) duly executed blank transfers of the said shares and debentures.

2. On the said certificate debentures and transfers being handed to the lender he shall advance to the borrower a sum of £1000 and shall hold the said shares and debentures as security for such advance.

3. The said sum of £1000 shall be repayable on the day of 19 and the borrower shall pay interest thereon in the meantime and till repayment at the rate of 6 per cent. per annum. Such interest to be payable by quarterly payments on the day of the day of the day of and the day of in each year—and the first of such payments to be made on the day of next.

4. If the borrower shall fail to repay the said sum of £1000 and all interest then due under these presents when the same becomes repayable then the lender may at any time thereafter give the borrower one week's notice that he the lender intends to sell such shares and debentures or any of them and at the expiration of such notice the vendor may at any time before the said sum of £1000 and all interest then due thereon have been paid proceed to sell the shares and/or debentures referred to in the notice or any of them.

5. Any money arising from a sale under the last preceding clause hereof shall be held by the lender in trust to be applied by him first in payment of all costs charges and expenses incurred by him in relation to the sale or otherwise in relation to this agreement or the charge hereby created. Secondly in payment of all interest due under these presents

where an agreement that the mortgagor should have the option of purchasing the debentures which form his security was held to be bad; *London and Globe Finance Corporation* v. *Montgomery* (1902), 18 T. L. R. 661, would seem a very doubtful authority since these two cases.

(*rr*) See *post*, pp. 468 *et seq.*

(*rrr*) This agreement will be under seal where the transfers are required to be by deed. It will bear a mortgage stamp. See *infra*, p. 484.

and thirdly in repayment of the principal sum hereby secured and the balance if any shall be paid to the borrower.

6. On any such sale as aforesaid the purchaser shall not be bound or concerned into the application of the purchase money or to inquire into the regularity of the sale but the remedy of any one injured by a sale wrongfully made in purported exercise of such power of sale shall be in damages against the person exercising the power only.

7. On any such sale the lender may fill in the transfer or transfers of the shares and/or debentures sold with the name of the purchaser or any person named by him and may present all transfers requisite for carrying out any such sale for registration—and the lender may also at any time after the said day of 19 fill in the transfers of the said shares and debentures or either of them with his own name or any other name he may think fit and present the same for registration, and the borrower hereby irrevocably appoints the lender his attorney in his name or on his behalf for the purpose of executing any further transfers that may be requisite for carrying out any such sale.

8. Any dividends or interest received by the lender after the said shares or debentures are registered in his name shall be applied in the same manner as moneys arising from a sale under the provisions hereinbefore contained and the lender may exercise any vote which may be conferred on him by such shares or debentures being registered in his name in such manner as he may think fit and shall not be responsible for any exercise of or for not exercising the same.

9. Any notice to be given to the borrower hereunder may be given by leaving the same at or by sending the same through the post to him at his above-mentioned address—and any such notice if sent by post shall be deemed to be duly given at the expiration of twenty-four hours from the time when a letter containing the same was put into the post box.

10. If the borrower shall on or before the said day of repay the said sum of £1000 and all interest and other moneys hereby secured then the lender shall hand back to him the said certificate and debentures and transfers—and shall execute and do but at the expense of the borrower all documents and things which may be requisite for effectually vesting the said shares and debentures in the borrower or as he shall direct. IN WITNESS, etc.

FORM OF POOLING AGREEMENT (*s*).

AN AGREEMENT made the day of 1909. BETWEEN the several persons whose names are set out in the first column of the schedule hereto of the one part and A.B. of in the county of and C.D. of in the county of (who and the survivor of them and the executors and administrators of such survivor are where the context admits hereinafter called the trustees) of the other part. WHEREAS the several persons whose names and addresses are set out in the first and second columns of the schedule hereto have respectively handed to the trustees the certificates for the shares in the Company Limited, the particulars of which are set opposite their respective names in the third and fourth columns of such schedule AND WHEREAS each of such persons has also handed to the trustees blank transfers for the shares comprised in such certificates NOW IT IS HEREBY AGREED BETWEEN THE PARTIES HERETO—

1. The Trustees shall sell such of the shares specified in the Schedule hereto at such price or prices not being less in any case than 25*s*. per share as they shall in their discretion think fit.

(*s*) The agreement must be under seal where the transfers are required to be by deed, see *post*, p. 289. It will require a 6*d*. stamp if not under seal, otherwise a 10*s*. stamp.

2. Except as hereinafter provided no such sale shall be made after the day of 19 and on any such sale the trustees may fill in the transfers deposited with them with the numbers of the shares to be transferred and with the names of the purchasers or of such other persons as the purchasers shall direct and do all things that may be requisite for obtaining the registration of such transfers.

3. No person whose name is mentioned in the schedule hereto shall before the said day of 19 sell any share he may now or at any time previous to the said day hold in the said company.

4. All moneys received by the trustees arising from any sale under these presents shall be applied by them in the payment of all costs and expenses incurred by them in connection with such sales or otherwise under these presents and the balance if any shall be divided amongst the persons whose names are set out in the first column of the schedule hereto in proportion to the number of shares set opposite their respective names in the third column of such schedule.

5. Any of the shares set out in the schedule hereto which shall not be sold by the said day of 19 shall be distributed and allotted among the several persons mentioned in such schedule as nearly as possible in proportion to the number of shares set opposite their respective names in the third column of such schedule—and each of such persons shall accept such of such shares as the trustees may pursuant to this clause allot to him—provided always that the trustees may at any time after the said day of 19 sell any of the shares set out in the schedule hereto which are then unsold and which by reason of the ratio which the total number of such shares which are then unsold bears to the total number of shares set out in the schedule hereto, cannot in the opinion of the trustees be conveniently distributed hereunder and the trustees may also after the said day of sell any shares which it may be necessary to sell to provide for any costs or expenses incurred by them in connection with any sale hereunder or otherwise under these presents and which they are unable to pay out of any moneys then in their hands.

6. Any sale under the last preceding clause may be made at such price as the trustees in their discretion shall think fit and on any distribution or sale under such clause they may fill in the transfers deposited with them in such manner and do such things as may be requisite for carrying such distribution or sale into effect including anything that may be requisite for obtaining the registration of any transfer.

7. All moneys received by any person named in the first column of the schedule hereto by way of dividend or otherwise in respect of any shares set opposite his name in the third column of such schedule prior to the ultimate distribution of shares under these presents shall be paid to the trustees and subject to the rights of any purchaser of shares shall be applied by the trustees in the same manner as if they were moneys arising from a sale under these presents.

8. The trustees shall as soon as conveniently may be after the said day of 19 render to each of the persons named in the schedule hereto a true account of all dealings and transactions hereunder and such account shall show the sum of money and the

number of shares to which each of such persons is entitled hereunder and they may send to each such person such account together with a cheque for the amount of cash he is entitled to, by a letter sent through the post addressed to him at the address set opposite his name in the second schedule hereto.

9. Each of the persons named in the first column of the schedule hereto hereby appoints the trustees his attorneys in his name or on his behalf to execute and do all transfers documents and things which may be necessary for any of the purposes aforesaid.

THE FIRST SCHEDULE HEREINBEFORE REFERRED TO.

Name of Member.	Address.	Number of Shares.	Distinctive Number of Shares.

IN WITNESS, etc.

CHAPTER IV.

THE CONTRACT OF MEMBERSHIP AND MATTERS RELATING THERETO.

EVERY company must keep in one or more books a register of its members and enter therein the following particulars :—

(1) The names and addresses and the occupation if any of the members, and, in the case of a company having a share capital, a statement of the shares held by each member distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member.

(2) The date at which each person was entered in the register as a member.

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

Where share or stock warrants are issued the company must strike out of its register the names of the members holding the shares or stock specified in such warrants as if they had ceased to be members, and must enter in the register : (1) the fact of the issue of the share or stock warrants ; (2) a statement of the stock or shares included in each warrant distinguishing each share by its number ; (3) the date of the issue of the warrant. Until the warrant is surrendered the above particulars are to be deemed to be the particulars required by the Act to be entered in the register of members. On surrender of a share warrant the date of surrender must be entered as if it were the date at which a person ceased to be a member (*b*).

Where any shares have been converted into stock the register must show the amount of stock held by each member in lieu of the above-mentioned particulars relating to shares (*c*).

No notice of any trust, express, implied or constructive, may be

(*a*) Companies (Consolidation) Act, 1908, s. 25. Non-compliance with this section will render the company liable to a penalty of £5 for every day during which the default continues ; and every director and manager of the company who knowingly and wilfully authorizes or permits the default will be liable to the same penalty.

(*b*) Companies (Consolidation) Act, s. 37 (5).

(*c*) *Ibid.*, s. 43.

entered on the register or receivable by the Registrar in the case of companies registered in England or Ireland (*d*). It follows that if a person gives notice to the company that he claims an equitable interest in the shares registered in the name of another person, the company is not bound to take notice of such trust, and may not enter notice of it in its register, and the company will not be liable for allowing the registered holder to deal with his shares without regard to such equitable interest unless at the time of registering a transfer, the directors registering the same actually know that the transfer is a wrongful one (*e*), but the section does not allow a company to advance money to a shareholder after notice of the interest of another person, and then by virtue of the doctrine of tacking or otherwise, to claim priority over such other interest (*f*). In a word, the section, while it excludes the rule in *Dearle* v. *Hall* (*g*), does not touch the rule in *Hopkinson* v. *Rolt* (*h*), and notice will affect a company in its character of a trader, though it may not affect it in its duty of keeping a register. A form of article has been framed with the view of excluding this latter rule, but it would seem quite ineffectual, at all events so far as non-members of the company are concerned, and this has been so held in Ireland (*i*).

It would, however, seem probable that if a company has a lien for calls which have not actually been made, such lien will prevail over advances made after the issue of the shares, but before a call has been made, as in such case the liability would exist before the advances were made (*k*). Executors or trustees, who can claim to be registered, may insist that their names shall be entered on the register without any notice

(*d*) Companies (Consolidation) Act, 1908, s. 27.

(*e*) This seems to be the law, see *per* Lord SELBORNE in *Société Generale* v. *Walker* (1886), 11 A. C. 20: *Simpson* v. *Molson's Bank*, [1895] A. C. 270, the dicta of JOYCE, J., in *Peat* v. *Clayton*, [1906] 1 Ch. 659, seem inconsistent with these cases, but they were not necessary for the decision of the case. An entry in the books of a company that shares were transferred to a person in trust only gives notice of the trust referred to: *London and Canadian Loan* and *Agency Co.* v. *Duggan*, [1893] A. C. 506, a Canadian case where there was apparently nothing to prevent an entry as to trusts.

(*f*) *Bradford Bank* v. *Briggs* (1887), 12 A. C. 29; *Rainford* v. *Keith*, [1905] 2 Ch. 147, where the directors knew the certificate was with a friend of the transferor, but had a declaration, although one of them knew otherwise, that such friend had no charge on it. The company had to refund moneys it received as the result of the transfer.

(*g*) (1828), 3 Russell 1.

(*h*) (1861), 9 H. L. C. 514.

(*i*) *Rearden* v. *Provincial Bank*, [1896] 1 Ir. 532. See also *Binney* v. *Ince Hall Coal and Cannel Co.* (1866), 35 L. J. (CH.) 363.

(*k*) See the remarks in *New London and Brazilian Bank* v. *Brocklebank* (1882), 21 C. D. 302, and in *Borland's Trustee* v. *Steel Brothers*, [1901] 1 Ch. 279; it is not clear whether in the former case the company had notice of the trust at the time it made the advance—if

of the character in which they hold (*l*). A company cannot, having regard to this section, claim rights—*e.g.* a lien—against a *cestui que trust*, where his trustee is registered (*m*). The register of members commencing from the date of the registration of the company must be kept at the registered office of the company, and, except when closed under the provisions of the Act, must during business hours, subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less fee as the company may provide for each inspection (*n*). Joint stock banking companies are bound to show their list of shareholders to any registered shareholder during business hours from ten to four (*o*). Every assurance company which is subject to the provisions of Assurance Companies Act, 1909, and is not registered under the Companies Act, and has not incorporated under its deed of settlement section 10 of the Companies Clauses Consolidation Act, 1845, must keep a "shareholders' address book" in accordance with the provisions of that section, and must, on the application of any shareholder or policy holder of the company, furnish to him a copy of such book on payment of a sum not exceeding 6*d*. for every 100 words required to be copied (*p*).

Any member or other person may require a copy of the register or of any part thereof or of the list and summary required by the Act or any part thereof on payment of sixpence or such less sum as the company may prescribe for every hundred words or fractional part thereof required to be copied (*q*). Under this section a

it had the decision would not seem to be law, although the dicta abovementioned probably are; see also *Ex parte Stewart* (1864), 4 De G. J. & S. 543 as to notice. The decision in *Miles* v. *New Zealand Alford Estate Co.* (1886), 32 C. D. 266 would seem clearly not law as it was decided on the strength of *Bradford Bank* v. *Briggs* (1886), 31 C. D. 19, which was subsequently reversed (1887), 12 A. C. 29.

(*l*) *W. Key & Son*, [1902] 1 Ch. 467; *T. H. Saunders & Co.*, [1908] 1 Ch. 415, which also decided that it is for executors or trustees to decide in what order their names shall appear on the register.

(*m*) *Re Perkins* (1890), 24 Q. B. D. 613.

(*n*) Companies (Consolidation) Act, 1908, s. 30 (1). These provisions do not apply to a company in liquidation: *Kent Coalfields Syndicate*, [1898] 1 Q. B. 754. See s. 9 of the Stannaries Act, 1869, as to the cost book, containing amongst other things a list of shareholders, to be kept by companies regulated by that Act.

(*o*) Banking Companies (Shares) Act, 1867, s. 2.

(*p*) Assurance Companies Act, 1909, s. 10, and see *ibid.*, s. 33 (1) (*a*) and (*b*), *supra*, p. 17, for certain assurance companies which are excepted and *ibid.*, s. 23, *supra*, p. 23, as to penalties for non-compliance.

(*q*) Companies (Consolidation) Act, 1908, s. 30 (2) having regard to this sub-section the right of

shareholder or other person may see the whole register (*r*), and if the company refuses to give him inspection, the Court will order it to do so, even though the motive in seeking inspection is hostile to the company (*s*).

With regard to companies registered in England or Ireland, any Judge of the High Court sitting in chambers or the Judge of the Court exercising the Stannaries jurisdiction in the case of companies subject to that jurisdiction may by order compel an immediate inspection of the register (*t*).

A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time not exceeding in the whole thirty days in each year (*u*).

Loose sheets tacked together and intended to be the regular register until a regular book is obtained, will apparently constitute a register if they contain the necessary particulars, and the entry of a name on them will be entry on the register ; but if the sheets are not intended to be a formal register at all, but merely a statement of facts to be transcribed into a formal register when one is obtained, they will not be a register (*x*).

The mere fact that a book does not call itself a register will not prevent its being a register, if it contains the matters a register ought to contain or the bulk of them (*y*), nor will a book which omits to number the shares which each member holds, cease to be a register because of such omission (*z*) if the shares are in fact numbered (*a*).

The register of members is *primâ facie* evidence of any matter directed or authorized to be entered therein (*b*). It has been said that a book which would be a register for other purposes may yet not be complete enough to be treated as a register under these

inspection given by the previous sub-section does not carry with it the right to take copies : *Balaghat Gold Mining Co.*, [1901] 2 K. B. 665 ; overruling *Boord* v. *African Trading, etc., Co.*, [1898] 1 Ch. 596. The penalty for refusing to give inspection or a copy is £2 for each refusal and a further £2 for each day during which the refusal continues. The company and every director or manager who knowingly authorizes or permits such refusal will be liable: *ibid.*, sub-s. (3). As to action for copies to be supplied, *post*, p. 201.

(*r*) *Holland* v. *Dickson* (1888), 37 C. D. 669.

(*s*) *Mutter* v. *Eastern and Midlands Railway* (1888), 38 C. D. 92 ; *Davies* v. *Gas Light and Coke Co.*, [1909] 1 Ch. 708.

(*t*) Companies (Consolidation) Act, 1908, s. 30 (3). For form of summons, see *post*, p. 201.

(*u*) *Ibid.*, s. 31.

(*x*) *Ex parte Cammell*, [1894] 2 Ch. 392.

(*y*) *Underbank Mills Cotton, etc., Co.* (1886), 31 C. D. 226 ; *Weikersheim's Case* (1873), 8 Ch. 831.

(*z*) *East Gloucestershire Railway* v. *Bartholomew* (1868), L. R. 3 Ex. 15.

(*a*) *Irish Peat Co.* v. *Phillips* (1861), 1 B. & S. 598.

(*b*) Companies (Consolidation) Act, 1908, s. 33.

provisions (*c*). It would seem that a company's register must be kept in England, Scotland, or Ireland, according to the place where the company's registered office is, and it cannot be kept abroad under any circumstances (*d*), though there is obviously no objection to a duplicate register being kept abroad ; but a company having a share capital may, if its objects comprise the transaction of business in a colony and if authorized by its articles, keep in any colony where it transacts business a branch register of members resident in that colony (*e*) ; a company keeping such a colonial register must give the Registrar of Joint Stock Companies notice of the situation of the office where such register is kept and of any change in its situation and of the discontinuance of the office if it be discontinued.

A colonial register is to be deemed to be part of the company's register of members (*ee*). It is to be kept in the same way as the company's ordinary or principal register of members (*f*) ; a copy of every entry made in it must be transmitted to the registered office of the company as soon as possible after such entry is made, and the company must keep at such registered office a duplicate of its colonial register which is to be duly entered up from time to time, and to be deemed to be part of its principal register.

The shares registered in a colonial register must be distinguished from the other shares of the company, and no transactions with respect to any shares registered in a colonial register may, while so registered, be entered in any other register (except, of course, the duplicate to be kept). A company may, subject to these provisions, make such a provision in its articles, as it sees fit, with regard to its colonial register, and it may discontinue its colonial register at any time. On discontinuing a colonial register a company must forthwith transfer all entries therein to its main register (*ee*). Transfers in a

(*c*) *Wolverhampton New Waterworks* v. *Hawksford* (1860), 7 C. B. (N. S.) 795 ; *Bain* v. *Whitehaven Furness Railway* (1850), 3 H. L. C. 1. A case decided under the Companies Clauses Act (Scotland), 1845, which requires the seal of the company to be affixed to the register. Under the Act of 1862 and the present Act a register is evidence without being sealed : *Cornwall Mining Co.* v. *Bennett* (1860), 5 H. & N. 423.

(*d*) But see *Sands' Case* (1875), 32 L. T. 299 : a case which would seem clearly wrong on this point.

(*e*) Companies (Consolidation) Act, 1908, s. 34. Colony includes for this purpose British India and the Commonwealth of Australia.

(*ee*) *Ibid.*, s. 35.

(*f*) Companies (Consolidation) Act, 1908, s. 35, sub-s. 2. Advertisements as to closing such a register must be inserted in a newspaper circulating where it is kept. Applications for rectifying it may be made to any competent Court in the colony, and such Court will have the same jurisdiction of rectifying the register as is under the Act exerciseable by the High Court. Offences by refusing or authorising or permitting the refusal of copies or inspection of the colonial register may be prosecuted in any Court in the colony having summary criminal jurisdiction : *ibid.*

colonial register will be deemed to be transfers of property situated out of the United Kingdom, and will be free from British stamp duty unless executed in any part in the United Kingdom, and, on the death of a member registered in such a register, his shares will for the purpose of British duties be deemed to be part of his estate and effects situate in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or of which an inventory is to be exhibited and recorded, in the same manner as if he were registered in the principal register, if he died domiciled in the United Kingdom, but not otherwise (*g*).

To return to the company's main register: the Court may order the rectification of such register on the application of the person aggrieved, or any member of the company or the company if (*a*) the name of any person (*h*) is without sufficient cause entered or omitted from such register; or (*b*) if default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member. On such an application the Court may order rectification and payment by the company of damage sustained by the person aggrieved (*i*) or it may refuse the application.

On an application under the section the Court may decide any question relating to the title of any party to the application to have his name entered in or omitted from the register whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register (*k*). The earlier part of this section first appeared in the Companies Act, 1856—and it was pointed out (*l*) that the section could only be intended to deal with simple cases between a company and its members, and that in other cases a bill in equity was still necessary—as a result section 9 of the Companies Act, 1857, which is substantially re-enacted by this section and the corresponding section (*m*) of the Act of 1862 was

(*g*) Companies (Consolidation) Act, 1908, s. 36, and see *New York Breweries* v. *Attorney-General*, [1899] A. C. 62, as the liability of a company which transfers shares of a foreigner into the names of representatives who have not proved here.

(*h*) Apparently a partnership firm is not within this section, as it is not a person: *Vagliano Anthracite Collieries* (1910), 79 L. J. (CH.) 769; but cp. *Dunster's Case*, [1894] 3 Ch. 473; *Weikersheim's Case*, [1873] 8 Ch. 831.

(*i*) It would seem that the Court has only jurisdiction to award damages under the section, where an order for rectification is made: *Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618; and see *Skinner* v. *City of London Marine Insurance Corporation* (1885), 14 Q. B. D. 882, as to the quantum of damages, where a company has wrongfully refused to register.

(*k*) Companies (Consolidation) Act, 1908, s. 32. For form of notice of motion and of order, *post*, and pp. 201 *et seq.*

(*l*) *British Sugar Refining Co.* (1857), 3 K. & J. 408.

(*m*) S. 35.

enacted, and a wide construction was given to the section as so amended in *Re Swan* (*n*). However, even after the passing of the Act of 1862, such high authorities as Lord Cairns (*o*) and Sir George Jessel (*p*) took the view that the section gave the Court no jurisdiction in cases where the relief sought was in the nature of specific performance. Turner, L.J., and other judges, however, took a different view, and held that the Court had jurisdiction in all cases, but that as the section provides that the Court "may," and not that the Court "shall," order rectification, the Court could decline to try on such an application cases which could not conveniently be dealt with on a summary application—*e.g.* cases dealing with complicated questions of fact—and this latter view would seem to be the one that has prevailed (*q*).

The Court will, on such an application, rectify the register in respect of shares which have been forfeited (*r*) if a case for rectification is made out, and it will also in such a case grant rectification in spite of the fact that the directors of the company are willing to rectify without an order (*s*), for an applicant is entitled to be protected against possible claims in a liquidation or otherwise. On such an application the Court will in a proper case order that the register be rectified by striking out the name of a person who has been induced to take shares by misrepresentations in a prospectus (*t*) and it will also decide questions between vendor and purchaser and mortgagee and mortgagor (*u*).

Where the Court thinks that the matter is not one to be decided in a summary way, it will refuse the application, but without prejudice to an action being brought (*x*).

(*n*) (1859), 7 C. B. N. S. 400.

(*o*) *Ward and Henry's Cases* (1867), 2 Ch. 431.

(*p*) *Ex parte Sargent* (1874), 17 Eq. 273.

(*q*) *Kimberley North Block Diamond Co.* (1888), 59 L. T. 579; *Ex parte Shaw* (1877), 2 Q. B. D. 463; *Sussex Brick Co.*, [1904] 1 Ch. 598. See, however, the remarks of the Scotch Court in *Sleigh* v. *Glasgow and Transvaal Options* (1904), 6 Fra. 420; *Gowans* v. *Dundee Steam Navigation Co.* (1904), 6 Fra. 613; relief was refused in *Ex parte Ward* (1868), L. R. 3 Ex. 180, but this was an exceptional case. In *Askew's Case* (1874), 9 Ch. 664, the Court declined to give relief under the section as there were charges of fraud which could more conveniently be tried in an action, and as the applicant, being a fully paid shareholder, would not be damaged by the delay an action would entail.

(*r*) *Ex parte Los* (1865), 34 L. J. (CH.) 609; but see *Wright's Case* (1872), 7 Ch. 55.

(*s*) *Higgs' Case* (1865), 2 H. & M. 657; *Martin's Case* (1865), 2 H. & M. 669.

(*t*) *Webster's Case* (1866), 2 Eq. 741; *Stewart's Case* (1866), 1 Ch. 574. See also *Askew's Case* (1874), 9 Ch. 664.

(*u*) *Ex parte Sargent* (1874), 17 Eq. 273; *Tees Bottle Co.* (1876), 33 L. T. 834; *Kimberley North Block Diamond Co.* (1888), 59 L. T. 579.

(*x*) *Simpson's Case* (1870), 9 Eq. 91; *Ex parte Parker* (1867), 2 Ch. 685.

It was held under section 35 of the Companies Act, 1862, which expressly empowered the Court to direct the Company to pay the costs, that on such an application the Court could only order the company or the applicant to pay costs, and could not order any other person who has been served to pay them (*y*), and that if the company had in a dispute between the applicant and a third party, who turned out to be wrong, sided with such third party, the company would be ordered to pay the costs (*z*), but if it had remained neutral such an order would not be made (*a*). This provision as to costs is not re-enacted by section 32 of the Companies (Consolidation) Act, 1908. It is thought that this omission, coupled with section 5 of the Judicature Act, 1890, and order 65, r. 1 R. S. C., enables the Court to direct any party to pay the costs of the motion. In any case this rule did not apply to the costs of an appeal, and parties other than the company and the applicant may be ordered to pay these (*b*), and it does not apply where the company is in winding-up (*c*).

These applications may be made when the company is in winding-up, and orders may be made *nunc pro tunc* so as to take effect from the time when registration should have been made (*d*). The question of what will amount to undue delay, within the meaning of the section, would seem to be a question depending on the facts in each case, but it has been discussed in a variety of cases (*e*).

If the Court makes an order for the rectification of the register of a company which is required by the Act to send a list of its members

(*y*) *Ex parte Sargent* (1874), 17 Eq. 273; *Kimberley North Block Diamond Co.* (1888), 58 L. T. 305 (the point was not taken before the Court of Appeal (1888), 59 L. T. 579). An order directing a third party to pay costs was made in *Tees Bottle Co.* (1876), 33 L. T. 834; it is stated that this case was affirmed on appeal (see *per* HALL, V.C., *Ortigosa* v. *Brown Janson* (1878), 38 L. T. 145, 147). The only trace of such appeal which has been found after a search in all the current reports, is in 20 Sol. J. 584, where the respondent was ordered to give security for the costs of an appeal, as he had refused to pay the costs below. It would seem probable from this and the fact that there is apparently no further report that the appeal was not decided on the merits.

(*z*) *Ex parte Sargent* (1874), 17 Eq. 273.

(*a*) *Kimberley North Block Diamond Co.* (1888), 58 L. T. 305; 59 L. T. 379.

(*b*) *Ex parte Shaw* (1877), 2 Q. B. D. 463.

(*c*) *Ex parte Kintrea* (1870), 5 Ch. 95. Notice of the application must be served on the liquidator, where the application is made before a winding-up order, but after the petition is presented. *Ex parte Trenchard* (1871), 19 W. R. 96.

(*d*) *Sussex Brick Co.*, [1904] 1 Ch. 598; *Breckenridge's Case* (1865), 2 H. & M. 642; *Reese River Silver Mining Co.* v. *Smith* (1869), L. R. 4 H. L. 64; *Nation's Case* (1867), 3 Eq. 77.

(*e*) *Shepherd's Case* (1867), 2 Ch. 16; *Nation's Case* (1867), 3 Eq. 77; *Head's and White's Cases* (1867), 3 Eq. 84; *Shipman's Case* (1868), 5 Eq. 219; *Walker's Case* (1868), 6 Eq. 30; *Fyfe's Case* (1869), 4 Ch. 768; *Hill's Case* (1869), 4 Ch. 769 n.; *Lowe's Case* (1870), 9 Eq. 589.

to the registrar of joint stock companies—*i.e.* a company having a share capital—it must when making the order direct notice of the rectification to be given to the Registrar (*f*). If the Court makes an order rectifying the register, the name of the person, whose name is to be struck off, should be run through with a pen in the register, and a statement should be appended as follows: "By an order of the High Court, dated, etc., this name was erased" (*g*).

The application may be made by motion in the High Court or by application to a Judge of such Court sitting in chambers in the case of companies registered in England and Ireland, or by application to the Judge of the Court exercising the Stannaries jurisdiction in the case of companies subject to that jurisdiction (*h*) and by summary petition to the Court of Session in the case of companies registered in Scotland, or in such other manner as such Courts may respectively direct (*i*). The usual practice is to make these applications, when the company is a going concern, by motion in the Chancery Division; but the application is, where the company is in winding-up, made by summons. Where the company is in compulsory liquidation or is being wound up subject to the supervision of the Court, the leave of the Court to commence or continue the proceedings is necessary (*k*), and it has been said that applications even where the company is in winding-up should be made in the name of the company (*l*). Except where the company is in winding-up, these applications should not be assigned to the winding-up Judge (*m*).

In two cases (*n*) Kay, J., stated that motions to rectify the register in the Chancery Division should be entered in the general list and heard as actions, but this rule only holds good in cases arising out of misrepresentations in a prospectus (*o*); other applications under the section are usually heard on affidavit evidence (*p*).

(*f*) Companies (Consolidation) Act, 1908, s. 32 (4).

(*g*) *Iron Shipbuilding Co.* (1865), 34 B. 597; In *Ex parte Webb* (1863), 8 L. T. N. S. 478, where it was not certain that the applicant was the person on the register his name was struck off the list of contributories, but the register was not altered.

(*h*) The High Court has also jurisdiction in the case of these companies, *Penhale and Lomax Consolidated Silver Lead Mining Co.* (1867), 2 Ch. 398.

(*i*) Companies (Consolidation) Act, 1908, s. 32 (2).

(*k*) *Onward Building Society*, [1891] 2 Q. B. 463.

(*l*) *Ex parte Kintrea* (1870), 5 Ch. 95. This is not the usual practice.

(*m*) *British Columbia Exploitation Co.*, W. N. (1899) 32.

(*n*) *Bucknall's Gold Estate Co.*, W. N. (1887) 102; *British Burmah Co.* (1887), 56 L. T. 815; W. N. (1887) 101.

(*o*) Yearly Practice, 1912, p. 727. Notes to O. 52, r. 1, R. S. C.

(*p*) They should be entituled in the matter of the Act, and taken to the Writ, etc., Department of the Central Office for assignment to a judge by ballot under O. 52, r. 9 (*c*), R. S. C., and they must be served in the same way as a writ, and except where special leave is given, two clear days' notice must be given.

In one case, where a company wished to strike off a large number of names, Buckley, J., made the order *ex parte* to save expense, but directed the order to lie in the office for three weeks and notice to be given to each person whose name was struck off, and he further directed that such persons should within such time be at liberty to make applications to vary his order (*q*).

Where, owing to quarrels in the company, there was no director or other person to rectify the register, Kekewich, J., declined to make an immediate order empowering the applicants to rectify the register themselves, but he directed that the company should within four days after service of the order on them rectify the register (*r*), and he intimated that failing compliance with this order, he would allow the applicants to rectify the register themselves under O. 42, r. 30, R. S. C.

Further, any judgment or order against a corporation wilfully disobeyed may by leave of the Court or a Judge be enforced by sequestration against the corporate property or by attachment against the directors or other officers thereof, or by writ of sequestration against their property (*rs*). For the purpose of this rule an undertaking has the same effect as an order (*rt*). The word "wilfully" in this rule is intended to exclude only casual, accidental, or unintentional disobedience (*ru*). Applications for leave to issue a writ of sequestration are usually made by motion, though they may be by summons (*ry*), and personal service of the order which is the foundation of the proceedings is necessary except where it can be shown that the respondent is evading service (*rz*). On an application for leave to issue a writ of sequestration, solicitor and client costs will often be given, but not unfrequently the writ will be ordered to be in the office for a period (*ru*). Leave to issue a writ of attachment against a director will not be given unless he has been personally served (*ra*).

(*q*) *London Electrobus*, [1906] W. N. 147.

(*r*) *L. L. Syndicate*, [1901] W. N. 164; 17 T. L. R. 711.

(*rs*) O. 42, r. 31, R. S. C.; and see for practice as to writs of sequestration, O. 43, r. 6, R. S. C., and notes in Yearly Practice, 1912, pp. 605 *et seq.*, and pp. 620 *et seq.*: and in Annual Practice, 1912, pp. 706 and 707 and pp. 719 *et seq.*

(*rt*) *Milburn* v. *Newton Colliery* (1908), 52 Sol. J. 317, not following *Attorney-General* v. *S. Wheatley & Co.*, [1907] 116 L. T. Jo. 153.

(*ru*) *Stancombe* v. *Trowbridge Urban Council*, [1910] 2 Ch. 190.

(*ry*) *Selous* v. *Croydon Local Board* (1885), 53 L. T. 209.

(*rz*) *Kistler* v. *Tettmar*, [1905] 1 K. B. 39; *Hyde* v. *Hyde* (1888), 13 P. D. 166; *Re Tuck*, [1906] 1 Ch. 692.

(*ra*) *McKeown* v. *Joint Stock Institute*, [1899] 1 Ch. 671.

ORIGINATING SUMMONS FOR INSPECTION OF REGISTER.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.
MR. JUSTICE

In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the A.B. Company Limited.

Let the A.B. Company Limited a Company having its registered office at in the county of attend at the Chambers of Mr. Justice at the time specified in the margin hereof on the day of 19 at o'clock in the noon on the hearing of an application on the part of X.Y. of in the county of a member of the above-mentioned Company,

(1) For an order directing the A.B. Company Limited to forthwith permit the said X.Y. to inspect its register of members.

(2) And that the said A.B. Company Limited do pay the costs of this application such costs to be taxed.

Dated

NOTE.—It will not be necessary for you to enter an appearance in the central office, but if you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made and proceedings taken as the Judge may think just and expedient.

Under O. 54, r. 4, F (7), a respondent to an originating summons for inspection of the register of a joint stock company need not enter an appearance. The evidence in support will be an affidavit showing that the applicant is a member and has been refused inspection—or, if he is not a member, that he was refused inspection on tendering 1*s.* or such less fee as was prescribed by the company.

Section 30 of the Act does not give a summary remedy for a refusal to supply copies, and it is thought that an action may be commenced by writ—and that at all events where the applicant is a member of the Company the formalities required in the case of a prerogative writ of mandamus need not be gone through (*s*). Possibly in some cases it may be possible to obtain such an order on a motion in the action.

NOTICE OF MOTION FOR RECTIFICATION OF REGISTER.

IN THE HIGH COURT OF JUSTICE, 19—A—No.
Chancery Division.
MR. JUSTICE

In the Matter of the A.B. Company Limited
and
In the Matter of the Companies (Consolidation) Act, 1908.

Take notice that this Honourable Court will be moved before his Lordship Mr. Justice on the day of 19 at 10.30 o'clock in the forenoon or so soon thereafter as counsel can be heard by counsel on behalf of C.D. of in the County of for an order that the register of the above named company may be rectified by entering on such register the name of the said C.D. as the

(*s*) *Davies* v. *Gas Light and Coke Co.*, [1909] 1 Ch. 708.

holder of the 100 shares numbered 201 to 300 both inclusive in the capital of the company and now registered in the name of E.F. of in the County of and that notice of such rectification may be given to the Registrar of Joint Stock Companies and that the above named company may be ordered to pay to the said C.D. the damages he has sustained by reason of their default in making such entry and the costs of this motion or that such other order may be made in the premises as to the Court may seem meet.

Dated

To the A.B. Company Ltd. Signed
No. Street, E.C. X.Y. & Co.
and E.F. Solicitors for the applicant.
No. Street, E.C.

Except where the motion is entered in the general list (*vide supra*, p. 199), it will be supported by affidavit evidence, setting forth the incorporation capital and objects of the company shortly, and the facts that lead to the application and that go to show the damage sustained.

ORDER ON MOTION TO RECTIFY THE REGISTER OF MEMBERS.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

MR. JUSTICE

In the Matter of T. & H. Saunders & Co. Limited.
and
In the Matter of the Companies (Consolidation) Act, 1908.

Upon motion this day made unto this court for F. H. M. of in the county of G. E. M. of in the county of and T. E. M. of in the county of the executors of the will of T. M. deceased and upon hearing counsel for the above-named company T. & H. Saunders & Co. Ltd. and upon reading two affidavits of the said F. H. M. filed respectively the 19 and the several exhibits in the former affidavit referred to and an affidavit of A. C. S. filed the 19 and the several exhibits therein referred to. This Court doth order that the register of members of the above-named company be rectified by striking out the name of T. M. deceased therefrom as the holder of 100 ordinary shares numbered 401 to 500 inclusive and 484 preference shares numbered 1291 to 1730 inclusive and 2057 to 2100 inclusive and by inserting in lieu thereof the names of the applicants as the holders of such shares in the following order (*t*) that is to say F. H. M., G. E. M. & T. E. M. and it is ordered that the said Company T. & H. Saunders & Co. Ltd. do pay to the said F. H. M. G. E. M. & T. E. M. their costs of this motion such costs to be taxed by the Taxing Master and it is ordered that due notice of this rectification be given to the Registrar of Joint Stock Companies by serving a copy of this order upon him or by leaving the same with a clerk at the office of the said Registrar and at the same time producing the duplicate of this order duly

(*t*) The order in which the names of the applicants were to appear was one of the points in dispute in the case, see *T. & H. Saunders & Co.*, [1908] 1 Ch. 415, and this explains this direction.

passed and entered. [T. & H. Saunders & Co. Ltd., January 24th, 1908, WARRINGTON, J., [1908] 1 Ch. 415.]

The shares or other interest of any member in a company are personal estate, and in a company having a share capital each share must be distinguished by its appropriate number (*u*). A company cannot re-number shares which have been issued, without preserving the old numbers so as to preserve the identity of the shares, and to enable the ownership of each share to be traced (*v*).

Members of a company consist of subscribers of the memorandum, who are deemed to have agreed to become members of the company. The names of these persons must on the registration of the company be entered as members in its register of members; and (2) all other persons who agree to become members of the company, and whose names are entered on its register of members (*x*).

In the case of companies having a share capital, no subscriber of the memorandum may take less than one share and each subscriber must write opposite his name the number of shares he takes (*y*).

By signing the memorandum a person not only agrees to take, but actually takes the shares set opposite his name (*z*), and it becomes forthwith the duty of the directors to put him on the register for such shares (*a*).

A signatory to the memorandum agrees to take his shares from the company, and he will not free himself from this liability by taking shares, whether fully paid up or not, from a promoter or any other person (*b*). His agreement with the company is to pay for these shares in cash or in kind, and he may agree to pay for them by transferring property instead of cash to the company (*c*). It would

(*u*) Companies (Consolidation) Act, 1908, s. 22. Shares are not within the Statute of Frauds: *Humble* v. *Mitchell* (1839), 11 A. & E. 205; *Duncuft* v. *Albrecht* (1841), 12 Sim. 189; *Colonial Bank* v. *Whinney* (1886), 11 A. C. 426; but by the Banking Companies (Shares) Act, 1867, commonly known as Leeman's Act, contracts for the sale of any share stock or other interest in a banking company (other than the Bank of England or Ireland) are null and void unless they show in writing the distinctive numbers (if any) of the shares or where there are no distinctive numbers the persons in whose names such share stock or other interest stood at the date of the contract. Persons inserting false numbers or names will be guilty of a misdemeanor. A custom on the Stock Exchange to disregard the provisions of this Act, is unreasonable and so will not bind a non-member who does not know of it: *Perry* v. *Barnett* (1885), 15 Q. B. D. 388.

(*v*) *Platt* v. *Rowe* (1909), 26 T. L. R. 49.

(*x*) Companies (Consolidation) Act, 1908, s. 24.

(*y*) *Ibid.*, ss. 3, 4 and 5.

(*z*) *Fothergill's Case* (1870), 8 Ch. 270; *Re Ebenezer Timmins*, [1902] 1 Ch. 238, 243.

(*a*) *Evans' Case* (1867), 2 Ch. 427.

(*b*) *Migotti's Case* (1868), 5 Eq. 238; *Forbes' and Judd's Cases* (1870), 5 Ch. 270.

(*c*) *Baglan Hall Colliery* (1870), 5 Ch. 346; *Drummond's Case* (1869), 4 Ch. 772; *Pells' Case* (1870), 5 Ch.

appear, however, that a mere subsequent agreement to receive fully paid shares for property transferred will not satisfy the liability of a subscriber to the memorandum, there should be something in the memorandum or the articles or the prospectus, or the agreement under which the property is sold to the company, showing that the property transferred, is being transferred in payment for the shares in question (*d*).

A subscriber to the memorandum is liable as a member for his shares, even though he has never been put on the register in respect of them (*e*). Nor will his liability cease where all the shares have been agreed to be issued conditionally, and the condition has not been fulfilled (*f*), but if all the shares of the company have actually been allotted, and there has been no allotment to a subscriber, then the liability of such subscriber will cease (*g*).

In one case a subscriber who subscribed for a certain number of shares of a particular class, but who subsequently, because he thought it fairer, agreed to have and had allotted to him a total number of shares equal to those for which he had subscribed, but made up of shares of different classes, was held liable only for those shares for which he had subscribed (*h*). This case, however, has been explained to have been so decided, because it would have been a case of great injustice and hardship, if any other decision had been come to (*i*).

There is authority for saying that a subscriber to the memorandum will not be able to escape from his liability, where he has been induced to subscribe by misrepresentations, by taking proceedings to rescind his contract (*k*).

Where a page had been inserted in the memorandum after a subscriber had signed, he was held not to be liable (*l*), and the same result would apparently follow where any material alteration is made after the memorandum has been signed by the person whom it is sought to make liable (*m*). In one case (*n*) a person who had signed

11. See also *Re Whitehead and Bros.*, [1900] 1 Ch. 804.

(*d*) *Fothergill's Case* (1873), 8 Ch. 270.

(*e*) *Sidney's Case* (1872), 13 Eq. 228; *Levick's Case* (1871), 40 L. J. (CH.) 180; *Evans' Case* (1867), 2 Ch. 427; *London and Provincial Consolidated Coal Co.* (1877), 5 C. D. 525; *Esparto Trading Co.* (1879), 12 C. D. 191; *Hall's Case* (1870), 5 Ch. 707.

(*f*) *Evans' Case* (1867), 2 Ch. 427.

(*g*) *Mackley's Case* (1876), 1 C. D. 247; *Carmichael and Hewett's Case* (1882), 46 L. T. 653.

(*h*) *Duke's Case* (1876), 1 C. D. 620.

(*i*) *Ashbury* v. *Watson* (1885), 30 C. D. 376.

(*k*) *Lord Lurgan's Case*, [1902] 1 Ch. 707; cp. *Coleman's Case* (1863), 1 De G. J. & S. 495.

(*l*) *Felgate's Case* (1864), 2 De G. J. & S. 456.

(*m*) See remarks in *Peel's Case* (1867), 2 Ch. 674.

(*n*) *Baron de Beville's Case* (1869), 7 Eq. 11; cp. *Nicholl's Case* (1857), 24 B. 639; as explained in *Carling's Case* (1876), 1 C. D. 115.

for fully paid shares, for which he had given no consideration, and also for other shares, was held not to be a member in respect of the fully paid shares, but this case is a very doubtful one, and would probably not be followed.

The first step towards a contract to take shares, except in the case of a subscriber to the memorandum, is an application by the intending shareholder for shares; where there is a prospectus, such prospectus is usually accompanied by a form of application. This is followed by the allotment of shares and the entry of the name of the allottee on the company's register (*o*); even then the contract is not complete until the allottee has been notified of the allotment which has been made to him; until such notification the application for shares may be withdrawn.

The allotment is almost always made by the directors in pursuance of a power in that behalf in the articles. An allotment, if irregular, is not necessarily a mere nullity, thus an allotment made by a board of directors which has not been regularly summoned, may, it would seem, be ratified by a second and properly convened board meeting, and after notification of the irregular allotment, a shareholder cannot withdraw his application, unless the ratifying meeting is unduly postponed (*p*). In many cases an article providing that the continuing directors may act (*q*) or enabling *de facto* directors to act, will cure the defect and make the allotment valid (*r*). A conditional allotment will only become absolute on the performance of the condition (*s*) or on the allottee's name being entered in the register, as, until one of these events happens, there will not be a complete contract; entry on the register, though it can and ought to be made by the directors, being, except in the case of subscribers, a condition precedent to complete membership. After a winding-up has supervened, it would seem that there are cases where even directors who have agreed to take shares cannot be entered on the register (*t*);

(*o*) An allotment of shares is the appropriation of specific shares to the applicant and the entry of his name on the register, *Spitzel* v. *Chinese Corporation* (1899), 80 L.T. 347. See also *Nicoll's, Tufnell's and Ponsonby's Cases* (1885), 29 C. D. 421; *Mosely* v. *Koffyfontein Mines*, [1911] 1 Ch. 73, 84, [1911] A. C. 409. The retention of the deposit moneys by the company coupled with the return of the banker's receipts will not amount to allotment: *Best's Case* (1865), 2 De G. J. & S. 650, at p. 656.

(*p*) *Bolton Partners* v. *Lambert* (1889), 41 C. D. 295; but see *Fleming* v. *Bank of New Zealand*, [1900] A. C. 587; *Portuguese Consolidated Copper Mines* (1889), 42 C. D. 16, from which it would seem that a delay in making and notifying the second allotment which would apart from the irregular allotment be unreasonable, will not, having regard thereto, necessarily be so.

(*q*) *Scottish Petroleum Co.* (1883), 23 C. D. 413. See Article 89, Table A.

(*r*) Cp. Article 94, Table A. See *infra*, pp. 363 and 364, for the effect of such an article.

(*s*) *Spitzel* v. *Chinese Corporation* (1899), 80 L. T. 347.

(*t*) *Nicholl's, Tufnell's and Ponsonby's Cases* (1885), 29 C. D. 421.

but usually where there is a complete contract, the register can, even after winding-up, be rectified by inserting the name of a person who has agreed to take shares (*u*). As a company is usually under no obligation to allot shares, in response to an application, the application for shares is only an offer to take the shares applied for or any smaller number (*v*), and consequently, until the applicant has been notified that his offer had been accepted, he is at liberty to withdraw from it (*x*). Nor is a director in any different position to any one else (*y*). There may be exceptions to this rule, as for instance, on a reconstruction, where a shareholder in the old company, applies for shares in the new company to which under the contract between the two companies he is entitled (*z*), but even this is doubtful (*a*).

Another case where notification is unnecessary, though it is scarcely an exception, is where the applicant has told an official of the company not to trouble to notify him if his offer is accepted. This really belongs to the class of cases, of which there are several (*b*), where a person has been appointed the agent of the applicant to receive notice of allotment. Informal notice will be enough (*c*). The contract to take shares is completed where the application for shares is by post (*d*), and probably in all cases (*e*) by the letter of acceptance being put into the post (*f*). Notice of withdrawal must be given and received by the person to whom it is given before the acceptance is posted, for no authority to send this by post will be assumed (*g*). It will not be enough to give the acceptance letter to a postman to post (*h*), nor will it be sufficient to post it to the local

(*u*) See *post*, pp. 1101 *et seq.*, where the cases cited in the last note are explained.

(*v*) *Nicholl's, Tufnell's and Ponsonby's Cases* (1885), 29 C. D. 242.

(*x*) *Gunn's Case* (1868), 3 Ch. 40; *Sahlgreen and Carrall's Cases* (1868), 3 Ch. 23; *Pellatt's Case* (1867), 2 Ch. 527; *Tothill's Case* (1866), 1 Ch. 85; *Pentelow's Case* (1869), 4 Ch. 178.

(*y*) *Ritso's Case* (1877), 4 C. D. 774.

(*z*) *Adam's Case* (1872), 13 Eq. 474; *Brown and Tucker's Cases* (1872), 41 L. J. (CH.) 157.

(*a*) *Wallace's Case*, [1900] 2 Ch. 671. See same case, 69 L. J. (CH.) 777.

(*b*) *Cookney's Case* (1858), 3 De G. & J., 176. See also *G. H. Levita's Case* (1870), 5 Ch. 489; *Robinson's Case* (1869), 4 Ch. 322; *Bloxam's Case* (1864), 4 De G. J. & S. 447 has been so explained; and *Wallis's Case* (1869), 4 Ch. 325.

(*c*) *Levita's Case* (1868), 3 Ch. 36.

(*d*) *Harris' Case* (1872), 7 Ch. 587.

(*e*) *Household Fire and Carriage* v. *Grant* (1869), L. R. 4 Ex. Div. 216.

(*f*) *Henthorn* v. *Fraser*, [1892] 2 Ch. 27; *Household Fire and Carriage Co.* v. *Grant* (1869), 4 Ex. Div. 216. These cases would appear to overrule *British and American Telegraph Co.* v. *Colson* (1869), L. R. 4 Ex. 9, and *Reidpath's Case* (1871), 11 Eq. 86. Probably notice of acceptance by telegram will be enough, *Cowan* v. *O'Connor* (1888), 20 Q. B. D. 640.

(*g*) *Henthorn* v. *Fraser*, [1892] 2 Ch. 27.

(*h*) *London and Northern Bank Jones Case*, [1900] 1 Ch. 221.

agent of the company (*i*); the notice will probably be sufficiently given where the letter which is posted is wrongly addressed, if the person to whom it is addressed is responsible for the mistake (*k*). It would appear to be immaterial whether the notice of acceptance once posted does or does not reach its destination (*l*). Notice of withdrawal may be given to the secretary of the company (*m*), or even verbally to a clerk temporarily in charge of the company's office (*n*).

Notice of acceptance of an offer to take shares must be given promptly after the application, otherwise the applicant will be entitled to repudiate even after receiving notice of his allotment (*o*). In one case the Court considered it doubtful whether a delay of two months was not too much, and held that having regard to the special facts of the case, *viz.*, that the prospectus stated allotment would be immediate, it certainly was (*p*). In another case where application was made on the 8th June and allotment on 23rd November, the delay was held to be too much (*q*).

Two or three months' delay was, however, not considered too long for ratifying a previous informal allotment which had been duly notified (*r*).

In one case it was doubted whether notice of the stoppage of a cheque sent in payment of application moneys, was not notice of withdrawal of the offer to take shares (*s*).

There are certain cases where what purports to be a complete contract to take shares is in reality a nullity.

Putting aside the cases where the allotment can be challenged owing to some irregularity in the constitution of the board which allotted the shares (*t*) these cases would appear to group themselves under two heads. These are (1) the cases where there has in reality been no contract at all because there had been no real application for shares. The application for shares in these cases was not in truth the act of the applicant at all, and with regard to it he was entitled to say *non est factum*. Such were the cases where applications

(*i*) *Hebb's Case* (1867), 4 Eq. 9.

(*k*) *Townsend's Case* (1872), 13 Eq. 148.

(*l*) *Henthorn* v. *Fraser*, [1892] 2 Ch. 27; *Harris' Case* (1872), 7 Ch. 587; *Townsend's Case* (1872), 13 Eq. 148.

(*m*) *London and Northern Bank, Jones' Case*, [1900] 1 Ch. 221.

(*n*) *Truman's Case*, [1894] 3 Ch. 272.

(*o*) *Carmichael's Case* (1850), 17 Sim. 163; *Conway's Case* (1851), 5 De G. & Sm. 150; *Mathew's Case* (1850), 3 De G. & Sm. 234. In such case, however, repudiation will not be allowed after a winding-up has supervened: *Boyle's Case* (1885), 54 L. J. (CH.) 550.

(*p*) *Ex parte Baily* (1867), 2 Ch. 592.

(*q*) *Ramsgate Hotel* v. *Montefiore*; *ibid.* v. *Goldsmid* (1866), L. R. 1 Ex. 109.

(*r*) *Portuguese Consolidated Copper Mines* (1889), 42 C. D. 16.

(*s*) *Truman's Case*, [1894] 3 Ch. 272.

(*t*) *Howard's Case* (1866), 1 Ch. 561; and see *post*, p. 261 and pp. 363 and 364.

were made nominally in the names of infants (*u*), or married women (*x*); but, in reality, by third parties. In these cases it was held that there was no contract between the persons applying and the company. Another case coming under this head was the case of a man signing an application for shares in one company, having been induced to believe and believing that he was applying for shares in another company (*y*), and also the case where a man applied for shares in a company, and was allotted shares of a larger value than those mentioned in the memorandum of association he had seen, the company having consolidated its capital into shares of a larger amount (*z*). Other cases of this class are the cases where the parties were never really *ad idem* either owing to the application having been made conditionally and having been accepted unconditionally, or to the application having been made unconditionally and accepted subject to certain conditions.

Thus where there were applications to take shares on certain terms, and in accepting the application a new term was inserted, *viz.*, that unless certain payments were made before a certain time, the shares would be forfeited, there was held to be no contract (*a*).

These cases may be contrasted with the case where the application was on the footing that £1 should be paid on application, and £4 on allotment, and the letter of acceptance dated the 6th September, stated that £5 must be paid in respect of each share before 15th September—here the only fresh term (if any) was one giving the applicant a few extra days to pay for his shares (*b*). A contract was held to be void where the acceptance was on the footing that £1 should be paid on application, and £3 on allotment, and in the letter of acceptance it was stated that an allotment would be made if the balance was paid in a few days (*c*).

In another case where a proviso was added to the application form providing that all the shares of the company must be applied

(*u*) *Richardson's Case* (1875), 19 Eq. 588.

(*x*) *Pugh and Sharman's Case* (1872), 13 Eq. 566; in this case the married woman signed the application without being informed or knowing what she was signing.

(*y*) *Baillie's Case*, [1898] 1 Ch. 110.

(*z*) *Gustard's Case* (1869), 7 Eq. 438; in this case it is difficult to see why the applicant was held to be a contributory for shares of a smaller amount, the shares had been transferred before the applicant knew of the alteration and before the question arose. See also *Henry Holden's Case* (1869), 8 Eq. 444.

(*a*) *Jackson* v. *Turquand* (1869), L. R. 4 H. L. 305; *Barrett's Case* (1865), 3 De G. J. & S. 29; *Addinell's Case* (1866), 1 Eq. 225.

(*b*) *Peek's Case* (1869), 4 Ch. 532.

(*c*) *Pentelow's Case* (1869), 4 Ch. 178. This case was said to be very near the line in *Peek's Case* (1869), 4 Ch. 532. The correspondence treated the allotment as conditional and apparently the applicant, who had repudiated the contract as soon as he received the letter of acceptance, had not been properly entered on the register.

for and there was an allotment, but all the shares of the company were not applied for, it was held that there was no contract (*d*), and the same result followed where the application was subject to terms being arranged and to power being given to the applicants to nominate directors and no terms were arranged and no such power was given (*e*).

(2) The second class of cases are the cases where the application was subject to a condition precedent which was originally, either by reason of having been *ultra vires* the company or otherwise, impossible of performance, or which has subsequently become impossible of performance. Thus, in one case shares were applied for and the application was accepted on the footing that the applicant was to have a contract to supply goods and that his calls were to be paid by such goods, and there was held to be no contract (*f*).

These cases must be carefully distinguished from the cases where there is an absolute agreement to take shares, coupled with a collateral agreement, or a condition subsequent, which is bad. In such case the agreement to take shares will stand while the collateral agreement falls to the ground (*g*). Each case of this kind must be decided on the construction of the particular agreement, and no safe guide can be given as to what will and what will not amount to a condition precedent; but the fact that the applicant's name has been entered on the register to his knowledge and without any protest from him will be strong evidence that the case is not a condition precedent case (*h*).

Where there is an agreement to take shares coupled with a condition subsequent, the agreement to take shares will stand, even where the condition subsequent cannot be upheld, unless the company is in due time and before a winding-up takes place required to perform its agreement or rescind (*i*).

(*d*) *Tomlin's Case*, [1898] 1 Ch. 104; to this class of cases belong also *Beck's Case* (1874), 9 Ch. 392; *Wynne's Case* (1873), 8 Ch. 1002.

(*e*) *Canadian and Colonial Corporation*, *Times* Newspaper, December 1, 1911. The underwriting commissions had also been largely increased in this case.

(*f*) *Shackelford's Case* (1866), 1 Ch. 567; see also *Roger's Case* (1868), 3 Ch. 633; *Howard's Case* (1866), 1 Ch. 561; *Simpson's Case* (1869), 4 Ch. 174; *Gorrissen's Case* (1873), 8 Ch. 504, where the contract was "to place" not "to take" shares.

(*g*) *Elkington's Case* (1867), 2 Ch. 511; *Bridger's Case* (1870), 5 Ch. 305; *Harrison's Case* (1868), 3 Ch. 633. Cp. also *Woolaston's Case* (1859), 4 De G. & J. 437; *Wood's Case* (1858), 3 De G. & J. 85; and see *Coleman's Case* (1863), 1 De G. J. & S. 495. In the last case the matter rested in contract as the name had never been entered on the register.

(*h*) *Elkington's Case* (1867), 2 Ch. 511.

(*i*) *Fisher's Case* (1886), 31 C. D. 120, where the application was made on the footing that the applicant was to be credited with certain sums, when calls were made in respect of his shares. The same

Among the condition precedent cases are, it would seem, the cases where a reconstruction scheme has for some reason or other failed, and the person applying has applied to the old company only, for shares to which he was entitled in respect of his holding in such old company (*k*). Where application has been made direct to the new company, there, even if the reconstruction scheme fails, it would seem the applicant will usually be bound (*l*).

A shareholder will not be bound by an agreement to take fully paid shares where his name is not on the register, and the company can only issue unpaid shares (*m*). Where a company fails to obtain a certificate entitling it to commence business, an allotment would be wholly bad.

But even where the agreement is void if the applicant's name is put on the register and he with full knowledge of all the facts does acts which are only consistent with being a shareholder in respect of such shares, he will be bound as a shareholder in respect of such shares. In such case the placing of the applicant's name on the register would seem to amount to an offer, and the acts done with full knowledge to be an acceptance of such offer. Mere acquiescence even for a length of time would appear not to be enough (*n*). But if the allottee transfers his shares (*o*) or attends meetings and accepts dividends (*p*), or on notice that shares have been allotted under a reconstruction scheme acknowledges the notice without protest (*q*), or it would seem acts as a director, if the shares allotted under such reconstruction scheme are necessary for his qualification (*r*), then, and in similar cases, the allottee will be bound. Where shares have been offered at a discount, the allottee will be taken to know the law, and in this, as well as in other cases where one of the conditions of allotment is *ultra vires*, although there will be no enforceable contract before registration (*s*), once the shares have been registered

principles apply where rescission is sought as in misrepresentation cases: see *post*, pp. 226 *et seq.*

(*k*) *Dougan's Case* (1873), 8 Ch. 540, explaining *Alabaster's Case* (1869), 7 Eq. 243; *Stace's* and *Worth's Cases* (1869), 4 Ch. 682.

(*l*) *Hare's Case* (1869), 4 Ch. 503; *Challis' Case* (1871), 6 Ch. 266; and see *Campbell's Case* and *Hippisley's Case* (1874), 9 Ch. 1; see *post*, pp. 1110 and 1111.

(*m*) *Arnot's Case* (1887), 36 C. D. 702, and *Daniell's Case* (1857), 1 De G. & J. 372, explained in *Carling's Case* (1876), 1 C. D. 115.

(*n*) *Somerville's Case* (1869), 4 Ch. 266; *Higg's Case* (1865), 2 H. & M. 657; *Hutchinson's Case* (1866), 1 Ch. 226; but cp. dictum of MELLISH, L.J., in *Wynne's Case* (1873), 8 Ch. 1002.

(*o*) *Crawley's Case* (1869), 4 Ch. 322.

(*p*) *Ex parte Sandys* (1889), 42 C. D. 98; *Addlestone Linoleum Co.* (1888), 37 C. D. 191, where, however, the claim was to keep the shares and prove for damages.

(*q*) *Challis' Case* (1871), 6 Ch. 266.

(*r*) *Leeke's Case* (1871), 6 Ch. 469.

(*s*) *Macdonald, Sons & Co.*, [1894] 1 Ch. 89; *Barnett's Case* (1874), 18 Eq. 507.

in the name of the allottee, and he has done acts only consistent with being a member, he will be taken to have agreed to take the shares, or, at any rate, he will be estopped from denying that he has so agreed (*t*). It has, however, been held that where stock has been issued, without having been paid for in full, the allottee will be entitled to have his name taken off the register even after winding-up (*tt*).

The Prospectus.

To obtain members other than subscribers to the memorandum, it is usual to issue a prospectus (*i.e.*, a document inviting persons to take shares in the company, and setting forth the advantages of the company).

It seems that at common law persons inviting others to take shares in a company do not incur the same duty as those making a proposal for a policy of insurance (*u*), in other words, the contract is not what is called a contract involving *uberrima fides* (*x*), and requiring full disclosure of all facts, which would be likely to influence an applicant for shares. The rule would appear to be that a prospectus must contain no mis-statement, which if it were true would substantially add to the value of the shares offered for subscription (*y*).

Further, a prospectus may omit nothing which, if stated, would qualify anything which is stated therein (*z*).

There are some statements (*a*) which point towards a fuller disclosure being necessary, but it is believed that in all cases these statements are qualified by the context in which they are found, and that the true rule is that there must be no such suppression of facts as would amount to a *suggestio falsi*—in other words, an omission

(*t*) *Ex parte Sandys* (1889), 42 C. D. 98; and cp. *Arnot's Case* (1887), 36 C. D. 702; *Blyth's Case* (1877), 4 C. D. 140; *Pagin's* and *Gill's Cases* (1877), 6 C. D. 681.

(*tt*) *Home and Foreign Investment and Agency Co.*, [1912] 2 Ch. 72. The creditors had all been paid, but this could not, it is thought, have made any difference.

(*u*) *Per* Lord Watson, *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273.

(*x*) Cp. *Ross Estates Investment Co.* (1867), 3 Eq. 122; in this case it was stated that statements in a prospectus were required to be *uberrima fides*, and to contain a most complete disclosure of facts, but the learned judge went on to say that no statement might be substantially untrue, thus qualifying his previous remarks.

(*y*) *Jennings* v. *Broughton* (1854), 5 De G. M. & G. 126; *Central Railway of Venezuela* v. *Kisch* (1867), L. R. 2 H. L. 99, 121, and in the Court below *sub nom. Kisch* v. *Central Railway of Venezuela* (1865), 3 De G. J. & S. 122, *per* Lord Lyndhurst; *Atwood* v. *Small* (1838), 6 Cl. & Fin. 232 at p. 395; *Henderson* v. *Lacon* (1868), 5 Eq. 249; *Ross* v. *Estates Investment Co.* (1867), 3 Eq. 122 and 3 Ch. 682.

(*z*) *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273; *Kisch* v. *Central Railway of Venezuela* (1865), 3 De G. J. & S. 122; *Heymann* v. *European Central Railway* (1869), 7 Eq. 154; *Pulsford* v. *Richards* (1853), 17 Beav. 87.

(*a*) See the well-known remarks of Kendersley, V.C., in *New Brunswick* v. *Muggeridge* (1860), 1 Dr. & Sm. 281, which were approved in *Central Railway of Venezuela* v. *Kisch* (1867), L. R. 2 H. L. 99; *Henderson* v. *Lacon* (1868), 5 Eq. 249; and see also the judgments of the dissenting judges in the Irish Court of Appeal in *Aaron's Reefs* v. *Twiss*, [1895] 2 Ir. 107.

which, if fraudulently made, would give rise to an action of deceit (*b*)—will be required to sustain an action of rescission against the company (*c*). If a statement is true at the time when it is put forward in a prospectus, but becomes false before shares applied for on the strength of such prospectus are allotted, the company is bound to draw the attention of applicants for shares to the change of circumstances (*d*), and it would appear that it is not enough for a company to send with the letters of allotment a statement setting forth the truth, but not referring to the previous mis-statement, and not informing the applicants that they are entitled to withdraw from their contract (*e*). The company is bound to see that such a notice is brought to the attention of the applicants, it will not be enough to serve a notice in the way provided by the company's articles (*f*). A statement of opinion (*g*), or a statement of intention (*h*), is a statement of an existing fact.

If any fact is wrongly stated or omitted, it will not be enough for a company to show, that some document referred to in the prospectus would, if examined, have disclosed the true state of facts, and the case will not be altered where the prospectus states that such document can be inspected, and no attempt is made to inspect it (*i*).

The Companies Act, 1867, was the first Act which required the prospectus to make any particular statement. The section (s. 38) is now repealed (*k*), but it is still important because some of the decisions on this section may throw light on the provisions of the later statutes.

The provisions of the section were as follows :—

" Every prospectus of a company and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the dates and the names of the parties to any contract entered into by the company or the promoters, directors, or trustees thereof before the issue of such prospectus or notice, whether subject to adoption by the directors or the company or otherwise ; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the

(*b*) See *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377 ; *Arkwright* v. *Newbold* (1881), 17 C. D. 381.

(*c*) *McKeown* v. *Boudard Co.* (1897), 45 W. R. 152.

(*d*) *Reynell* v. *Sprye* (1852), 1 De G. M. & G. 656 ; *Traill* v. *Baring* (1864), 4 De G. J. & S. 318 ; *Scottish Petroleum Co.* (1883), 23 C. D. 413.

(*e*) *Arnison* v. *Smith* (1889), 41 C. D. 348.

(*f*) *London and Staffordshire Fire Co.* (1883), 24 C. D. 149.

(*g*) *Angus* v. *Clifford*, [1891] 2 Ch. 449.

(*h*) *Edgington* v. *Fitzmauriee* (1885), 29 C. D. 459.

(*i*) *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273 ; *Redgrave* v. *Hurd* (1882), 20 C. D. 1 ; *Central Railway of Venezuela* v. *Kisch* (1867), L. R. 2 H. L. 99 ; *Reynell* v. *Sprye* (1852), 1 De G. M. & G. 656.

(*k*) Companies Act, 1900, s. 33 (1).

company knowingly issuing (*l*) the same as regards any person taking shares in the company on the faith of such prospectus unless he shall have had notice of such contract."

The section in terms included all possible contracts made by the persons named therein, it included as well contracts made with the company and other contracts, executed and executory contracts, and contracts which before the issue of the prospectus had been cancelled. The only persons who could succeed in an action under the section were the persons, who, having taken shares, could show that they would not or at all events might not have taken their shares if the contract omitted had been disclosed (*m*), and this fact in itself practically limited the operation of the section to material contracts (*n*). In the result, material contracts and material contracts alone had to be disclosed (*o*).

It became usual to insert a clause in the prospectus and application form binding applicants for shares, to waive non-compliance with the section; but such a clause probably only covered unintentional and honest omissions (*p*).

The section, unlike those in later acts, only applied to a prospectus offering shares, and not to one offering debentures, for subscription (*q*).

The section gave no right of action against the company, but only against the promoters, directors, and officers of the company knowingly issuing the prospectus (*r*).

(*l*) A person "knowingly" issued the same when he had had or ought to have had knowledge of the contract in question; it was no defence to say that he had forgotten the very existence of the contract, *Shepheard* v. *Broome*, [1904] A. C. 342, or that he had not looked into the contracts, *Watts* v. *Bucknall*, [1903] 1 Ch. 766, or that he thought or had been advised that an omitted contract was immaterial: *Twycross* v. *Grant* (1877), 2 C. P. D. 469; *Macleay* v. *Tait*, [1906] A. C. 24.

(*m*) *Nash* v. *Calthorpe*, [1905] 2 Ch. 237; *Macleay* v. *Tait*, [1906] A. C. 24; *Shepheard* v. *Bray*, [1906] 2 Ch. 235. But see this case on appeal, [1907] 2 Ch. 571; *Baty* v. *Keswick* (1901), 85 L. T. 18; *Cackett* v. *Keswick*, [1902] 2 Ch. 456; in *Marshall* v. *Morrison*, [1907] W. N. 29, it was held that no action under the section would lie unless the applicant could show that he would or might not have taken shares if he had seen the dates and the names of the parties to the contract.

(*n*) *Sullivan* v. *Metcalfe* (1880), 5 C. P. D. 455.

(*o*) *Cornell* v. *Hay* (1873), L. R. 8 C. P. 328; *Charlton* v. *Hay* (1874), 31 L. T. 437; *Twycross* v. *Grant* (1877), 2 C. P. D. 469; *Macleay* v. *Tait*, [1906] A. C. 26; *Shepheard* v. *Broome*, [1904] A. C. 342; *Gover's Case* (1876), 1 C. D. 182; *Craig* v. *Phillips* (1876), 3 C. D. 722. If *Marshall* v. *Morrison*, [1907] W. N. 29, is right very few contracts would appear to be material; what is material to one man may be immaterial to another, cp. *Baty* v. *Keswick* (1901), 86 L. T. 18; and *Cackett* v. *Keswick*, [1902] 2 Ch. 15.

(*p*) *Greenwood* v. *Leathershod Co.*, [1900] 1 Ch. 421; *Cackett* v. *Keswick*, [1902] 2 Ch. 456; *Macleay* v. *Tait*, [1906] A. C. 24.

(*q*) *Cornell* v. *Hay* (1873), L. R. 8 C. P. 328.

(*r*) *Gover's Case* (1876), 1 C. D.

This section has been, as already stated, repealed and a prospectus must now state the matters set out in sections 80 and 81 of the Companies (Consolidation) Act, 1908; but, of course, this section in no way abrogates the common law duties of a company as to making mis-statements or omissions.

The next statutory requirements with regard to the contents of a prospectus were contained in the Companies Act, 1900, these were somewhat modified by the Act of 1907, the provisions of which were re-enacted by sections 80 and 81 of the present Act.

Every prospectus (*s*) issued by or on behalf of a company or in relation to any intended company must be dated, and on or before the date when any such prospectus is published a copy thereof signed by every person who is named therein as a director or proposed director of the company either personally or by his agent authorized in writing must be filed for registration with the Registrar of Joint Stock Companies. No prospectus may be issued until a copy of it has been filed. The Registrar of Joint Stock Companies may not register any prospectus unless it is so dated and signed, and the date on the prospectus will until the contrary is proved be taken as the date of the publication of the prospectus. Every prospectus must state on its face that a copy has been filed, and if a prospectus is issued without a copy thereof being filed for registration as required by the section, the company and every person who is knowingly a party to the issue of the prospectus will be liable to a fine not exceeding £5 for every day from the date of the issue of the prospectus until such copy is filed (*t*). This section (unlike section 81) would appear to have no application where the prospectus is issued after the incorporation of a company by a person other than the company or an agent of the company (*e.g.* where it is issued by an underwriter).

The object of this section would appear to be threefold. It ties a director to knowledge of the fact that the prospectus has been issued on a particular date, so that he cannot say he never heard of the prospectus or that certain mis-statements in the prospectus never came to his knowledge until after the issue of the prospectus.

182; *Sullivan* v. *Metcalfe* (1880), 5 C. P. D. 455; *Finance and Issue* v. *Canadian Property*, [1905] 1 Ch. 37.

(*s*) Prospectus means any prospectus notice circular advertisement or other invitation offering to the public for subscription or purchase any shares or debentures of a company: Companies (Consolidation) Act, 1908, s. 285. Cp. *South of England Natural Gas and Petroleum Co.*, [1911] 1 Ch. 573; *Sleigh* v. *Glasgow and Transvaal Options* (1904), 6 Fra. 420. Under the same section the expression debentures includes debenture stock.

(*t*) Companies (Consolidation) Act, 1908, s. 80. The offence may be prosecuted under the Summary Jurisdiction Acts, but in Scotland every prosecution must be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate directs: *ibid*, s. 276.

It provides that a copy of the prospectus shall always be available to persons interested, and it gives publicity to the affairs of the company (*u*). In practice the Registrar before filing a prospectus sees that the memorandum with the names, addresses, and descriptions of the signatories, and the number of shares subscribed for by each of them is set out where this is required. He also sees that the names, descriptions, and addresses of the directors, or proposed directors are set out, and looks to the minimum subscription provisions, but he does not concern himself any further with the contents of the prospectus.

The Act goes on to provide that every prospectus issued by or on behalf of a company or by or on behalf of any person who is or has been engaged or interested in the formation of a company must state the following particulars :—

"(1) The contents of the Memorandum of Association, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively ; and the number of founders or management *or deferred shares* (*x*), if any, and the nature and extent of the interest of the holders in the property and profits of the company ; and

"(2) The number of shares, if any, fixed by the articles of association as the qualification of a director, and any provision in the articles of association as to the remuneration of the directors ; and

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

"(4) The minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share ; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment *made within the two preceding years*, and the amount actually allotted ; and the amount, if any, paid on the shares so allotted ; and

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

(*u*) Any person may inspect documents kept by the Registrar of Joint Stock Companies and have copies or extracts of any such documents or any part of such documents certified by him on payment of the fees appointed by the Board of Trade, which are not to exceed 1*s*. for an inspection, 6*d*. for each folio of a certified copy or extract except in Scotland, where the charge is 6*d*. for each page of two hundred words : Companies (Consolidation) Act, 1908, s. 243 (6).

(*x*) The words in italics first occur in the Companies Act, 1907.

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

"(7) The amount (if any) paid or payable as purchase money in cash, shares, or debentures for any such property as aforesaid, specifying the amount (*if any*) payable for goodwill; and

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

"(9) The amount or estimated amount of preliminary expenses; and

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

"(11) The dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or to any contract entered into more than *two* years (*z*) before the date of issue of the prospectus; and

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

(*y*) For the purposes of the section every person is to be deemed to be a vendor who has entered into any contract absolute or conditional for the sale or purchase or for any option of purchase of any property to be acquired by the company in any case where either (*a*) The purchase money is not fully paid at the date of *issue* [publication in 1900 Act] of the prospectus or (*b*) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus, or (*c*) the contract depends for its validity or fulfilment on the result of that issue: Companies (Consolidation) Act, 1908, s. 81 (2). There need, however, be no disclosure of the amount of the purchase money payable under a contract between the person who sold to the company and a third party, if such contract has been completed—even though completion only took place a few days before the issue of the prospectus; *Brooks* v. *Hansen*, [1906] 2 Ch. 129. Where property to be acquired by the company is to be taken on lease the section applies as if the expression vendor included the lessor the expression purchase money included the consideration for the lease and the expression sub-purchaser included a sub-lessee: *ibid.*, sub-s. (2).

(*z*) Three years in the Companies Act, 1900, but even under the old Act two years was the limit where the prospectus was published more than a year after the date when the company was entitled to commence business.

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

"(14) *where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively*" (*a*).

The section does not apply to a circular or notice inviting existing members or debenture holders of the company to subscribe for shares or debentures whether with or without the right to renounce in favour of other persons; but it does apply to every other prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares, debentures, or debenture stock of a company, whether it is issued with reference to the formation of a company or subsequently (*b*); apparently a circular of which a few copies are printed or typewritten, and which is only given to the directors and a few other persons, for distribution among their personal friends, does not come within the section, at all events where it purports only to give information, and not to invite applications for shares (*c*). Where more than one prospectus has been issued, and one complies with the statute and the other does not, only applicants who have applied on the faith of the latter prospectus can complain (*d*).

The requirements as to the memorandum of association and the qualification, remuneration, and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses do not apply in the case of a prospectus published more than one year after the date when the company is entitled to commence business (*e*).

Where a prospectus is published as a newspaper advertisement, it is not necessary to specify the contents of the memorandum of association or the signatories thereto, and the number of shares subscribed for by them (*f*).

(*a*) Companies (Consolidation) Act, 1908, s. 81 (1).

(*b*) Companies (Consolidation) Act, 1908, ss. 81 (7), 285.

(*c*) *Sleigh* v. *Glasgow and Transvaal Options* (1904), 6 Fra. 420; *Sherwell* v. *Combined Incandescent Mantles* (1907), 23 T. L. R. 482; and cp. *South of England Natural Gas and Petroleum Co.*, [1911] 1 Ch. 573.

(*d*) *Roussell* v. *Burnham*, [1909] 1 Ch. 127.

(*e*) Companies (Consolidation) Act, 1908, s. 81 (8).

(*f*) Companies (Consolidation) Act, 1908, s. 81 (5). Sometimes one sees in newspapers advertisements issued by companies which

Any condition requiring or binding any applicant for shares or debentures to waive any of the requirements of the section or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus will be void (*g*).

Where an official quotation is desired, the Stock Exchange requirements as to a prospectus are :—

1. That the prospectus shall have been publicly advertised. This does not necessarily mean in a paper, but a reasonable number of copies of the prospectus must have been circulated.

2. That the prospectus agrees substantially with the Act of Parliament or Articles of Association.

3. That the prospectus provides for the issue of not less than one-half of the authorized capital and for the payment of 10 per cent. upon the amount subscribed. This 10 per cent. is not necessarily payable on application—it will be enough if the prospectus shows when it is to be paid. If shares have been allotted to vendors they are counted in the one-half and this provision merely requires the prospectus to show that such one-half has been issued or that it is intended to issue it immediately. The provision has, moreover, no application to debentures or debenture stock. But even in the case of these securities if an insufficient proportion of the total issue is to be issued it may cause difficulty in getting an official quotation.

4. In cases where a company has sold an issue of debentures or debenture stock which is subsequently offered to the public for subscription either by the company or any subsequent purchaser, the prospectus must state the authority for the issue and all conditions of sale. This rule is to meet the case of a sale of debentures or debenture stock to a bank or some person without disclosing the price paid by the purchaser. It will be necessary to state the price paid by the purchaser and who is issuing the debentures or debenture stock.

In order to comply with the Stock Exchange Rules it is necessary that two-thirds of the amount proposed to be issued (*h*) of any class of shares or securities whether such issue be the whole or a part of the authorized amount has been applied for by and unconditionally allotted to the public—shares or securities granted in lieu of money payments not being considered to form a part of such public allotment—and the articles, trust deed, if any, and certificate or bond are in an approved form (*hh*).

The Stock Exchange authorities will also have to be satisfied that the requirements of the Act have been complied with, but they will not insist on the memorandum of Association being set out in cases where the Act does not require it.

propose to issue shares, which do not contain the statutory requirements and state that the publication is for information only and that applicants must apply to the company for the full prospectus, such advertisements should never contain an application form, but do not appear to be contary to the Act.

(*g*) Companies (Consolidation) Act, 1908, s. 81 (4).

(*h*) The amount proposed to be issued will include vendors' shares.

(*hh*) See the Stock Exchange Rules and appendices set out in the Appendix to this book (pp. 1508 *et seq.*) as to the steps to be taken where a special settlement or an official quotation is sought.

STATEMENT IN LIEU OF A PROSPECTUS.

Companies which do not issue a prospectus on or with reference to their formation, which have not allotted shares or debentures before the 1st July, 1908, and which are not private companies (*i*), may not allot any of their shares or debentures unless before the first allotment of either shares or debentures there has been filed with the Registrar of Joint Stock Companies a statement in lieu of a prospectus signed by every person who is named therein as a director of the company or by his agent authorised in writing. Such statement to be in the form and containing the particulars set out in the second schedule to the Act (*k*). The Registrar will not file a statement in lieu of a prospectus unless every point in such form is dealt with either by a definite affirmative statement or by a negative statement, and he is bound in this case to see the statute is complied with.

A private company may, subject to anything contained in its memorandum or articles, by passing a special resolution and by filing with the Registrar of Joint Stock Companies such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures together with such a statutory declaration as the company would have had to file before commencing business turn itself into a public company (*l*). As has already been pointed out, these provisions are far from easy to understand, but it is thought that the special resolution required need not expressly convert the company into a public company (though no doubt this is desirable), but need only change the articles in such a way that they cease to comply with section 121 (1) of the Act. Presumably, neither the statement in lieu of a prospectus nor the statutory declaration will have to be filed by a company registered before the 1st July, 1908, and subsequently converted into a private company (*ll*), though perhaps it will be otherwise in the case of a company originally formed as a public company after that date.

A company may not, previously to the statutory meeting, vary the terms of a contract referred to in the prospectus or statement in lieu of a prospectus except subject to the approval of the statutory meeting (*m*).

(*i*) See *post*, pp. 329 *et seq.*, as to the requirements for enabling such a company to obtain a certificate entitling it to commence business, and Companies (Consolidation) Act, 1908, s. 87 (1) (*d*).

(*k*) Companies (Consolidation) Act, 1908, s. 82; for definition of private company, see *supra*, p. 9.

(*l*) Companies (Consolidation) Act, 1908, s. 121 (2).

(*ll*) The Registrar of Joint Stock Companies takes the view that such a statement need not be filed in these cases.

(*m*) Companies (Consolidation) Act, 1908, s. 83.

STATEMENT IN LIEU OF PROSPECTUS.

(Being the form in the Second Schedule to the Act.)

THE COMPANIES (CONSOLIDATION) ACT, 1908.

LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal capital of the company .	£
Divided into	Shares of £ each ,, ,, ,, ,, ,, ,,
Names, descriptions, and addresses of directors or proposed directors.	
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash. The consideration for the intended issue of those shares and debentures.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid. 3. debentures £ 4. Consideration.
Names and addresses of (*a*) vendors of property purchased or acquired, or proposed to be (*b*) purchased or acquired by the company. Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £ Cash . . . £ Shares . . £ Debentures . . £ Goodwill . . £
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company, or Rate of such commission . . .	Amount paid. ,, payable. Rate per cent.
Estimated amount of preliminary expenses.	£
Amount paid or intended to be paid to any promoter. Consideration for the payment . .	Name of promoter. Amount £ Consideration :—

(*a*) For definition of vendor, see section 81 (2) of the Companies (Consolidation) Act, 1908.

(*b*) See section 81 (3) of the Companies (Consolidation) Act, 1908.

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.	Nature of the provisions.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorized in writing) ______________

MINIMUM SUBSCRIPTION.

The first class of voidable contracts to be dealt with is the class where the company has no right to make an allotment.

(1) On the first allotment by a company of shares offered to the public (*n*) for subscription; and (2) in the case of a company which does not issue any invitation to the public to subscribe for its shares, and which is not a private company (*o*), on the first allotment of share capital payable in cash no allotment may be made unless certain provisions are complied with. They are to the following effect:—

In the case of a company offering shares to the public no allotment may be made of any share capital offered to the public for subscription unless the amount (if any) fixed by the memorandum or articles of association and named in the prospectus (*p*) as the minimum subscription upon which the directors may proceed to allotment (*q*), or if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription has been subscribed, and the sum payable on application, which must not be less than 5 per cent. of the nominal amount of each share of the amount so fixed and named, or of the whole amount offered, has been paid to and received by the company in cash (*r*). The amount to be subscribed is called the minimum subscription, and it must be reckoned exclusively of any amount payable otherwise than in cash.

If these conditions are not complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares must forthwith be repaid to them without interest, and if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company will be jointly and severally liable to repay that money with interest

(*n*) This means offered by the company: *Sherwell* v. *Combined Incandescent* (1907), 23 T. L. R. 482.

(*o*) A private company is a company which by its articles (1) restricts the right to transfer its shares, and (2) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty, and (3) prohibits any invitation to the public to subscribe for any shares or debentures of the company: Companies (Consolidation) Act, 1908, s. 121.

(*p*) It must be expressly stated in the prospectus, on the strength of which the applicant complaining took shares: *Roussell* v. *Burnham*, [1909] 1 Ch. 127.

(*q*) An article which provides that the minimum subscription shall be a given percentage (*e.g.* 50 per cent.) of any shares offered will be sufficient: *West Yorkshire Darracq* (1909), 25 T. L. R. 77.

(*r*) The receipt of a cheque is not payment in cash, at all events where it is dishonoured afterwards: *Mears* v. *West Canadian, etc., Pulp Co.*, [1905] 2 Ch. 353, or where it is not presented at once, but is held over for a few days: *National Motor Mail Coach Co.*, [1908] 2 Ch. 228; cp. *Glasgow Pavilion* v. *Motherwell* (1903), 6 Fraser, 116—where cheques received after banking hours were cashed the next day, and were held to amount to a payment when received. It would appear that directors when allotting shares should examine the company's pass book to see that all cheques received have been honoured: *Truman's Case*, [1894] 3 Ch. 272.

at the rate of 4 per cent. per annum from the expiration of such forty-eight days; but any director who can prove that the money has been lost, and that such loss was not due to any negligence or misconduct on his part, will escape liability. Conditions requiring applicants to waive compliance, with any of these provisions, or with the provisions next mentioned are void. The section except sub-section (3) requiring the amount payable on application to be not less than 5 per cent. of the nominal amount of each share does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription (*s*). Companies, other than private companies, which do not issue any invitation to the public to subscribe for their shares, may not on the first allotment of share capital payable in cash (*t*) allot any shares unless the minimum subscription—*i.e.* either (1) the amount if any fixed by the memorandum or articles, and named in the statement in lieu of a prospectus as the minimum subscription upon which the directors may proceed to allotment; or (2) if no amount is so fixed and named then the whole amount of the share capital other than that issued as fully or partly paid up otherwise than in cash has been subscribed, and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company (*u*).

In the case of shares not offered for subscription, there is no specific time within which application moneys must in the absence of a right to allot be returned; but it would seem that the remedy in such case is under the provisions of the following section (section 86), though, no doubt, it is the duty of the directors to return moneys received without making any allotment.

A person who has taken shares on the strength of an offer made before the incorporation of the company cannot avail himself of these provisions to avoid his contract (*x*), and the same remark applies to a subscriber to the memorandum, for his contract is complete without allotment, and therefore he is also not helped by the provisions of the succeeding section which deal with the case of wrongful allotment (*y*). Where the company has issued two prospectuses, one of which does, and one of which does not comply with these provisions, a person who has taken shares on the strength of the incomplete prospectus, will have the rights given by the section

(*s*) Companies (Consolidation) Act, 1908, s. 85, sub-ss. 1–6.

(*t*) These provisions do not apply if the allotment was made before the 1st July, 1908. As above stated, they also cannot be waived.

(*u*) Companies (Consolidation) Act, 1908, s. 85 (7).

(*x*) *Sherwell* v. *Combined Incandescent Co.* (1907), 23 T. L. R. 482.

(*y*) Cp. *Fothergill's Case* (1873), 8 Ch. 270, and as to their position where the company fails to get a certificate entitling it to commence business, *post*, pp. 329 and 330.

in cases where no minimum subscription is fixed by the prospectus (*z*).

It is provided by the next section that in case of an allotment in contravention of the provisions of the preceding section, the allotment will be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company (*a*), and not later, and that it will be so voidable notwithstanding the winding-up of the company.

The remedy under section 85 of the Act is apparently gone once there has been an allotment, even though it was a wrongful one, and a company cannot avoid a wrongful allotment unless the allottee demands that they shall do so (*b*).

The Act also provides (*a*) that any director who has knowingly (*c*) contravened or permitted or authorized the contravention of any such provisions, with respect to allotment, shall be liable to compensate the company and the allottee for any loss damages or costs which the company or the allottee may have sustained or incurred thereby (*d*). Proceedings to enforce such liability must be commenced within two years after the allotment.

The date when the company must be in a position to go to allotment is the actual date of allotment, and it will be no defence, where there has been an irregular allotment, to show that within a few days or hours of the allotment the company did make an allotment which, coupled with the previous allotment, would if it had been made at the time of the previous allotment have complied with the minimum subscription provisions, or that it was in a position to make a sufficient allotment at the time of the irregular allotment.

Thus where the company had its issue underwritten, and had subsequently allotted the shares to the extent of the minimum subscription to applicants, some of whom paid their application moneys by cheques which were subsequently dishonoured, an allotment to the plaintiff was avoided, although the underwriters were ready to take up the requisite shares (*e*). Nor will the allotment be good if

(*z*) *Roussell* v. *Burnham*, [1909] 1 Ch. 127.

(*a*) Companies (Consolidation) Act, 1908, s. 86 : it is not necessary that actual proceedings should be commenced within the month—it is enough if notice of intention to avoid the allotment is given within the month—and proceedings are taken as soon as it is clear that the directors of the company do not intend to remove the applicant's name : *National Motor Mail Coach Co.*, [1908] 2 Ch. 228.

(*b*) *Burton* v. *Bevan*, [1908] 2 Ch. 240 ; but see the first case cited in note (*e*), *infra*.

(*c*) "Knowingly" means with knowledge of the facts, not of the law : but knowledge after allotment is not enough : *Burton* v. *Bevan*, [1908] 2 Ch. 240.

(*d*) The amount of such compensation will probably not be limited to the amount by which the shares applied for fall short of the minimum subscription : *Daily Events Co.*, *Times* Newspaper, 2nd March, 1911.

(*e*) *Mears* v. *West Canada Pulp, etc., Co.*, [1905] 2 Ch. 353. This case and the one cited in note (*f*), *infra*, would appear to throw doubt

some of the payments are made by cheques which have not been cashed at the date of the allotment, but which after being held over some days are ultimately honoured (*f*).

It is submitted that shares allotted under a void contract would not count for the purposes of the minimum subscription, but that shares allotted under a voidable contract would count, for there the contract is good until proceedings are taken to set it aside.

Where the company does not have a statutory meeting, being a company incorporated before 1901, or it is submitted where the allotment is made after the statutory meeting, as may happen in the case of a company which does not originally offer its shares to the public, an irregular allotment may be set aside in the same way as an ordinary voidable contract, viz. if proceedings are taken as soon as the irregularity is discovered and before winding-up (*g*).

The Act does not provide any way in which a statement in lieu of a prospectus can be altered, and it would therefore appear that a company which does not offer its shares to the public cannot alter its minimum subscription, and receive fresh applications on the basis of such altered minimum subscription. Of course, however, it is always open to such a company to offer its shares to the public, and it would seem that it could convert itself into a private company. A company offering its shares to the public will have to comply with the provisions relating to companies offering their shares to the public, even where there has been a previous allotment.

A practical question sometimes arises as to the position of the bankers of a company which offers shares to the public, where they have received application moneys, and the company is not at the expiration of forty days in a position to go to allotment. Must the bankers in such case, where they know the facts, honour the cheques of the directors, or should they return the moneys to the applicants or insist that all cheques until the claims of all the applicants for shares have been satisfied should be in favour of such applicants? Apart from the statute, moneys so paid would not be subject to any trust in favour of the applicants, in the event of the contract not going through (*h*), and consequently there would be no lien in their favour. The statute says that "all moneys received from applicants for shares shall forthwith be repaid," and proceeds to impose a penalty (payment of interest) on directors who fail to make such repayment. It is thought that these words do impose a trust

on the Scotch Case, *Glasgow Pavilion* v. *Motherwell* (1903), 6 Fraser, 116, which decides that payment of the application moneys by cheque is a payment in cash within the meaning of the section, where all the cheques are subsequently honoured.

(*f*) *National Motor Mail Coach Co.*, [1908] 2 Ch. 228.

(*g*) *Finance and Issue* v. *Canadian Produce*, [1905] 1 Ch. 37.

(*h*) *Stewart* v. *Austin* (1867), 3 Eq. 299.

or lien, and that a bank having received moneys from a company need not honour their cheques until there has been an allotment and the company has obtained a certificate entitling it to commence business (*hh*). If this view is right, an injunction restraining dealings with such moneys will lie against the bank or the company or its directors (*i*).

Where an official quotation on the Stock Exchange is required, such quotation will not be granted unless two-thirds of the amount proposed to be issued of any class of shares or securities, whether such issue be the whole or a part of the authorized amount, shall have been applied for and unconditionally allotted to the public, shares or securities granted in lieu of money payments not being considered to form a part of such public allotment (*k*).

MISREPRESENTATIONS AND VOIDABLE CONTRACTS.

Persons who have been induced to take shares in companies by misrepresentations in a prospectus may have a remedy both against the company whose shares they have taken and against the directors or other persons actually responsible for the prospectus.

A person seeking relief against the company must in all cases seek rescission of his contract to take shares; for while he remains a shareholder of the company he cannot obtain damages against it either in an action based on fraud or misrepresentation (*l*), or in an action based on breach of contract (*m*). When a person obtains relief by way of rescission, he will also obtain an order for return of any moneys he has paid in respect of his shares, together with interest on such moneys at the rate of 4 per cent. per annum down to the date of repayment; such interest is not given as damages (*n*). Where an action for rescission is pending, the Court will restrain the company from forfeiting the shares for non-payment of calls, at all events where the plaintiff pays the amount of the calls with interest into Court, and enters into the usual undertaking in damages (*o*).

(*hh*) In such cases there is no contract: *New Druce Portland* v. *Blakston* (1908), 24 T. L. R. 583.

(*i*) See *Mears* v. *West Canada Pulp, etc., Co.*, [1905] 2 Ch. 353; but it would seem to be otherwise where the company is entitled to commence business and there has been an allotment, and if a company has wrongfully allotted it cannot of its own initiative avoid the allotment: *Burton* v. *Bevan*, [1908] 2 Ch. 240.

(*k*) *See also* the requirements as to the prospectus set out *supra*, pp. 215 *et seq.*

(*l*) *Houldsworth* v. *City of Glasgow Bank* (1880), 5 A. C. 317.

(*m*) *Addlestone Linoleum Co.* (1888), 37 C. D. 191.

(*n*) *Karberg's Case*, [1892] 3 Ch. 1.

(*o*) *Jones* v. *Sacaya Rubber and Produce Co.*, [1911] 1 K. B. 455; *Lamb* v. *Sambas Rubber and Gutta Percha Co.*, [1908] 1 Ch. 845; not following *Ripley* v. *Paper Bottle Co.* (1888), 57 L. J. (CH.) 327, but the court will not in such case restrain the company from bringing an action for calls: *Tatham* v. *Palace Restaurants* (1909), 53 Sol. J. 743.

Whether a shareholder who has obtained rescission could in a proper case obtain in addition damages in an action of deceit does not appear to have been decided, but on principle there does not seem to be any reason why he should not be so entitled (*p*).

At common law a person seeking this relief must be prepared to show that (1) a material misrepresentation has been made to him or that some statement made to him was substantially untrue owing to the absence of some qualifying statement, (2) that the company was responsible for such statement, or at all events that it was not in a position to take the benefit of such misstatement, and (3) that he, the applicant for relief, was induced by such misstatement or omission to take his shares.

(1) The misstatement or omission must be one of an existing fact, though of course a man may tell an untruth about the state of his opinion or belief or intention, in which case there would obviously be an untrue statement of fact (*q*).

Mere ambiguous statements may, it would seem, be sufficient to found such an action (*r*), but omissions will not be enough unless they are omissions of things which, if stated, would qualify or alter the statements actually made (*s*).

Moreover, a statement true at the time when made, but subsequently and before allotment becoming untrue, will be sufficient ground for rescission (*t*), even when the letter of allotment is accompanied by a statement of the altered circumstances, if such statement does not refer to the original statement and does not inform the allottee of his right to be freed from his bargain (*u*). In this

(*p*) Lord SELBORNE in *Houldsworth* v. *City of Glasgow Bank* (1880), 5 A. C. 317, seems to have said that damages could not be obtained against the company; the principle enunciated by WILLES, J., in *Barwick* v. *Joint Stock Bank* (1867), L. R. 2 Ex. 259, would seem contrary to this. This principle has been approved in many cases, notably in *Swire* v. *Francis* (1878), 3 A. C. 106; *Mackay* v. *Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 394; and *Houldsworth* v. *City of Glasgow Bank* (1880), 5 A. C., at p. 326.

(*q*) *Edgington* v. *Fitzmaurice* (1885), 29 C. D. 459; *Angus* v. *Clifford*, [1891] 2 Ch. 449.

(*r*) *Smith* v. *Chadwick* (1884), 9 A. C. 187; but cp. *Hallows* v. *Fernie* (1868), 3 Ch. 467.

(*s*) *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273; *McKeown* v. *Boudard Co.* (1897), 45 W. R. 142; see also *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377, a case of fraud; *Christineville Rubber Estates* (1911), 28 T. L. R. 38.

(*t*) *Reynell* v. *Sprye* (1852), 1 De G. M. & G. 656; *Traill* v. *Baring* (1864), 4 De G. J. & S. 318; *Scottish Petroleum Co.* (1883), 23 C. D. 413, approving *Anderson's Case* (1881), 17 C. D. 413; and *Kent County Gas Light and Coke Co.* (1906), 95 L. T. 756, where it was known at the time of allotment that a person who had not formally resigned did not intend to act as director.

(*u*) *Arnison* v. *Smith* (1889), 41 C. D. 348.

class of action, where rescission is sought, it is unnecessary to show that the company or its directors knew of the untruth of the statements made, or that they made them recklessly, not caring whether they were true or false. This is the most vital distinction between this sort of action and an action founded on fraud (*x*).

Nor even in the absence of fraud is it essential to show that the misstatement was so material as to go to the whole root of the contract, in other words, to make such a case as was necessary to obtain this form of relief in a court of law before the Judicature Acts (*y*); it is enough to show that there was a material misstatement which, taken as true, would have added substantially to the value of the shares acquired (*z*).

(2) There are several cases where the company will be held to be responsible for misrepresentations, or will not be allowed to take the benefit of a contract induced by them.

These cases were divided by Romer, J. (*a*), into four classes. His lordship says: "Speaking generally, to make a company liable "for misrepresentations inducing a contract to take shares from it, "the shareholder must bring his case within one or other of the "following heads:—

"(1) Where the misrepresentations are made by the directors "or other the general agents of the company entitled to act and "acting on its behalf, as, for example, by a prospectus issued by the "authority or sanction of the directors of a company inviting "subscriptions for shares.

"(2) Where the misrepresentations are made by a special agent "of the company acting within the scope of his authority, as, for "example, by an agent specially authorized to obtain on behalf of "the company subscriptions for shares. This head, of course, in- "cludes the case of a person constituted agent by the subsequent "adoption of his acts."

In cases coming under these heads it would appear that a company will be liable even where they did not make the statements with the view of inducing persons to take shares, but any statement complained of must have been made by the company to the person aggrieved, or to all persons of the class to which he belongs, as, for instance, to

(*x*) *Henderson* v. *Lacon* (1868), 5 Eq. 249; *Redgrave* v. *Hurd* (1882), 20 C. D. 1; *Reese River Silver Mining Co.* v. *Smith* (1873), L. R. 6 H. L. 64; and *sub nom. Smith's Case* (1867), 2 Ch. 604.

(*y*) See *Kennedy* v. *New Zealand, etc., Mail Co.* (1867), L. R. 2 Q. B. 580.

(*z*) *Jennings* v. *Broughton* (1854), 5 De G. M. and G. 126; *Central Railway of Venezuela* v. *Kisch* (1867), L. R. 2 H. L. 99, 121; *Ross* v. *Estates Investment Co.* (1866), 3 Eq. 122 and (1868) 3 Ch. 682; and per Lord LYNDHURST in *Atwood* v. *Small* (1871), 6 Cl. and Fin. 232; *Denton* v. *MacNeill* (1866), 2 Eq. 352.

(*a*) *In Lynde* v. *Anglo-Italian Hemp, etc., Co.*, [1896] 1 Ch. 178, 182.

all intending shareholders (*b*). Thus a statement made by a company to its own shareholders only will not be sufficient to entitle a person to bring an action where he was not a shareholder at the date of the statement, even if the statement has been shown to him by one of the company's directors without the sanction of the other directors (*c*). It will be otherwise where the company or its directors have allowed the statement to get into circulation (*d*).

On this ground it would appear that a person who has taken shares on the statements contained in a statement in lieu of a prospectus or in any other document which the directors of a company are required to file will be entitled to rescission. Of course, transferees of shares are in quite a different position (*e*); except possibly in the case where the original shareholder has been misled, and they have stepped into his shoes, it would appear that they can never have any relief against the company (*f*). The third head mentioned by the learned Judge in *Lynde* v. *Anglo-Italian, etc., Hemp Co.* (*g*) is, " Where the company can be held affected before the " contract is complete with the knowledge that it is induced by " misrepresentations, as, for example, when the directors on allotting " shares know, in fact, that the application for them has been induced " by misrepresentations, even though made without any authority."

The fourth head is, " Where the contract is made on the basis " of certain representations, whether the particulars of those repre- " sentations were known to the company or not, and it turns out " that some of those representations were material and untrue, as, " for example, if the directors of a company know, when allotting, " that an application for shares is based on the statements contained " in a prospectus, even though that prospectus was issued without " authority or even before the company was formed, and even if " the contents are not known to the directors."

Under this fourth head would appear to come cases where the directors did not, when allotting, know that the application was made on the basis of any prospectus or any representations at all, for *Karberg's Case* (*h*) is put under this head, and in that case the Judge

(*b*) See *Burnes* v. *Pennell* (1849), 2 H. L. C. 497; *National Exchange Co. of Glasgow* v. *Drew* (1855), 2 Macq. 103; *New Brunswick Co.* v. *Conybeare* (1862), 9 H. L. C. 711; *Western Bank of Scotland* v. *Addie* (1867), L. R. 1 H. L. Sc. 145. It may be doubted whether *Mixer's Case* (1859), 3 De G. and J. 575, can be altogether reconciled with these cases.

(*c*) *Holt's Case* (1856), 22 Beav. 45; *Nicol's Case* (1859), 3 De G. & J. 387.

(*d*) *Scott* v. *Dixon* (1859), 29 L. J. (EX.) 62 *n*; *Bell's Case* (1856), 22 Beav. 35.

(*e*) *Worth's Case* (1859), 4 Dr. 529.

(*f*) See *Duranty's Case* (1858), 26 Beav. 268.

(*g*) [1896] 1 Ch. 178, 182.

(*h*) [1892] 2 Ch. 1.

in the Court of first instance found, and the Court of Appeal apparently did not differ from him on this point, that there was no evidence that the directors knew that the application was based on the prospectus containing the statements complained of; and *Tamplin's Case* (*i*) was treated as being governed by *Karberg's Case* (*k*), and there again there was the same finding in the Court of first instance (*l*). In cases under this head, it would appear, however, that there must be some formal written or printed statement purporting to be made in the name of the company, a more irresponsible verbal statement by a promoter or other person would not be enough; otherwise, it seems impossible to reconcile *Karberg's Case* (*k*) with other cases (*m*).

(3) The third requisite in an action for rescission is that the applicant should show that he was induced by the misrepresentation or omission complained of to take his shares. This would appear in all cases to be a question of fact, and where there is a jury a question for the jury (*n*). It is not necessary, though usually desirable, for the applicant for relief to go into the box and state that but for the statement or the prospectus complained of he would not or might not have taken his shares, but he must either by such statement or in some other way, as, *e.g.*, by showing the materiality of such statement or omission, convince the jury, or, where the Judge has to find the facts, the Judge, that such is the case (*o*). Where the statement complained of is ambiguous, he must show the sense in which he understood it (*p*). No relief will be given to a person who was a party to the fraud complained of (*q*).

The question remains whether rescission can be obtained where the prospectus has not complied with the statutory requirements. It was decided (*r*) under section 38 of the Companies Act, 1867, that rescission could not be given for non-compliance with that section; but this decision does not necessarily apply to the present statutory requirements, because section 38, unlike the latter enactments, makes non-compliance with its terms a fraud on the part of certain named persons of whom the company is not one.

(*i*) [1892] W. N. 146.

(*k*) [1892] 3 Ch. 1.

(*l*) [1892] W. N. 94.

(*m*) *E.g. Lynde* v. *Anglo-Italian Hemp, etc., Co.*, [1896] 1 Ch. 178; *Hilo Manufacturing Co.* v. *Williamson* (1911), 24 T. L. R. 164; *Gibson's Case* (1858), 2 De G. &. J. 275; see also *Western Bank of Scotland* v. *Addie* (1867), L. R. 1 H. L. Sc. 145.

(*n*) *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273; *Smith* v. *Chadwick* (1884), 9 A. C. 187.

(*o*) *Smith* v. *Chadwick* (1854), 9 A. C. 187. However material a fact may be, the tribunal may be satisfied that the applicant for relief was not in the least concerned with it—but took his shares solely on the strength of some other fact: see *Baty* v. *Keswick* (1901), 85 L. T. 18.

(*p*) *Smith* v. *Chadwick* (1884), 9 A. C. 187.

(*q*) *Odessa Tramways* v. *Mindel* (1878), 8 C. D. 235.

(*r*) *Gover's Case* (1876), 1 C. D. 82.

If some of the requirements of the statute are not complied with, an applicant might well be led by such omission to believe that the thing required to be divulged did not exist in the case of the company issuing the prospectus (*s*). This would appear to be the case, for example, if a company which has founders' shares does not refer to founders' shares at all; in such case it might reasonably be assumed that it had no founders' shares, and again, if there is no reference to an underwriting commission payable in respect of debentures (*t*), it would not be unreasonable to assume that it was paying no such commission. These remarks do not apply to all the statutory requirements, but it is submitted that the Court might well have taken the view that in all cases where a person could satisfy a jury or a Judge who was trying questions of fact that he would or might not have taken shares or debentures (*u*) had he known of certain facts which the statute required to be divulged, but which were in fact not divulged, he would be entitled to relief by way of rescission (*x*). This view has, however, not prevailed (*y*).

It may, however, be added that the difficulty in ascertaining whether a person would or would not have taken shares if he had known of certain facts, which he did not know of, has not been found insuperable in cases (*z*) under section 38 of the Companies Act, 1867, and it is difficult to see why the company should be allowed to benefit by a failure to comply with its statutory duty.

Generally speaking, where there is a voidable contract, the person entitled to avoid it may do so at any time, until he has done some action which is only consistent with the intention to stand by his contract, and such act must be done with full knowledge of the right to avoid the contract (*a*).

(*s*) See the analogy of the cases, where it has been held that if a promoter, who owes a duty to the company to divulge any profit he is making does not state that he is making any profit, he in effect says that he is making no profit: *Bentinck* v. *Fenn* (1887), 12 A. C. 652, 671; *Leeds and Hanley Theatres of Varieties*, [1902] 2 Ch. 809.

(*t*) The company cannot pay underwriting commissions in respect of shares unless it divulges the fact in its prospectus, where there is a prospectus: see s. 89 of the Act, and see also as to minimum subscription, s. 85.

(*u*) See *Shepheard* v. *Bray*, [1906] 2 Ch. 235, but see the remarks on this decision when it came before the Court of Appeal, [1907] 2 Ch. 571.

(*x*) It is thought that the company does not come within the protection given to "directors or other persons" given by s. 81, sub-s. 6 of the Act, where they do not know of facts, or make honest mistakes of fact.

(*y*) *Wimbledon Olympia*, [1910] 1 Ch. 630; *South of England Natural Gas and Petroleum Co.*, [1911] 1 Ch. 573.

(*z*) See *Nash* v. *Calthorpe*, [1905] 2 Ch. 237; *Macleay* v. *Tait*, [1906] A. C. 24.

(*a*) *Deposit Life Assurance Co.* v. *Ayscough* (1856), 6 E. & B. 179.

This rule applies in the case of a shareholder whose shares have been forfeited, and he may in an action for calls made before forfeiture repudiate any liability to the company unless he has previously taken up a position which is not consistent with this attitude (*b*).

But the rule does not apply to a shareholder whose name is on the company's register. Before taking proceedings such a person may, where the case requires investigation, take a proper time so as to enable him to look into the matters in question (*c*), but subject to this a person who knows of his right to repudiate his shares must act at once (*d*). It will not be enough for the shareholder to write repudiating his shares (*e*), nor may he, in the absence of a definite agreement with the company to that effect (*f*), wait and see what is the result of other proceedings founded on the same misrepresentations as he complains of (*g*). Thus delays of a month and a half (*h*), of a month (*i*), and of twelve days (*k*) have in the special circumstances been held to be fatal. Any act which amounts to an election, with full knowledge, to keep the shares will also be fatal (*l*); but it would seem that after a person has testified his election to repudiate his shares by issuing his writ he may with impunity do acts which would otherwise amount to an election to keep the shares (*m*). In the cases where the right to repudiate a voidable contract arises out of a divergence between the prospectus and the memorandum or articles of association, a shareholder is bound not only to take steps immediately on ascertaining his right so to do, but also to take immediate steps to make himself acquainted with the company's memorandum and articles of association. In these cases, therefore, steps to repudiate will have to be taken almost immediately after allotment (*n*).

(*b*) *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273.

(*c*) *Central Railway of Venezuela* v. *Kisch* (1867), L. R. 2 H. L. 99.

(*d*) *Central Railway of Venezuela* v. *Kisch* (1867), L. R. 2 H. L. 99; *Heymann* v. *European Central Railway* (1868), 7 Eq. 154.

(*e*) *Kent* v. *Freehold Land Co.* (1868), 3 Ch. 493; *Hare's Case* (1869), 4 Ch. 503.

(*f*) *Scottish Petroleum Co.* (1883), 23 C. D. 413; *Ex parte Storey* (1890), 62 L. T. 791.

(*g*) *Shelton's Case* (1893), 9 T. L. R. 13; *Ashley's Case* (1870), 9 Eq. 263.

(*h*) *Ogilvie* v. *Currie* (1868), 37 L. J. (CH.) 541.

(*i*) *Taite's Case* (1867), 3 Eq. 795.

(*k*) *Scottish Petroleum Co.* (1883), 23 C. D. 413.

(*l*) *Brigg's Case* (1866), 1 Eq. 483; *Scholey's Case* (1870), 9 Eq. 266 *n*; *Sharpley* v. *Louth and East Coast Railway Co.* (1876), 2 C. D. 663; *Ex parte Shearman* (1897), 66 L. J. (CH.) 25, and contrast *Ex parte Hale* (1886), 55 L. T. 670.

(*m*) *Foulkes* v. *Quartz Hill Mining Co.* (1883), Cab. & E. 156. *Ex parte Edwards* (1891), 64 L. T. 561; but see the remarks on this in *Tomlin's Case*, [1898] 1 Ch. 104.

(*n*) *Lawrences and Kincaid's Case* (1867), 2 Ch. 412; *Wilkinson's Case* (1867), 2 Ch. 536; *Peel's Case* (1867), 2 Ch. 674; *Jackson's Cases* (1867), 16 L. T. 378. The earlier view that such contracts were void,

After a winding-up no relief can, in the case of a voidable contract to take shares, be given to a person on the register against the company, unless proceedings have been commenced before the winding-up (*nn*). In such case there cannot be a *restitutio in integrum* (*o*). This rule applies in a compulsory winding-up (*p*), when the winding up will be taken to commence on the date of the presentation of the successful petition (*q*) and in a voluntary winding-up (*r*), and it applies even when all the creditors have been paid (*s*). It has been extended so as to preclude rescission, and consequently an action for damages against the company also (*t*), where there is no winding-up, but the company has, before proceedings were commenced, stopped business (*u*). The fact that the company is insolvent at the time proceedings are started will not, if it has not then ceased to carry on its business, preclude rescission (*x*).

A winding-up will not, however, preclude the right to rescission where a writ has been issued before the winding-up (*y*), or where in answer to an application for calls under Order 14, R. S. C., an affidavit has been filed before winding up stating the deponent's intention to counterclaim for rescission (*z*). In these cases, notwithstanding the winding-up, the Court has power to order rectification of the register (*a*). It has been held that where, before winding-up, a shareholder successfully defends an action for calls on the ground of fraud he cannot, after winding-up, repudiate his shares (*b*); but this case was doubted by the Court of Appeal (*z*).

Winding-up will not preclude relief where before it commenced there was a definite agreement between the applicant for relief and the company providing that the applicant should stay his hand until the termination of proceedings then pending between the company

see *Webster's Case* (1866), L. R. 2 Eq. 741; *Ship's Case* (1865), 2 De G. J. & S. 544; *Stewart's Case* (1866), 1 Ch. 574; *Stewart* v. *Austen* (1867), 3 Eq. 299 is not law; *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 351 *et seq.*; *Downes* v. *Ship* (1868), L. R. 3 H. L. 343.

(*nn*) For a statutory exception to this rule, see *supra*, p. 224.

(*o*) *Western Bank of Scotland* v. *Addie* (1867), L. R. 1 H. L. Sc. 145; *Clarke* v. *Dickson* (1858), E. B. & E. 148.

(*p*) *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 325.

(*q*) *Whiteley's Case*, [1900] 1 Ch. 365; *Kent* v. *Freehold Land Co.* (1868), 3 Ch. 493.

(*r*) *Stone* v. *City and County Bank* (1878), 3 C. P. D. 282.

(*s*) *Burgess's Case* (1880), 15 C. D. 507.

(*t*) *Houldsworth* v. *City of Glasgow Bank* (1880), 5 A. C. 317.

(*u*) *Tennent* v. *City of Glasgow Bank* (1879), 4 A. C. 615.

(*x*) *Carling* v. *London and Leeds Bank* (1887), 56 L. J. (CH.) 321.

(*y*) *Smith's Case* (1867), 2 Ch. 604, and *sub nom. Reese River Silver Mining Co.* v. *Smith* (1869), L. R. 4 H. L. 64, and see *Cocksedge* v. *Metropolitan Coal Consumers* (1891), 64 L. T. 826, as to amending a statement of claim after a winding-up order has been made, in such cases.

(*z*) *Whiteley's Case*, [1900] 1 Ch. 365.

(*a*) *Reese River Silver Mining Co.* v. *Smith* (1869), L. R. 4 H. L. 64; *Sussex Brick Co.*, [1904] 1 Ch. 598.

(*b*) *Ex parte Stevenson* (1868), 16 W. R. 95.

and another applicant for relief, whose cause of action arose out of the same misrepresentations (*c*). A mere unenforceable understanding will, however, not be enough to avail the applicant (*d*), or an agreement between the company and other persons coupled with repudiation by the applicant (*e*) unless possibly where the directors have given notice that they do not intend to proceed with actions for calls while the proceedings for rescission are pending (*f*).

In one case (*g*) rectification was granted after winding-up, where the shareholder had repudiated and the secretary of the company had returned his deposit moneys, but had, without his knowledge, left his name on the register.

As directors of a company have, where there is a clear case for rescission, power to rectify the register without an order (*h*) directing them so to do, this case may possibly be supported on the ground that the company was estopped from saying the repudiating shareholder was a shareholder; but considerable doubt was thrown on the case in the *Scottish Petroleum Co.* (*i*). Where shares have been allotted owing to a mutual mistake, the position seems to be the same as in misrepresentation cases (*k*).

Where shares have been allotted to an infant, the allotment would seem to be voidable, and not void (*l*), and if the infant repudiates in time and has taken no benefit, he can recover the moneys paid (*m*).

REMEDIES FOR MISREPRESENTATIONS AGAINST DIRECTORS AND OTHERS.

Directors, promoters, and other persons responsible for any statements made in a company's name will in certain cases be liable

(*c*) *Pawle's Case* (1869), 4 Ch. 497; *Neill's Case* (1867), 15 W. R. 894; *Scottish Petroleum Co.* (1883), 23 C. D. 413; *Central Klondyke Co.* (1898), 5 Mans. 282.

(*d*) *Scottish Petroleum Co.* (1883), 23 C. D. 413.

(*e*) *Hare's Case* (1869), 4 Ch. 503.

(*f*) *McNeill's Case* (1870), 10 Eq. 503, approved in *Scottish Petroleum Co.* (1883), 23 C. D. 413: and see also *Wallace's Case*, [1900] 1 Ch. 365; *Ashley's Case* (1870), 9 Eq. 263 was similar in all respects to *McNeill's Case, supra*, except that there had been no express repudiation and consequently relief was not given.

(*g*) *Fox's Case* (1868), 5 Eq. 18.

(*h*) *Blake's Case* (1865), 34 Beav. 639; see also *Scottish Petroleum Co., Maclagan's Case* (1881), 50 L. J. (CH.) 141, where under a valid compromise it was arranged that a member's name should be taken off the register, and this not having been done before winding-up, relief was given after.

(*i*) (1854), 23 C. D. 413.

(*k*) *Hartley's Case* (1875), 10 Ch. 157; *Darlington Forge Co.* (1887), 34 C. D. 522.

(*l*) *Ebbet's Case* (1870), 5 Ch. 102. The Infants' Relief Act, 1874, seems to make no difference as the contract is executed and not executory: *Hamilton* v. *Vaughan-Sherrin*, [1894] 3 Ch. 589; Lindley on Companies, 6th Edition, vol. i. p. 56; *Valentini* v. *Canali* (1890), 24 Q. B. D. 167.

(*m*) *Hamilton* v. *Vaughan-Sherrin*, [1894] 3 Ch. 589.

for those statements, on the principle that all persons directly concerned in telling untruths must be treated as principals (*n*).

The only action which, apart from statute, lay against such persons was the common law action of deceit (*o*).

This action lay where a person made a false statement knowing it to be false or recklessly, not caring whether it was false or true, and meaning that another person should act on it, and such other person did act on it, believing it to be true and was damaged by so acting (*p*). To consider these points somewhat more minutely :—

It will be necessary in an action of this sort to show that the person sought to be made liable actually made the statement complained of, either personally or by means of some agent whom he instructed to make it. For instance, a director will not in an action of this nature be responsible for the false statements of his co-directors (*q*), or for false statements made by sub-agents of the company (*r*), unless it can be shown that he has concurred in such statements or failed in doing some act he ought to have done. It will be difficult for a director to escape on this ground, now that a signed prospectus must be filed. It will further be necessary to show that there was a false statement of an existing fact, or that a false impression as to an existing fact has been conveyed (*s*).

A mere omission will not be enough, unless the effect of such omission be to make what is stated false (*t*).

If the statement was true when made, and subsequently but before a contract to take shares made on the strength of it is completed becomes untrue, it will not be sufficient in an action of deceit (*u*).

But a person cannot save himself in an action of this nature by showing that the document containing the false statement referred to other documents, which if they had been inspected would have shown the falsity of the statement complained of (*x*).

The third thing which must be shown in an action of this nature is that the person who made the false statement, or, if he was a mere agent, and his principal is sought to be made liable, his principal made such statement either knowing it to be false or what comes

(*n*) *Henderson* v. *Lacon* (1868), 5 Eq. 249; *Cullen* v. *Thompson's Trustees* (1862), 4 Macq. 424.

(*o*) *Derry* v. *Peek* (1889), 14 A. C. 337.

(*p*) *Gerhard* v. *Bates* (1853), 2 E. & B. 476; *Derry* v. *Peak* (1889), 14 A. C. 337.

(*q*) *Cargill* v. *Bower* (1879), 10 C. D. 502.

(*r*) *Bear* v. *Stevenson* (1874), 30 L. T. 502; *Weir* v. *Barnett* (1877), 3 Ex. Div. 32.

(*s*) See *Seddon* v. *North Eastern Salt Co.*, [1905] 1 Ch. 326.

(*t*) *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377; *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273. This statement does not extend to the omission of things by statute required to be stated, these are subsequently considered.

(*u*) *Arkwright* v. *Newbold* (1881), 17 C. D. 381.

(*x*) *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273.

to the same thing recklessly not caring whether it was true or false. The mere fact that the statement was made without reasonable grounds for believing it to be true will not be enough (*y*).

In the case of an ambiguous statement it will be necessary to show that either the defendant meant it in the sense which is untrue(*z*), or presumably that he made it trickily meaning it to be understood in such a way as to convey an untruth.

The fourth point that must be shown is that the statement was either made to the person injured or to some other with the intent that the person injured should act on it (*a*).

Thus it would appear that a statement made in a prospectus not issued for the benefit of persons buying on the market will give no right of action to such persons (*b*). A report made to shareholders will not give a right of action to non-shareholders or even to shareholders unless the intention was that such report should get into the hands of existing shareholders (*c*). An untruth told to the Stock Exchange authorities, with a view of obtaining an official quotation, will not give a cause of action to a person buying on the strength of such quotation, even though he knows all the requirements of the committee before granting an official quotation and buys because he assumes they have been complied with (*d*).

In one case, however, a person who had been the recipient of a prospectus, subsequently, after reading a puff of the company in a newspaper at a time when no shares were being issued, bought shares on the market, and it was held that the prospectus was intended to influence persons buying on the market, and consequently that the purchaser was entitled to succeed in an action of deceit (*e*). This fourth requirement is in effect "the malice," *i.e.* the intention to injure, which in such cases will usually be implied, and which is required in most actions of tort; it has been described as the nexus which connects the plaintiff and the defendant (*f*).

Probably in the case of fraudulent statements in a statement

(*y*) *Derry* v. *Peek* (1889), 14 A. C. 337; see also *Angus* v. *Clifford*, [1891] 2 Ch. 449, where a statement as to the defendant's belief, which was of course a question of existing fact, was carelessly made.

(*z*) *Glasier* v. *Rolls*. (1889), 42 C. D. 436.

(*a*) *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377; citing *Barry* v. *Croskey* (1861), 2 J. & H. 107.

(*b*) *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377. It is thought that the fact that a prospectus has been filed as required by the Act will make no difference in this respect.

(*c*) *Scott* v. *Dixon* (1859), 29 L. J. Ex. 62 *n*.

(*d*) *Barry* v. *Croskey* (1861), 2 J. & H. 117.

(*e*) *Andrews* v. *Mockford*, [1896] 1 Q. B. 372.

(*f*) Cp. *Read* v. *Friendly Society of Co-operative Stonemasons*, [1902] 2 K. B. 732, 739; such intention will be inferred, where injury is a natural consequence of the Act complained of.

in lieu of a prospectus (*g*), an action of deceit will lie against directors, at all events where the plaintiff has bought his shares from the company on the strength of such statement. It is, however, doubtful whether such a statement, though filed and therefore open to the public, will be held to be made with the intention of purchasers on the market acting on it, except in exceptional cases.

Lastly, the plaintiff in an action of deceit must show that he has been damaged by the deceit complained of (*h*). This is not, as was stated by Sir George Jessel in one case (*i*), an inference of law; it is in each case a question of fact which must be decided by the jury or other tribunal trying the facts (*k*). It is not, however, necessary to call the plaintiff to say that he was misled; in fact, as has been pointed out, when these actions were originally instituted the plaintiff could not give evidence in his own behalf (*l*); but the jury must be able to infer from the materiality of the misstatements or otherwise that the plaintiff would not, or at all events might not, have taken his shares if the misstatement had never been made (*m*). These inferences may be rebutted, as, for instance, where the tribunal trying the question is satisfied that the plaintiff bought his shares solely on the strength of a particular statement which was true (*n*), or that he made his own independent investigations and relied on them only (*o*).

Where the plaintiff relies on an ambiguous statement, it is for him to show the sense in which he understood it (*p*).

(*g*) Persons wilfully making in a statement in lieu of a prospectus a statement false in any material particular knowing it to be false are guilty of a misdemeanour and will be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case in lieu of or in addition to imprisonment to a fine; such fine in case of summary conviction not to exceed £100. Companies (Consolidation) Act, 1908, s. 281; Perjury Act, 1911, s. 5. In Scotland the prosecution must be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate directs: *ibid.*, s. 276.

(*h*) *Bellairs* v. *Tucker* (1884), 13 Q. B. D. 562.

(*i*) *Redgrave* v. *Hurd* (1882), 20 C. D. 1.

(*k*) *Arnison* v. *Smith* (1889), 41 C. D. 348; *Smith* v. *Chadwick* (1884), 9 A. C. 187; *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273.

(*l*) *Smith* v. *Chadwick* (1884), 9 A. C. 187.

(*m*) *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273; *Arnison* v. *Smith* (1889), 41 C. D. 348; *Smith* v. *Chadwick* (1884), 9 A. C. 187; *Macleay* v. *Tait*, [1906] A. C. 24; *Nash* v. *Calthorpe*, [1905] 2 Ch. 237; *Shepheard* v. *Bray*, [1906] 2 Ch. 235. See, however, the remarks of the Court of Appeal in this case, [1907] 2 Ch. 571; *Cackett* v. *Keswick*, [1902] 2 Ch. 456; and see also *Smith* v. *Land and House Property* (1885), 28 C. D. 7.

(*n*) *Baty* v. *Keswick* (1901), 85 L. T. 18.

(*o*) *Redgrave* v. *Hurd* (1882), 20 C. D. 1; *Attwood* v. *Small* (1838), 6 Cl. & Fin. 232.

(*p*) *Smith* v. *Chadwick* (1884), 9 A. C. 187.

These actions do not survive against the executors of a deceased person (q); they will not be barred by laches or because the company, whose shares were taken, is in winding-up, but only by the lapse of the statutory period of six years from the discovery of the fraud (r).

The decision in *Derry* v. *Peek* (s) that it was necessary to make a case of fraud against persons responsible for misrepresentations in a prospectus was thought to unduly favour such persons, and consequently the Directors' Liability Act, 1890, was passed. This Act is incorporated with slight modifications in the present Act (t).

Now, where a prospectus (u) invites persons to subscribe for shares in or debentures or debenture stock of a company (1) every person who is a director of the company at the time of the issue of the prospectus, and (2) every person who has authorised the naming of him and is named in the prospectus as having agreed to become a director either immediately or after an interval of time, and (3) every promoter (x) of the company, and (4) every person who has authorized the issue of the prospectus will be liable to pay compensation to all persons who subscribe for any shares or debentures or debenture stock on the faith of such prospectus for the loss or damage they may have sustained by reason of any untrue statement therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith unless it is proved—

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

2. With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract

(q) *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377.

(r) *Redgrave* v. *Hurd* (1882), 20 C. D. 1.

(s) (1889), 14 A. C. 337.

(t) Companies (Consolidation) Act, 1908, s. 84.

(u) For definition of prospectus, see *ibid.*, s. 285, *supra*, p. 214, note (s).

(x) "Promoter" for the purposes of this section means a promoter who was a party to the preparation of the prospectus or notice or of the portion thereof containing the untrue statement but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company: Companies (Consolidation) Act, 1908, s. 84 (5).

(y) The expression "expert" in this section includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him: *ibid.* It will be noticed that this definition does not purport to be exhaustive.

(z) A person to whom this Act applies may rely on the statements of others whose duty it is to keep him informed: *Stevens* v. *Hoare* (1904), 20 T. L. R. 407; but it is no ground of defence to say he believed a statement to be true if he knew all the facts but took an erroneous view of the law; *Sheppheard* v. *Bray*, [1904] A. C. 342.

from a report or valuation of an expert that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; but the director, person named as director, promoter, or person who authorised the issue of the prospectus will be liable to pay the compensation above mentioned if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

3. With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document that it was a correct and fair representation of the statement or copy of or extract from the document.

Further, a person may protect himself in an action under the section by showing that though he had consented to become a director he withdrew such consent before the issue of the prospectus, and that it was issued without his authority or consent; and any person rendered liable under the section may defend himself by showing (1) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice (*a*) that it was issued without his knowledge or consent; or by showing (2) that after the issue of the prospectus and before allotment thereunder he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal and of the reason therefor.

Where a company existing on the eighteenth day of August, one thousand eight hundred and ninety, has issued shares, debentures, or debenture stock and for the purpose of obtaining further capital by subscriptions for shares, debentures, or debenture stock issues a prospectus, a director will not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus or has adopted or ratified it.

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

(*a*) A statement in his defence to an action on the prospectus will not be sufficient: *Drincqbier* v. *Wood*, [1899] 1 Ch. 393.

(*b*) Even apart from this section a person can restrain the use of his name where he has not consented to act as director; *Routh* v. *Webster* (1847), 10 Beav. 562; *Walter* v. *Ashton*, [1900] 2 Ch. 282.

defending himself against any action or legal proceedings brought against him in respect thereof.

Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation. These last words seem to do away to some extent with the decision in *Gerson* v. *Simpson* (c), which established that the Directors' Liability Act had, even in cases of fraud, done away with the old rule, that there could be no contribution between joint tortfeasors (d) in prospectus cases. In these cases the third party procedure provided by O. 16, R.S.C., can be utilized.

Claims against a company and its directors may be joined in one action (e), and several persons who have been deceived by the same prospectus may be co-plaintiffs (f).

Warrington, J. (g), has held that an action for contribution under the section would lie against the executors of a deceased director, and sums paid to the plaintiff in the action on the prospectus for costs would be included in such contribution, but not any costs of an appeal, or any costs incurred by the person claiming contribution in the previous action. The effect of the section in the case of directors, promoters, and persons who are with their authority named as directors in a prospectus, would seem to be to render such persons absolutely liable for every statement in a prospectus unless there is something in the section to relieve them of such liability (ff).

Actions under the section will probably be statute barred at the end of six years from the time when the cause of action arose—but they are not actions for penalties within the meaning of the Civil Procedure Act, 1833—and so will not be barred at the end of two years from that time (h).

If the requirements of section 81 of the Act as to the contents of a prospectus are not complied with, a director or other person responsible for the prospectus will not incur any liability by reason of the non-compliance if he proves, (a) as regards any matter not disclosed, he was not cognisant thereof, or (b) the non-compliance arose from an honest mistake of fact on his part.

(c) [1903] 2 K. B. 197.

(d) See *Merryweather* v. *Nixan* (1799), 8 T. R. 186.

(e) *Frankenburg* v. *Great Horseless Carriage Co.*, [1900] 1 Q. B. 504: and cp. *Gower* v. *Couldridge*, [1898] 1 Q. B. 348.

(f) *Drincqbier* v. *Wood*, [1899] 1 Ch. 393; and see *Stroud* v. *Lawson*, [1898] 2 Q. B. 44.

(ff) For orders declaring liability and ordering contribution, see *supra*, pp. 247 and 248.

(g) *Shepheard* v. *Bray*, [1906] 2 Ch. 235, but see the remarks of the Court of Appeal (where the case was ultimately compromised), [1907] 2 Ch. 571. The Court of Appeal probably doubted whether such an action would lie against personal representatives: see S. C. 76, L. J. Ch. 692.

(h) *Thomson* v. *Lord Clanmorris*, [1900] 1 Ch. 718.

In the event of non-compliance with the requirements contained in paragraph (*m*) of sub-section (1) of section 81 of the Act (disclosure of interest of directors), no director will incur any liability unless it is proved that he had knowledge of the matters not disclosed (*i*). The section does not limit or diminish any liability which any person may incur under the general law or under the Act apart from the section (*k*).

FORM OF PROSPECTUS.

The subscription list will be opened on day of , 19 , and will close on or before day of 19 .

A copy of this prospectus has been filed with the Registrar of Joint Stock Companies.

The Company, Limited.

(Incorporated under the Companies (Consolidation) Act, 1908.)

Capital £100,000

Divided into 50,000 6 per cent. cumulative preference shares of £1 each, and 50,000 ordinary shares of £1 each.

Issue of 50,000 6 per cent. cumulative preference shares of £1 each at par,

payable

2 Shillings per share on application,

2 Shillings per share on allotment,

and the balance as and when called for

and

of 20,000 6 per cent. debentures of £100 each, all of which are now offered for subscription, at £95 per cent., payable

£25 per cent. on application.

£25 per cent. on allotment

and £45 per cent on the 19 .

DIRECTORS.

[*Names, addresses, and descriptions of directors or proposed directors.*]

TRUSTEES FOR DEBENTURE HOLDERS.

SECRETARY.

BANKERS.

SOLICITORS.

AUDITORS.

[*The names and addresses.*]

OFFICES.

PROSPECTUS.

The company has been formed (or where there is a new issue of shares or debentures. "The object of this issue is") [here set out with particularity the object for which the company has been formed, as *e.g.* to acquire a particular business or the objects of the contemplated issue and any

(*i*) Companies (Consolidation) Act, 1908, s. 81 (6).

(*k*) *Ibid.*, sub-s. (9).

particulars which it may be considered advisable to set out, *e.g.* the working prospects, the profits made, or the dividends paid in past years, and any copies of or extracts from public official documents, reports of valuers, or accountants or other experts (*l*) as to the value of the company's property and/or any property the company is to acquire or on any other matter, *e.g.* the person if any who is to be managing director or manager and the terms of his employment]. The preference shares of the company confer a right to a 6 per cent. cumulative preferential dividend, and to priority on a return of capital in a winding-up.

The debentures are secured by a trust deed dated 19 , and made between the company of the one part and A.B. and C.D. of the other part, creating a first specific charge on the freehold and leasehold property of the company and a floating charge on the undertaking and remaining assets of the company including its uncalled capital for the time being and the company has not power to create any mortgage or charge ranking *pari passu* with or having priority to the debentures.

The company may redeem any of the debentures at any time after the day of 19 , by giving six months' notice of its intention so to do to the registered holders of such debentures—and the principal moneys and interest secured by the debentures will be immediately payable in the events specified in such debentures. Interest on the debentures will be paid by equal half-yearly payments on the day of and the day of in each year. The first of such payments to be made on the day of next. Each debenture may at the option of the holder be paid up in full at any time before the day of next, and all interest will be calculated from the date or dates when payment was made.

As soon as payment in full has been made in respect of any debenture, the allotment letter and provisional receipts may be exchanged for such debenture. Certificates for the preference shares will be issued as soon as possible and on such issue every person entitled to a certificate will be notified of the fact and will receive his certificate in exchange for his allotment letter and the provisional receipts for the moneys payable on application and allotment in respect of the shares mentioned in such certificate.

The minimum subscription on which the directors may proceed to allotment is 50,000 shares of £1 each. During the past two years, two offers of shares have been made. The amounts offered on such occasions (respectively) were 20,000 ordinary shares of £1 each and 500 ordinary shares of £1 each. All the shares so offered were actually allotted and are now fully paid up (or as may be).

Of the preference shares now offered for subscription, 20,000 have been underwritten at a commission at the rate of 5 per cent. on the nominal value of the shares and two-thirds of the debentures (*m*) now issued have been

(*l*) See s. 84 of the Act, pp. 238 *et seq.*, *ante*, as to these.

(*m*) It is a condition precedent to an application for an official quotation on the Stock Exchange that two-thirds of the amount proposed to be issued of any class of shares or securities whether such issue be the whole or a part of the authorized amount shall have been applied for by and unconditionally allotted to the public, shares or

underwritten at a commission at the rate of 5 per cent. on the nominal value of such debentures.

The number of shares fixed by the articles of association of the company as the qualification of a director is [here set out the substance of the article if any, dealing with this matter] and the following provisions are made in such articles of association for the remuneration of the directors of the company are [here set out any articles which deal with the remuneration of directors or managing directors, or the payment of their travelling expenses, or give power to pay such remuneration under given circumstances and other like articles].

The following contracts have been entered into :—

(1) A contract dated the day of 19 , between A.B. of and C.D. of whereby the said A.B. agreed to sell the business of a heretofore carried on by him at for £ payable as to £ in cash as to £ in fully paid ordinary shares of £ each and as to £ in debentures £ of such consideration is payable for goodwill.

(2) A contract dated the day of 19 between the said C.D. and the Company whereby the said C.D. agreed to sell the property comprised in the said last mentioned agreement for £ payable as to £ in cash as to £ in fully paid ordinary shares of £ each and as to £ in debentures of which £ was payable for goodwill.

(3) A contract dated and made between E.F. of the one part and the company of the other part. Whereby the said E.F. agreed to serve the company as manager for a period of years at a salary of £ per annum.

Copies of the above contracts and of the memorandum and articles of association and of the trust deed and of one of the debentures can be inspected at during business hours any day before the closing of the subscription list.

Except as above mentioned the company has not issued any shares or debentures for a consideration other than cash.

C.D. is the promoter of the company and he is to receive £ in consideration of his paying the preliminary expenses of the company which include duties on registration law costs printing advertising stamps commission for underwriting payable as above a brokerage of on each debenture and of on each share allotted in respect of applications on brokers stamped application forms [and not being applications by underwriters or in direct relief of underwriting] etc. and are estimated at £ .

The following directors are interested in the promotion of the company namely—the said A.B. as the former owner and vendor of the property comprised in the above mentioned contract of 19 to the extent of £ cash and £ debentures, X.Y. as an underwriter of shares at the commission above mentioned.

Every ordinary share confers one vote at every meeting of the company

securities granted in lieu of money payments not being considered to form a part of such public allotment, but such shares and securities are taken into account in ascertaining the amount proposed to be issued.

and every preference share one vote at every meeting of the company where a special or an extraordinary resolution is to be passed or confirmed.

A copy of the Memorandum of Association of the Company will be found printed in the fold of this prospectus.

There are no founders management or deferred shares.

Applications for allotment should be made on the accompanying form and should together with a cheque for the application moneys be forwarded to the Bankers of the Company.

Should no allotment be made all moneys paid on application will be returned in full and where the number of shares or debentures allotted is less than the number applied for the surplus of such moneys will be applied towards payment of the moneys payable on allotment on the shares and debentures allotted and the balance if any will be returned.

Failure to pay at the due date any instalment on shares or debentures allotted will render the allotment liable to cancellation and all previous payments liable to forfeiture—or the company may at its option charge interest at the rate of 6 per cent. per annum from the date when the instalment became payable until the actual date of payment.

Application will be made in due course to the committee of the Stock Exchange for a special settlement and an official quotation for the shares and debentures of this issue.

Copies of this prospectus can be had from the Brokers Bankers and Solicitors of the Company.

Dated 19 .

[The contents of the memorandum with the names description and addresses of the signatories and the number of shares subscribed for by them respectively (*n*) will be set out in the fold.]

APPLICATION FORM.

No.

The Company Limited

(Incorporated under the Companies (Consolidation) Act, 1908.)

Capital £

Divided into preference shares of £ each and ordinary shares of £ each.

APPLICATION FORM.

To the Directors of the Company Limited.

Gentlemen,

Having paid to the Company's Bankers Messrs. the sum of £ being a deposit of 5*s.* per share on [preference] shares of £ each in the above mentioned company I request you to allot me that number of the said shares upon the terms of the prospectus dated 19 and subject to the provisions of the Memorandum and Articles of Association of the Company, and I hereby agree to accept such shares or any smaller number that may be allotted to me upon the terms and subject to the provisions aforesaid and to pay the further sum of per share or in the event of all the shares I am applying for not being allotted such further sum as may pursuant to the terms of the said prospectus be

(*n*) Where there are founders or management or deferred shares their number and the nature and extent of the interest of the holders on the property and profits of the company must be set out.

payable by me on allotment and the balance of the sums payable in respect of such shares as and when called up and I authorize you to enter my name on the register of members of the company as the holder of such shares. [In consideration of this application you are to allot to me $\frac{\text{and}}{\text{or}}$ any nominee or nominees of mine such further [preference] shares of £ each in the capital of the company not exceeding in number the number of shares which you may now allot me as at any time or times before 19 I $\frac{\text{and}}{\text{or}}$ such nominee or nominees may apply and pay for at par] (*o*).

Ordinary Signature
Names in full
Address
Description

No.
The Company Limited.

RECEIPT FOR PAYMENT ON APPLICATION FOR SHARES.

Received this day of 19 from
the sum of £
being a deposit of £ per share on application for shares in the capital of the above mentioned company.
£ : : . [1*d*.]

This receipt must be preserved to exchange for the share certificate.

ALLOTMENT LETTER.

The Company Limited.
Incorporated under the Companies (Consolidation) Act 1908.)
Capital £
Divided into preference shares of £ each and ordinary shares of £ each.

ALLOTMENT LETTER.

No.
To Esq.
Sir,

In answer to your application for shares in this Company I have to inform you that the directors have allotted you shares numbered to both inclusive [and that they will allot you $\frac{\text{and}}{\text{or}}$ any nominee or nominees of yours further [preference] shares of £ each in the capital of the company not exceeding in number the shares now allotted to you which at any time before 19 you $\frac{\text{and}}{\text{or}}$ your nominee or nominees may apply and pay for at par].

The amounts payable on application and allotment are
Deposit of per share on shares allotted £
Further payment of per share due on allotment £

Together £

(*o*) The words in brackets will be inserted where the allottee has an option of taking further shares.

Deposit paid by you on application . . . £
Balance due by you . . . £

I have to request that you will pay such sum to Messrs. the Company's Bankers at

[A form of renunciation accompanies this letter.] You will be notified when the Share certificates for the shares allotted to you are ready for issue and at any time after such notification you will be entitled to receive your certificate in exchange for this letter and the banker's receipts for the moneys payable by you on application and allotment (*p*).

Dated

[6*d*.] Secretary.

No.

The Company Limited.

RECEIPT FOR BALANCE DUE ON ALLOTMENT OF SHARES.

Received this day of 19
from
the sum of £
being the balance of the moneys payable on the allotment of shares in the above mentioned Company.

£ : : . [1*d*.]

This receipt must be preserved to exchange for the share certificate.

LETTER OF RENUNCIATION.

The Company Limited.
(Incorporated under the Companies (Consolidation) Act 1908.)
Capital £

Divided into Preference Shares of £ each and ordinary shares of £ each.

LETTER OF RENUNCIATION.

To the directors of the Company Limited.

Gentlemen,

I hereby renounce of the shares allotted to me as stated in the letter of allotment dated and sent by you to me in favour of C.D. of and request you to register of the said shares in his name (*q*).

Dated

Signed A.B. [6*d*.]

I hereby agree to accept of the shares referred to in the above letter and authorize you to register such shares in my name.

Signed C.D.

(*p*) Letters of allotment, even when for a fractional part of a share, must have a 6*d*. stamp where the total nominal amount allotted is £5 or over; in other cases there will be a 1*d*. stamp, an adhesive stamp which must be cancelled by the person who executes the letters may be used: Stamp Act, 1891, as amended by Finance Act, 1899, s. 9, and Revenue Act, 1909.

(*q*) In the case of letters of renunciation of shares or fractions of shares a 6*d*. stamp must be used except where the nominal amount is less than £5, in which case there

ORDER UNDER SECTION 38 [NOW REPEALED] OF THE COMPANIES ACT, 1867, AND THE DIRECTORS' LIABILITY ACT, 1890 [NOW REPEALED AND RE-ENACTED BY SECTION 84 OF THE COMPANIES (CONSOLIDATION) ACT, 1908] (*r*).

(*Title and Formal Parts.*)

This Court doth declare that the prospectus of the L. & N.B. Ltd. in the Statement of Claim referred to must be deemed fraudulent as regards the plaintiff within the meaning of section 38 of the Companies Act 1867 on the part of the defendants all of whom knowingly issued the same by reason of it not having specified the dates of and the names of the parties to the contracts referred to in paragraphs 5, 6, and 7 of the Statement of Claim and that the plaintiff is entitled to damages for the said fraud under the said section and that as against all the defendants the plaintiff is entitled under the Directors' Liability Act 1890 to compensation by reason of the untrue statements made by the said defendants in the said prospectus and referred to in paragraph 9 of the Statement of Claim and it is ordered that an inquiry be made what sum by way of compensation ought to be awarded to the Plaintiff on the footing of the said declarations for the loss or damage sustained by him by reason of his having taken 400 shares of £10 each in the said Company on the faith of such prospectus having regard to the price paid by him for the said 400 shares and the real value of such shares at the time of allotment and it is ordered that the defendants do pay to the plaintiff his costs of this action including therein the costs of the plaintiff's examination *de bene esse* such costs to be taxed by the Taxing Master and the parties are to be at liberty to apply as there may be occasion. [*Broome* v. *Speak*, 1901, B. 5284. BUCKLEY, J., April 30th, 1902, [1903] 1 Ch. 586, [1904] A. C. 342.]

FORM OF ORDER FOR CONTRIBUTION UNDER SECTION 84 (4).

(*Title and Formal Parts.*)

. . . declare that the plaintiffs respectively are entitled to contribution from the estates of G.B. T.G. and W.W.O. all since deceased in the

must be a 1*d*. stamp. Separate duties are chargeable in respect of letters of allotment and renunciation, though contained in the same document an adhesive stamp may be used, it must be cancelled by the person executing the letter: Stamp Act, 1891, as amended by Finance Act, 1899, s. 9, and Revenue Act, 1909, s. 9.

(*r*) It is believed that there has as yet been no successful action for damages by reason of the prospectus omitting matters required by s. 81 of the existing Act (or the sections replaced by it). An order in such an action would presumably contain a declaration that the prospectus "did not comply with the requirements of s. 81 of the Companies (Consolidation) Act, 1908, by reason of it not having specified the dates of and the parties to the following contracts, all of which are material, namely, the contracts referred to in paragraph of the statement of claim" or as may be, "and that the plaintiff is as against all the defendants entitled under the said section to damages for the said non-compliance." There will also be an inquiry as to damages as in the above form.

Statement of Claim mentioned respectively to the payments made by them respectively in respect of the following matters namely First Compensation to persons who subscribed for shares on the faith of a prospectus mentioned in the first paragraph of the Statement of Claim the amount of such compensation not to exceed 15*s.* per share but this is not to extend to any moneys paid into Court in actions which are still pending Secondly The costs of the plaintiffs in the action of *Broome* v. *Speak* in the pleadings mentioned up to and including judgment as well as his costs of the inquiry directed by such judgment and the reference to Mr. C.E.C.H. and E.G. Thirdly Costs paid to other persons who applied for shares as aforesaid whether under judgments in actions brought by them respectively or by agreement together with interest on the amounts that such estates respectively are liable to contribute as aforesaid at the rate of 4 p.c. p. a. as from the dates when the payments in respect of which such estates are so liable to make contribution were made by the plaintiffs respectively And it is ordered that the following accounts and inquiries be taken and made (1) An inquiry what sums have been paid by the plaintiffs respectively in respect of the several matters aforesaid (2) An inquiry how much is due from the estates of the said B. and of the said G. respectively to each of the plaintiffs for principal and interest having regard to the number of other persons liable to make the said payments and to the insolvency of the estate of the said W.M.O. and of the estate of the defendant W.D.C. since deceased and all sums received from such last mentioned estates or either of them or from the defendants R.M. H.M. and W.D.G. or any of them And it is ordered that what on making the said inquiries shall appear to be due from the estates of the said G.B. and T.G. be answered by the defendants their respective executors out of their assets in due course of administration And it is ordered that in case the defendants the executors of the said G.B. do not admit assets for that purpose or for the purpose of paying the costs hereinafter directed to be paid by them as such executors an account be taken of the personal estate of the said G.B. come to the hands of the defendants J.W.C. T.G. A.B. or any of them or of any other person or persons by the order or to the use of the said defendants or any of them [here follow similar directions with regard to the estate of T.G.] And it is ordered that the defendants J.W.C. T.G. and A.B. as executors of the G.B. and the defendants E.O.S. G.B. and J.W.C. as executors of T.G. and the defendant Y.E.W. as executrix of the said W.M.O. pay to the plaintiffs their costs of this action up to and including judgment but not including the costs of the motion to vary the minutes such costs to be taxed by the Taxing Master and this Court doth reserve all costs subsequent to this judgment and the parties are to be at liberty to apply as there may be occasion. [*Shepheard* v. *Bray*, 1904, S. 2354. WARRINGTON, J., July 17th, 1906, reported [1906] 2 Ch. 235 (*s*).]

(*s*) Doubt was thrown on this decision on appeal, where it was compromised. See [1907] 2 Ch. 571. The Law Journal report, 76 L. J. (CH.) 692, indicates that this doubt arose owing to the difficulty the Court felt in holding that s. 84 (4) applied to executors of deceased directors. It is thought, however, that the order may be useful as a precedent.

CHAPTER V.

SHARES.

ANNUAL LIST OF MEMBERS AND SUMMARY.

EVERY company having a share capital must once at least in every year make a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) the incorporation of the company.

The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

(*a*) The amount of the share capital of the company, and the number and amount of the shares into which it is divided;

(*b*) The number of shares taken from the commencement of the company up to the date of the return;

(*c*) The amount called up on each share;

(*d*) The total amount of calls received;

(*e*) The total amount of calls unpaid;

(*f*) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures (*a*), or allowed by way of discount in respect of any debentures since the date of the last return;

(*g*) The total number of shares forfeited;

(*h*) The total amount of shares or stock for which share warrants are outstanding at the date of the return;

(*i*) The total amount of share warrants issued and surrendered respectively since the date of the last return;

(*a*) The expression "debentures" includes debenture stock: Companies (Consolidation) Act, 1908, s. 285.

(*k*) The number of shares or amount of stock comprised in each share warrant;

(*l*) The names and addresses of the persons who at the date of the return are the directors of the company, or occupy the position of directors, by whatever name called;

(*m*) The total amount of debt due from the company in respect of all mortgages and charges which are required (or in the case of a company registered in Scotland, which if the company had been registered in England would be required) to be registered with the Registrar of Joint Stock Companies under the Act or which would have been required to be so registered if created after the 1st day of July, 1908.

The summary must also include a statement made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of such liabilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss (*b*).

Probably it is not necessary for each item of the fixed assets to be separately valued, but separate figures should be given where different considerations apply to different classes of assets, and goodwill should not be included in one item with the other assets, if its value has been arrived at in a different way (*bb*).

The list and summary must be contained in a separate part of its register of members and must be completed within seven days after the fourteenth day after the first or only ordinary general meeting of the company in the year and the company must forthwith forward a copy to the Registrar of Joint Stock Companies (*c*).

(*b*) Companies (Consolidation) Act, 1908, s. 26 (1), (2), and (3). The last provision does not apply to private companies; see s. 7 of the Assurance Companies Act, 1909, *post*, pp. 417 and 418, for the exception in favour of companies under that Act, which have deposited accounts and a balance sheet as required by that section, and have sent a copy of them to the Registrar of Joint Stock Companies.

(*bb*) *Galloway* v. *Schill Seebohm & Co.* (1912), 28 T. L. R. 400.

(*c*) Companies (Consolidation) Act, 1908, s. 26; for form of summary see Form E. in the third schedule to the Act being the next form. A company which makes default under the section is liable to a fine of £5 for every day during which the default continues, the offence being a continuing one, and six years being the limit for recovering penalties: *Reg.* v. *Catholic Life Institution* (1883), 48 L. T. 675. Every director and manager of the company who knowingly and wilfully authorises or permits the default is liable to a like penalty: *ibid.*, sub-s. 5. The fact that directors have committed an offence by not summoning a meeting—so that they cannot make a list of the members so as to comply with the section—will be no answer, and they can be convicted for both offences: *Park* v. *Lawton*, [1911] 1 K. B. 588. An offence under this section is a criminal offence: *Reg.* v. *Tyler*, [1891] 2 Q. B. 588. On a summons under the section a magistrate may go behind the register though it is not his business to deal with complicated questions of title: *Briton Medical and General Life Association* (1888), 39 C. D. 61; *Grosvenor Bank and Discount* v. *Boaler* (1885),

Every limited banking company and every insurance company and deposit, provident, or benefit society under the Act must, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form marked C. in the First Schedule to this Act, or as near thereto as circumstances will admit.

A copy of the statement must be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

Every member and every creditor of the company will be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

If default is made in compliance with this section, the company will be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default will be liable to the like penalty.

For the purposes of the Act a company that carries on the business of insurance in common with any other business or businesses will be deemed to be an insurance company.

These provisions do not apply to any life or other assurance company to which the provisions of the Life Assurance Companies Acts, 1870 to 1872 (now the Assurance Companies Act, 1909), as to the annual statements to be made by such a company, apply with or without modifications, if the company complies with those provisions (*d*).

RETURN UNDER SECTION 26 OF THE ACT.

FORM E. AS REQUIRED BY PART II. OF THE ACT.

SUMMARY OF CAPITAL AND SHARES of the COMPANY LIMITED, made up to the day 19 (being the fourteenth day after the date of the first ordinary general meeting in 19).

Nominal capital £ divided into * { shares of £ each
{ shares of £ each

Total number of shares taken up to * the day of 19 (which number must agree with the total shown in the list as held by existing members)

49 J. P. 774; and see *Gibson* v. *Barton* (1875), L. R. 10 Q. B. 329; and *Edmonds* v. *Foster* (1875), 33 L. T. 690; *Reg.* v. *Newton* (1879), 48 L. J. (M. C.) 77; and *Dorti* v. *South African Superannuation* (1904), 20 T. L. R. 425; for other cases under the section.

(*d*) Companies (Consolidation) Act, 1908, s. 108.

Number of shares issued subject to payment wholly in cash
Number of shares issued as fully paid up otherwise than in cash }
Number of shares issued as partly paid up to the extent of per share otherwise than in cash }
There has been called up on each of shares }£
† There has been called up on each of shares }£
‡ Total amount of calls received, including payments on application and allotment }
Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash } £
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share } £
Total amount of calls unpaid } £
Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary } £
Total amount (if any) paid on § shares forfeited } £
Total amount of shares and stock for which share warrants are outstanding } £
Total amount of share warrants issued and surrendered respectively since date of last summary } £
Number of shares or amount of stock comprised in each share warrant }
Total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies, or which would require registration if created after the first day of July nineteen hundred and eight. }

STATEMENT in the form of a balance sheet made up to the day of 19 containing the particulars of the capital, liabilities, and assets of the company.

* When there are shares of different kinds or amounts (*e.g.* preference and ordinary, or £10 or £5), state the numbers and nominal values separately.

† Where various amounts have been called or there are shares of different kinds, state them separately.

‡ Include what has been received on forfeited as well as on existing shares.

§ State the aggregate number of shares forfeited (if any).

The return must be signed at the end by the manager or secretary of the company.

Presented for filing by

LIST OF PERSONS holding shares in the Company Limited, on the day of 19 , and of persons who have held shares therein at any time since the date of the last return, showing their names and addresses, and an account of the shares so held.

Folio in Register Ledger containing Particulars.	Names, Addresses, and Occupations.				Account of Shares.					Remarks.
	Surname.	Christian Name.	Address.	Occupation.	*Number of Shares held by existing Members at date of Return.	‡Particulars of Shares transferred since the date of the last Return by Persons who are still Members.		Particulars of Shares transferred since the date of the last Return by Persons who have ceased to be Members.		
						Number.†	Date of Registration of Transfer.	Number.	Date of Registration of Transfer.	

* The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

† When the shares are of different classes these columns may be subdivided so that the number of each class held or transferred may be shown separately.

‡ The date of registration of each transfer should be given, as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor, and not opposite that of the transferee; but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

NAMES AND ADDRESSES of the persons who are the Directors of the Limited on the day of 19 (*e*).

Names.	Addresses.

NOTE.—Banking companies must add a list of all their places of business.

(Signature)

[State whether manager or secretary.]

FORM OF STATEMENT (SECTION 108) TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT, OR BENEFIT SOCIETIES (*f*).

* The share capital of the company is , divided into shares of each.

The number of shares issued is

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (*or* July) were—

Debts owing to sundry persons by the company.

On judgment, £

On speciality, £

On notes or bills, £

On simple contracts, £

On estimated liabilities, £

The assets of the company on that day were—

Government securities [*stating them*]

Bills of exchange and promissory notes, £

Cash at the bankers, £

Other securities, £

* If the company has no capital divided into shares the portion of the statement relating to capital and shares must be omitted.

(*e*) Form E in the Third Schedule to the Act.

(*f*) Form C in the First Schedule to the Act.

RIGHTS AND LIABILITIES OF SHAREHOLDERS.

There remains to consider the rights and liabilities which spring from a contract to take shares.

To take the liabilities first, there is the liability already indicated to pay to the company or to contribute to its assets in a winding-up the full nominal value of the shares.

In properly drawn articles shares are also subject to a lien for moneys due to the company, or at all events for calls, and also to forfeiture for non-payment of calls.

The rights usually conferred on shareholders are the right to a certificate, the right to transfer and generally to deal with the shares, the right to dividends and to participate in the assets of the company on a winding-up, and the right to vote, and the right to convert their shares into share warrants or stock, and the right sometimes given to have new shares allotted to them on an increase of capital.

It is proposed to deal with all these matters in this chapter except the right to participate in the assets of a company on a winding-up, which it is thought can be more conveniently dealt with in the part of this work which deals with winding-up (*k*).

PAYMENT FOR SHARES.

A company cannot, by its memorandum or articles, provide for relieving any of its shareholders from their liability to pay an amount equal to the full nominal value of their shares (*l*). Payment must either be made to the company while it is a going concern, or must be contributed to its assets in a winding-up, and the rule holds good even when the creditors of the company have been satisfied without such contribution and the only persons interested are the other shareholders (*m*). An arrangement by which debentures which have been issued at a discount can be exchanged at any time for shares equal in nominal value to the par value of the debentures is bad as offending against this rule (*n*), and debentures charged on and payable only out of profits cannot be exchanged for fully paid shares where no profits have been earned (*o*).

Forfeited shares cannot be issued as fully paid if their full nominal

(*k*) See *infra*, pp. 1253 *et seq.*

(*l*) *Ooregum Gold Mining Co.* v. *Roper*, [1892] A. C. 125; *Almada* v. *Tirito Co.* (1888), 38 C. D. 415; *Addlestone Linoleum Co.* (1888), 37 C. D. 191; *Klenck* v. *East India, etc., Co.* (1888), 16 Rettie 271. Cp. *Mother Lode, etc., Co.* v. *Hill* (1903), 19 T. L. R. 341, as to a compromise which involves a release of liability on shares: see also *Midland Electric Light and Power Co.* (1889), 60 L. T. 666; *Zoedone Co.* (1889), 60 L. T. 383.

(*m*) *Welton* v. *Saffery*, [1897] A. C. 299; *Weymouth Steam Packet, etc., Co.*, [1891] 1 Ch. 66.

(*n*) *Mosely* v. *Koffyfontein*, [1904] 2 Ch. 108; cp. *Railway Time Tables Co.* (1893), 62 L. J. (CH.) 935; and *Ramwell's Case* (1881), 50 L. J. (CH.) 827.

(*o*) *Famatina Development Corporation* v. *Bury*, [1910] A. C. 439.

value has been called, but not paid, up; but they may be issued as paid up to the extent of the amounts actually paid up on them (*p*). Although a company cannot issue shares at a discount, yet if it issues shares with nothing paid on them or partly paid shares as fully paid up, and gives a certificate under its seal to that effect, it will be estopped from denying that such shares are fully paid up against any person who has been damaged by such misrepresentation (*q*). The same estoppel will apply where the company has on a transfer of shares which are not fully paid given a certificate that they are fully paid, and a person acts on the faith of such certificate and is prejudiced thereby (*r*), and even where the transferee is a director and has received a transfer of shares instead of having them allotted direct to him (*s*).

In such case it would appear that the directors responsible for the misrepresentation would be personally liable for the damage the company has suffered (*t*), and the company could also get indemnified by the persons at whose request the certificates were issued (*u*).

Although where there is a contract to issue shares at a discount the person who has agreed to take them may not be liable on his contract, if he has allowed his name to be on the register, and has done acts which are only consistent with his being a member, a fresh contract to be a member will be inferred, and with it, where there is no case of estoppel, will follow all the ordinary incidents of membership, including the liability to pay for the shares in full (*v*). It will, however, apparently be otherwise where bonus stock has been issued (*x*). To some extent the underwriting provisions of the Act form an exception to the rule as to issuing shares at a discount, but they do not apparently authorize the issue of shares at a discount (*y*), although it would seem that under them fully or partly

(*p*) *New Balkis* v. *Randt Gold Co.*, [1904] A. C. 165, and [1903] 1 K. B. 461, 467; *Morrison* v. *Trustees, etc., Corporation* (1898), 68 L. J. (CH.) 11, and see *Randt Co.*, [1904] 2 Ch. 468.

(*q*) *Parbury's Case*, [1896] 1 Ch. 100; *Bloomenthal* v. *Ford*, [1897] A. C. 156; see also *Markham and Darter's Case*, [1899] 1 Ch. 414, affirmed on other grounds, [1899] 2 Ch. 480; *New Chile Gold Mining Co.* (1893), 68 L. T. 15. It will apparently be otherwise in the case of a transferee of stock which has been issued at a discount: *Home and Foreign Investment and Agency Co.*, [1912] 1 Ch. 72.

(*r*) *Burkinshaw* v. *Nicholls* (1878), 3 A. C. 1004.

(*s*) *Coasters' Limited*, [1911] 1 Ch. 86, an allotment would have been the natural thing in this case, the applicant having applied and paid for 1000 shares: instead of having shares allotted to him, however, he received a transfer from a person who was a promoter and secretary and who had applied the moneys received in partly paying for 4000 shares, of which the 1000 actually transferred formed part.

(*t*) *Hirsche* v. *Sims*, [1894] A. C. 654; *Joint Stock Corporation*, *Times* Newspaper, February 2, 1912.

(*u*) *Sheffield* v. *Barclay*, [1905] A. C. 392.

(*v*) *Ex parte Sandys* (1889), 41 C. D. 38. Cp. *Re Macdonald, Sons & Co.*, [1894] 1 Ch. 89.

(*x*) *Home and Foreign Investment and Agency Co.*, [1912] 1 Ch. 72.

(*y*) *Keatinge* v. *Paringa* (1902), 18 T. L. R. 266.

paid shares may be issued in consideration of a person agreeing to take and pay for other shares in full (*z*).

Although shares cannot be issued at a discount, there is nothing to prevent their being issued at a premium, though even in this case it would seem that a shareholder will only be liable as a contributory for the nominal amount of his shares, the premium in effect being the price he pays for the right to purchase shares, which are considered to be worth more than their nominal value (*a*).

A company need not require that the full value of shares shall be paid on their allotment, and in practice it rarely does so.

There is nothing to prevent a limited company providing by its memorandum of association that part of its capital shall only be capable of being called up in the event and for the purposes of a winding-up, and such a provision would be unalterable (*b*).

A limited company may by special resolution determine that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its capital will not be capable of being called up except in the event and for the purposes of a winding-up (c) ; and an unlimited company which has a share capital may, on registering as a limited company, make a like provision, and if, as it is empowered to do, it increases its nominal capital by increasing the nominal amount of its shares on such registration the amount by which its capital is so increased can only be called up in the event and for the purposes of a winding-up (*d*). Such provisions would appear to be unalterable, as they do not apparently form part of the company's articles, and consequently the provisions for altering the articles do not affect them. Reserve capital under these sections, unlike other uncalled capital, cannot be charged while the company is a going concern (*e*).

Once capital has been called up, it cannot be returned (*f*) except on a reduction of capital where the sanction of the Court will be required or under the provisions of section 40 of the Act. These provisions are as follows :—

(*z*) *Ante*, pp. 177 *et seq.*, Underwriting.

(*a*) *Lion Insurance Co.* (1884), 12 Q. B. D. 176 ; *Baird's Case*, [1899] 1 Ch. 593 ; *Marlborough Club Co.* (1868), 5 Eq. 365. The two cases decided under the 1856 Act, viz. *Maxwell's Case* (1875), 20 Eq. 585 ; and *McKewan's Case* (1877), 6 C. D. 447, if they ever were authorities under the later Acts, would seem so far as inconsistent with the other cases cited in this note to be also inconsistent with *Ooregum Gold Mining Co.* v. *Roper*, [1892] A. C. 125, and *Welton* v. *Saffery*, [1897] A. C. 299, and therefore to be overruled.

(*b*) *Ashbury* v. *Watson* (1885), 30 C. D. 376.

(c) Companies (Consolidation) Act, 1908, s. 59. For form of resolution, *infra*, p. 402.

(*d*) Companies (Consolidation) Act, 1908, s. 58.

(*e*) *Mayfair Property Co.*, [1898] 2 Ch. 28.

(*f*) *Trevor* v. *Whitworth* (1887), 12 A. C. 409.

When a company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount.

The resolution shall not take effect until a memorandum showing the particulars required by this Act in the case of a reduction of capital has been produced to and registered by the Registrar of Joint Stock Companies (*g*), but the other provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid-up capital under this section.

On a reduction of paid-up capital in pursuance of this section any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone or jointly with any other person, which in consequence of the reduction would otherwise be returned to him or them and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in such securities authorized for investment by trustees as the company may determine, and on the money so invested, or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the securities.

The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call.

On a reduction of paid-up share capital in pursuance of this section the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction.

After any reduction of share capital under this section the company shall specify in the annual list of members required by this Act the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section (*h*).

The section only authorizes a special resolution for a return of capital in cases where the company has actually got accumulated

(*g*) There is no special form for this return. It should be substantially in the same form as the minutes in use on a reduction of capital. As to this form, see *infra*, p. 690, note (*l*): a form of resolution will also be found on that page.

(*h*) Companies (Consolidation) Act, 1908, s. 40.

profits, and so a resolution to return capital in respect of past or future years is bad (*i*). The return need not necessarily be made to all the shareholders; it may for instance be so made as to equalise the amounts paid on the shares, where such amounts had previously been unequal (*k*).

The amount payable in respect of shares is payable either in cash or in kind (*l*).

The question of what amounted to a payment in cash was an exceedingly important question while section 25 of the Companies Act, 1867, was in force, and as section 7 of the Companies Act, 1900 (now reproduced with the modifications brought about by the Act of 1907, by section 88 of the present Act), seems to keep the decisions under that section on foot (*m*), it will be necessary to deal with them shortly (*n*). Anything which is sufficient to support a plea of payment as opposed to a plea of set-off or of accord and satisfaction will amount to a payment in cash. Thus where a person has sold property to a company for cash, and the company has debited him with the amount due on the shares he holds, at the same time crediting him with a like amount out of the purchase price, this will be a payment in cash (*o*), and the same rule will hold good where the contract for sale provides that the money shall be so credited even where no calls have been made on the shares, and the money payable in respect of them is not presently payable, and no entry has been made in the books of the company (*p*). Again, where a cash compensation was payable under an agreement and calls had not actually been made (*q*), and where it was part of the terms of a compromise that the moneys payable thereunder should be credited to the shares of a third person, on which calls had not been made (*r*), there was held to be a payment in cash. And even where a person agreed to sell property for cash and his purchasers sold to a company for cash

(*i*) *Re Piercy*, [1907] 1 Ch. 289.

(*k*) *Neale* v. *Birmingham Tramways Co.*, [1910] 2 Ch. 464.

(*l*) *Drummond's Case* (1869), 4 Ch. 772.

(*m*) Buckley, 9th Edition, pp. 200, *et seq.*, of course the penalty under the new sections for disobedience to their provisions is different to that under s. 25.

(*n*) These cases have at times met with disapproval in high quarters: see *Johannesberg Hotel Co.*, [1891] 1 Ch. 11; *Ooregum Gold Mining Co.* v. *Roper*, [1892] A. C. 125, but it would seem that they are now established law.

(*o*) *Spargos Case* (1873), 8 Ch. 407; *Larocque* v. *Beauchemin*, [1897] A. C. 358; *North Sydney Investment Co.* v. *Higgins*, [1899] A. C. 263, overruling *Cleland's Case* (1872), 14 Eq. 387, unless the debt which in this last case was due to the shareholder was not immediately payable, a fact that does not appear from the report: see Buckley, 9th Edition, p. 202.

(*p*) *Jones, Lloyd & Co.* (1889), 41 C. D. 159.

(*q*) *Adamson's Case* (1874), 18 Eq. 670, approved in *Jones, Lloyd & Co.* (1889), 41 C. D. 159; see also *Ex parte Bentley* (1879), 12 C. D. 850.

(*r*) *Ferraos' Case* (1874), 9 Ch. 355.

and there was ultimately an arrangement that the original vendor should take fully paid shares instead of part of the purchase-money payable to him, such shares were held to be paid for in cash (*s*), but it would of course have been otherwise if the original agreement had been that the sum payable as purchase-money should be paid by shares (*t*).

But where a person who holds shares agrees to sell property (*u*), or services (*x*) for fully paid shares, or where the company owes a debt which is not presently payable to a shareholder (*y*), the shares will not be paid for in cash, and a debt due under an agreement with a trustee for a company before its incorporation, will not enable the creditor if he is also a shareholder to substantiate a claim to have paid for his shares in cash (*z*) ; but where before winding-up an account has been stated in which calls have been treated as paid by being set off against debts due from the company, this will amount to a payment in cash (*a*).

An action for calls may be met by the plea of set-off only in cases where the calls have been made before the winding-up, and judgment allowing the plea of set-off has been given before winding-up (*b*) ; but the costs of an action for calls begun before the winding-up and discontinued by the liquidator will be allowed in proceedings taken by the liquidator in the winding-up for the same calls (*c*).

The company can set off a claim for calls made before winding-up against a debt existing at the date of the winding-up, even after the winding-up has commenced, but this right of set-off does not apply to calls made after the winding-up (*d*).

Where the amount payable on shares is payable, either wholly or partly in cash, the balance payable after payment of the moneys payable on application and allotment is payable either by instalments, *i.e.* the payment of fixed sums at fixed times, or, what is more usual, the balance is payable as and when called up.

(*s*) *Barrow-in-Furness Co.* (1880), 14 C. D. 400.

(*t*) See *Rosherville Hotel Co.* (1890), 2 Meg. 60.

(*u*) *Fothergill's Case* (1873), 8 Ch. 270 ; *Johannesberg Hotel Co.*, [1891] 1 Ch. 119.

(*x*) *White's Case* (1879), 12 C. D. 511, and see also *Pagin and Gill's Case* (1877), 6 C. D. 681 ; *Andrew's Case* (1878), 8 C. D. 126, but these two last cases seem really cases of *ultra vires* agreements to pay for shares by future services.

(*y*) *Kent's Case* (1888), 39 C. D. 259, but if the instalments had become payable before the winding-up, and had been credited by the Company to the shares the result would probably have been different, see *Eyles* v. *Ellis* (1827), 4 Bing. 112.

(*z*) *Johannesberg Hotel Co.*, [1891] 1 Ch. 119 ; *North Sydney Investment etc., Co.* v. *Higgins*, [1899] A. C. 263.

(*a*) *Branksea Island, Ex parte Bentinck* (1888), 1 Meg. 12.

(*b*) *Hiram Maxim Co.*, [1903] 1 Ch. 70.

(*c*) *United Service Association*, [1901] 1 Ch. 97.

(*d*) *Christie* v. *Taunton*, [1893] 2 Ch. 175 ; *Mersey Steel and Iron Co.* v. *Naylor* (1884), 9 A. C. 434.

In the former case the application form which accompanies the prospectus usually contains an agreement to pay the further instalments on certain fixed dates, mentioning the amounts of the instalments and the dates either in the application form itself or by reference to the prospectus. If the company goes into winding-up before all the instalments have become due, then the balance may be called up immediately, for the agreement is only operative while the company is a going concern ; and the same rule applies to calls which cannot be made immediately (*e*). The application form, where the amount payable is not payable by instalments, provides for the payment of the balance as and when it shall be called up. In either case the application form provides that the shares are to be allotted subject to the terms of the company's memorandum and articles of association (*f*).

The articles of association usually contain provisions for enabling calls to be made, and not infrequently provide that not more than a certain amount is to be called up at a time and that a specified period must elapse between two calls. An article authorizing calls to be made from time to time, but providing that no call shall exceed a specified sum, will not prevent two calls, each of which is for the sum so specified, being made at the same meeting, if the calls are payable at different dates (*g*). Usually the persons to make a call are the directors, though occasionally power is given to them to authorize a nominee of debenture holders to do so, and the articles also deal with the length of the notice, which is requisite for a call (*h*). It would seem that even where there is a defect in the appointment of the directors, they can, if the defect is not known of, make a call as validly as though there were no such defect not only where there is an article validating the acts of such directors (*i*), but even where there is no such article (*k*) ; but this will not be the case where the directors have not been appointed at all (*l*) and all parties are aware of the fact.

If the articles specify a minimum number of directors, then if the number of the directors has fallen below that number no call can be made (*m*), unless there is an article providing that continuing

(*e*) *Cordova Union Gold Co.*, [1891] 2 Ch. 580 ; *Re Pyle Works* (1890), 44 C. D. 534, *per* LINDLEY, L.J., at p. 583.

(*f*) This would, of course, in any case be implied.

(*g*) See *Universal Corporation* v. *Hughes*, [1909] S. C. 1434.

(*h*) See Clause 12 of Table A, in the First Schedule to the Act, and cp. *Austin's Case* (1871), 24 L. T. 933.

(*i*) *Dawson* v. *African Co.*, [1898] 1 Ch. 6 ; *British Asbestos* v. *Boyd*, [1903] 2 Ch. 439 ; *Boschoek Proprietary* v. *Fuke*, [1906] 1 Ch. 148 ; *Transport Co.* v. *Schomberg* (1905), 21 T. L. R. 305 ; but cp. *Howbeach Coal Co.* v. *Teague* (1860), 5 H. & N. 151.

(*k*) *British Medical* v. *Jones* (1896), 74 L. T. 384, and see s. 74 of the Companies (Consolidation) Act, 1908.

(*l*) *Tyne Mutual Steamship Co.* v. *Brown* (1896), 74 L. T. 283 ; *Garden Gully, etc., Co.* v. *McLister* (1876), 1 A. C. 39.

(*m*) *Bottomley's Case* (1881), 16 C. D. 681.

directors may act, and even in such case it would seem doubtful, whether it is not necessary to have a sufficient number to constitute a quorum (*n*). The date when a call is payable is of the essence of the call, and there will be no proper call until a resolution has been passed fixing both the amount and the date of the call (*o*) ; it would appear to be probable that a verbal direction to the secretary fixing the date of the call is not enough (*p*).

A call becomes a debt from the date when it is made although it is only payable at a future date (*q*), and it seems that whether there is, as is very common (*r*), an article providing that a call shall be deemed to have been made at the date of the resolution of the directors authorizing such call, or not, the date of such resolution will be the date when the call is made (*s*).

The person who is on the register when a call is made would seem to be the person liable for the call, even in cases where he has transferred his shares before the date for payment arrives (*t*).

The articles usually also contain provisions to make joint holders of shares jointly and severally liable for calls, and providing that interest shall run from the date when any call or instalment become payable, in case of non-payment, but they usually enable the directors to waive payment of interest (*u*). Joint holders would, even apart from such a clause, be jointly and severally liable (*x*).

A company may, if authorized by its articles, either (*a*) make arrangements on the issue of shares for a difference between the shareholders in the amounts and of payment of calls on their shares or (*b*) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held

(*n*) *York Tramways, etc., Co.* v. *Willows* (1882), 8 Q. B. D. 685 ; *Scottish Petroleum Co.* (1883), 23 C. D. 413 ; *Newhaven Local Board* v. *Newhaven School Board* (1885), 30 C. D. 350, and see *post*, pp. 361 *et seq.*

(*o*) *Cawley & Co.* (1889), 42 C. D. 209.

(*p*) *Johnson* v. *Lyttle's Agency* (1877), 5 C. D. 687.

(*q*) *Dawes' Case* (1869), 38 L. J. (CH.) 512 ; *North American* v. *Bentley* (1856), 15 Jur. 187 ; but cp. *Reg.* v. *Inns of Court Hotel* (1863), 32 L. J. (Q.B.) 369. Not unusually the articles contain a clause providing that interest shall be paid on calls in arrear ; such a provision does not apply to calls made in a winding-up : *Welsh Flannel and Tweed Co.* (1875), 20 Eq. 360. *Ex parte Lintott* (1867), 4 Eq. 184.

(*r*) See Clause 5 of Table A in the First Schedule to the Companies Act, 1862.

(*s*) Lindley on Companies, 6th Edition 584 ; *R.* v. *Londonderry* (1849), 13 Q. B. 998 ; cp. *Adams* v. *Ferick* (1859), 26 Beav. 384.

(*t*) *Taylor's*, *Phillips'*, and *Rickard's Cases*, [1897] 1 Ch. 298.

(*u*) See Clauses 13, 14, and 15 of Table A in the First Schedule to the Companies (Consolidation) Act, 1908.

(*x*) *Dunster's Case*, [1894] 3 Ch. 473. A contrary view was taken in *Hill's Case* (1875), 20 Eq. 585, and the report in *Dunster's Case* does not expressly state that there was no article on the point, but it is thought that the above proposition is correct.

by him, although no part of that amount has been called up (*y*). The articles usually do contain the authority requisite for these matters. The former power is one which is, perhaps specially, open to abuse by the directors, and they cannot use it so as to save themselves from paying calls on their own shares (*z*).

The articles usually also provide that the directors may make arrangements for receiving moneys paid in advance of calls, and for paying interest on the moneys so advanced until they have actually been called up (*a*). Such a power is perfectly valid (*b*); indeed, it is difficult to see how it could be otherwise, seeing that it is contained in Table A. Where such a payment has been made the relation of debtor and creditor, and not that of company and shareholder, exists *qua* such payment between the company and the member making the payment (*c*), but the member making the payment cannot compel the company to repay it (*d*) although it is thought that the company can, with the consent of the member, do so (*e*), and he will rank after other creditors in a winding-up (*f*), but will be entitled to repayment with interest before other members receive anything. To the extent of such a payment the persons paying will be relieved from their liability to contribute to the assets of the company on a winding-up even where they are directors and have passed a resolution sanctioning the arrangement, immediately before a winding-up and have paid a debt they have guaranteed (*g*), or their own fees (*h*) out of the moneys so raised. But a resolution for such a payment, after the presentation of a petition on which a winding-up order is ultimately made, is bad as changing the status of the members (*i*), and a resolution that moneys advanced shall be treated as paid in advance of calls if the company goes into winding-up, but otherwise as a loan is bad (*k*). A term in a guarantee providing that payments made under the guarantee are to be treated as payments in advance of calls, will be invalid as to payments made after winding-up (*kk*).

(*y*) Companies (Consolidation) Act, 1908, s. 39 (1) and (2).

(*z*) *Alexander* v. *Automatic Co.*, [1900] 2 Ch. 56.

(*a*) Companies (Consolidation) Act, 1908. Table A, Clause 17.

(*b*) *Lock* v. *Queensland Co.*, [1896] A. C. 461; [1896] 1 Ch. 397; *Dale* v. *Martin* (1883), 11 L. R. Ir. 371. Under such a power a solicitor to a company can agree to set off his costs against calls not yet made: *Ramwell's Case* (1881), 50 L. J. (CH.) 827.

(*c*) *Lock* v. *Queensland Co.*, [1896] A. C. 461.

(*d*) *Per* LINDLEY and KAY, L.JJ.; *Lock* v. *Queensland Co.*, [1896] 1 Ch. 397.

(*e*) Cp. *United Provident Assurance Co.*, [1910] 2 Ch. 477, 479.

(*f*) *Exchange Drapery Co.* (1888), 38 C. D. 171.

(*g*) *Poole's*, *Jackson's*, and *Whyte's Cases* (1888), 9 C. D. 322, overruling it would seem *Sykes' Case* (1871), 13 Eq. 255, but see *Kent's Case* (1888), 39 C. D. 259.

(*h*) *Gallagher's Case* (1882), 46 L. T. 54.

(*i*) *Pennington's Case* (1881), 45 L. T. 433; and see also *Barge's Case* (1868), 5 Eq. 420.

(*k*) *Barge's Case* (1868), 5 Eq. 420; such an arrangement makes it impossible to comply with s. 25 of the Act.

(*kk*) *Law Car and General Insurance Corporation*, [1912] 1 Ch. 405.

RESOLUTION FOR A CALL.

That the following call be made on each of the members of the company [holding shares numbered to both inclusive or holding shares in respect of which the sum of 5*s.* and no more has been paid or as may be] that is to say a call of two shillings and sixpence in respect of each such share and that such call be payable on the day of (*l*) 19 to the bankers of the company at their banking house No. Street, E.C.

CALL LETTER.

The Company Limited.
No. Street, E.C.

Sir,

I beg to give you notice that the directors of the above named company have made the below mentioned call upon all the members of the company [holding shares numbers to both inclusive,] that is to say a call of two shillings and sixpence in respect of each such share. Such call will be payable to the bankers of the company Messrs. at their banking house No Street on the day of 19 .

As the holder of [of such] shares the amount payable by you in respect of such call is £

Upon presentation at the offices of the company of the bankers' receipt together with the certificate of shares a note of payment will be endorsed on the certificate.

Your obedient servant,
A. B.
Secretary.

C. D., Esq.,
No. St.
London, W.

No. Bankers' Receipt.

Received this day of 19 for the Company Limited the sum of £ being amount of call due on 19 .

For Messrs.

A.B.
1*d.*

We now come to the case where shares are to be paid for otherwise than in cash. It will be necessary in this case to have an agreement between the company and the shareholder or some person through whom he claims.

As shares are not within either section 4 of the Statute of Frauds or section 4 of the Sale of Goods Act, 1893 (*m*) (which replaces

(*l*) The length of notice prescribed by the articles must be followed here.

(*m*) *Humble* v. *Mitchell* (1839), 11 A. & E. 205; *Duncuft* v. *Albrecht* (1841), 12 Sim. 189; *The Colonial Bank* v. *Whinney* (1886), 11 A. C. 426.

section 17 of the Statute of Frauds), such contract will not necessarily be in writing, though of course it is usually so.

Given an agreement of this sort, a Court cannot go behind it to see whether the company has or has not received full value for its shares, unless either a case is made for setting aside the whole agreement, *e.g.*, where the agreement was induced by fraud, or where the consideration given for the shares is illusory or admits of an obvious monetary value (*n*).

The reason for this rule would appear to be that the person who sells to a company may sell at his own price just as any other vendor can do, and the Court cannot make a fresh bargain for the parties (*o*). The question being, apart from the now repealed section 25 of the Companies Act, 1867 (*p*), whether at the time when payment for the shares was made there was a binding agreement to pay otherwise than in cash (*q*).

In the case of subscribers to the memorandum it was, except in cases where the rule in *Spargo's Case* (*r*) applies, formerly difficult, if not impossible, to arrange for the shares for which they signed to be paid for otherwise than in cash, for no binding agreement with the company to pay for such shares otherwise than in cash could be made " at or before the issue of such shares," as was required by section 25 of the Companies Act, 1867 (*s*).

Now, however, a payment for such shares may be made in kind (*t*), but it must be quite clear from the memorandum or the articles or the prospectus, or the agreement under which the shares are issued as fully paid, that the intention of the parties when such agreement was made was that the shares for which the memorandum was signed were to be part of those mentioned in the agreement, and that there was not an agreement to take shares arising from the subscription to the memorandum and a subsequent agreement by the company to issue different shares as the consideration

(*n*) *Re Wragg*, [1897] 1 Ch. 796, and the cases cited in the next notes.

(*o*) *Re Wragg*, [1897] 1 Ch. 796; *Leifchild's Case* (1866), 1 Eq. 231; *Pells' Case* (1870), 5 Ch. 11; *Drummond's Case* (1869), 4 Ch. 772; *Anderson's Case* (1878), 7 C. D. 75; *Chapman's Case*, [1895] 1 Ch. 771; *Innes and Co.*, [1903] 2 Ch. 254.

(*p*) Repealed by the Companies Act, 1900, s. 33.

(*q*) *Baglan Hall Colliery Co.* (1870), 5 Ch. 353; see *supra*, pp. 259 and 260.

(*r*) (1873), 8 Ch. 407; and see also the other cases on this point cited *supra*, pp. 259 and 260.

(*s*) *F. and W. Jarvis Co.*, [1899] 1 Ch. 393; *Ebenezer Timmins & Co.*, [1902] 1 Ch. 238; *Archibald D. Dawnay* (1900), 16 T. L. R. 474. This difficulty was got over in the *Whitehead Bros.*, [1900] 1 Ch. 804.

(*t*) *Drummond's Case* (1869), 4 Ch. 772; *Jones' Case* (1871), 6 Ch. 48; *Maynard's Case* (1874), 9 Ch. 60; see *Schroder's Case* (1871), 11 Eq. 131, where shares were paid for by bonds issued by the confederate Government.

for the property passing to the company (*u*). An agreement to pay for shares by goods to be supplied in the future is not, however, good, for that is substituting a simple contract debt for the specialty debt given by the statute (*x*), and a person who has a contract with the company to take shares, *e.g.* a subscriber to the memorandum, will not satisfy his liability by taking fully paid-up shares from a promoter (*y*). The question of whether, in the case of shares issued before the 1st of January, 1901, a contract should have been filed under section 25 of the Companies Act, 1867, has perhaps not entirely lost its importance with the repeal of that section, having regard to the suggestion thrown out by the Court of Appeal in one case (*z*) that shares issued for a consideration other than cash before the repeal of the section would not be entitled to participate with other shares in the distribution of assets on a winding-up (*a*).

Where, however, there is no real consideration for the issue of the shares, as where the consideration consists wholly of past services, there the allottee will hold them as shares with nothing paid on them (*b*), and a company is not bound to accept in payment of calls overdue coupons for the interest due on debentures, where there are or may be equities which can be set off against claims on the coupons (*c*). A payment made on account of the shares of more than one person will be credited to all the shares equally, and if for any reason one of such persons has wrongly been treated as being entitled to the full benefit of the payment, this will not affect the rights of the other persons (*d*).

RETURNS AS TO ALLOTMENTS.

A company limited by shares must within one month after making any allotment of its shares file with the Registrar of Joint Stock

(*u*) *Fothergill's Case* (1868), 3 Ch. 270; *Dent's Case* (1873), 8 Ch. 748.

(*x*) *Pellatt's Case* (1867), 2 Ch. 527; but cp. *Gardner* v. *Iredale*, [1912] W. N. 92.

(*y*) *Forbes'* and *Judd's Cases* (1870), 5 Ch. 270; *Migotti's Case* (1867), 4 Eq. 238.

(*z*) *Re Brutton and Burney*, [1901] 1 Ch. 637.

(*a*) These remarks were based mainly on the fact that the Companies Act, 1898, which enabled the Court to give relief where s. 25 had not been complied with, was not repealed by the Act of 1900. The Act of 1898 is now repealed, and its provisions are not re-enacted; but probably the provisions of the Interpretation Act, 1889, would enable relief to be still obtained under it, and indeed resort is sometimes had to the provisions where the company is reducing its capital (see *post*, p. 646, note (*a*)). Section 33 (2) of the Act of 1900, which prohibits further proceedings under s. 25 of the Companies Act, 1867, is not happily worded.

(*b*) *Eddystone Marine Co.*, [1893] 3 Ch. 9; in *Re Leinster Bank Corporation*, [1902] 1 Ir. 349, the Court seems to have taken the view that there was no consideration but the agreement was good, because authorised by the memorandum and articles; if this is the right view of that case, it is submitted it was wrongly decided; see also *Alkaline Reduction Co.* (1897), 45 W. R. 10.

(*c*) *Henry Holden's Case* (1869), 8 Eq. 444.

(*d*) *Duchess of Westminster Silver Lead Ore Co.* (1879), 10 C. D. 307.

Companies (1) a return of the allotments stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount if any paid or due and payable on each share ; and

(2) In the case of shares allotted as fully or partly paid-up for a consideration other than cash (*e*), a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid-up, and the consideration for which they have been allotted (*f*). All such contracts must be duly stamped. Where any such contract is not reduced to writing, the company must within one month after the allotment file with the Registrar of Joint Stock Companies the particulars of the contract prescribed by the Board of Trade. Such particulars must be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and are to be deemed an instrument within the meaning of the Stamp Act, 1891 ; and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon shall be adjudicated under section 12 of that Act (*f*).

It is not very clear what contracts require to be filed under this section ; it is clear that the ordinary contract between a vendor and the company, by which the vendor is to receive fully paid shares, must be filed. But what if the shares are to be allotted to the vendor or his nominees, and the vendor has certain contracts made before the incorporation of the company by which he is bound to nominate certain other parties, as taking part of the shares to be allotted to him ? Should such other contracts be filed ? It is thought that they need not, for the Registrar of Joint Stock Companies takes the view that the section is complied with where the company enters into an agreement to allot to the vendor or his nominees, and subsequently by a letter of renunciation or an agreement under hand renounces his rights in favour of a named person or agrees to let a named person have some of his shares. For all practical purposes

(*e*) As to what is a payment in cash see *Spargo's Case* (1873), 8 Ch. 407, and the other cases cited therewith, *supra*, pp. 259 and 260.

(*f*) Companies (Consolidation) Act, 1908, s. 88. Default in complying with the provisions of this section entails a penalty of £50 for every day during which the default continues on every director, manager, secretary, or other officer who is knowingly a party to the default : *ibid.* An offence under the section may be prosecuted under the Summary Jurisdiction Acts, but in Scotland prosecution must be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate directs : *ibid.*, s. 276.

the fact of the Registrar taking this view will be sufficient protection. Such letter of renunciation or agreement should have a 6*d*. stamp except where a letter of renunciation relates to shares of a nominal value of less than £5, when it will have a 1*d*. stamp (*g*).

Under the Act of 1867 it was not (*h*), and it is apparently not now necessary for the contract to show the distinctive numbers of the shares allotted (*hh*); but the section seems to be framed so as to do away with the decisions under section 25 of the Act of 1867, which decided that the contract to be filed need not show the name of the allottee (*i*), and that it was unnecessary to file preliminary contracts where the contract filed contained recitals of their contents (*k*).

The old decisions as to the necessity of there being a contract which is binding on the company (*l*), and as to a mere escrow being insufficient (*m*) are, it is thought, still law; but probably if there is only a contract with a trustee followed by acts of part performance which make the company bound, it will be necessary to file particulars in the same way as if the contract had not been reduced to writing (*n*).

The Registrar of Joint Stock Companies takes the view where a reconstruction scheme gives existing shareholders in the old company an option to take shares in the new company, it is not sufficient now as it was formerly (*o*), to file the reconstruction agreement. If default has been made in filing with the Registrar of Joint Stock Companies within the time limited by the section any documents which require to be filed under the section, then the company or any person liable for the default may apply (*p*) to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and

(*g*) Stamp Act, 1891, as amended by s. 9 of the Finance Act, 1899.

(*h*) *Ex parte Forde* (1885), 30 C. D. 153; *Hartley's Case* (1875), 10 Ch. 157; *Kirby's Case* (1882), 46 L. T. 682.

(*hh*) The Registrar does not require such distinctive numbers to be inserted in a contract presented for filing, and they are not inserted in the form prescribed by the Board of Trade where there is no written contract: see *post*, pp. 270 and 271.

(*i*) *Carling's Case* (1876), 1 C. D. 115; *Kirby's Case* (1882), 46 L. T. 682

(*k*) *S. Frost & Co.*, [1899] 2 Ch. 207, and cp. *Kharaskhoma Exploring and Prospecting Syndicate*, [1897] 2 Ch. 451; *Re Maynard's*, [1898] 2 Ch. 556; *Robert Watson & Co.*, [1899] 2 Ch. 509.

(*l*) *Jackson & Co.*, [1899] 1 Ch. 348; *Coolgardie Consolidated Gold Mines* (1898), 14 T. L. R. 277; *Anglo-Colonial Syndicate* (1891), 65 L. T. 847.

(*m*) *Dalton Time Lock Co.* v. *Dalton* (1892), 66 L. T. 704.

(*n*) As to the old law see *Hartley's Case* (1875), 10 Ch. 157, 44 L. J. (CH.) 240, and cp. *Smith* v. *Brown*, [1896] A. C. 614.

(*o*) *Elsner and McArthur's Case*, [1895] 2 Ch. 759; *Transvaal Exploring Co.* v. *Albion (Transvaal) Gold Mines*, [1899] 2 Ch. 370; letters of renunciation or agreements by the liquidator will, however, of course, suffice.

(*p*) The application should be made by originating motion in the Chancery Division, but it can also be made by summons.

equitable to grant relief (*q*), may make an order extending the time for the filing of the document for such period as it thinks proper.

FORM OF RETURN OF ALLOTMENTS TO BE FILED WITH THE REGISTRAR OF JOINT STOCK COMPANIES, UNDER SECTION 88 (1) OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (*r*).

No. of Certificate Form No.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Return of allotments from the * 19 to the of 19 of the Limited

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

MADE PURSUANT TO SECTION 88 (1).

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

† Distinguish between Preference, Ordinary, etc.

† Number of the shares allotted payable in cash
" " "
Nominal amount of the shares so allotted
" " "
Amount paid or due and payable on each such share
" " "
Number of shares allotted for a consideration other than cash
Nominal amount of the shares so allotted
Amount to be treated as paid on each such share
The consideration for which such shares have been allotted was as follows:—

Presented for filing by

* In making a return of allotments under section 88 of the Companies (Consolidation) Act, 1908, it is to be noted that—

1. Where a return includes several allotments made on different dates the dates of only the first and last of such allotments should be entered on the top of the front page, and the registration of the return should be effected within one month of the first date.

2. Where a return relates to one allotment only, made on one particular date, that date only should be inserted, and the spaces for the second date struck out and the word "made" substituted for the word "from" after the word "allotments" on the front page.

(*q*) As to the meaning of these words see the decisions under s. 14 of the Companies Act, 1900, *post*, p. 550.

(*r*) Form 45 prescribed by Order of Board of Trade of March 29, 1909.

NAMES, ADDRESSES, AND DESCRIPTIONS OF ALLOTTEES.

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

Signature

PARTICULARS PRESCRIBED BY THE BOARD OF TRADE UNDER SECTION 88 (2) OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (*s*).

Certificate No. Form No. 52.

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

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Particulars prescribed under section 88, *sub-section* (2).

Filed by the A.B. Co. Limited.

Presented for filing by Messrs. & Co. Solicitors to the said Company.

In cases where a contract such as is mentioned in paragraph (*b*) of sub-section (1) of section 88 of the Companies (Consolidation) Act, 1908, is not reduced to writing, the Company must, within the time limited in the said section, file with the Registrar of Joint Stock Companies the following particulars of the contract, which particulars must be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.

(1) The number of shares, in whole or in part, allotted for a consideration other than cash.	
(2) If the consideration for the allotment of any shares is services, or any consideration other than that mentioned below in part 3, state what such consideration consists of.	
(3) If the consideration for the allotment of any shares is a sale of property, or the agreement for the sale of property, state fully the consideration for, and other terms of, such sale or agreement for sale.	
(4) Give full particulars, in the form of the following table, of the property which is the subject of the sale, showing in detail how the total consideration is apportioned between the respective heads.	

(*s*) Form 52 prescribed by Order of Board of Trade of March 29, 1909.

Equitable estates, or interests in freeholds and leaseholds, whether in the United Kingdom or abroad (which includes hereditaments subject to a legal Mortgage). Patents, Licences, Trade Marks, and Copyrights.	£
Goodwill.	
Fixtures and Fittings.	£
Book and other debts (including money on deposit at Bank or elsewhere).	£
Benefit of Contracts.	£
Other property, viz :—	£
Total	—
(5) If the consideration payable is partly in respect of a sale of property or agreement for a sale of property, and partly in respect of some other consideration, state fairly how much of the amount of the consideration is attributable to each of the heads of the property sold or agreed to be sold, and how much to such other consideration.	
(6) If the consideration payable consists in the assumption by the purchaser of liabilities to third persons, specify the total amount of such liabilities.	

Signature

Designation of position in relation to the company

Dated

FORM OF NOTICE OF MOTION APPLYING TO THE COURT FOR RELIEF UNDER SECTION 88 OF THE COMPANIES (CONSOLIDATION) ACT, 1908.

IN THE HIGH COURT OF JUSTICE, 19—K.—No.
Chancery Division.
MR. JUSTICE

In the Matter of the K Company Ld.
and
In the Matter of the Companies (Consolidation) Act, 1908.

Take notice that this Honourable Court will be moved before his lordship Mr. Justice on day the day of next at 10.30 o'clock in the forenoon or as soon thereafter as Counsel can be heard by Counsel on behalf of the above named Company [or of A. B. of in the county of a director of the above named company] for an order that the time for filing with the Registrar of Joint Stock Companies the following documents which are required

to be filed by section 88 of the Companies (Consolidation) Act 1908 that is to say a contract dated the day of 19 and made between C.D. of the one part and X.Y. of the other part and a contract dated the day of 19 and made between the said X.Y. of the one part and the above named company of the other part [or the prescribed particulars of a contract of sale by X.Y. to the above named company which has not been reduced to writing] together with the necessary return under section 88 (1) (*b*) of the Companies (Consolidation) Act 1908 stating the number and nominal amounts of the shares allotted as fully paid up in pursuance of the above contracts and the consideration for which the same have been allotted may be extended for a period of 21 days from the date of such order.

Dated

To the K. Company Ltd. (*t*).

Signed

Solicitors for the above named (*u*).

This notice of motion must be served on the company where the application is not by the company, where the application is by the company it need not be served on any one. The affidavit in support should be made by a director or other officer of the company, and should shortly state the effect of the contract which, or the particulars of which, are to be filed, and should show that the omission to file the document in question was accidental or due to inadvertence or should give the reasons why it is just and equitable to grant relief.

ORDER EXTENDING TIME FOR REGISTERING RETURN OF ALLOTMENTS.

IN THE HIGH COURT OF JUSTICE, No. 0045 of 1909.
Chancery Division.

MR. JUSTICE SWINFEN EADY,

Tuesday the 9th day of February 1909.

In the Matter of Roland Stagg Limited

and

In the Matter of the Companies Acts 1907 and 1909 (*x*).

Upon Originating Motion this day made unto this Court by Counsel on behalf of the above named Rowland Stagg Limited and upon reading the Affidavit of R.B. filed the 29th January 1909 and the Exhibits therein referred to. And the Court being satisfied that the omission to file with the Registrar of Joint Stock Companies the Statutory Returns under Section 7 of the Companies Act 1900 and the other Documents specified in the schedule hereto and being the respective contracts in writing constituting the title of R. S. to the allotment to him of 6148 Preference Shares and 8309 Ordinary Shares and of R.S. and W.S. (trading as R. & W. S.) to the allotment to them of 3892 Ordinary Shares and of

(*t*) Omit where the company is the applicant.

(*u*) Insert the applicant's name.

(*x*) References to the Companies (Consolidation) Act, 1908, will in cases occurring now be substituted for references to the Acts of 1900 and 1907.

R.S. and H.S. (trading as S. Brothers) to the allotment to them of 2767 Ordinary Shares all of which said Shares were deemed to be fully paid up was due to inadvertence and that it is just and equitable to grant relief.

Doth pursuant to Section 6 (4) of the Companies Act 1907 Order that the time for the filing with the Registrar of Joint Stock Companies of the said Returns and other Documents specified in the Schedule hereto be extended until the 2nd March 1909 and an Office Copy of this Order is to be filed with the Registrar of Joint Stock Companies.

THE SCHEDULE BEFORE REFERRED TO.

1. The necessary return under Section 7 (*a*) of the Companies Act 1900 of the allotment of Shares made by the Company at a Board Meeting duly convened and held 10th December 1908.

2. An Agreement dated the 5th November 1908 and made between R.S. and W.S. of the one part and the said Company of the other part.

3. An Agreement dated 5th November 1908 and made between the said R.S. of the one part and the said Company of the other part.

4. An Agreement dated the 5th November 1908 and made between the said R.S. and H.S. of the one part and the said Company of the other part.

5. A Supplemental Agreement dated the 25th day of January 1909 and made between the said R.S. of the first part the said W.S. of the second part and the said H.S. of the third part and the said Company of the fourth part.

6. The necessary return under Section 7 (*b*) of the Companies Act 1900 stating the number and nominal amounts of Shares allotted as fully paid up in pursuance of the above mentioned contracts and the consideration for which the same have been allotted.

LIEN ON SHARES.

Even before articles imposing a lien on shares were contained in Table A it was well established that such a lien was good (*y*). Where an official quotation on the Stock Exchange is required the lien must not extend to fully paid shares.

It is, however, thought that the articles in Table A, which do give a lien on shares, may well be extended in two respects. In the first place, they may be extended so as to include not only "all moneys whether presently payable or not called or payable at a fixed time in respect of" any share, but also "all moneys, whether presently payable or not called or liable to be called or payable at a fixed time in respect to any share," thus, so far as moneys liable to be called up are concerned, preventing a mortgagee of the shares obtaining priority over the company (*z*).

(*y*) *Bradford Bank* v. *Briggs* (1886), 12 A. C. 29; *Bank of Africa* v. *Salisbury Gold Mining Co.*, [1892] A. C. 29.

(*z*) See *Borland's Trustee* v. *Steel Brothers*, [1901] 1 Ch. 279; citing *New London and Brazilian Bank* v. *Brocklebank* (1882), 21 C. D. 302; *Bradford Bank* v. *Briggs* (1886), 12 A. C. 29, and see the cases collected

Again, there seems no reason why the lien for other moneys should not extend to shares held by joint holders and to debts due from such joint holders or any one or more of them.

The lien should extend to all dividends payable on the shares. It is thought that a transferee of the shares would, unless his transfer were registered before he had notice of any lien, take subject to a lien the company had against his transferor (*a*), for a lien is an equitable charge, and a member paying off the moneys charged on his shares by virtue of such a lien may avail himself of the provisions of the Conveyancing and Law of Property Act, 1881, and call on the company to assign their lien to his nominee (*b*). A lien extends only to debts or liabilities of the registered owner of shares, and even a note on the register as the rights of a *cestui que* trust will not make it available where he is indebted to the company (*c*).

The articles then usually proceed to enable the directors to sell shares, which are subject to a lien on giving notice, usually a fourteen days' notice, to the person entitled to the shares or to the person entitled on the death or bankruptcy of such person. The power of sale should be in respect of sums presently payable, and there is almost always a provision as to the proceeds of any such sale which will be applied in payment of the moneys secured by the lien and presently payable, and the balance of such moneys will be paid to the person entitled to the shares at the date of the sale. In Table A (*d*), such balance will remain subject to any lien that exists for moneys not presently payable; but it would seem that the shares should be sold subject to the lien for sums not presently payable in respect of the shares. These articles, then, conclude with a provision for protecting the title of the purchaser of shares so sold, and sometimes they provide that the remedy of a person injured by a wrongful sale shall be in damages against the company only. A company entitled to set up a lien will not be estopped from so doing by a statement that it has no claim unless the person to whom the statement was made has altered his position because of such statement (*e*).

Even where the original articles contain no provision as to

supra, pp. 192 *et seq.* Such a lien will not enable a company to gain priority for moneys advanced after notice of other advances on the shares; see *Stocton Malleable Iron Co.* (1875), 2 C. D. 101, as to the construction of an article giving a lien for moneys "due" to the company.

(*a*) The point was raised but not decided in *W. Key and Son, Ltd.*, [1902] 1 Ch. 467, a lien will extend to any moneys or consideration to be received in respect of shares on a winding-up; *General Exchange Bank* (1871), 6 Ch. 818.

(*b*) *Everitt* v. *Automatic Weighing Machine Co.*, [1892] 3 Ch. 506; see also *National Bank of Wales*, [1899] 2 Ch. 629.

(*c*) *Ystalyfera Gas Co.* (1887), W. N. 30; see also *Re Perkins* (1890), 24 Q. B. D. 613.

(*d*) Article 11.

(*e*) *Horsfall* v. *Huddersfield and Halifax Union Banking Co.* (1883), 52 L. J. (CH.) 599.

liens, the company may by special resolution impose a lien, and that even where such change will admittedly affect only one member of the company (*f*). A person entitled to some out of a block of shares, all of which are subject to a lien, may require the owner of the block to throw the charge exclusively on the other shares, and though this right will not avail against the company, it will against persons who subsequently become entitled through the owner (*g*).

FORFEITURE OF SHARES.

The right of forfeiture for non-payment of calls, although in some sense a reduction of capital, is recognized by the Companies (Consolidation) Act and the earlier Acts, and is therefore clearly good. Whether such a right can be made to extend to other cases, *e.g.* to the case of the representatives of a deceased member if and because they decline to become members, would appear to be a more difficult question; it is thought that it cannot (*h*).

It would seem that a power of forfeiture will not be implied (*i*), and the articles of association should therefore in all cases deal with the matter.

A power of forfeiture should only be used where the company does not see any prospect of recovering the moneys due in respect of the shares which it is proposed to forfeit (*k*); it follows that such a power cannot be used for the purpose of enabling a company to release a perfectly solvent shareholder from his liability (*l*). A power of forfeiture may be exercised even after the company has gone into voluntary winding-up, and meetings of contributories may be called for the purpose of appointing directors to exercise such power (*m*). Directors may forfeit partly paid shares after they have given a charge on the uncalled capital of the company (*n*). Equity will not give relief against a valid forfeiture (*o*).

The provisions of the articles dealing with forfeiture must be strictly followed, as any irregularity in the forfeiture (*p*) or even in

(*f*) *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656; see also *Re Rowe*, [1904] 2 K. B. 489, where BIGHAM, J., declined to allow a company to revalue its securities after making such an alteration.

(*g*) *Gray* v. *Stone* (1893), 69 L. T. 282.

(*h*) In *Hope and International* (1876), 4 C. D. 327, the clause really enabled an ordinary purchase of shares; in *Kelk's Case* (1870), 9 Eq. 107, the company was not a limited company at the time of forfeiture.

(*i*) *Clarke* v. *Hart* (1858), 6 H. L. C. 633; cp. *Barton's Case* (1859), 4 De G. & J. 46.

(*k*) Cp. *Spackman* v. *Evans* (1868), L. R. 3 H. L. 171, 186.

(*l*) *Esparto Trading Co.* (1879), 12 C. D. 381; *Gower's Case* (1868), 6 Eq. 77; *Stanhope's Case* (1866), 1 Ch. 161; *Richmond's Case* (1858), 4 K. & J. 305; *Harris* v. *North Devon Railway* (1855), 20 Beav. 384.

(*m*) *Ladd's Case*, [1893] 3 Ch. 450.

(*n*) *Agency Land and Finance Co.* (1904), 20 T. L. R. 41.

(*o*) *Sparks* v. *Liverpool Waterworks* (1807), 13 Ves. 428.

(*p*) *Johnson* v. *Lyttle's Agency* (1877), 5 C. D. 687.

a call out of which the forfeiture arose (*q*) may avoid the whole forfeiture, though the usual form of article providing that acts of *de facto* directors shall be valid will often set on foot a forfeiture which would otherwise be bad (*r*). Mere delay or laches will not bar the right of a person whose shares have been forfeited to relief, for the contract to take shares being an executed one, gives a right to relief at law, and equitable defences are therefore not available to the company. Delay will, however, of course frequently be evidence of an intention to abandon the shares, and as such an intention would be a defence to an action for forfeiting shares wrongfully, evidence of delay in asserting rights will often be very important (*s*). It is usual for the articles to provide that where forfeited shares have been sold the purchaser shall have a good title and the right of the person aggrieved shall be in damages against the company only (*t*). A prospective notice that shares will be forfeited on non-payment may, without any further resolution of the directors, be good (*u*), but a more or less ambiguous notice of an intention to forfeit will usually be construed as a mere threat to forfeit, and as leaving the directors the option of forfeiting or not as they see fit (*x*), a forfeiture may be valid although the name of the person whose shares have been forfeited has not been struck off the list of members (*y*), and in a proper case the Court will assume that the directors have passed a valid resolution for forfeiture (*z*). Although the greatest regularity

(*q*) *Bottomley's Case* (1881), 16 C. D. 631 ; *Garden Gully* v. *McLister* (1876), 1 A. C. 39.

(*r*) Cp. *Dawson* v. *African, etc., Co.*, [1898] 1 Ch. 8 ; *British Asbestos* v. *Boyd*, [1903] 1 Ch. 439.

(*s*) *Clarke* v. *Hart* (1858), 6 H. L. C. 633 ; *Garden Gully* v. *McLister* (1876), 1 A. C. 39 ; *General Property Investment Co.* v. *Mathieson* (1888), 16 Rettie, 282 ; *Clements* v. *Hall* (1858), 2 De G. & J. 173 ; *Palmer* v. *Moore*, [1900] A. C. 293 ; *Hunter* v. *Stewart* (1861), 4 De G. F. & J. 168 ; *Norway* v. *Rowe* (1812), 19 Ves. 144 (a case reported on interlocutory proceedings) ; cp. *Prendergast* v. *Turton* (1841), 1 Y. & C. C. C. on appeal, 13 L. J. (CH.) 268, which was treated as a case of abandonment in the first two cases cited, *supra* ; *Rule* v. *Jewell* (1881), 18 C. D. 660, where KAY, J., was prepared to hold, if necessary, that there had been an abandonment ; *Clegg* v. *Edmondson* (1857), 8 De G. M. & G. 787 (a case of an executory interest) ; *Faure* v. *Philippart* (1888), 58 L. T. 525, a case of abandonment ; and *Jones* v. *North Vancouver Land and Improvement Co.*, [1910] A. C. 317, where the person who was held to be the real owner of the shares had been a party to the resolution for forfeiture and had lain by for twelve years ; a trifling irregularity will, after a lapse of time, it is thought, not be enough to avoid a forfeiture.

(*t*) Such a right may be enforced in winding-up : *New Chile Gold Mining Co.* (1890), 45 C. D. 398.

(*u*) *Wollaston's Case* (1859), 4 De G. & J. 46.

(*x*) *Moore* v. *Rawlins* (1859), 6 C. B. (N. S.) 289 ; *Bigg's Case* (1866), 1 Eq. 309 ; cp. *Collum's Case* (1870), 39 L. J. (CH.) 259.

(*y*) *Lyster's Case* (1867), 4 Eq. 233, 36 L. J. Ch. 616.

(*z*) *Knight's Case* (1867), 2 Ch. 321.

is required in a notice of an intention to forfeit (*a*), a forfeiture will not be avoided merely because the directors have omitted to comply with an article requiring them to inform the person whose shares have been forfeited of the fact of such forfeiture (*b*). The company itself or its liquidator will in many cases be precluded from setting up that a forfeiture is invalid owing to irregularities in the forfeiture (*c*), and the liquidator (*d*) or the directors (even where there is an article allowing them to cancel a forfeiture on such terms as they think fit) cannot cancel a forfeiture without the consent of the person whose shares have been forfeited (*e*). A person whose shares have been forfeited is no longer liable to the company as a member, though he may, and if the articles of the company are properly drawn will, be liable as a debtor to the company for moneys presently payable to the company at the time of forfeiture in respect of the forfeited shares, including any interest on arrears of calls (*f*).

Moneys so received will be moneys received in respect of calls, and a person who has purchased forfeited shares discharged from all calls due prior to his purchase will consequently be entitled to the benefit of such moneys (*g*). In a winding-up a person whose shares have been forfeited within the year will be liable to be placed on the B list of contributories (*h*), and the same remark applies to a person who has within the year transferred shares which have subsequently been forfeited (*i*). A person who has been induced to take shares by fraudulent misrepresentations may, if such shares have subsequently been forfeited, recover moneys paid to the company in respect of the shares, even after the commencement of a

(*a*) *Watson* v. *Eales* (1856), 23 Beav. 294; *Johnson* v. *Lyttle's, etc., Agency* (1877), 5 C. D. 687; cp. *Graham* v. *Van Dieman's Land* (1856), 26 L. J. (EX.) 73, as to notice being given to a bankrupt, but it is safer to give notice to the trustee in bankruptcy, even where the articles do not expressly require it.

(*b*) *Knight's Case* (1867), 2 Ch. 327.

(*c*) *New Sombrero* v. *Erlanger* (1878), 3 A. C. 1213; *Lindsay Petroleum* v. *Hurd* (1874), L. R. 5 P. C. 21; and *Quebrada Co.* (1873), 42 L. J. (CH.) 277; cp. *Evans* v. *Smallcombe* (1868), L. R. 3 H. L. 249; *Spackman* v. *Evans* (1868), L. R. 3 H. L. 171; *Houldsworth* v. *Evans* (1868), L. R. 3 H. L. 263, though these were cases of surrender rather than forfeiture.

(*d*) *Webster's Case* (1863), 32 L. J. (CH.) 135; *Dawe's Case* (1868), 6 Eq. 232.

(*e*) *Larkworthy's Case*, [1903] 1 Ch. 711.

(*f*) *Stocken's Case* (1868), 3 Ch. 412; *Ladies' Dress Association* v. *Pulbrook*, [1900] 2 Q. B. 376.

(*g*) *Randt Gold Co.*, [1904] 2 Ch. 468.

(*h*) *Creyke's Case* (1870), 5 Ch. 63; see also *Marshall* v. *Glamorgan* (1868), 7 Eq. 129; *Bath's Case* (1878), 8 C. D. 334.

(*i*) *Bridger and Neill's Case* (1869), 4 Ch. 266; such a person cannot be put on the A. list of contributories; *Needham's Case* (1867), 4 Eq. 135; cp. *Wallscourt's Case* (1899), 7 Mans. 235, where a person whose shares had been cancelled and reissued was held to be liable as a contributory.

winding-up (*k*). A person commencing an action for rescission may, if threatened with forfeiture for non-payment of calls, find himself in a difficult position, for if the action fails he may find that the shares have been forfeited and that he has lost all the moneys he has paid on the shares. In such a case, if there is really a question to be tried, an injunction restraining the company from forfeiting the shares will be granted at all events, if the plaintiff pays the amount of the calls into Court to abide the result of his action (*l*).

A shareholder in a company may bring an action on behalf of himself and all other shareholders of the company to annul a forfeiture (*m*).

The question sometimes arises whether a company can cancel forfeited, or for that matter, any issued shares; it is thought that it cannot do so, for cancellation of shares is nowhere recognized by the Acts, and cancellation of shares involves a far more real reduction than does forfeiture, for it means that there are fewer issued shares to appear on the debit side of the balance-sheet. This view is fortified by the express power given by the Act to cancel unissued shares, and the fact that in the case of forfeited shares the number of forfeited shares must appear in the annual list of members and summary required by section 26 of the Act (*n*). As already stated, a company may issue forfeited shares as paid up to the extent of the moneys actually paid on them before forfeiture (*o*), and any sums recovered in respect of such shares after forfeiture (*p*), but the person taking such shares will be liable to pay any balance unpaid on the shares, even if calls for such balance have been made before forfeiture (*q*).

NOTICE OF INTENTION TO FORFEIT.

The Company Limited.
No. Street, E.C.

I am directed to require you to pay the sum of £ being the

(*k*) *Aaron's Reefs* v. *Twiss*, [1896] A. C. 273.

(*l*) *Jones* v. *Pacaya Rubber and Produce Co.*, [1911] 1 K. B. 455; *Lamb* v. *Sambas Rubber and Gutta Percha*, [1908] 1 Ch. 845, overruling *Ripley* v. *Paper Bottle Co.* (1888), 57 L. J. (CH.) 327.

(*m*) *Sweny* v. *Smith* (1869), 7 Eq. 324, in which case payment under protest was held to be a good payment of calls; and see also *Quebrada Co.* (1873), 42 L. J. (CH.) 277, where the cheque was considered to have been accepted by the company.

(*n*) *Marshall* v. *Glamorgan* (1869), 7 Eq. 129, and *Wright's Case* (1871), 12 Eq. 331, would appear to be inconsistent with *Trevor* v. *Whitworth* (1887), 12 A. C. 409.

(*o*) *Morrison* v. *Trustees, etc., Corporation* (1899), 68 L. J. (CH.) 11; *Ramwell's Case* (1881), 50 L. J. (CH.) 827.

(*p*) *Randt Gold Co.*, [1904] 2 Ch. 468.

(*q*) *New Balkis* v. *Randt Gold Mining Co.*, [1903] 1 K. B. 461, 467, [1904] A. C. 165.

amount of the call of 2*s.* 6*d.* per share made on the day of on the shares numbered to both inclusive held by you together with interest thereon at the rate of per cent. per annum from the day of the date when such call was payable until payment. You are required to make such payments on or before the day of 19 (*r*) and in the event of non-payment at or before that date the shares in respect of which such call was made (being the shares above mentioned) will be liable to forfeiture.

A. B.
Secretary.

C. D., Esq.
No. Street, E.C.

RESOLUTION FOR FORFEITURE.

That the shares held by and numbered to both inclusive be and the same are hereby forfeited.

CERTIFICATES.

Certificates are the documents of title to shares, and a company will usually not register a transfer of shares unless accompanied by the certificate. It would seem, however, that as certificates are not in any sense negotiable instruments (*s*) the company will not be liable for registering a transfer without the production of the certificate, even where the certificate contains the usual note stating that no transfer will be registered without the production of the certificate (*t*) unless the company has actual notice that the transferor is not entitled to make the transfer (*u*). A certificate of shares should correspond with the company's register in showing what the interest of the member is; *primâ facie* a person entitled to have a transfer registered is entitled to a certificate in the same form as that which his predecessor had, and if his predecessor had a clean certificate he too will be entitled to one (*x*).

Where an official quotation on the Stock Exchange is desired, the certificates must comply with the following requirements:—

(1) They must state on their face the authority under which the company is constituted and the amount of the authorized capital of the company.

(2) They must contain a footnote to the effect that no transfer

(*r*) For length of notice see article.

(*s*) *Longman* v. *Bath Electric Tramways*, [1905] 1 Ch. 646, 665.

(*t*) *Rainford* v. *James Keith*, [1905] 1 Ch. 296; *Shropshire Union, etc., Railway Co.* v. *The Queen* (1875), L. R. 7 H. L. 496; *Guy* v. *Waterlow Bros.* (1875), 25 T. L. R. 515.

(*u*) *Rainford* v. *James Keith*, [1905] 2 Ch. 147 (on appeal).

(*x*) *W. Key and Son*, [1902] 1 Ch. 467.

of any portion of the holding can be registered without the production of the certificate.

(3) Where the capital of the company consists of more than one class of shares of the same denomination, the distinctive numbers of the shares of each class must be printed on the face of the share certificates.

(4) All preference share certificates must bear on their face a statement of the company's capital and the conditions both as to capital and dividends under which the shares are issued (*xx*).

Certificates are almost invariably issued under the common seal of the company (*y*). A certificate under the common seal of the company specifying any share or shares or stock held by any member of the company is *primâ facie* evidence of the title of the member to the share or shares or stock therein specified (*z*). It follows that the company will be estopped from denying the title of any *bonâ fide* purchaser for value of shares who has acted on the strength of such a certificate, except perhaps in the case where the company has issued the certificate at the request of the person injured and the company has consequently a counter-right to claim the indemnity which arises from such a request (*a*) for a person who makes a request, direction, or demand to a company to act on a forged transfer (*b*) or a forged power of attorney (*c*), or it is thought on a forged certificate, will be bound to indemnify the company against the consequences of acting on his request.

Examples of this estoppel are to be found in cases where an original allottee (*d*) or other person (*e*) has in good faith purchased or lent money (*f*) on the strength of a statement, contained in a certificate under the common seal of the company, that the shares are fully paid when they are in fact not so; and also in cases where a *bonâ fide* purchaser for value has in good faith acted on a certificate issued in consequence of a forged transfer having been registered (*g*),

(*xx*) Stock Exchange Rules, Appendix 36 D, *infra*, p. 1511.

(*y*) Where an official quotation on the Stock Exchange is desired the articles must so provide.

(*z*) Companies (Consolidation) Act, 1908, s. 23.

(*a*) *Ruben and Ladenburg* v. *Great Fingall*, [1906] A. C. 439, *per* Lord DAVEY, at p. 446.

(*b*) *Sheffield* v. *Barclay*, [1905] A. C. 392.

(*c*) *Starkey* v. *Bank of England*, [1903] A. C. 114. As to what will amount to a request direction or demand, see *Bank of England* v. *Cutler*, [1908] 2 K. B. 208. A power of attorney executed by a person whilst of unsound mind stands on the same footing: *Daily Telegraph Newspaper* v. *Mclaughlin*, [1904] A. C. 776.

(*d*) *Parbury's Case*, [1896] 1 Ch. 100.

(*e*) *Burkinshaw* v. *Nicholls* (1878), 3 A. C. 1004.

(*f*) *Bloomenthal* v. *Ford*, [1897] A. C. 156.

(*g*) *Bahia and San Francisco Railway* (1868), L. R. 3 Q. B. 584.

or of a third party having fraudulently induced the directors of the company to affix its seal thereto (*h*). An estoppel of this kind may arise even where the person to whom the certificate is issued has in his character as director signed the certificate (*i*), and where, as in *Barrow's Case* (*k*), a purchaser with notice has acquired the shares from a person entitled to the benefit of an estoppel.

The company may be estopped by issuing a certificate under the common seal, even where the purchaser has not bought on the strength of such certificate, as, for example, where, in consequence of relying on the certificate issued, he has entered into a contract to sell the shares therein referred to (*l*), or has lain by and lost his remedy against his vendor (*m*); and a company has been held to be estopped where a transferee who has taken shares without seeing the certificate has subsequently paid a call relying on the certificate (*n*). In all these cases the cause of action does not arise from the company giving any warranty by the issue of a certificate, and the right of a person who has acted on the certificate arises only when the company proceeds to do or omit some act which it could not have done or omitted if such person had in fact been the true owner of the shares, *e.g.* on a refusal to register a transfer of the shares; that will be the date to ascertain the measure of damages (*o*), for damages will usually be the remedy of the person injured (*p*), though where a certificate for stock has been wrongly issued the company may possibly replace the true owner in his original position by purchasing fresh stock (*q*).

Where a *bonâ fide* purchaser for value has bought without seeing the certificate or has subsequently had a certificate wrongly issued, he will not be able to set up any estoppel against the company, unless he can show damage, even in cases where he has mortgaged the shares for a loan which he has subsequently paid off and his mortgagees would during the currency of the loan have been entitled to set up an estoppel against the company (*r*). A forged certificate

(*h*) *Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618.

(*i*) *Coasters, Ltd.*, [1911] 1 Ch. 86.

(*k*) (1880), 14 C. D. 432.

(*l*) *Balkis Consolidated* v. *Tomkinson*, [1893] A. C. 396.

(*m*) *Dixon* v. *Kennaway*, [1900] 1 Ch. 833; cp. *Platt* v. *Rowe* (1909), 26 T. L. R. 49.

(*n*) *Hart* v. *Bolivia, etc., Mining Co.* (1868), L. R. 3 Ex. 111; this case has not, it is believed, been followed, and it would seem difficult to understand why the measure of damages should have exceeded the amount of the call.

(*o*) *Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618.

(*p*) This will be the case where the company has issued all its authorized capital: *Balkis Consolidated* v. *Tomkinson*, [1893] A. C. 396.

(*q*) *Bank of England* v. *Cutler*, [1908] 2 K. B. 208; in the case of shares this could perhaps only be done with the consent of the true owner. The case cited was not the case of a limited company.

(*r*) *Simm* v. *Anglo-American* (1880), 5 Q. B. D. 188. The decision of LINDLEY, J., in the cross

will not give any right by way of estoppel against the company, even where the company has enabled the forger to issue it, *e.g.* by giving him the custody or control of its seal, for such a certificate is a mere nullity (*s*).

Every company must within two months after the allotment of any shares, and within the same period after the registration of a transfer of any shares, complete and have ready for delivery the certificates of the shares allotted or transferred, unless the conditions of issue otherwise provide. If default is made, the company and every director, manager, secretary, or other officer who is knowingly a party to the default will be liable to a fine not exceeding £5 for every day during which the default continues (*t*).

The articles of association usually provide that every member whose name is entered on the register shall be entitled to a certificate under the common seal of the company specifying the shares held by him (*u*); not infrequently they also provide that the certificate shall state the amount paid up thereon (*x*). The article also provides that in the case of joint holders of shares only one certificate shall be issued, and that delivery of such certificate to any one of such joint holders shall be delivery to all.

They also provide for the issue of a fresh certificate in the case of a certificate being worn out, lost, defaced, or destroyed on payment of a prescribed fee, and on such terms as to evidence and indemnity as the directors may prescribe (*y*).

FORM OF SHARE CERTIFICATE.

No. Share Certificate.

The A. B. Company Limited

(Incorporated under the Companies (Consolidation) Acts 1908.)

CAPITAL £50,000 divided into 25,000 Preference Shares of £1 each (numbered 1 to 25,000) and into 25,000 Ordinary shares of £1 each (numbered 25,001 to 50,000).

action of *Anglo-American* v. *Spurling* (1880), 5 Q. B. D. 188, is now overruled by *Sheffield* v. *Barclay*, [1905] A. C. 392.

(*s*) *Ruben* v. *Great Fingall*, [1905] A. C. 439, overruling *Shaw* v. *Port Philip* (1884), 13 Q. B. D. 103.

(*t*) Companies (Consolidation) Act, 1908, s. 92. The offence can be prosecuted under the Summary Jurisdiction Acts, but in Scotland prosecutions must be instituted by the Lord Advocate or a procurator fiscal as the Lord Advocate directs: *ibid.*, s. 276.

(*u*) See Table A, Clause 6.

(*x*) This is not in the clause in Table A, but it was in Clause 2 of Table A, in the schedule to the Companies Act, 1862. In the case of shares not fully paid at the date of the issue of the certificate a receipt for the amount paid in respect of each subsequent call is usually indorsed on the certificate and signed by the Secretary.

(*y*) Table A, Clause 7. The fee must not exceed one shilling where an official quotation on the Stock Exchange is desired. Stock Exchange Rules, 1906. Appendix 36 B, *infra*, p. 1510.

[The Preference Shares confer the right to a cumulative preferential dividend at the rate of 7 per cent. per annum on the amount paid up thereon and are entitled on a return of capital to have the amount paid up thereon repaid in priority to all amounts paid up on the ordinary shares but they do not confer any further rights to dividends or on a distribution of capital in a winding-up.] (*z*)

THIS IS TO CERTIFY that A. B. of
is the registered holder of 50 [Preference] (*z*) Shares of £1 each numbered to both inclusive in the capital of the Company subject to the provisions of the memorandum and articles of association of the company and that the amount of ten shillings per share has been paid up thereon.

Dated 19 .

L.S. E.F. C.D. } Directors.

X.Y. Secretary.

NOTE.—The Company will not transfer any shares without the production of a certificate relating to such shares; which certificate must be surrendered before any deed of transfer, whether for the whole or any portion thereof can be registered or a new certificate issued in exchange.

NOTE TO BE ENDORSED ON PAYMENT OF CALL.

Received of A.B. the sum of £ being the amount of the first call of 2*s*. 6*d*. per share made in respect of the within mentioned shares.

For the A.B. Company Ltd.

TRANSFERS.

The shares or other interest of any member of a company incorporated under the Companies (Consolidation) Act, 1908, or under the earlier Acts are personal estate capable of being transferred in manner provided by the articles of the company (*a*). Where the articles are silent on the point, every shareholder is entitled to transfer his shares and to have the transfer registered (*b*). A transfer of shares can be registered even though the transferors know that the company is on the eve of winding-up (*c*), but where winding-up has become inevitable, directors may refuse to register further transfers (*d*).

(*z*) The words in square brackets may be omitted in the case of an ordinary share certificate.

(*a*) Companies (Consolidation) Act, 1908, s. 22.

(*b*) *Cawley & Co.* (1889), 42 C. D. 209; *Weston's Case* (1869), 4 Ch. 20; *Lindlar's Case*, [1910] 1 Ch. 312, even where the transfer is to evade liability; *De Pass Case* (1859), 4 De G. & J. 544. This of course assumes that the transferor and transferee are capable of making and accepting the transfer; see *post*, pp. 1124 *et seq.*

(*c*) *Taurine Co.* (1884), 25 C. D. 118; distinguishing *Chappell's Case* (1871), 6 Ch. 902; *Allen's Case* (1873), 16 Eq. 449; see also *Murray* v. *Bush* (1873), L. R. 6 H. L. 37.

(*d*) *Alexander Mitchell's* and *Rutherford's Cases* (1879), 4 A. C. 547, 567, 581; *Nelson Mitchell* v. *City of Glasgow Bank* (1879), 4 A. C. 624.

On the application of the transferor of any share or other interest in a company, the company must enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee (*e*).

Transfers of the shares or other interest of a deceased member of a company which are made by his personal representative will, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the transfer (*f*); and on the bankruptcy of a member his trustee may exercise the right to transfer his shares to the same extent as the bankrupt might have exercised it if he had not become bankrupt (*g*). Companies are usually anxious to induce persons who are entitled to shares on the death or bankruptcy of a member to become members, as in such way they will have some person (*h*) (viz. the personal representative or trustee in bankruptcy), and not merely an estate, liable for calls unpaid on the shares, and in consequence the articles of association usually provide that any persons entitled to shares on the death or bankruptcy of a member shall be entitled to be registered upon producing such evidence as the directors may require (*i*). Not infrequently further pressure is brought on such persons to register by depriving them of some of the rights of membership until they do register (*k*); but, where the articles place restrictions on the right to transfer, they should also place restrictions on the rights of persons entitled to register by reason of death or bankruptcy, for such persons claim by transmission, and not by transfer,

(*e*) Companies (Consolidation) Act, 1908, s. 28; it is, however, still the duty of the transferee to get the transfer registered; *Skinner* v. *City of London Marine Insurance Co.* (1885), 14 Q. B. D. 882.

(*f*) Companies (Consolidation) Act, 1908, s. 29.

(*g*) Bankruptcy Act, 1883, s. 50.

(*h*) Such person will be liable once his name is on the register, even though there is also an entry that he is a trustee or personal representative; nor does the fact that the company is a Scotch company which can enter trusts on its register make any difference: *Muir* v. *City of Glasgow Bank* (1879), 4 A. C. 337.

(*i*) Cp. Table A, Clause 22; and *Tuticorin Cotton Press Co.* (1894), 71 L. T. 723, as to the position of a Scotch sequestrator.

(*k*) Before registration it has been held that personal representatives are not entitled to receive notices of meetings unless of course the articles otherwise provide: *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656, but perhaps s. 67 of the Act, which differs from the corresponding section of the Companies Act, 1862, may incorporate the provisions of Table A in such case. It would seem that, in the absence of an article to the contrary, personal representatives will have the same right of property conferred on them by the shares as would the member through whom they claim, *e.g.* the right to claim an allotment of shares: *James* v. *Buena Ventura, etc., Syndicate*, [1896] 1 Ch. 456, or it is thought to vote or claim dividends or capital. Cp. also *New Zealand Gold* v. *Peacock*, [1894] 1 Q. B. 622; *Bombay Burmah Trading Corporation* v. *Smith* (1894), 21 Ind. App. 139.

and such an article would in the absence of restrictions give an unqualified right to registration (*l*). Under such an article the company is not entitled to make an entry in its register showing the character in which the personal representative or trustee bankruptcy holds shares, and personal representatives, and, indeed, trustees generally, are entitled to decide in what order their names are to appear in the company's register (*m*). If, as is commonly the case, the company requires production of the probate by executors, this will only give it notice of the names and addresses of the executors, and the company cannot assume there has been a breach of trust merely because one executor who has signed a transfer purports to revoke his signature (*n*).

A company may always refuse to register a transfer of shares which is not properly stamped (*o*), and very frequently the articles give the directors power to refuse to register a transfer of shares either in all cases or in certain cases, *e.g.* transfers of partly paid shares to persons of whom they do not approve, or transfers of shares over which they have a lien (*p*), or transfers made by members who are indebted to them (*q*). Where the consent of the Board is requisite for a transfer, the fact that no formal consent has been given is immaterial after the transferee's name has been entered on the register (*r*).

Where the directors are only empowered to refuse to register transfers under certain circumstances, those circumstances must exist at the time when the transfer is presented to the company for registration ; it will be no valid reason for refusing to register a transfer that they have arisen after the transfer has been presented, but before it has actually been registered (*s*). But directors are always entitled to take a reasonable time before registering a

(*l*) *Bentham Mills Spinning Co.* (1879), 11 C. D. 900; and see *Cannock and Rugeley Colliery Co., Ex parte Harrison* (1885), 28 C. D. 363, where a trustee in bankruptcy was not entitled to be put on the register because the bankrupt had before his bankruptcy executed a transfer of the shares ; it made no difference that the company had declined to register the transfer, and that the transferees consented to the registration of the transfer, although they did not give up their security.

(*m*) *T. and H. Saunders & Co.*, [1908] 1 Ch. 415.

(*n*) *Grundy* v. *Briggs*, [1910] 1 Ch. 444.

(*o*) *Maynard* v. *Consolidated Kent Collieries*, [1903] 2 K. B. 121.

(*p*) Table A, Clause 20. Where the article restricted transfers by a person indebted to the company, it was held that it must be read with the articles giving the company a lien : *Stockton Malleable Iron Co.* (1876), 2 C. D. 101.

(*q*) Table A in the Schedule to the Companies Act, 1862, clause 10. Cp. *Stocton Malleable Iron Co.* (1876), 2 C. D. 101, for the construction of such an article.

(*r*) *Branksea Island* (No. 2), *Ex parte Bentinck* (1888), 1 Meg. 23.

(*s*) *Cawley and Co.* (1889), 42 C. D. 209 ; *Reg.* v. *Inns of Court Hotel* (1860), 29 L. J. (Q. B.) 269.

transfer (*t*), and they usually give notice to the member holding the shares specified in the transfer that a transfer has been lodged for registration; they do not owe any one a duty to do this (*u*), but it is a wise precaution to take, as it may protect them from registering a forged transfer and issuing a certificate by which they may eventually be estopped. If the directors of a company have power to refuse to register transfers, either generally (*x*) or in certain cases (*y*), they will not be bound to give their reasons for declining to register a transfer, and in the absence of evidence to the contrary a Court will assume that they have exercised their powers reasonably and *bonâ fide*, but, like all other powers conferred on directors, a power to refuse to register transfers is a fiduciary power, and on evidence that it has been exercised improperly (*z*) the Court will intervene, and in a proper case it will make an order for rectification of the register under section 32 of the Companies (Consolidation) Act, 1908 (*a*). *De facto* directors (*b*) or directors interested in the transfer (*c*) can concur in passing a transfer. When the directors are empowered to refuse to register a transfer to a person whom they do not approve, they cannot decline to register a transfer merely because they wish to keep all the shares of the company in one family, nor can they in such case refuse to register all nominees of the person proposed without even knowing who they are (*d*), for even if the person proposed be himself objectionable, a desirable nominee may be produced, and the company will only be concerned with the person actually on the register (*e*). Further, where there is such an article they cannot refuse to register any transfer

(*t*) *Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618.

(*u*) *Simm* v. *Anglo-American* (1880), 5 Q. B. D. 188.

(*x*) *Ex parte Penney* (1873), L. R. 8 Ch. 446.

(*y*) *Coalport China Co.*, [1895] 2 Ch. 404. The *onus probandi* in these cases is on the persons alleging the refusal to register is wrongful: *Hannans King, etc., Mining Co.* (1898), 14 T. L. R. 314; *North City Milling Co.*, [1909] 1 Ir. 179.

(*z*) The Court will not assume directors are acting improperly merely because the proposed transferee has recently been admitted as a member in respect of other shares: *North City Milling Co.*, [1909] 1 Ir. 179.

(*a*) The fact that the approval of the directors is a condition precedent to registration is no impediment to relief under the section where the directors have acted improperly, for the shareholders' right of transfer is absolute except so far as it is diminished by contract: *Poole* v. *Middleton* (1861), 29 Beav. 646; and the directors' power of refusal is apparently gone where they have exercised it improperly: *Bell Bros.* (1891), 65 L. T. 245.

(*b*) *Murray* v. *Bush* (1873), L. R. 6 H. L. 246, and see this case also as to the principles for guiding directors in passing transfers.

(*c*) *Bush's Case* (1871), 6 Ch. 246; the point was not dealt with on appeal (1873), L. R. 6 H. L. 246.

(*d*) *Bell Bros.* (1891), 65 L. T. 245.

(*e*) *Pender* v. *Lushington* (1877), 6 C. D. 70; and cp. *Shepherd's Case* (1866), 2 Eq. 564.

whatsoever (*f*), or to refuse to register transfers because they are made with a view to increasing the voting power of the transferor by putting the shares into the names of nominees (*g*); nor will such a power justify a refusal to sanction a transfer because the transferor is indebted to the company in cases where the company has no lien for the debt (*h*), or because the transferee has given a false address unless perhaps he has given it fraudulently (*i*); and the directors cannot refuse to register a transfer without considering or discussing the matter (*k*).

But if the transferee is interested in a rival company (*l*), or being already a shareholder has involved the company in vexatious litigation (*m*), these would seem reasons for refusing to register the transfer. It may be pointed out that these are all cases where the right to refuse registration is limited to a particular reason, namely, non-approval of the transferee. Even where the power to refuse is absolute, it is still a fiduciary power, and must be exercised *bonâ fide* in the interests of the company (*n*). A right to refuse to register transfers given by the articles of a company will not be affected by a vesting order (*o*).

Directors can deprive themselves of their right to refuse to register a transfer; for instance, if they agree to register a transfer if a call is paid, they cannot refuse to register it if the call is paid (*p*), and where the articles require them to give a certificate before registering transfers, and they have not done this, they cannot after

(*f*) *Per* MELLISH, L.J., in *Ex parte Penney* (1873), 8 Ch. 446, commenting on *Robinson* v. *Chartered Bank* (1866), L. R. 1 Eq. 32, a case which as he pointed out was decided on demurrer.

(*g*) *Stranton Iron and Steel Co.* (1873), L. R. 16 Eq. 559; *Moffatt* v. *Farquhar* (1878), 7 C. D. 591.

(*h*) *Pinkett* v. *Wright* (1842), 2 Hare 133.

(*i*) *Weston's Case* (1869), 4 Ch. 20.

(*k*) *Ceylon Land and Produce Co.* (1891), 7 T. L. R. 692; in this case there was evidence of unfair conduct on the part of the chairman, and CHITTY, J., said that the fact that the clause only applied to partly paid shares, pointed to lack of pecuniary responsibility being the only proper reason for refusing registration.

(*l*) CHITTY, J., seems to assume this in *Bell Bros.* (1891), 65 L. T. 245; it was considered doubtful in *Robinson* v. *Chartered Bank* (1866), L. R. 1 Eq. 32.

(*m*) *Stewart* v. *James Keiller* (1902), 4 Fra. 657.

(*n*) *Coalport China Co.*, [1895] 2 Ch. 404, *per* LINDLEY, L.J., at p. 409; RIGBY, L.J., added at p. 410, "and having regard to the rights of the transferee," but it is difficult to see what could be the rights of a transferee in such a case.

(*o*) *New Zealand Trust and Loan Co.*, [1893] 1 Ch. 403, at p. 412, and see also this case *Re Price* (1894), W. N. 169; *Re Gregson*, [1893] 3 Ch. 233; and *Re C. M. G. Spinster*, [1898] 2 Ch. 324; and *Re Purvis*, [1904] 1 Ch. 373, as to forms of vesting orders.

(*p*) *Slee* v. *International Bank* (1868), 17 L. T. 425.

registration of transferees turn round and impeach the registration (*q*).

A contract for the sale of shares on the Stock Exchange is not conditional on the company allowing the purchaser to become a complete member by admitting him to its register (*r*), but the vendor under such a contract may not do anything to prevent the purchaser from being registered (*s*); if the purchaser is not registered, he will be liable to indemnify the vendor against all calls that may be made on the shares after the transfer (*t*). Where directors have refused to register a transfer they are not bound to give notice of the fact to the transferor (*u*). A provision in the articles of association requiring members to transfer their shares does not offend against the rule against perpetuities, even though the transfer may have to be made at a date exceeding a life or lives in being and twenty-one years, after the time when the contract of membership was entered into; and a clause requiring a transfer at a fixed price if the member goes bankrupt is not contrary to the bankruptcy laws (*v*). A private company must restrict "the right to transfer its shares" (*x*); presumably the restriction required is on the right to have transfers of shares registered, for the mere transfer, apart from its registration, in no way concerns the company. It would, moreover, seem as the section is silent on the subject that an absolute restriction is not necessary, any restriction which applies to all the shares of the company, or at all events any restriction which enables the company to limit the number of its members, would seem sufficient. Nor does there seem to be anything to prevent such a company having one form of restriction for one class of its members and another for another class.

With regard to the form which transfers of shares have to take, this is entirely a matter for the articles; occasionally the articles provide that transfers must be by deed. But such a provision is not desirable, as it is common for holders of shares to borrow money on their shares by depositing the certificates with a blank transfer

(*q*) *Bargate* v. *Shortridge* (1855), 5 H. L. C. 297; see also *post*, pp. 294 *et seq.*, as to the effect of registration.

(*r*) *London Founders' Association* v. *Clarke* (1888), 20 Q. B. D. 576.

(*s*) *Hooper* v. *Herts*, [1906] 1 Ch. 549.

(*t*) *Castellan* v. *Hobson* (1870), 10 Eq. 47; *Hardoon* v. *Belilios*, [1901] A. C. 118. In these cases where there is no fund to indemnify the vendor, and the purchaser is *sui juris*, the law as laid down by *Wise* v. *Perpetual Trustee*, [1903] A. C. 139, does not seem to apply: a trustee in bankruptcy is not liable either personally or out of the assets to indemnify the bankrupt against calls; *Levi* v. *Ayres* (1878), 3 A. C. 842.

(*u*) *Sustard's Case* (1869), 8 Eq. 438.

(*v*) *Borland's Trustee* v. *Steel Bros.*, [1901] 1 Ch. 279; *Attorney-General* v. *Jameson*, [1905] 1 Ir. 218.

(*x*) Companies (Consolidation) Act, 1908, s. 121.

(*i.e.* the name of the transferee not being filled in) with the lender; in such a case, if the transfer requires to be by deed, the lender cannot validly fill in the name of the transferee, for that will not make the deed so completed the deed of the borrower, and the company can refuse to register the transferee (*y*), and even where it has registered him he will be postponed to persons who have a prior equity (*z*). On the other hand, if the articles only require transfers to be by instruments in writing, even if a transfer bear a seal and the company has been accustomed to require transfers to be by deed, the lender will be entitled to fill up the blank and to demand registration of the transfer as fully as he could have done if the blank had originally been filled up (*a*); but even where the articles do not require transfers to be by deed, a third party who takes a blank transfer from the original lender will have no higher title than such lender had, and cannot fill up the transfer for purposes foreign to the original contract (*b*); but if the transfer is filled up before he gets it and without his knowledge, the transferee will, even where the transfer must be by deed, get a good title to the shares free from any claim by the person who gave the blank transfer (*c*). The commonest form of article requires transfers to be executed by the transferor and transferee, and sets out that transfer must either be in any usual or common form or in the form set out in the articles, such form being itself a very common form (*d*). For the purposes of an official quotation on the Stock Exchange, this would appear to be enough, for all that is requisite is that the articles should provide that the common form of transfer shall be used.

(*y*) *Société Générale de Paris* v. *Walker* (1886), 11 A. C. 20; approving *Hibblewhite* v. *MacMorine* (1840), 6 M. & W. 200; see also *Barned's Banking Co., Ex parte Contract Corporation* (1868), 3 Ch. 105, as to such a transfer operating as an agreement.

(*z*) *Powell* v. *London and Provincial Bank*, [1893] 2 Ch. 555.

(*a*) *Ex parte Sargant* (1874), 17 Eq. 273; in *France* v. *Clarke* (1884), 26 C. D. 257. Lord SELBORNE said with reference to this case that the applicant only claimed to stand in his transferor's shoes and not to be entitled to any higher right, that his right in equity had been admitted and that there was evidence of ratification; but for these circumstances he would have overruled it. See also *Tees Bottle Co.* (1878), 38 L. T. 145 (stated in *Ortigosa* v. *Brown, Janson & Co.* (1878), 38 L. T. 145, to have been affirmed on appeal, but possibly the appeal was dismissed because security for costs was not found. see 20 Sol. J. 584).

(*b*) *France* v. *Clarke* (1884), 26 C. D. 257; it was held in *Fox* v. *Martin* (1895), 64 L. J. (CH.) 473, that this case was not overruled by *Colonial Bank* v. *Cady* (1890), 15 A. C. 267; and see *Re Wernher* (1888), 59 L. T. 579; *Ortigosa* v. *Brown, Janson & Co.* (1878), 38 L. T. 145.

(*c*) *Union Credit* v. *Mersey*, [1899] 2 Q. B. 305; though this case does not relate to blank transfers of shares it seems to establish the above proposition; see also *Balkis Consolidated Co.* (1888), 58 L. T. 300.

(*d*) Table A, Clauses 18 and 19.

Where the articles are silent on the subject, it would seem that the form of transfer will be governed by established custom of the company, and that the company may decline to register a transfer not in the form usually used on transfers of its shares (*e*).

Even the Court in a winding-up cannot dispense with the provisions of the articles dealing with the form which transfers are to take (*f*), and *a fortiori* the directors cannot do so, but if there is some slight and immaterial variation from such form that will not be enough to entitle the directors to refuse registration (*g*). Thus where the address is omitted (*g*), or even a wrong address (*h*), or a wrong description (*i*) is without fraudulent intent given if there is no doubt who the person in question is, this will not invalidate a transfer, even in cases where the form of transfer sanctioned by the articles requires the address to be given; nor will the fact that the numbers of the shares are wrongly given or are not given in the transfer, where the intention to assign the number of shares specified in the transfer and the intention to accept such shares is manifest, for directions as to the distinguishing numbers of the shares being inserted are simply directory, so as to enable the company to trace the titles to the different shares (*k*). Of course very different questions would arise where it is doubtful whether the shares to be transfered belong to one class or another.

The mere non-execution of a transfer by the transferee will not, even though his execution is required by the articles, render the transfer void (*l*).

Where the consideration is wrongly stated this will not invalidate the transfer, or prevent the property in the shares transferred from passing (*m*); but the directors may go behind a transfer and ascertain what the consideration really is, and if, as the result of such inquiries, they ascertain that a transfer is not properly stamped, they may decline to register the transfer (*n*). Where directors are entitled to demand such evidence as they think fit of the right of the

(*e*) *Marino's Case* (1867), 2 Ch. 596; this case was distinguished in *Ex parte Sargant* (1874), 17 Eq. 273. S. 22 of the Act says the matter is to be regulated by the articles.

(*f*) *Walker's Case* (1866), 2 Eq. 554.

(*g*) *Lethcby and Christopher*, [1904] 1 Ch. 815.

(*h*) *Weston's Case* (1869), 4 Ch. 20; see also *Discoverers' Finance Corporation; Lindlar's Case*, [1910] 1 Ch. 207, 212.

(*i*) *Master's Case* (1872), 7 Ch. 292; *Bishop's Case* (1869), 7 Ch. 296 *n*.

(*k*) *Lethcby and Christopher*, [1904] 1 K. B. 815; *Ind's Case* (1872), 7 Ch. 485; *Bishop's Case* (1869), 7 Ch. 296 *n*; and cp. *Platt v. Rowe* (1909), 26 T. L. R. 49.

(*l*) *Taurine Co.* (1884), 25 C. D. 118.

(*m*) *Powell* v. *London and Provincial Bank*, [1893] 2 Ch. 555.

(*n*) *Maynard* v. *Consolidated Kent Collieries*, [1903] 2 K. B. 121. A person who registers an instrument which is not duly stamped is liable to a fine of £10: Stamp Act, 1891, s. 17. It may be that s. 74 of the Finance (1909–1910) Act, 1910, which deals with voluntary conveyances, will increase the duties of directors and secretaries. The circulars issued by the Inland Revenue Commissioners in April, 1910, and June, 1910, cited in Alpe, 12th ed. p. 43, suggest that inquiry ought to be made in all cases where there is a transfer for a nominal consideration.

transferor to transfer, they may require his certificate to be left with the company for their inspection (*o*). The stamps on transfers are the same as were those on conveyances on sale, before the latter were doubled by the Finance (1909–1910) Act, 1910 (*p*). Directors cannot, as against an innocent transferor, rely on their own default in not passing a transfer (*q*).

In lieu of the old writ of distringas a notice in lieu of distringas may now be given by any person claiming to be interested in any stock or shares standing in the books of a company. Such person or his solicitor must make an affidavit in the prescribed form (*r*), with such variations as circumstances may require, and such affidavit and a notice also in the prescribed form (*s*) must be filed at the central office, and an office copy of the affidavit with a duplicate of the notice authenticated by the seal of the central office must be served on the company. A note must be appended to the affidavit stating on whose behalf it is filed and to what address any notices are to be sent (*t*).

If after such a notice the company receives a request to transfer the stock or shares or for payment of dividends, it must give notice by sending a prepaid letter through the post to the person interested, at the address given; but the company cannot by reason of any such notice decline to register a transfer or to pay dividends for more than eight days from receiving a request so to do without the order of a Court or Judge (*u*), and any person who has given such a notice must on receiving the notice from the company forthwith apply for an injunction.

In spite of these elaborate rules, and the provisions of the Act preventing a company from entering notices on its register (*x*), it has been held that a company cannot register a transfer of shares if it has notice of an adverse claim to the shares comprised in such transfer, even though no notice in lieu of distringas has been given (*y*).

(*o*) *East Wheal Martha Mining Co.* (1863), 33 Beav. 119; see also *Colonial Bank* v. *Whinney* (1886), 11 A. C. 426; *Société Générale* v. *Walker* (1886), 11 A. C. 20.

(*p*) *Supra*, p. 166.

(*q*) *Bargate* v. *Shortridge* (1855), 5 H. L. C. 297; *Murray* v. *Bush* (1873), L. R. 6 H. L. 37.

(*r*) O. 46, rr. 2, 3, and 4, R. S. C.

(*s*) Appendix B to R. S. C., Forms No. 22 and 27. From these forms it would appear that the notice can only be given when the interest is claimed under some instrument in writing.

(*t*) O. 46, r. 5 R. S. C.; and see *ibid.*, r. 6, as to service of notices On change of such address a memorandum must be served on the company, but this will not affect any notice given before such alteration has been duly notified: *ibid.*, r. 7.

(*u*) O. 46, r. 10 R. S. C. The notice may be withdrawn on a written request of the person who has obtained it, and any other person claiming to be interested in the shares or stock may by motion or summons get an order putting an end to its operation: *ibid.*, r. 9.

(*x*) Companies (Consolidation) Act, 1908, s. 27.

(*y*) *Peat* v. *Clayton*, [1906] 1 Ch. 659.

It was not said for how long a company was bound to hold up a transfer because of such notice, but it would seem that the proper course for a company receiving such a notice is to inform the person giving it that they will register the transfer unless he takes legal proceedings (*z*).

A judgment creditor may obtain a charging order against stock or shares in which the judgment debtor is beneficially interested. Such an order is usually made on *ex parte* summons, and is made as an order *nisi* in the first instance, and has the same effect as a notice in lieu of distringas on being served on the company; it is then either made absolute or discharged. But no proceedings can be taken to enforce such an order until six months after the date of the order (*a*); it must then be made in a fresh action specially brought to enforce it (*b*). A charging order will give the chargee no higher rights than the person against whom the order was made had (*c*) at the date of the order *nisi* (*d*).

The measure of damages for a wrongful refusal to register a transfer of shares is the difference between the price of the shares when the transferee ultimately gets them and what he would have got for them if his transfer had been registered in due time, and he had realized them prudently as soon as he could do so after that time, but at the same time without being too hasty about realization; the number of shares comprised in the transfer and the prices ruling at the time when it should have been registered and all other surrounding circumstances must be taken into account (*e*).

On a contract for the sale of shares on the Stock Exchange, if part only of the shares comprised in a certificate form the subject of the sale, it is usual for the certificate to be sent with the transfer for certification, and on receipt of such transfer and certificate the secretary or other proper officer of the company marks the transfer with the words "certificate lodged." Unless a transfer is duly accompanied by the certificate relating to the shares comprised therein, or is certificated, the rules of the Stock Exchange provide that the purchaser may refuse to pay for his shares. The certificate is then retained by the company, and in its place fresh certificates are issued. Such certification is not *ultra vires* on the part of the

(*z*) *Grundy* v. *Briggs*, [1910] 1 Ch. 444.

(*a*) O. 46, r. 1 R. S. C. and 1 and 2 Vict. c. 110, ss. 14 and 15, and 3 and 4 Vict. c. 82, s. 1. Such an order takes effect from the date of the order *nisi* if made absolute: *Brereton* v. *Edwards* (1888), 21 Q. B. D. 226, 488. It can be made even where the judgment creditor is himself incapable of giving a charge: *Re Leavesly*, [1891] 2 Ch. 1.

(*b*) *Kolckmann* v. *Meurice*, [1903] 1 K. B. 534.

(*c*) *Gill* v. *Continental Gas Co.* (1872), L. R. 7 Ex. 332; *Gray* v. *Stone* (1893), 69 L. T. 282.

(*d*) *Haly* v. *Barry* (1868), 3 Ch. 452; *Brereton* v. *Edwards* (1888), 21 Q. B. D. 488.

(*e*) *Hooper* v. *Herts*, [1906] 1 Ch. 549.

company, as it facilitates dealings with the company's shares, and this is likely to benefit the company (*f*).

The giving of this certificate only amounts to a representation that documents have been lodged with the company which are apparently in order, and which *primâ facie* show the transferor's title to transfer, and it does not imply a warranty of the transferor's title or of the validity of the certificate, and the company will not be estopped if a transfer is certificated where no share certificate has been lodged, if the certificate is in fact with the company at the time when the transfer is left with it and shows a title to transfer the shares, which in fact the transferor had not got; as, for instance, where he has previously transferred the shares to a person who has not got a fresh certificate, for in such case the person who has acted on the certification would have been equally misled if it were true that the certificate had been lodged and is really damaged by the lack of title in his transferor, and not by the certification (*f*). Moreover, if the officer of the company, whose duty it is to certify transfers, returns the transfer after certification to the transferor, the company will not be liable to persons who subsequently deal with the transferor on the faith of his having the certificate and without knowledge of the certification (*h*). If it is the duty of the secretary of the company to certify transfers, the company will not be liable to an action for deceit if the secretary fraudulently and for his own ends certificates the transfer, where no certificate has been lodged, nor will the company in such case be liable by estoppel if, as is usually the case, its secretary is a mere servant, and in no sense its general agent, and the misrepresentation is consequently not made by the company (*i*). The company will, however, apparently be liable by estoppel if a transfer of fully paid shares is certificated where the shares transferred are not fully paid up, even if no certificate has been lodged or if the certificate lodged is silent as to whether the shares are fully paid up or not (*k*). It would seem, now, that this decision, if good law, can only apply where there is no fraud, unless owing to exceptional circumstances the fraud can be attributed to the company (*i*); and it would seem to follow that the company will be estopped where its secretary negligently certificates a transfer,

(*f*) *Bishop* v. *Balkis Consolidated* (1890), 25 Q. B. D. 512.

(*h*) *Longman* v. *Bath Electric Tramways*, [1905] 1 Ch. 646.

(*i*) *George Whitechurch, Ltd.* v. *Cavanagh*, [1902] A. C. 117.

(*k*) *McKay's Case*, [1896] 2 Ch. 757. In Lindley on Companies, 6th Edition, at pp. 83, 670, and 1081, this case is treated as overruled by *George Whitechurch, Ltd.* v. *Cavanagh*, [1902] A. C. 117, though it is there pointed out that this latter case was a case of the secretary being fraudulent. Lord MACNAGHTEN and Lord JAMES at pp. 126, 133, and 134, both say that the company will not be estopped where the secretary certificates a transfer and no certificate has in fact been lodged.

which is shown by the certificate relating to the shares comprised therein to be out of order, whether such certificate is or is not lodged with the transfer.

Where there is a conflict of rights between two innocent parties claiming shares, the general rules are (1) that the person who has the complete legal title to the shares or who has as between himself and the company an unconditional right to be registered will have priority ; (2) where both parties have only equitable rights the person whose equity is prior in point of time prevails.

Both these rules are, however, liable to be displaced by the conduct of the parties in a given case.

With regard to (1), it has been doubted whether anything but the complete legal title will prevail (*l*), and it seems to be the case that nothing short of registration will protect a person where the company has a discretion as to registration, as, for instance, where no complete and properly stamped transfer has been delivered to the secretary of a company governed by the Companies Clauses Act, 1845 (*m*), or where the company's deed provides that no person shall be registered as a member until he has executed the company's deed and no offer to do so has been made, or where the articles regulate transfers in any way (*n*).

Again, where certificates contain a note that no transfer will be registered without the production of the certificate relating to the shares comprised therein, a person who puts forward a transfer unaccompanied by the necessary certificate has not an unconditional right to be registered, at all events unless he can prove the loss or destruction of his certificate (*o*), although probably the company would not incur any liability if it registered the transfer without the production of the certificate (*p*), unless, of course, it had notice at the time of registration of the prior claim of some other person with whom the certificate had been deposited as security for money or otherwise (*q*).

Except in the case of volunteers (*r*), persons with a complete

(*l*) *Ireland* v. *Hart*, [1902] Ch. 522 ; but see *Peat* v. *Clayton*, [1906] 1 Ch. 659.

(*m*) *Nanney* v. *Morgan* (1888), 37 C. D. 346.

(*n*) *Moore* v. *North Western Bank*, [1891] 2 Ch. 599 ; and see also *Ireland* v. *Hart*, [1902] 1 Ch. 522, where there was no restriction on transfers, but the directors heard of the adverse claims while availing themselves of their right to take a reasonable time to register the transfer.

(*o*) *Colonial Bank* v. *Whinney* (1886), 11 A. C. 426 ; *Société Générale* v. *Walker* (1886), 11 A. C. 20.

(*p*) *Shropshire Union Railways, etc., Co.* v. *Reg.* (1875), L. R. 7 H. L. 496 ; *Rainford* v. *James Keith*, [1905] 1 Ch. 296 ; *Guy* v. *Waterlow Bros.* (1909), 25 T. L. R. 515.

(*q*) *Rainford* v. *James Keith*, [1905] 2 Ch. 147.

(*r*) *Graham* v. *O'Connor* (1895), 73 L. T. 712.

legal title to shares will be postponed to persons having a higher equity only if they knew, or must be taken to have known, of such equity before they acquired the legal title (*s*), or if they have subsequently estopped themselves from relying on it (*t*) ; but if the company knew of the equity at the time of registration, but nevertheless registered the transfer, it may apparently rectify its register so as to relegate the transferee to the position he would have held if he had never been registered (*u*). A person cannot avail himself of a legal title which he has got in after he has notice of prior equities (*x*) or where he has acted negligently (*y*).

Where shares are held by trustees who have no authority to sell, if they transfer to a purchaser for value without notice (*z*) and the transferee is registered or obtains an unconditional right to be registered, the title of the transferee will prevail over that of the *cestuis qui trustent*, but the title of the *cestuis qui trustent* will prevail if asserted before the transferee is in such position (*a*), unless they have in any way estopped themselves from asserting their rights.

Persons interested in shares will be held to have estopped themselves against a *bonâ fide* purchaser for value without notice (including, of course, a mortgagee (*b*)) where they have authorized a sale or a mortgage, even though there is a limitation on the power which is so conferred, and regard is not had to such limitation (*c*) unless it has come to the knowledge of the purchaser before he has paid his money, and on this principle it has been held that an agent authorized to sell can, if his principal has executed a transfer to him, give a good title to a mortgagee (*d*), and that a principal who at the bidding of his agent has executed a transfer to a bank, which is in

(*s*) *Colonial Bank* v. *Hepworth* (1887), 36 C. D. 36 ; and *Sheffield* (*Lord*) v. *London Joint Stock Bank* (1888), 13 A. C. 333, as explained in *London Joint Stock Bank* v. *Simmons*, [1892] A. C. 201 ; in *Lord Sheffield's Case* the lenders knew that they were in all probability dealing with an agent having limited authority, and were so put on inquiry : see *Cooke* v. *Eshelby* (1887), 12 A. C. 271.

(*t*) *Colonial Bank* v. *Cady* (1890), 15 A. C. 267 ; *Hone* v. *Boyle* (1891), 27 L. R. Ir. 137 ; the cases on blank transfers have already been dealt with.

(*u*) *Peat* v. *Clayton*, [1906] 1 Ch. 659.

(*x*) *Ortigosa* v. *Brown, Janson & Co.* (1878), 38 L. T. 145 ; *Taylor* v. *London and County Banking Co.*, [1901] 2 Ch. 231.

(*y*) *Walker* v. *Linom*, [1907] 2 Ch. 104.

(*z*) Cp. *Briggs* v. *Massey* (1880), 42 L. T. 49, as to what will not amount to notice.

(*a*) *Shropshire Union Railways, etc., Co.* v. *Reg.* (1875), L. R. 7 H. L. 496.

(*b*) Except perhaps where the mortgage is a security for an antecedent debt : *Roots* v. *Williamson* (1888), 38 C. D. 485.

(*c*) *Brocklesby* v. *Temperance, etc., Building Society*, [1895] A. C. 173 ; *Marshall* v. *National Provincial Bank* (1892), 40 W. R. 328.

(*d*) *Rimmer* v. *Webster*, [1902] 2 Ch. 163.

the habit of lending money on, but not of purchasing shares of the nature of those comprised in, the transfer, will be estopped from denying that such transfers confer a good security on the bank for money lent (*e*), for although an agent for sale has not usually authority to mortgage (*f*), the only limit of authority which can be recognized where there is a written document is, in the absence of express notice, the document itself (*g*); and, indeed, the rule itself scarcely seems to hold good in the case of a broker to whom a client has transferred stock (*h*).

A receipt clause in a transfer will, if there has been a sale, protect a person relying on it against the vendor's lien of a principal, even though the consideration has never passed, the reason for this being because the person relying on it will have the higher equity, and not because of any doctrine of estoppel (*i*). If there has in fact been no sale and no money has passed, the principal will not be barred by a receipt given by his agent from showing such fact, even in cases where if he had given the receipt himself there would be an estoppel against him (*k*). The ordinary statement in a transfer that the money has been paid is as effectual an acknowledgment as the ordinary conveyancing receipt (*l*).

It is possible that a trustee is in this respect in a different position to an agent, and that the mere fact that a person has taken a transfer in the name of a trustee will not prevent his setting up his rights against even a purchaser for value without notice who has not obtained a legal title to the shares (*m*); and a person who has once been an agent for sale will, when he ceases to have authority to sell, be in the same position as though he had been in the position of a trustee, and not an agent for sale of the shares (*n*).

If a person deposits bonds which pass by delivery with an agent or a trustee for safe custody, and that agent or trustee delivers

(*e*) *Bentinck* v. *London Joint Stock Bank*, [1893] 2 Ch. 120.

(*f*) *Paterson* v. *Tash* (1743), 2 Str. 1178; *Daubigny* v. *Duval* (1794), 5 T. R. 604; *Werner* v. *Gill*, [1905] 2 K. B. 172, affirmed, [1906] 2 K. B. 574.

(*g*) *Bryant, Powis and Bryant* v. *Quebec Bank*, [1893] A. C. 170; *Hambro* v. *Burnand*, [1904] 2 K. B. 10.

(*h*) *Collis* v. *Hibernian Bank* (1893), 31 L. R. Ir. 261; cp. *Magnus* v. *Queensland National Bank* (1888), 37 C. D. 466.

(*i*) *Capell* v. *Winter*, [1907] 2 Ch. 376, commenting on *Rice* v. *Rice* (1853), 2 Drew. 73; *Lloyd's Bank* v. *Bullock*, [1896] 2 Ch. 192.

(*k*) *Capell* v. *Winter*, [1907] 2 Ch. 376, it is very difficult to reconcile this case with *Rimmer* v. *Webster*, [1902] 2 Ch. 163.

(*l*) *Rimmer* v. *Webster*, [1902] 2 Ch. 162; see, however, *Renner* v. *Tolley* (1893), 68 L. T. 815.

(*m*) *Burgis* v. *Constantine*, [1908] 2 K. B. 484; *Carritt* v. *Real and Personal* (1889), 42 C. D. 263; in *Lloyd's Bank* v. *Bullock*, [1896] 2 Ch. 192, CHITTY, J., held that there had in fact been a sale, though it could have been avoided, and the trustee had power to sell.

(*n*) *Burgis* v. *Constantine*, [1908] 2 K. B. 484.

them to a purchaser for value without notice, it follows that the true owner's rights will be postponed to those of such purchaser, even though the bonds be not negotiable instruments (*o*).

These cases are all based on estoppel, but to found such an estoppel there must not merely be conduct of culpable neglect calculated to lead others, and in fact leading them, to believe in a certain state of circumstances, but the neglect must be in the transaction itself, and must be of some duty owed by the person guilty of neglect towards the person who has suffered or towards the general public or some class of the public to whom such person belongs (*p*), and must be the proximate cause of the loss. Thus the mere fact that a company has allowed its secretary to have the custody of its seal and has thereby enabled him to transfer stock under a forged power of attorney purporting to bear such seal (*q*) or to issue certificates fraudulently (*r*) will not prevent the company from establishing that an innocent purchaser for value has no title to the stock or the shares mentioned in the certificates; and a person who has given his broker transfers which are blank with regard to the descriptions of the shares to be transferred and has left the certificates of shares other than those he intended to transfer with such broker will not be precluded from showing that the broker has fraudulently and contrary to his instructions filled up the blanks in the transfers with the descriptions of such other shares (*s*); nor will a company be precluded from denying the title of a purchaser of shares where the certificate relating to the shares has been deposited with it and it has negligently allowed it to be handed to the wrong person (*t*).

Where a company has registered a forged transfer it will have to replace the original owner of the shares transferred in the position he occupied before the transfer was registered (*u*); but it will be entitled to be indemnified, as is above stated (*x*), by the person who put forward the forged transfer. The cause of action in such case arises when the company first declines to treat the person whose name has been wrongfully removed from the register as the owner of the stock or shares which have been wrongfully transferred, and the Statute of Limitations will not commence to run till then (*u*). The

(*o*) *Goodwin* v. *Robarts* (1876), 1 A. C. 476; *Hone* v. *Boyle* (1891), 27 L. R. Ir. 137.

(*p*) *Swan* v. *North British Australasian* (1863), 2 H. & C. 175; and see also *Kepitigalla Rubber Estates* v. *National Bank of India*, [1909] 2 K. B. 1010, 1025.

(*q*) *Bank of Ireland* v. *Evans' Trustees* (1855), 5 H. L. C. 389; *Merchants of the Staple* v. *Bank of England* (1888), 21 Q. B. D. 160.

(*r*) *Ruben* v. *Great Fingall*, [1906] A. C. 439.

(*s*) *Swan* v. *North British Australasian* (1863), 2 H. & C. 175; *Taylor* v. *Great Indian Peninsula* (1859), 4 De G. & J. 559.

(*t*) *Longman* v. *Bath Electric Tramways*, [1905] 1 Ch. 646; and see *Northern Counties, etc., Fire Insurance Co.* v. *Whipp* (1884), 26 C. D. 482.

(*u*) *Barton* v. *North Staffordshire Railway* (1888), 38 C. D. 458.

(*x*) *Supra*, p. 281.

fact that the company sends a notice to the owner of shares informing him that there has been an application to transfer his shares and stating that the shares will be transferred unless they hear from him to the contrary will not protect the company if they do register a forged transfer (*y*).

Where shares are registered in the joint names of several executors (*z*), they must all be parties to a transfer even where the register contains a note that they are executors (*a*).

Companies (*b*) who issue or have issued shares, stock, or securities transferable by an instrument or by an entry in any books or register kept on their behalf have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares or securities in pursuance of a forged transfer or of a transfer under a forged power of attorney whether such loss arises and whether the transfer or power of attorney was forged before or after the passing of the Forged Transfers Act, 1891, and whether the person receiving compensation or any person through whom he claims has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid (*c*). A company may, if it thinks fit, provide either by fees not exceeding the rate of 1*s*. on every £100 transferred with a minimum charge equal to that for £25 to be paid by the transferee upon the entry of the transfer in the books of the company, or by insurance, reservation of capital, accumulation of income, or in any other manner which they may resolve upon, a fund to meet claims for compensation (*d*).

For the purpose of providing such compensation any company may borrow on the security of its property (*e*), and may impose such reasonable restrictions on the transfer of their shares, stocks, or securities or with respect to powers of attorney for the transfer thereof, as it may consider requisite for guarding against losses arising by forgery (*f*). A company which makes compensation under these Acts for any loss arising from forgery has without prejudice to any other right or remedy the same right or remedy against

(*y*) *Barton* v. *London and North Western Railway* (1890), 24 Q. B. D. 77.

(*z*) *Barton* v. *North Staffordshire Railway* (1888), 38 C. D. 458.

(*a*) *Barton* v. *London and North Western Railway* (1890), 24 Q. B. D. 77.

(*b*) This includes all companies incorporated by or in pursuance of any Act of Parliament or by Royal Charter and the Act also applies to any industrial, friendly, benefit building, or loan society, by or in pursuance of any Act of Parliament: The Forged Transfers Act, 1891, ss. 2 and 3.

(*c*) The Forged Transfers Act, 1891, s. 1 (1), as explained by the Forged Transfers Act, 1892, s. 2.

(*d*) The Forged Transfers Act, 1891, s. 1 (2), as amended by the Forged Transfers Act, 1892, s. 3.

(*e*) Forged Transfers Act, 1891, s. 1 (3).

(*f*) *Ibid.*, s. 1 (4).

the person liable for the loss as the person compensated would have had (*g*).

Where a transfer of shares has been made and nothing remains to be done to complete the transaction, such transaction can only be set aside if fraud is proved (*h*).

DIVIDENDS.

We have already considered the question of what funds a company can make available for dividend. We now come to the question of the provisions of the articles on the subject and of the distribution of the dividends among the members.

Not infrequently the articles provide that dividends shall only be paid out of the profits of the business of the company (*i*), thus preventing accretions to capital from being divided, and in other cases they provide that dividends shall only be paid out of profits (*k*), thus requiring the company to make good any losses of capital it may have suffered (*l*).

It is almost an invariable rule (*m*) that no shareholder is entitled to any share of the profits of the company until a dividend has been declared (*n*), and where this is the case even a preference shareholder cannot in a winding-up claim for arrears of his dividend out of profits which have been earned if no dividend has been declared (*o*), and the declaration of a dividend is a condition precedent to an action.

Usually the articles provide that the company in general meeting may declare a dividend, but that such dividend shall not exceed the amount recommended by the directors (*p*), or that the directors may with the sanction of the company in general meeting declare a dividend (*q*). If they empower the company to declare a dividend at the ordinary general meeting and require the accounts to be submitted to such meeting, no final dividend can be declared at an extraordinary general meeting (*qq*). The articles usually also enable the directors to declare or pay interim dividends (*r*), under such an article even where an interim dividend has been declared and the

(*g*) The Forged Transfers Act, s. 1 (5).

(*h*) *Seddon* v. *North Eastern Salt Co.*, [1905] 1 Ch. 326.

(*i*) See Clause 73 of Table A in the Schedule to the Companies Act, 1862.

(*k*) Table A, Clause 97.

(*l*) *Bond* v. *Barrow Hæmatite Co.*, [1902] 1 Ch. 353.

(*m*) For an exception to this rule see *Bridgewater Navigation*, [1891] 2 Ch. 317, where the articles were very special; and see also *Spanish Prospecting Co.*, [1911] 1 Ch. 92.

(*n*) *Bond* v. *Barrow Hæmatite Co.*, [1902] 1 Ch. 353; *Accrington Corporation Steam Tramways*, [1909] 2 Ch. 40.

(*o*) *Crichton Oil Co.*, [1902] 2 Ch. 86; *Espuela Land and Cattle Co.*, [1909] 2 Ch. 187; but sometimes the articles dealing with the distribution of assets on a winding-up vary this rule: see *W. J. Hall and Co.*, [1909] 1 Ch. 521, where an express provision for payment of arrears of the preferential dividend was held only to apply to the extent that there were profits in hand.

(*p*) Table A, Clause 95.

(*q*) See Clause 72 in Table A in the Schedule to the Companies Act, 1862.

(*qq*) *Nicholson* v. *Rhodesia Trading Co.* (1897), 1 Ch. 434.

(*r*) Table A, Clause 96.

funds to meet it set aside, the company can decide not to pay the dividend (*s*).

The articles also usually provide that the directors may before recommending or declaring a dividend set aside part of the profits to a reserve fund and empower them to apply such fund for the purposes of meeting contingencies, equalizing dividends, and other purposes (*t*). Even without such an article, however, the directors may, unless the articles are very special, set aside part of their profits or even all their profits to a reserve fund, and may invest such fund in any investments (of course, other than the shares of the company) which they consider desirable (*u*). Where the reserve fund has been invested and employed in the business of the company, the Court will usually be slow to take the view that it has been, so to speak, dedicated to capital, so as not to be available for distribution as profits in succeeding years (*x*). As between tenant for life and remainderman, the tenant for life is entitled to all profits distributed unless the company has validly capitalized them by resolution or otherwise (*y*), but where the trustees have an option of taking cash or fully or partly paid shares, and they elect to take the shares, such shares will belong to capital (*z*). Apart from a special article—and it is desirable that there should be such an article—directors must pay dividends in cash, and not in shares, debentures, or any other form of specie (*a*). Such payments would, however, appear unobjectionable where authorized by the articles (*b*), but of course the amount credited as paid up on the shares must not exceed the amount of the dividend. Dividends are apportionable as between a tenant for life and remainderman, and it is doubtful whether any provision in the articles would be enough to exclude the provisions of the Apportionment Act, 1870 (*c*). Before paying any dividend companies must pay the income tax payable by them. Broadly speaking, any company residing (*d*) in England must pay

(*s*) *Lagunas Nitrate Co.* v. *Schroeder* (1901), 85 L. T. 22.

(*t*) Table A, Clause 99.

(*u*) *Burland* v. *Earle*, [1902] A. C. 83; see also *Fisher* v. *Black and White Co.*, [1901] 1 Ch. 174, where dividends were payable "out of profits available for dividends," and the directors were held to be entitled to set aside part of the profits to a reserve fund.

(*x*) *Hoare and Co.*, [1904] 2 Ch. 208; *Bouch* v. *Sproule* (1887), 12 A. C. 385; *Re Alsbury* (1890), 45 C. D. 237.

(*y*) *Bouch* v. *Sproule* (1887), 12 A. C. 385; *Re Piercy*, [1907] 2 Ch. 389; and cp. *Re Northage* (1891), 60 L. J. (CH.) 488; *Hume Nisbet's Settlement* (1911), 27 T. L. R. 461; *Re Palmer* (1912), 56 Sol. J. 363.

(*z*) *Re Malam*, [1894] 2 Ch. 578.

(*a*) *Wood* v. *Odessa Waterworks* (1889), 42 C. D. 636.

(*b*) See cases in the three preceding notes: *Hoole* v. *Great Western Railway* (1868), 3 Ch. 262, is not an authority to the contrary, as it turned on the words of the Act of Parliament there in question.

(*c*) *Re Oppenheimer*, [1907] 1 Ch. 399.

(*d*) A company not registered in England may be resident there: *De Beers* v. *Howe*, [1906] A. C. 435;

income tax on the profits of every business carried on by them either wholly or partly in England (*e*), but not on the profits of any business carried on wholly abroad (*f*); a company will, however, have to pay on foreign investments, even where the profits are not actually received in England, if it carries on business there (*g*). For this purpose the fact that a company resident in England owns all the shares of a foreign company will not make the business of the foreign company the business of the English company, unless the foreign company is a mere *nominis umbra;* such shares will be simply foreign investments of the English company (*h*). Where a company is not resident in England it pays income tax only on the profits of any business carried on there (*i*). A company cannot claim either the exemptions given to persons of small income, even when its income is such as would entitle an individual to a remission of the whole or part of the tax (*k*), or the benefit of the provisions of the Income Tax Acts as to earned incomes (*kk*). On the other hand companies are not liable to super-tax (*kkk*).

The rule in the absence of any article dealing with the distribution of dividends would seem to be that they must be distributed amongst the members (*l*) in proportion to the nominal value of their shares, and irrespective of the amounts paid up on their shares (*m*).

The provisions in Table A of the Schedule to the Companies Act, 1862 (*n*), that dividends shall be paid to members in proportion to their shares in effect usually carried this out (*o*), for it is very rare where shares are not divided into different classes to find shares of different nominal amounts in the same company, except where some of the shares have been consolidated or subdivided, and where some, but not all, the shares of a company have been consolidated or subdivided, a consolidated share would probably for the purpose of such an article be reckoned as entitled to the same amount of

and see also *Attorney-General* v. *Alexander* (1875), 10 Ex. 20; *Cesena Sulphur Co.* v. *Nicholson* (1876), 1 Ex. D. 428; *Goerz* v. *Bell*, [1904] 2 K. B. 136; *American Thread Co.* v. *Joyce* (1912), 106 L. T. 171.

(*e*) *San Paulo* v. *Carter*, [1896] A. C. 31; *London Bank of Mexico* v. *Apthorpe*, [1891] 2 Q. B. 378.

(*f*) *Colquhoun* v. *Brooks* (1889), 14 A. C. 493; *Bartolomay, etc., Co.* v. *Wyatt*, [1893] 2 Q. B. 499.

(*g*) *Liverpool* v. *London and Globe Insurance Co.* v. *Bennett*, [1911] 2 K. B. 577; cp. *Gresham* v. *Bishop*, [1902] A. C. 287.

(*h*) *Gramophone and Typewriter* v. *Stanley*, [1908] 2 K. B. 89.

(*i*) *Attorney-General* v. *Alexander* (1875), 10 Ex. 20.

(*k*) *Mylam* v. *Market Harborough*, [1905] 1 K. B. 708; *Curtis* v. *Old Monkland*, [1906] A. C. 86; and see as to Income Tax generally, the Income Tax Acts, 1842 and 1853. Of course all companies have to pay tax on lands situate in England under Schedule A.

(*kk*) Finance Act, 1907, s. 19, as amended by the Finance (1909 to 1910) Act, 1910, s. 67.

(*kkk*) *Ibid.*, s. 66.

(*l*) For this purpose the estate of a deceased member is a member: *Bombay Burmah Trading Corporation* v. *Smith* (1894), 21 Ind. App. 139.

(*m*) This seems to follow from *Birch* v. *Cropper* (1889), 14 A. C. 525.

(*n*) Clause 72.

(*o*) *Oakbank Oil Co.* v. *Crum* (1883), 8 A. C. 65.

dividend as the shares which have been consolidated into such one share would have been entitled to before consolidation, and where a share has been subdivided into several shares such shares would together be entitled to the same dividend as the original share (*p*).

The Act, however, provides (*q*) that a company may, if authorized by its articles, pay dividends in proportion to the amount paid up on each share, where a larger amount is paid up on some shares than others; and it is very common for a company to provide for this by its articles. Table A, which adopts this form of article with a modification (*r*), goes on to provide that no amount paid on a share in advance of calls shall while carrying interest be treated as paid on the share. The provision is, however, it is thought, unnecessary, for such payments are not made by a member in his character of member, but he is a creditor in respect of them (*s*), and the articles only form a contract between (*t*), and dividends are in the absence of provision to the contrary only payable to members; further, a contract to pay sums in advance would seem to negative any right to dividends. It may be argued that sums which have been paid by persons after the forfeiture of their shares under a provision of the articles have been paid in respect of the shares (*u*), but the answer to this is that it is quite clear, taking the act as a whole (*x*), that the capital of the company consists of the amounts paid up on shares and the amounts unpaid on shares, these expressions having in effect a technical meaning, and that amounts paid up in advance of calls do not form part of such capital (*y*), otherwise interest could not be paid on them where the company has no fund available for dividend. There is nothing, however, to prevent a company receiving amounts in advance of calls as part of their paid up capital; but in this case dividends and not interest would be payable (*a*).

(*p*) Cp. *Wakefield Rolling Stock*, [1892] 3 Ch. 165.

(*q*) Companies (Consolidation) Act, 1908, s. 39 (3).

(*r*) Clause 98. Where nothing is paid up on some of the shares dividends are paid according to the amounts of the shares.

(*s*) *Lock* v. *Queensland Investment Co.*, [1896] A. C. 461; and see *supra*, p. 263.

(*t*) *Bailey* v. *British Equitable*, [1904] 1 Ch. 374; this case was reversed, [1906] A. C. 35, but such reversal does not affect this point: *Automatic Self Cleansing*, [1906] 2 Ch. 34, and see *Eley* v. *Positive Government* (1876), L. R. 1 Ex. D. 20, 88, and *supra*, pp. 90 and 91, as to the position of a member with regard to claims under the articles for rights other than members' rights. The articles simply empower the company to confer such rights.

(*u*) *Randt Gold Co.*, [1904] 2 Ch. 468. The person liable to pay these sums is liable as a debtor and not as a contributory: *Ladies' Dress Association* v. *Pulbrook*, [1900] 2 Q. B. 376.

(*x*) Cp. Companies (Consolidation) Act, 1908, ss. 2, 25 (1), 41, 53 (and also the previous sections on reduction of capital), 87 (1) (*b*), 91 and 123.

(*y*) *Lock* v. *Queensland Investment Co.*, [1896] A. C. 461.

(*a*) *Re Sharpe*, [1892] 1 Ch. 154.

Frequently the capital of companies is divided into more than one class of shares, and one of such classes is entitled to a dividend at a specified rate on the nominal amount or on the amount paid up on the shares, such dividend to be paid before the other class of shares gets anything. In such case the preferential dividend is *primâ facie* cumulative (*b*), *i.e.* if the profits of any year or years are not sufficient to pay the full dividend the holders of the shares carrying such dividend will, out of the profits of subsequent years, be entitled to have the deficiency made good before the holders of the other shares get anything; and where each class of shares is to get a dividend at a specified rate, and the balance of profits is to be divided among the two classes, both the fixed dividends will be cumulative (*c*), the principle being that the word dividend means a rateable proportion of the profits of the company, and not of its profits in a particular year. Where, however, the fixed dividend is to be paid out of the yearly profits (*d*) or the net profits of each year (*e*), it will be non-cumulative. Income tax will, of course, have to be deducted before paying the fixed dividend, and the shareholders entitled to such dividend will not, as against the other shareholders, be entitled to more than their fixed dividend less such income tax (*f*); but it will, it seems, be different where the contract to take shares is an English contract—if a foreign or colonial income tax is imposed after the shares have been issued, in such case the preference shareholders are entitled to get their dividend without deducting such foreign or colonial income tax before the ordinary shareholders get anything (*g*).

In well-drawn articles the lien on shares given to the company extends to dividends that may be declared (*h*). Sometimes the articles give the company a power of forfeiting dividends that have not been drawn for a certain period (*i*) (*e.g.* three years); but the Stock Exchange committee will not grant an official quotation where the articles contain such a clause (*k*). Apart from such a clause, the debt created by the declaration of a dividend will be statute barred twenty years after the dividend has been declared (*l*);

(*b*) *Henry* v. *Great Northern Railway* (1857), 1 De G. & J. 606, 643; *Webb* v. *Earle* (1875), 20 Eq. 556; *Foster* v. *Coles*, [1906] W. N. 107.

(*c*) *Allen* v. *Londonderry and Enniskillen Railway* (1877), 25 W. R. 524.

(*d*) *Adair* v. *Old Bushmills Distillery*, [1908] W. N. 24.

(*e*) *Staples* v. *Eastman Photographic Materials*, [1896] 2 Ch. 303.

(*f*) *Ashton Gas Co.* v. *Attorney-General*, [1906] A. C. 11, [1904] 2 Ch. 621.

(*g*) *Spiller* v. *Turner*, [1897] 1 Ch. 505.

(*h*) Table A, Clause 9.

(*i*) See Table A in the schedule to the Companies Act, 1862, Clause 76.

(*k*) Stock Exchange Rules, Appendix 36, B., *infra*, p. 1510.

(*l*) *Artisans' Land and Mortgage Co.*, [1904] 1 Ch. 796; the company does not become a trustee of a dividend for a shareholder at all

the articles also usually contain a clause providing that no dividend shall bear interest against the company (*m*) and for notice of dividends being given, and they also enable the company to pay a dividend to any one of joint holders (*n*).

It is within the competence of directors who have the powers usually conferred on directors to decide how, and within reasonable limits when, a dividend shall be payable, and if they decide to pay a dividend by cheque or dividend-warrant sent through the post, the posting of the cheque or dividend-warrant will amount to payment of the dividend, even if it is lost in the post. Moreover, where a meeting sanctions a dividend with notice that the company proposes to pay it in this way, there the members impliedly request that the dividend shall be so paid, and this by itself will be enough to exonerate the company from liability for loss in the post (*o*). The person entitled to the dividend will usually be entitled to a fresh cheque or warrant for his dividend under section 69 of the Bills of Exchange Act, 1882, on indemnifying the company against all persons whatever in case the cheque or warrant is found again (*p*). This decision is not altogether easy to follow, and it may be wise to have an article dealing with the matter.

Where a dividend is declared between the date of a contract for sale of shares and the transfer, it will be payable to the transferee if the contract be silent on the point (*q*).

FORM OF DIVIDEND WARRANT, ETC.

The A.B. Company Limited.

No. E.C.

Ordinary Share Dividend.

Dear Sir or Madam,

In accordance with a resolution of the Board sanctioned by a resolution of the Company in general meeting declaring a dividend at the rate of per cent. per annum for the year 19 on the ordinary shares of the company. I beg to annex Warrant as follows :—

Dividend of per cent. per annum on fully paid ordinary Shares of £1 each £

Less Income Tax at in the £

£

events where no fund has been set apart to meet his dividend : *Severn and Wye, etc., Railway Co.*, [1896] 1 Ch. 559.

(*m*) Table A, Clause 102 ; cp. *Rishton* v. *Grissel* (1870), 10 Eq. 393.

(*n*) Table A, Clauses 100 and 101.

(*o*) *Thairlwall* v. *Great Northern Railway*, [1910] 2 K. B. 509 ; following *Norman* v. *Ricketts* (1887), 3 T. L. R. 182 ; but see *Pennington* v. *Crossley* (1898), 77 L. T. 43.

(*p*) See *Thairlwall* v. *Great Northern Railway*, [1910] 2 K. B. 509.

(*q*) *Black* v. *Homersham* (1879), 4 Ex. D. 24, and as to Stock Exchange bargains, see Stock Exchange Rules, Rule 101.

I hereby certify that the Income Tax deducted has been or will be paid to the Commissioners of Inland Revenue.

Shareholders claiming exemption or abatement are hereby informed that the Inland Revenue will receive this statement as a voucher on claiming the same.

Name

This portion of the sheet to be retained by the Shareholder.

X.Y.
Secretary.

No. THE A.B. COMPANY, LIMITED.

Ordinary Share Dividend.

Dividend Warrant half year ending

Banking Company Limited.

Pay or Order.

Pounds

£

Secretary.

Signature of the person
to whom the warrant
is made payable.

NOTE.—This warrant must be presented for payment to the Bankers upon whom it is drawn within 6 months from date.

Members may if desired have their dividends paid direct to their Bankers; a form of authority for this purpose may be obtained on application.

VOTES.

The number of votes and the voting power given to each share is a matter which is regulated by the articles of association of each company. If the articles are silent on the subject, each member has one vote, however many shares he may happen to have (*r*). The usual provision, however, is to give each member one vote for every share he holds, though frequently certain classes of shares, *e.g.* preference shares, are not given a vote or are only given a vote on certain specified matters. Votes are a right of property, and a member may exercise his votes at a meeting of the company in such way as he pleases, and without regard to the interests of the company (*s*). Thus a member may vote on the question of the company entering into contracts with himself, and such a contract will be binding on the company even in cases where the person interested

(*r*) Companies (Consolidation) Act, 1908, s. 67. For the case where some only of the shares of a company have been consolidated or subdivided, see *Wakefield Rolling Stock*, [1892] 3 Cr. 165.

(*s*) *Pender* v. *Lushington* (1877), 6 C. D. 70.

holds a majority of the votes in the company (*t*). Moreover, a member may contract to use his vote in a particular way on all future occasions, and will be bound by such contract even when he holds his shares as trustee (*u*). No doubt there is a limit to the powers of those holding a majority of the votes in a company; such limit is hard to define, but it seems to come to this—a majority cannot bind a majority either (1) where what they propose to do is outside the powers of the whole company in such case any one shareholder can obtain an injunction to restrain the company from doing the *ultra vires* act (*x*), or (2) where the act proposed amounts to a fraud on or an interference with the rights of property of the minority. In such case the action must be brought by the plaintiff suing on behalf of himself and all other shareholders of the defendant company other than such as are made defendants (*e.g.* the directors) and the company is made a defendant (*y*). Such an action is maintainable where shareholders holding a majority of votes decline to take steps to upset a fraudulent contract (*z*), or where the majority are forcing through a reconstruction scheme which sacrifices the interests of the minority (*a*). In the cases now under consideration the company is the proper plaintiff, and the shareholder suing must show that it has declined to take action (*b*). Discovery can be obtained against the company (*c*), but it would not seem right to cast it in damages or costs, for the gist of the action is that the company has been injured by the wrongful acts of the majority.

A third exception to the general rule seems to be that a mere majority of the company cannot do anything prohibited by the articles (*d*).

But putting aside these exceptions, the general rule is that the Court will not interfere in the management of the company unless the company itself is the plaintiff (*e*). In one case it was held that the Court would not interfere though the company had not strictly

(*t*) *North Western Transportation* v. *Beatty* (1887), 12 A. C. 589; *Ving* v. *Robertson and Woodcock* (1912), 56 Sol. J. 412.

(*u*) *Greenwell* v. *Porter*, [1902] 1 Ch. 530.

(*x*) *Howden* v. *Yorkshire, etc., Collieries*, [1903] 1 K. B. 308, 336, [1905] A. C. 256, but it is usual even in this case for the plaintiff to sue on behalf of himself and all others.

(*y*) *Atwool* v. *Merryweather* (1867), 5 Eq. 464 *n.*; *Menier* v. *Hooper's Telegraph* (1874), 9 Ch. 350.

(*z*) *Atwool* v. *Merryweather* (1867), 5 Eq. 464; *Mason* v. *Harris* (1879), 11 C. D. 97; and cp. *Duckett* v. *Gover* (1877), 6 C. D. 82.

(*a*) *Clinch* v. *Financial Corporation* (1869), 4 Ch. 117.

(*b*) *Russell* v. *Wakefield Waterworks* (1875), 20 Eq. 474.

(*c*) *Spokes* v. *Grosvenor, etc., Hotel*, [1897] 2 Q. B. 124.

(*d*) *Automatic Self Cleansing, etc., Co.* v. *Cunninghame*, [1906] 2 Ch. 34; *Salmon* v. *Quin and Axtens*, [1909] 1 Ch. 311; [1909] A. C. 442; and see *Marshall Valve Geor, etc.* v. *Manning Wardle*, [1909] 1 Ch. 267.

(*e*) *Foss* v. *Harbottle* (1843), 2 Hare 461; *Mozley* v. *Alston* (1847), 1 Ph. 790.

followed the provisions of its articles, and though an invalid notice of a meeting to pass an extraordinary resolution to alter the articles had been given, the Court declined to interfere in an action by a minority (*f*), and in similar actions it has declined to prevent the directors from setting aside a fund to reserve before declaring a dividend (*g*) to restrain a company from extending its business in a manner not originally contemplated (*h*) or to interfere with the ruling of a chairman on the question whether there could be a poll on a question of adjournment (*i*). On special and extraordinary resolutions the rule always was that members and only members could vote, and any provision in the articles or otherwise enabling non-members (*e.g.* debenture holders) to vote was invalid (*k*); this depended on the terms of the Statute, and it is not thought that the provisions of the present section make any difference as they still only enable members to vote although "persons entitled according to the articles to vote" are allowed to demand a poll (*l*). For this purpose the word members means the persons who are on the company's register of members and who have agreed to become members (*m*); but the provisions of Table A seem to indicate that it may include other persons who represent members. Thus a lunatic or person of unsound mind may vote by his committee curator bonis or other person in like position (*n*). It is thought that the articles may provide for an infant voting by his guardian, and it would seem that, apart from special provisions to the contrary, the executors or administrators of a deceased member or the trustee in bankruptcy of a bankrupt member may exercise the voting rights of the deceased or bankrupt member (*o*). Further, the Act provides (*p*) that a company which is a member of another company may by resolution of its directors authorize any of its officials or any other person to act as its representative at any meeting of that other company, and that the person so authorized shall be entitled

(*f*) *Normandy* v. *Ind Coope & Co.*, [1908] 1 Ch. 84; this case seems very doubtful law, as it in effect enables a majority to decide whether a special resolution has been passed, in spite of the fact that a three-fourths majority is required at the first meeting.

(*g*) *Burland* v. *Earle*, [1902] A. C. 83.

(*h*) *Campbell* v. *Australian Mutual Provident Society* (1908), 77 L. J. (P. C.) 117.

(*i*) *Macdougall* v. *Gardiner* (1875), 1 C. D. 13; in this case it was in the plaintiff's power to put matters right by holding another meeting, as he and his friends had been elected directors, and so could conduct such meeting properly. These cases are more fully discussed, *post*, p. 397.

(*k*) Companies Act, 1862, s. 51.

(*l*) Companies (Consolidation) Act, 1908, s. 69.

(*m*) *Pender* v. *Lushington* (1877), 6 C. D. 70.

(*n*) Table A, Clause 62.

(*o*) Cp. Table A, Clause 23. *James* v. *Buena Ventura Syndicate*, [1895] 1 Ch. 456; *New Zealand Gold* v. *Peacock*, [1894] 1 Q. B. 622; *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656.

(*p*) Companies (Consolidation) Act, 1908, s. 68.

to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company. The articles may also confer on bearers of share warrants the same right of voting as if they were members (*q*). It must be borne in mind that the ordinary method of voting is by a show of hands, but that a poll may be demanded either by the number of persons necessary for that purpose under the articles, or if the articles are silent on the subject by any one member (*r*). On a show of hands the chairman has, except under very exceptional articles, only to count the number of hands held up; he cannot take any count either of the number of votes each person may be entitled to (*s*) or of the proxies he may hold (*t*). These matters may only be taken into account on a poll. No member is entitled to vote by proxy unless the articles of association authorize such voting (*u*); but they usually do contain such a provision (*x*). They also usually provide for the form of proxy necessary, usually setting out such form, and not infrequently they provide that only persons who are themselves members and entitled to vote shall be entitled to act as proxies (*y*). Usually in such cases the articles require that proxies shall be deposited at the registered offices of the company, a certain time before the meeting at which they are intended to be used (*z*). It would seem that under the common form of article requiring proxies to be members, membership at the date when the proxy is to be used is all that is necessary (*a*). A member using proxies which have been given to him is not required to state who has given him the proxies (*b*), though this will presumably appear from the proxies themselves.

The provisions of the articles with reference to proxies must be strictly complied with, and directors or others counting votes at meetings should reject proxies which are not in accordance with such requirements, *e.g.* unattested proxies, where the articles say

(*q*) Companies (Consolidation) Act, 1908, s. 37 (4).

(*r*) *Reg.* v. *D'Oyley* (1840), 12 A. & E. 139; *Chillington Iron Co.* (1885), 29 C. D. 159; and see Companies (Consolidation) Act, 1908, s. 69, as to special and extraordinary resolutions.

(*s*) *Horbury Bridge, etc., Co.* (1879), 11 C. D. 109.

(*t*) *Ernest* v. *Loma Gold Mines*, [1897] 1 Ch. 1, unless it would seem the proxy is not otherwise entitled to a vote.

(*u*) *Harben* v. *Phillips* (1883), 23 C. D. 14.

(*x*) Cp. Table A, Clause 64,

(*y*) Table A., Clauses 65 and 67, such a provision would apparently be implied, *Central Bahia Railway* (1902), 18 T. L. R. 503; *Madras Irrigation Co.* (1881), W. N. 120; and cp. the provisions relating to companies holding shares on other companies which are contained in s. 68 of the Companies (Consolidation) Act, 1908, and are set out, *supra*, p. 307.

(*z*) Table A, Clause 66.

(*a*) *Bombay, Burmah, etc. Co.* v. *Dorabji Cursetji Shroff*, [1905] A. C. 213.

(*b*) *Forester* v. *Newlands Diamond Mines* (1902), 18 T. L. R. 497.

proxies are to be attested (*c*). Letters and powers of attorney for the purpose of appointing a proxy to vote and proxies for voting at one meeting or at an adjournment thereof must be stamped with a duty of one penny before execution, and they must state the day upon which the meeting at which they are intended to be used is to be held. The duty may be denoted by an adhesive stamp, which must be cancelled by the person executing the instrument (*d*). Although such a proxy must be stamped before execution, the operative parts may be filled in after stamping and execution (*e*). A proxy that authorizes a vote at the next meeting without specifying the day will be bad, on the ground that it does not comply with the provisions of the Stamp Act (*f*).

Any one who makes or executes or votes or attempts to vote under or by means of any such letter or power of attorney or voting-paper which is not duly stamped will incur a fine of £50, and every vote given or tendered under the authority or by means of the letter or power of attorney or voting-paper will be void (*g*). Proxies in which the day of meeting is not named may be stamped after execution with a 10*s*. stamp (*h*). Directors may send stamped proxy papers to members of the company filled up with their own names as proxies, and may pay for the printing, stamping, and posting of such papers out of the funds of the company (*i*). A person who has given a proxy may verbally authorize the person to whom it is given or any other person to fill in blanks (*k*).

The articles usually contain provisions dealing with the question of which of several joint holders of shares is to vote (*l*), and they not infrequently provide that persons who have not paid all calls

(*c*) *Harben* v. *Phillips* (1883), 23 C. D. 14.

(*d*) Stamp Act, 1891, s. 80; but see s. 7 of the Finance Act, 1907, referred to, *post*, note (*h*). To cancel the stamp a person need not now write his name and the date across it; *McMullen* v. *Sir Alfred Hickman Steamship Co.* (1902), 71 L. J. (CH.) 766.

(*e*) *Sadgrove* v. *Brydon*, [1907] 1 Ch. 318; *Ernest* v. *Loma Gold Mines*, [1897] 1 Ch. 1, where the date was filled in after execution by the secretary of the company.

(*f*) *Reg.* v. *M'Inerney* (1891), 30 L. R. Ir. 49, and see *Howard* v. *Hill* (1889), 59 L. T. 818, where it was held that a blank proxy in favour of a certain named person would not authorize a vote at the next meeting; as the meeting at which the original election was to take place was postponed, and the rival candidate was not the same as the person who was expected to compete when the proxy was given, the decision is difficult to understand.

(*g*) Stamp Act, 1891, s. 80.

(*h*) *English and Scottish Bank*, [1893] 3 Ch. 385; under s. 7 of the Finance Act, 1907, proxies executed abroad can now be stamped with a 1*d*. stamp within thirty days after arrival in this country.

(*i*) *Peel* v. *London and North Western Railway*, [1907] 1 Ch. 5; *Campbell* v. *Australian Mutual Provident Society* (1908), 77 L. J. (P. C.) 117.

(*k*) *Ex parte Lancaster* (1877), 5 C. D. 911.

(*l*) Table A, Clause 61.

or other sums presently payable by them in respect of their shares shall not be entitled to vote (*m*). Even where there is such an article, the Court will not in the absence of evidence of an improper motive in making a call restrain directors from enforcing a call until after a meeting to decide whether they are to continue in office is held, and the Court cannot direct that the votes of persons who have not paid a call shall be counted (*n*).

SHARE WARRANTS.

A company limited by shares may, if authorized by its articles, with respect to any fully paid shares or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the shares or stock included in the warrant (*o*).

A stock or share warrant entitles the bearer to the share or stock therein specified, and such shares or stock may be transferred by delivery of the warrant (*p*), and a stock or share warrant is, by mercantile usage, a negotiable instrument (*q*).

The bearer of a share warrant is, subject to the articles of the company, entitled on surrendering it for cancellation to have his name entered as a member in the company's register of members; and the company is responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share or stock warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled (*r*). Where the articles of a company contain provisions authorizing the issue of share or stock warrants, the Registrar of Joint Stock Companies will not register the company as a private company, presumably on the ground that it is impossible to restrict the transfer of shares or stock comprised in a share or stock warrant. The bearer of a stock or share warrant is apparently not a member, but he may, if the articles so provide, be deemed to be a member within the meaning of the Act, either to the full extent or for any purposes defined in the articles; except that the shares or stock specified in the warrant may not be reckoned as or towards any qualification for being a director or manager of the company (*s*).

(*m*) Table A, Clause 63. Such an article must be carefully drawn, otherwise a purchaser of forfeited shares may as in *Randt Gold Mining Co.* v. *Wainwright*, [1901] 1 Ch. 181, find he is not entitled to vote owing to the default of his predecessor.

(*n*) *Anglo-Universal Bank* v. *Baragnon* (1881), 45 L. T. 362.

(*o*) Companies (Consolidation) Act, 1908, s. 37 (1).

(*p*) *Ibid.*, s. 37 (2).

(*q*) *Webb, Hale & Co.* v. *Alexandria Water Co.* (1905), 93 L. T. 339.

(*r*) Companies (Consolidation) Act, 1908, s. 37 (3).

(*s*) *Ibid.*, s. 37 (4).

On the issue of a share or stock warrant the company must strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and must enter in the register the following particulars, namely :—

(i.) The fact of the issue of the warrant.

(ii.) A statement of the shares or stock included in the warrant, distinguishing each share by its number ; and

(iii.) The date of the issue of the warrant.

Until the warrant is surrendered, the above particulars are deemed to be the particulars required by the Act to be entered in the register of members ; and on the surrender the date of the surrender must be entered as if it were the date at which a person ceased to be a member (*t*).

After the issue of a share warrant the summary required by the Act must show—

(i.) the total amount of shares or stock for which share warrants are outstanding at the date of the return ; and

(ii.) the total amount of share warrants issued and surrendered respectively since the last return ; and

(iii.) the number of shares or amount of stock comprised in each warrant (*u*).

The articles usually enable the directors to issue share warrants on the request of the registered holders of fully paid shares and on payment of the fee prescribed by the articles or settled by the directors, and also the stamp duty (*x*). They also usually provide for the surrender of share or stock warrants, and for the rights to which the holders of such stock or share warrants are entitled. It would seem that the bearer of a stock or share warrant must, before he is entitled to exercise any of the rights of a member in respect of the stock or shares comprised in his warrant, produce such warrant to the company (*y*). Frequently the articles provide that this deposit must be made a certain number of days before exercising any right, and also for the company giving a person who makes such deposit a voucher showing that his warrant has been deposited.

Usually share warrants have attached to them coupons entitling

(*t*) Companies (Consolidation) Act, 1908, s. 37 (5).

(*u*) *Ibid.*, s. 26 (2).

(*x*) Table A, Clause 35 ; the stamp on a share or stock warrant is of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the stock or shares specified in the warrant if the consideration for such transfer were the nominal value of such shares or stock : Stamp Act, 1891 ; *tit.* Share Warrant. This duty is not affected by the Finance (1909–1910) Act, 1910. The penalty for failing to stamp is £50 : Stamp Act, 1891, s. 107, and see also Finance Act, 1899. Section 13 of the Finance Act, 1911, does not apply.

(*y*) Cp. *Wedgwood Coal and Iron Co.* (1877), 6 C. D. 627.

the bearer to any dividends which may be declared on the shares or stock comprised on such warrants, and the articles not infrequently provide for the advertisement of all dividends while there are any stock or share warrants outstanding (z).

Any person who (1) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of the Act, or by means of any such forged or altered share warrant, coupon, or document, purporting to be a share warrant or coupon issued in pursuance of the Act demands or endeavours to obtain or receive any share or interest in any company under the Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered; or (2) who falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of the Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, is guilty of felony, and on being convicted thereof will be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three years.

Any person who without lawful authority or excuse, proof of which lies on him, engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of the Act, or to be a blank share warrant or coupon so issued or made, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material is guilty of felony, and on being convicted thereof will be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years (a).

FORM OF SHARE WARRANT AND COUPON ATTACHED.

THE A.B. COMPANY LIMITED.

(Incorporated under the Companies (Consolidation) Act, 1908.)

Capital £ divided into shares of £1 each.

No.

This is to certify that X.Y. or other the bearer hereof is entitled to the

(z) See Table A, Clauses 35 to 40 as to share warrants.

(a) Companies (Consolidation) Act, 1908, s. 38.

shares numbered to both inclusive in the capital of the Company subject to the provisions of the memorandum and articles of the Company.

Given under the common seal of the Company this day of 19

L.S. }Directors.

Secretary.

COUPON.

No.

The A.B. Company Limited. Pay the dividend (*b*) payable on the shares mentioned in the annexed share warrant No. 66 for the year 19 .

Secretary.

ADVERTISEMENT OF DIVIDEND FOR SHARE WARRANT HOLDERS (*c*).

The A.B. Company Limited. Notice is hereby given that at the ordinary general meeting of the above-named company held at on day the day of 19 a dividend was declared of 5 per cent. on the amount paid up on the shares of the company. Holders of share warrants to bearer may collect their dividends on presenting coupon No. at the company's registered office No. Street, E.C., or at the Bank Limited No. Street, E.C.

Secretary.

Holders of share warrants to bearer intending to submit a claim for refund of income tax to the Inland Revenue Department should apply for a certificate when presenting their coupons.

STOCK.

A company limited by shares may, if so authorized by its articles, alter the conditions of its memorandum by converting all or any of its paid-up shares into stock, and may also reconvert that stock into paid-up shares of any denomination (*d*) ; if it does either of these things it must give notice to the Registrar of Joint Stock Companies specifying the shares converted or the stock reconverted (*e*).

Where such a company has converted any of its shares into stock and given notice to the Registrar of Joint Stock Companies, all the provisions of the Act which apply to shares only cease to apply to such of the share capital as is converted into stock ; and the register of members of the company and the list of members to be forwarded

(*b*) Or the interim dividend as the case may be. These coupons form part of the share warrant and are not, it is thought, apart from such share warrant negotiable instruments. See *post*, p. 467, note (*i*).

(*c*) Notices of meeting to share warrant holders given by advertisement should state the same matters as are stated on notices of meetings and also the date on or before which and the place where share warrants are to be deposited; the notice also usually states that the share warrants will be retained until after the meeting, a certificate being issued as prescribed by the articles in the meanwhile.

(*d*) Companies (Consolidation) Act, 1908, s. 41 (1) (c).

(*e*) *Ibid.*, s. 42. See *ante*, p. 84, as to the form of such notice, and as to copies of the memorandum issued after the conversion showing such alteration.

to the Registrar must show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares required by the Act (*f*).

Where payment in full is made, stock can be issued without going through the formality of issuing shares—but the issue of bonus or partly paid stock is *ultra vires*—and it has been held that the holders of stock so issued are not members (*ff*).

The principal effect of turning shares into stock seems to be that, subject to the provisions of the articles, any amount, however small, of the stock may be transferred, for the whole stock issued forms one mass. Usually, however, the articles enable the directors to fix a minimum amount of stock transferable and to forbid transfers of fractions of that minimum (*g*); they also generally confer on the holders of stock the same rights as are conferred on holders of shares, but subject to a proviso that no right in relation to meetings shall be conferred by any such aliquot part of stock as would not if existing on shares have conferred that right (*h*). There is no reason why stock should not be converted into stock warrants (*i*), though Table A does not allow of this being done (*k*).

As stock may be reconverted into shares of any denomination it would appear desirable to provide that the reconverted shares shall confer only the same privileges as the stock from which they are reconverted, otherwise the result of such reconversion may be to confer on a share of very small or very large denomination the same voting rights as are conferred by other shares.

It follows from the nature of stock, that it can have no distinctive numbers and stock certificates will be on the same form as share certificates except that they will certify that the holder is the holder of £ stock in the capital of the company; usually, too where there is a minimum amount transferable, they will contain a note stating that the stock is only transferable on amounts of £ (*i.e.* the minimum) and multiples of that amount.

RIGHTS TO NEW SHARES ON AN INCREASE OF CAPITAL.

It is not unusual for the articles to provide that on an increase of capital and subject to any direction of a general meeting of the company, new shares must be offered to existing members—as nearly as possible in proportion to their holdings. Such articles often further states that the offer must be made by a notice specifying the number of shares to which each member is entitled and must limit a time within which shares if not accepted will be deemed to be declined, and that on the expiration of such notice or on a member stating that he does not desire the shares to which he is entitled the company may dispose of such shares as

(*f*) Companies (Consolidation) Act, 1908, s. 43.

(*ff*) *Home and Foreign Investment and Agency Co.*, [1912] 1 Ch. 72.

(*g*) Table A, Clause 32.

(*h*) Cp. Table A, Clause 33. This clause only gives small amounts of stock rights to dividends and profits, and apparently gives them no rights on a winding-up.

(*i*) Companies (Consolidation) Act, 1908, s. 37.

(*k*) Table A, Clause 34.

it sees fit (*l*). Under such clauses, subject to any provision to the contrary in the articles, the representatives of a deceased member are entitled to the shares to which the deceased would have been entitled (*m*). If shares are held by trustees any new shares to which they become entitled belong to the estate and if they are not in a position to take them the right to call for the new shares should, if valuable, be sold for the benefit of the estate (*n*). The notice is usually accompanied by a letter of renunciation, which must bear a sixpenny stamp (*o*), so as to enable the shares or rather the right to call for them to be sold. Where an owner of shares is under contract to sell such shares at the date when he becomes entitled to fresh shares in right of his holding, the purchaser will be entitled to such fresh shares and the vendor will hold them as trustee for him (*p*).

FORM OF OFFER OF SHARES TO EXISTING SHAREHOLDERS.

Dear Sir,

I am requested by the directors to offer you new shares of £ each on the capital of the Company. Should you desire to take these shares or any of them will you fill in and sign the application form sent herewith. Should you wish to renounce your rights to such shares or any of them will you fill in the enclosed letter of renunciation, and sign it over a sixpenny stamp and obtain the signature of the person in whose favour you renounce to the form appended to such letter of renunciation. If this offer is not accepted on or before the day of it will be deemed to be declined, and the directors will dispose of the shares offered.

X. Y.
Secretary.

APPLICATION FORM.

The Directors of the Limited.

Gentlemen,

I agree to take of the shares offered to me by your letter of the of 19 and I authorize you to enter my name on the register of members in respect of the same.

Signed.

(*l*) Cp. Table A, Clause 42.

(*m*) *James* v. *Buena Ventura*, [1896] 1 Ch. 456, and see also *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656 as to their right to notices.

(*n*) *Briggs* v. *Massey* (1881), 50 L. J. (CH.) 747; 51 L. J. (CH.) 447, trustees are not, however, always authorised to take the new shares; *Sculthorpe* v. *Tipper* (1872), 13 Eq. 232; *Re Morris* (1885), 54 L. J. (CH.) 388; and see *Re Pugh* (1889) W. N. 143; *Re Smith*, [1902] 2 Ch. 117; *Re Anson*, [1907] 1 Ch. 424.

(*o*) Or a 1*d*. stamp where the nominal amount of the shares is under £5. Finance Act, 1899, s. 9; Stamp Act, 1891, First Schedule.

(*p*) *Stewart* v. *Lupton* (1874), 22 W. R. 855.

LETTER OF RENUNCIATION.

The Directors of Limited.
Gentlemen,

I renounce my right to of the shares offered to me by your letter of the of 19 in favour of of

Signed. [6d.]

The Directors of Limited.
Gentlemen,

I agree to take the shares referred to in the above letter of renunciation, and I authorize you to enter my name on the register of members in respect of the same.

Yours faithfully,
A. B.

RIGHTS OF DIFFERENT CLASSES OF SHARES.

Very frequently the shares of a company are divided into two or more different classes, conferring different rights.

For instance, there may be preference shares as we have seen conferring a preferential dividend, either with or without a right to a further dividend after a specified dividend has been paid on the other shares of the company (*pp*) and either with or without a right to repayment of capital on a winding-up in priority to other shares. In such last case the preference shares may or may not be entitled to participate in any assets of the company that may remain after all the shareholders have received a return of the capital they have paid up. Sometimes, too, there will be deferred or founders' shares, perhaps of small nominal value, conferring rights to a considerable proportion of the profits, after a certain dividend has been paid on the other shares of the company and also, in some cases, a right to a considerable share of the assets after the other shareholders have received back the capital they have paid up. Not infrequently the preference shares are given no voting rights, or only voting rights on certain specified matters, *e.g.* the question of a winding-up. Sometimes, too, the company cannot borrow, or cannot borrow beyond a certain amount without the consent of the preference shareholders. The statute provides that holders of preference shares of a company shall have the same right to receive and inspect the balance-sheets of the company and the reports of the auditors and other reports, as is possessed by the holders of ordinary shares in the company (*q*). The rights conferred on different classes of shares are not matters which the Act requires to be set out in the

(*pp*) In *Will* v. *United Lankat Plantations* (1912), 56 Sol. J. 379, the resolution creating the preference shares and the articles were read together, with the result that such shares were held to be entitled to share in further dividends.

(*q*) Companies (Consolidation) Act, 1908, s. 114; this does not apply to a private company.

memorandum, and so are *primâ facie* matters for the articles (*r*). In such case the articles can, of course, be changed, but the power of changing the articles being one which must be exercised in the interests of the company as a whole, it would be difficult if not impossible to alter such rights so as to favour one existing class of members against another (*s*); it will, however, be otherwise where it is a question of bringing in fresh capital and getting people to take up unissued shares. For greater security the rights of preference shareholders are often set out in the memorandum; in such case they will form a condition of the memorandum (*t*) and so be unalterable (*u*) unless the memorandum itself provides, by reference to the Articles or otherwise (*x*), a mode by which they may be altered, in which case such provision will form part of the condition. Possibly also rights conferred by the memorandum may be altered if there is a power in the original Articles of Association, even though such power is not in any way incorporated in the memorandum. There is one Scotch case (*y*) which affirms the view that such rights can be so altered, and this view is supported by Table A, which, after providing that subject to the provisions of the memorandum shares may be issued with such privileges as may from time to time be determined (*z*), proceeds to provide that where the shares are divided the rights (including apparently those conferred by the memorandum) may be varied (*a*). As already stated, the rights given to different classes of shares are not by the Act required to be set out in the memorandum, and there is abundant authority to show that with regard to matters not by the Act required to be set out in the memorandum the original articles may be looked at for the purpose of construing the memorandum (*b*), on the principle that two contemporaneous documents must so far as possible be read together, and be reconciled the one with the other; indeed, in *Anderson's Case* (*c*),

(*r*) *Andrews* v. *Gas Meter*, [1897] 1 Ch. 361.

(*s*) *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656; *Punt* v. *Symons*, [1903] 2 Ch. 512; *Griffith* v. *Paget* (1877), 5 C. D. 894.

(*t*) *Ashbury* v. *Watson* (1885), 30 C. D. 376.

(*u*) Companies (Consolidation) Act, 1908, s. 7.

(*x*) *Welsbach Incandescent Co.*, [1904] 1 Ch. 87.

(*y*) *Oban and Aultmore Glenlivet Distilleries* (1903), 5 Fra. 1140.

(*z*) Table A, Clause 3.

(*a*) *Ibid.*, Clause 4; but see the dicta of NEVILLE, J., in *Australian Estates and Mortgage Co.*, [1910] 1 Ch. 414, at pp. 424 and 425.

(*b*) *Harrison* v. *Mexican Railway* (1875), 19 Eq. 358; *Bangor and Portmadoc Slate Co.* (1875), 20 Eq. 59; *Phœnix Bessemer Co.* (1875), 44 L. J. (CH.) 683; South Durham *Brewery Co.* (1885), 31 C. D. 261; *Bridgewater Navigation Co.* (1888), 39 C. D. 1; *Hyderabad Deccan Co.* (1896), 75 L. T. 23; *Maxwell's Case* (1875), 20 Eq. 585; *McKewan's Case* (1877), 6 C. D. 447; in which last two cases the articles added to the liability imposed by the memorandum; *Southern Brazilian Rio Grande*, [1905] 2 Ch. 78; *Rainford* v. *James Keith*, [1905] 2 Ch. 147.

(*c*) (1877), 7 C. D. 75; see also *Humboldt Redwood* v. *Coats*, [1908] S. C. 751.

Jessel, M.R., and Baggallay, L.J., held that if there was a conflict in such matters there was no reason why the memorandum should prevail (*cc*). Further, the contract the shareholder enters into purports to be based on both the memorandum and articles, and the only possible ground for saying that such contract is invalid would be based on cases like *Welton* v. *Saffery* (*d*) and the fact that the Act says that the memorandum is to be unalterable ; but all these cases will be found to be cases where the company is doing by its articles something contrary to the policy of the Acts, and such a contract as is now under discussion can scarcely be said to be that, when a few words added to the memorandum so as to incorporate the article as to varying class rights would clearly make the contract valid (*e*).

All this is quite consistent with the view that rights conferred by the memorandum and which are not added to or affected by the original articles are unalterable.

Even such rights may, however, be altered now, for the Act (*f*) provides that—A company may by special resolution confirmed by an order of the Court (*g*) modify the conditions contained in its memorandum of association so as to reorganize its capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes ; but no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class representing three-fourths of the capital of that class and confirmed in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of such class.

Where an order is made under this section an office copy thereof must be filed with the Registrar within seven days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.

The proviso in the section is very badly drafted, but it will be observed that it does not speak of the majority in number of the shareholders, but of a majority in number of shareholders, and it is thought that if a meeting of the shareholders be called the majority at that meeting will be sufficient, if there are there present in person

(*cc*) But see *post*, p. 445, note (*e*).

(*d*) [1897] A. C. 299.

(*e*) *Welsbach Incandescent Co.*, [1904] 1 Ch. 87 ; *Andrews* v. *Gas Meter*, [1897] 1 Ch. 361 ; *Underwood* v. *London Music Hall*, [1901] 2 Ch. 309. In *Collins* v. *Birmingham* (1899), 15 T. L. R. 181, the memorandum conferred on certain shares "the rights specified in the articles" and the question was whether this meant the original articles or the articles for the time being.

(*f*) Companies (Consolidation) Act, 1908, s. 45. See post, pp. 720, *et seq.*

(*g*) The Court having jurisdiction to wind up the company: Companies (Consolidation) Act, 1908, s. 285. The petition may be presented in the winding-up department or to the Chancery Division.

or by proxy (*h*) and voting in favour of the scheme shareholders representing three-fourths of the capital of the class. At the confirmatory meeting a bare majority of the members of the class present in person or by proxy will be enough. The application to the Court should, it is thought, be by petition. Presumably where no shares of a particular class have been issued the shares of that class may be consolidated or subdivided by special resolution. Almost any scheme can, it is thought, be carried out by using both the consolidation and division branches of the section; thus 5 per cent. preference shares could be converted to 4 per cent. by first consolidating them with the ordinary shares and then dividing the ordinary shares into different classes (*i*).

Where on an increase of capital provision is made for the new shares having special rights, such rights will not be incorporated in the memorandum (*ii*).

To return to Articles conferring the power to change class rights—a power to modify or alter or change the rights seems to be sufficient—the power may be given either to a meeting of the class at which a particular quorum is present (*k*) or it may be exercised by one shareholder of the class entering into an agreement with the company, such agreement being operative only if ratified by a particular majority of the class; a third plan is to authorize a change if a particular majority of the class consent to it in writing. The two later methods seem, perhaps, better than the first, as being more simple. Sometimes the power may be exercised in more than one way (*l*).

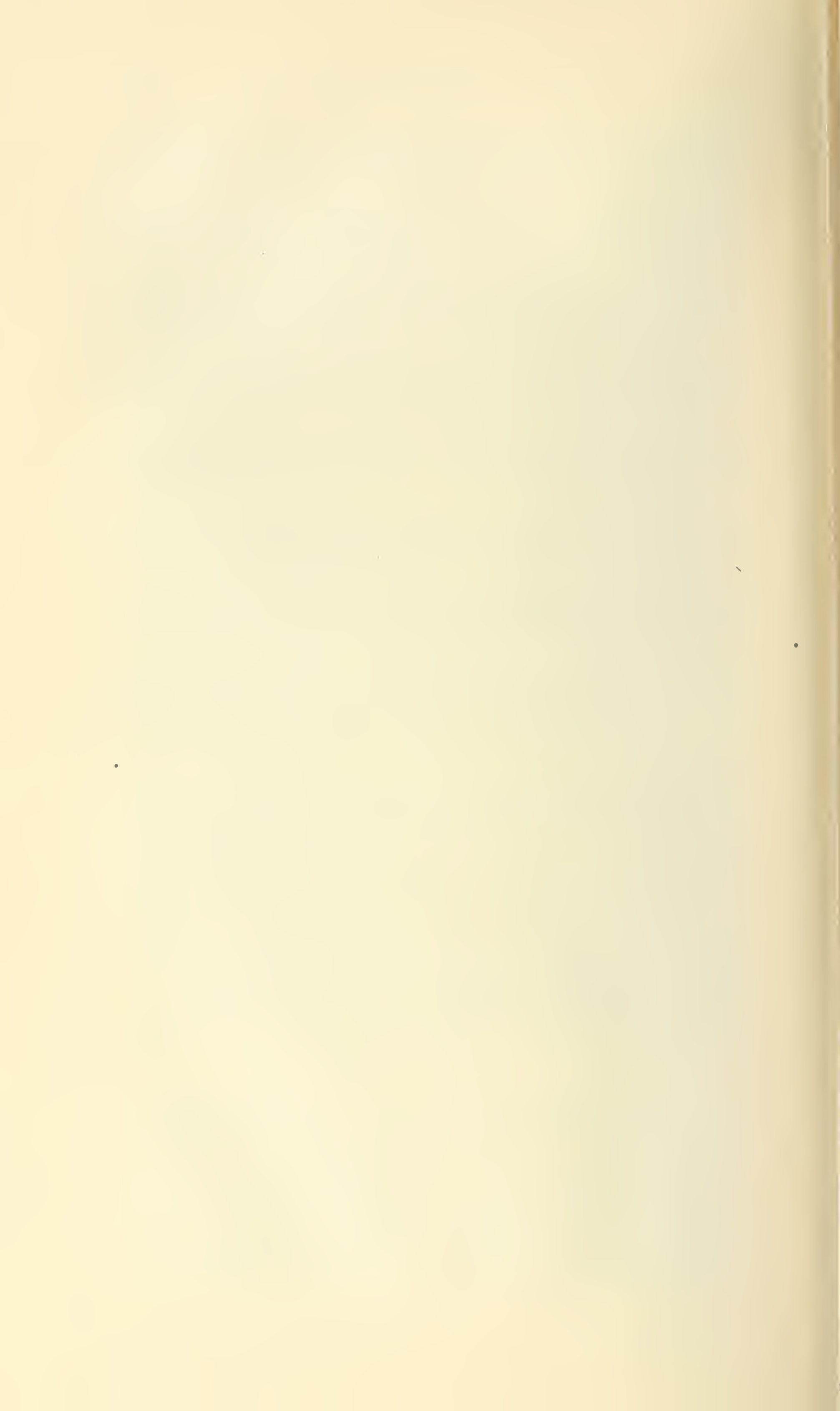
(*h*) The word "representing" in the section seems to authorize proxies.

(*i*) The matter is dealt with further, *infra*, p. 721.

(*ii*) *Australian Estates and Mortgage Co.*, [1907] 1 Ch. 414; but see *infra*, p. 720, note (*p*).

(*k*) For the construction of such an article, *Hemans* v. *Hotchkiss Ordnance Co.*, [1899] 1 Ch. 115. Where all the shares of a particular class are in the hands of one person it would seem that the assent of that person alone will be sufficient as there cannot be a meeting and the articles must be taken to have contemplated such a state of affairs: *East* v. *Bennett Bros.*, [1911] 1 Ch. 163.

(*l*) Cp. Table A, Clause 4.



CHAPTER VI.

Management and Administration of Companies.

Every company must have a registered office to which all communications and notices may be addressed, and notice of the situation of the registered office, and of any change therein, must be given to the Registrar of Joint Stock Companies, who must record the same.

A company carrying on business without complying with these requirements will be liable to a fine not exceeding £5 for every day during which it so carries on business (*a*).

Every limited company must:

(1) paint or affix, and keep painted or affixed, its name (*aa*) on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible:

(2) have its name engraven in legible characters on its seal:

(3) have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

A limited company which does not paint or affix, and keep painted or affixed, its name in the manner directed by the Act, will be liable to a fine not exceeding £5 for not so painting or affixing its name, and for every day during which its name is not so kept painted or

(*a*) Companies (Consolidation) Act, 1908, s. 62; the registered office must be in England, Scotland or Ireland, and the memorandum must state in which of such countries it is situate: *ibid.*, ss. 3, 4, and 5. Notice of change of a registered office must be on Form 5 issued by Somerset House (cost, 2*d*.). Such notice should be signed by the manager or secretary of the company.

(*aa*) Abbreviations such as "Co." and "Ltd." may be used: *F. Stacey & Co.* v. *Wallis* (1912), 28 T. L. R. 209.

affixed, and every director and manager of the company who knowingly and wilfully authorizes or permits the default will be liable to a similar penalty (*b*).

Any director, manager, or officer of a limited company or any person on its behalf who uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven, or issues or authorizes the issue of any notice, advertisement, or other official publication of the company or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not so mentioned, will be liable to a fine not exceeding £50, and he will also be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company (*c*).

Not every company has the power to issue negotiable instruments; it is a question in each case of whether it is intended to have such a power, the intention in each case being ascertained from the construction of its memorandum and articles; but probably trading companies, in the strict sense of the term, would in all cases have implied power to so do, as the question of what is usual or the reverse in the ordinary course of business of the company, will have an important bearing on the question whether such a power is to be implied (*d*).

Where a company has power to issue negotiable instruments, bills of exchange or promissory notes will be deemed to have been made, accepted, or endorsed on its behalf if made in the name of or by or on behalf or on account of the company by any person acting under its authority (*e*).

It has been held under this section that a company will only be

(*b*) If a company omits to comply with the provisions of this section that will not preclude it from enforcing any rights (*e.g.* to a trade name) it has: *H. G. Randall* v. *British and American Shoe Co.*, [1902] 2 Ch. 354; *Pearks, Gunston and Tee* v. *Thompson, Talmey & Co.* (1901), 18 Rep. Pat. Cas. 185.

(*c*) Companies (Consolidation) Act, 1908, s. 63. Section 12 of the Assurance Companies Act, 1909, provides that where any notice advertisement or other official publication of an assurance company contains a statement of the authorized capital of the company the statement must also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

(*d*) *Peruvian Railways Co.* v. *Thames and Mersey Marine Insurance Co.* (1867), 2 Ch. 617, where a company formed for the purpose of acquiring a concession for constructing a foreign railway was held entitled to accept bills because of wide general words in its memorandum. See also *Atkins* v. *Wardle* (1889), 58 L. J. (Q. B.) 377, and *ante*, p. 63.

(*e*) Companies (Consolidation) Act, 1908, s. 77.

bound by a bill of exchange where the person signing had actual authority to do so. In this case the company had held out that the person who signed had authority, and the person who had taken the bill of exchange or promissory note had no knowledge of any defect in such authority and had given consideration for the bill (*f*). It is not thought that this decision can be law; it seems to ignore the section of the Act (*g*) which provides that the acts of a director (which includes any person occupying the position of a director by whatever name called) (*h*) shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Moreover, if this decision is good law it would seem to affect not only bills of exchange and promissory notes, but also contracts made in writing or by parol under section 76 of the Act (*i*).

If a person who signs had no authority to do so, the directors, if they could originally have given him such authority, may ratify the transaction so as to make it binding on the company (*k*).

Bills of exchange and promissory notes, if made, accepted, or indorsed on behalf of a company, need not state such fact on their face (*l*), but it must be possible to gather from the document that the persons signing intend that the company and not themselves shall be bound. It will not be enough that they are described as directors (*m*), even if the seal of the company is attached (*n*); but it will be enough if a promissory note takes the form, "I promise to pay for the" company (*o*), or "I promise to pay," and then at the bottom the name of the company is appended with the name of the managing director, describing him as such underneath (*p*), or "we jointly promise to pay on account of the" company, naming it (*q*).

Under section 63 (3) (*supra*) directors, etc., may be liable even

(*f*) *Premier Industrial Bank* v. *Carlton Manufacturing Co.*, [1909] 1 K. B. 106.

(*g*) Companies (Consolidation) Act, 1908, s. 74; the case is treated as doubtful in Buckley, 9th Ed., p. 169.

(*h*) Companies (Consolidation) Act, 1908, s. 285.

(*i*) *Ibid.*, s. 76, and see *Toterdell* v. *Fareham Blue Brick, etc.* (1866), L. R. 1 C. P. 674; *Biggerstaff* v. *Rowatt's Wharf*, [1896] 2 Ch. 93; *Fountaine* v. *Carmarthen Railway* (1868), 5 Eq. 316.

(*k*) *Land Credit Co. of Ireland, Ex parte Overend, Gurney & Co.* (1869), 4 Ch. 460; and see *Agra Bank, Re Barber & Co.* (1870), 9 Eq. 724, for a case where a company was held liable. In *Cunningham & Co.* (1887), 36 C. D. 532, the company was held not to be liable, because the transaction was not merely unauthorized but also not one usually within the powers of a local manager.

(*l*) *Okell* v. *Charles* (1876), 34 L. T. 822.

(*m*) *Courtauld* v. *Sanders* (1867), 15 W. R. 906.

(*n*) *Dutton* v. *Marsh* (1871), L. R. 6 Q. B. 361.

(*o*) *Alexander* v. *Sizer* (1869), L. R. 4 Ex. 102.

(*p*) *Chapman* v. *Smethurst*, [1909] 1 K. B. 927.

(*q*) *Lindus* v. *Melrose* (1858), 3 H. & N. 177.

though the company is itself liable; if the bill of exchange does not contain the proper name of the company, *e.g.* if the word "limited" is omitted (*r*), or if it is omitted in one place, and in the only other place where the name occurs, it is so turned round as to put other words after it (*s*), or if additions are made to the name where it occurs (*t*), but if in one place the name is correctly stated as the drawer of a bill and in another the word "limited" is omitted from the name where it appears as the name of the acceptor, the section will be complied with, and only the company will be liable (*u*).

Directors, moreover, will not be liable where the name of the company is only contained in the address, and the word "Limited" is there abbreviated into Ltd. (*uu*).

Persons accepting bills, etc., on behalf of or in the name of a company will, if they have no authority to do so, be personally liable (*x*).

Contracts on behalf of a company may be made as in the following ways, that is to say—

(1) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged.

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

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

All contracts made according to this section are effectual in law, and bind the company and its successors and all other parties thereto, their heirs, executors, or administrators, as the case may be. Any deed to which the company is a party will be held to be validly executed in Scotland on behalf of the company if it is executed in terms of the provisions of the Act or is sealed with the common seal of the company and subscribed on behalf of the company by two

(*r*) *Penrose* v. *Martyr* (1858), E. B. & E. 499.

(*s*) *Atkins* v. *Wardle* (1889), 58 L. J. (Q. B.) 377; 5 T. L. R. 734.

(*t*) *Nassau Steam Press* v. *Tyler* (1894), 70 L. T. 376; in this case a company with the name of "the Bastille Syndicate, Limited," was described as "the Bastille and Old Paris Syndicate, Limited."

(*u*) *Dermatine* v. *Ashworth* (1905), 21 T. L. R. 510.

(*uu*) *F. Stacey & Co.* v. *Wallis* (1912), 28 T. L. R. 209.

(*x*) *West London Commercial Bank* v. *Kitson* (1884), 13 Q. B. D. 360; but see *Atkins* v. *Wardle* (1889), 58 L. J. (Q. B.) 377; 5 T. L. R. 734.

of the directors and the secretary of the company, and such subscription on behalf of the company will be equally binding whether attested by witnesses or not (*y*).

This section seems, so far as companies formed under the Companies (Consolidation) Act, 1908, or the Companies Act, 1862, are concerned, to do away with the old law that a company can only contract under its common seal; in the case of trading companies it had been established, even before the section, that they could validly enter into contracts in the ordinary course of their business without using their seal (*z*).

It is very usual to provide by the articles that the seal of the company shall only be affixed in the presence of one or more, usually two, directors and the secretary or some other person authorized in that behalf by the directors, and that every document to which the seal is affixed shall be signed by such persons. Such provisions are very useful, for though apart from them, if the seal were fixed by some entirely unauthorized person it would not, except perhaps in very exceptional circumstances, bind the company (*a*), the company probably would be bound, if the person who affixed the seal had apparent authority to do so, and there were no such provisions in the articles.

Under the second part of the section the signature of a chairman of a meeting of directors to minutes containing sufficient particulars to satisfy the Statute of Frauds has been held to be sufficient to satisfy the requirements of that statute (*b*).

A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney on behalf of the company and under his seal binds the company, and has the same effect as if it were under its common seal (*c*). Further, a company whose objects require or comprise the transaction of business in foreign countries may, if authorized by its articles, have for use in any territory, district, or place not situate in the

(*y*) Companies (Consolidation) Act, 1908, s. 76.

(*z*) *South of Ireland Colliery Co.* v. *Waddle* (1868), L. R. 3 C. P. 463; L. R. 4 C. P. 617; *Contract Corporation* (1869), 8 Eq. 14; cp. *Crampton* v. *Varna Railway* (1872), 7 Ch. 562.

(*a*) *Mayor, etc., of Merchants of the Staple* v. *Bank of England* (1887), 21 Q. B. D. 160; *Ruben* v. *Great Fingall*, [1906] A. C. 439.

(*b*) *Harrington* v. *Victoria Graving Dock* (1878), 3 Q. B. D. 549; cp. *Beer* v. *London and Paris Hotel* (1875), 20 Eq. 412. The articles of association of the company even when signed by the party to be charged will not be a sufficient compliance with the Statute of Frauds: *Eley* v. *Positive Government, etc., Assurance Co.* (1876), 1 Ex. Div. 20, affirmed on other grounds (1876), 1 Ex. Div. 88; *Dale* v. *Plant* (1889), 1 Meg. 338; 61 L. T. 206.

(*c*) Companies (Consolidation) Act, 1908, s. 78.

United Kingdom an official seal which must be a facsimile of the common seal of the company with the addition on its face of the name of every territory, district, or place where it is to be used. Any company which has such an official seal may by writing under its common seal authorize any person appointed for the purpose in any territory, district, or place not situate in the United Kingdom to affix the same to any deed or other document to which the company is party in such territory, district, or place. The authority of any such agent continues as between the company and any person dealing with the agent, during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

The person affixing any such official seal must, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

A deed or other document to which an official seal is duly affixed binds the company as if it had been sealed with the common seal of the company (*d*).

A document may be served on a company by leaving it at or sending it by post to the registered office of the company (*e*). The expression document in the Act includes summons, notice, order, and other legal process (*f*).

A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company, and need not be under its common seal (*g*).

All offences under the Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts (*h*).

The Court imposing any fine under the Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under the Act must, notwithstanding anything in any other Act, be paid into the Exchequer (*i*).

Where a limited company is plaintiff or pursuer in any action or

(*d*) Companies (Consolidation) Act, 1908, s. 79.

(*e*) *Ibid.*, s. 116. This is the proper and statutory way of serving a company under the Act, and therefore service at a branch office is bad. *Watkins* v. *Scottish Imperial Insurance* (1889), 23 Q. B. D. 286; *Wood* v. *Anderston Foundry* (1888), 36 W. R. 918; *Pearks, Gunston and Tee* v. *Richardson*, [1902] 1 K. B. 91, and see O. 9, r. 8, R. S. C.

(*f*) Companies (Consolidation) Act, 1908, s. 285.

(*g*) *Ibid.*, s. 117.

(*h*) *Ibid.*, s. 276; in Scotland certain prosecutions for fines and offences must be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.

(*i*) *Ibid.*, s. 277.

other legal proceeding, any Judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given (*k*). The section does not apply to misfeasance proceedings by a liquidator (*l*). The fact that a company is in liquidation, even voluntary liquidation with a view to an amalgamation (*m*), would appear to raise a sufficient *primâ facie* case for ordering security (*n*). The section would seem to apply to actions in the nature of cross actions (*o*), at all events where they are not simply defences to the original actions (*p*), and it applies to counterclaims (*q*), and, it would seem, appeals by the company (*r*), but not to appeals against orders in favour of the company (*s*). In deciding the amount of security to be given the Court will estimate the probable cost of the action, having regard, amongst other considerations, to the fact that the action may collapse (*t*), and the Court can order security to be given up to a certain stage of the action with liberty to renew the application (*x*). The fact that a step in the action has been taken will not be a bar to obtaining security for costs (*y*), especially where the company has so amended its statement of claim as to alter the nature of the action (*z*).

The section has no application to unlimited companies (*a*).

(*k*) Companies (Consolidation) Act, 1908, s. 278.

(*l*) *Strand Wood Co.*, [1904] 2 Ch. 1.

(*m*) *National Bank of Wales* v. *Collins* (1894), 38 Sol. J. 186.

(*n*) *Pure Spirit Co.* v. *Fowler* (1890), 25 Q. B. D. 235; *Northampton Coal, Iron and Waggon* v. *Midland Waggon Co.* (1878), 7 C. D. 501. In such cases, where there are no circumstances to the contrary, security should be ordered.

(*o*) *Washoe Mining Co.* v. *Ferguson* (1866), 2 Eq. 371; *City of Moscow Gas Co.* v. *International Finance* (1872), 7 Ch. 225; *Pure Spirit Co.* v. *Fowler* (1890), 25 Q. B. D. 235.

(*p*) See *Accidental and Marine Insurance* v. *Mercati* (1866), 3 Eq. 200; *Pure Spirit Co.* v. *Fowler* (1890), 25 Q. B. D. 235; *New Fenix Compagnie* v. *General Accident, Fire and Life Assurance*, [1911] 2 K. B. 619.

(*q*) *Strong* v. *Carlyle Press* (*No. 2*) (1893), W. N. 51.

(*r*) *Diamond Fuel Co.* (1879), 13 C. D. 400; *Photographic Artists, etc., Association* (1883), 23 C. D. 370; *Consolidated South Rand Mines Deep*, [1909] W. N. 66, and see also O. 58, r. 15, R. S. C.; but cp. *Sinclair* v. *Glasgow and London Contract* (1904), 6 Fra. 818.

(*s*) *Star Fire and Burglary* v. *C. Davidson and Sons* (1902), 4 Fra. 997.

(*t*) *Dominion Brewery* v. *Foster* (1897), 77 L. T. 507; *Imperial Bank of China* v. *Bank of Hindustan* (1866), 1 Ch. 437.

(*x*) *Western of Canada Oil Lands* v. *Walker* (1875), 10 Ch. 628. See also O. 65, r. 6, R. S. C.

(*y*) *Sidney and Wigpool Iron Ore* v. *Bird* (1883), 23 C. D. 358.

(*z*) *Northampton Coal, Iron and Waggon* v. *Midland Waggon Co.* (1878), 7 C. D. 500.

(*a*) *United Port and General Insurance* v. *Hill* (1870), L. R. 5 Q. B. 395.

Where a company is in winding-up, the fact that the assets will be sufficient to pay the costs is no answer to an application for security for costs (*b*). The Scotch practice under the section was discussed in *Brownrigg Coal Co.* (*c*), and it is thought that the principles laid down in this case hold to a certain extent also in England (*c*).

In the case of a company subject to the stannaries jurisdiction, the Court exercising the stannaries jurisdiction (*d*) has and can exercise the same jurisdiction and powers, as well on the common law as on the equity side thereof, as the Court of the Vice-Warden of the stannaries possessed before the commencement of the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of the Companies (Consolidation) Act and with the constitution of companies as prescribed or required by that Act.

For the purpose of giving fuller effect to such jurisdiction all process issuing out of such Court, and all orders, rules, demands, notices, warrants, and summonses required or authorized by the practice of the Court to be served on any company, whether registered or not registered or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the Judge for that purpose, or by such special order may be served in any part of the British Islands, on such terms and conditions as the Court may think fit; but no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the Court may be effected without the special order of the Judge made on a statement of the nature and object of the suit or plaint.

All decrees, orders, and judgments of such Court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries (*e*).

A company may by writing under its common seal agree to refer and may refer to arbitration, in accordance with the Railway Companies Arbitration Act, 1859, any existing or future difference between itself and any other company or person.

(*b*) *Southampton, etc., Steam Boat Co.* v. *Rawlins* (1863), 11 W. R. 978; disapproving *Caillaud's Patent Tanning* v. *Caillaud* (1859), 26 Beav. 427; see also *Consolidated South Rand Mines Deep*, [1909] W. N. 66.

(*c*) (1911), 48 S. L. R. 881.

(*d*) This jurisdiction was transferred to the County Courts of Cornwall by an order of December 16, 1896, made under the Stannaries Court (Abolition) Act, 1896. See also an order of April 5, 1897, as to certain funds. The County Courts (Stannaries) Fees Order, 1897, and Order 51 of the County Court Rules, 1903.

(*e*) Companies (Consolidation) Act, 1908, s. 280.

Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body; and all the provisions of the Railway Companies Arbitration Act, 1859, will apply to arbitrations between companies and persons in pursuance of the Act. The words "the companies" in the section of the Railway Companies Arbitration Act include companies under the Companies (Consolidation) Act, 1908 (*f*).

COMMENCEMENT OF BUSINESS.

No company except a private company (*g*) may commence a business or exercise any borrowing powers unless—

(*a*) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(*b*) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, or in the case of a company which does not offer shares for public subscription on the shares payable in cash; and

(*c*) There has been filed with the Registrar of Joint Stock Companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and

(*d*) In the case of a company which does not issue a prospectus, there has been filed with the Registrar of Joint Stock Companies a statement in lieu of prospectus.

The Registrar of Joint Stock Companies must, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate is conclusive evidence that the company is so entitled.

In the case of a company which does not issue a prospectus inviting the public to subscribe for its shares the Registrar may not give such a certificate unless in addition a statement in lieu of prospectus has been filed with him.

Any contract made by a company before the date at which it is entitled to commence business is provisional only, and is not binding on the company until that date, but on that date it becomes binding.

(*f*) Companies (Consolidation) Act, 1908, s. 119.

(*g*) The section in addition does not apply to companies registered before January 1, 1901, or to any company registered before July 1, 1908, which does not issue a prospectus inviting the public to subscribe for its shares.

The section does not prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention will without prejudice to any other liability, be liable to a fine (*h*) not exceeding £50 for every day during which the contravention continues (*i*).

If a company fails to obtain a certificate entitling it to commence business, all contracts made by it are simply void; it cannot sue or be sued on any contract even if it has actually supplied or been supplied with goods (*k*), and a bank with whom it has deposited moneys received by it will have no lien on such moneys and no right of action in respect of moneys which if the company had obtained its certificate would have been owing for work and labour done by the bank or for commission on shares applied for (*l*). A company cannot previously to its statutory meeting alter the terms of a contract referred to in a prospectus or statement in lieu of a prospectus except subject to the approval of the statutory meeting (*m*).

STATUTORY DECLARATION TO BE FILED PURSUANT TO SECTION 87 (1) (*c*) OF THE ACT BY A SECRETARY OR DIRECTOR OF A COMPANY (*n*), WHERE THE COMPANY HAS ISSUED A PROSPECTUS.

No. of Certificate. Form No. 44.

Companies (Consolidation) Act, 1908.

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

(*h*) The offence may be prosecuted under the Summary Jurisdiction Acts; in Scotland the prosecution must be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate directs: Companies (Consolidation) Act, 1908, s. 276.

(*i*) Companies (Consolidation) Act, 1908, s. 88; even before the Act provisions to this effect in the articles of a company protected the shareholders, *inter se*: *North Stafford Steel Co.* v. *Ward* (1868), L. R. 3 Ex. 172, and were held, though the decision is a somewhat doubtful one, to protect them against outsiders who did not know the provisions had been contravened: *Peirce* v. *Jersey Waterworks* (1870), L. R. 5 Ex. 209.

(*k*) *Otto Electrical Manufacturing Co.*, [1906] 2 Ch. 390; cp., however, *Ellett* v. *Sternberg* (1911), 27 T. L. R. 127.

(*l*) *New Druce Portland* v. *Blakiston* (1908), 24 T. L. R. 583.

(*m*) Companies (Consolidation) Act, 1908, s. 83. It is thought that notwithstanding a contract between a vendor and a trustee for an intended company which is referred to in a prospectus, the company could immediately after the prospectus make a different contract with the vendor.

(*n*) Form prescribed by Order of the Board of Trade, dated March 29, 1909.

Declaration made on behalf of the ______________

______________________________________ Limited,

that the conditions of section 87 (1) have been complied with.

Presented for Filing

by ______________________________________

I ______________________________________

of ______________________________________

____

being (*a*) ______________ of the

____

______________________________________ Limited,

(*a*) Insert here "the Secretary," or "a Director."

do solemnly and sincerely declare :—

That the amount of the share capital of the Company offered to the public for subscription is £ .

That the amount fixed by the Memorandum or Articles and named in the prospectus as the minimum subscription upon which the Company may proceed to allotment is £ .

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of £ .

That every director of the Company has paid to the Company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription.

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

Declared at ______________

____

the ______ day of ______________
one thousand nine hundred and ______
before me,

____
A Commissioner for Oaths.

Section 87 of the Companies (Consolidation) Act, 1908, provides that :—

(1.) A company shall not commence any business or exercise any borrowing powers unless—

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription ; and

(*b*) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, or in the case of a company

which does not issue a prospectus inviting the public to subscribe for its shares on the shares payable in cash ; and

(*c*) there has been filed with the registrar of companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with

(*d*) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar of companies a statement in lieu of prospectus.

(2.) The registrar of companies shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled : Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3.) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4.) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5.) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6.) Nothing in this section shall apply to a private company or to a company registered before the first day of January nineteen hundred and one, or to a company registered before the first day of July, nineteen hundred and eight, which does not issue a prospectus inviting the public to subscribe for its shares.

FORM OF STATUTORY DECLARATION TO BE FILED PURSUANT TO SECTION 81 (1) (*c*) BY A SECRETARY OR DIRECTOR OF A COMPANY, WHERE THE COMPANY HAS FILED A STATEMENT IN LIEU OF A PROSPECTUS (*o*).

Certificate No. Form No. 44a.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

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

Declaration made on behalf of the ______________________________
______________________________ Limited,
(which is a Company that has filed with the Registrar of Joint Stock

(*o*) Form 44a prescribed by Order of the Board of Trade, March 29, 1909.

Companies a Statement in lieu of prospectus), that the conditions of s. 87 (1) have been complied with.

Presented for Filing
by ______________________________

I ______________________________

of ______________________________

being (*a*) ______________________ of the

______________________ Limited,

(*a*) Insert here "the Secretary," or "a Director."

do solemnly and sincerely declare :—

That the amount of the Share Capital of the Company other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash is £ .

That the amount fixed by the Memorandum or Articles and named in the Statement in Lieu of prospectus as the minimum subscription upon which the Company may proceed to allotment is £ .

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of £ .

That every Director of the Company has paid to the Company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash.

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

Declared at ______________
the ______ day of ______________
one thousand nine hundred and ______
before me.

____
A Commissioner for Oaths.

DIRECTORS.

Owing to the size of most companies, it is impracticable for the business to be carried on by the shareholders, and consequently the duty of managing the affairs of the company is delegated to a select governing body consisting of persons usually called directors. The appointment of these persons, the time during which they are to serve, the qualification shares they are to hold, the powers conferred on them, and the remuneration they are to receive are matters, for the most part, decided by the articles of association ; but the Act (*p*) and also the general law has also something to say in the matter.

(*p*) In the Act the expression "director" unless the context otherwise requires includes any person occupying the position of director by whatever name called: Companies (Consolidation) Act, 1908, s. 285. A person having the powers ordinarily conferred on a director will, whatever he be called, be in the same position as a director: *Bulawayo Market and Offices*, [1907] 2 Ch. 458.

The number of directors is usually fixed within certain limits by the articles. The articles also usually either name the persons who are to be first directors, or leave it to the subscribers to the Memorandum of Association to do so, and sometimes the subscribers to the memorandum are themselves given the powers of directors until regular directors have been appointed. Where the subscribers to the memorandum all agree in the appointment of the directors, they need not meet to make the appointment (*q*); in other cases, if all have been summoned to a meeting a majority (*r*), but not a minority (*s*) of the whole number of subscribers can make the appointment. The power cannot be exercised before the company is incorporated (*t*), but it continues until directors are validly appointed (*u*). One company may be appointed the sole director of another company (*x*), and a director need not necessarily have special knowledge of the business the company is to carry on (*y*). Directors have been variously likened to trustees, agents, and managing partners. Their exact position is, however, probably not the same as any one of the three.

It is founded on contract, and so in bankruptcy where a director, who is also a partner in a firm which acts as agent for the company, has as a member of such firm misappropriated assets of the company, a double proof will be allowed (*z*).

Directors are not in any sense trustees for individual shareholders, and so there is nothing to prevent them from buying the shares of a member even when they, in their character of directors, know of negotiations which are likely to enhance the value of such shares (*a*); they are also not trustees for the creditors of the company (*b*), even in cases where the company itself stands in a fiduciary relationship towards a creditor (*c*).

(*q*) *Ex parte Kennedy* (1890), 44 C. D. 472, a mere majority will not be enough in such case: *Möller* v. *M'Clean* (1889), 1 Meg. 274.

(*r*) *York Tramways* v. *Willows* (1882), 8 Q. B. D. 685; *John Morley Building Co.* v. *Barras*, [1891] 2 Ch. 386.

(*s*) *London and Southern Counties Freehold Land Co.* (1885), 31 C. D. 223, and see *Howbeach* v. *Teague* (1860), 5 H. & N. 151.

(*t*) *Möller* v. *M'Clean* (1889), 1 Meg. 274.

(*u*) *John Morley Building Co.* v. *Barras*, [1891] 2 Ch. 386; reasonable notice to the subscribers is necessary: *ibid.*

(*x*) *Bulawayo Market and Offices*, [1907] 2 Ch. 458.

(*y*) *Brazilian Rubber Plantations Co.*, [1911] 1 Ch. 425.

(*z*) *P. Macfadyen*, [1908] 2 K. B. 17.

(*a*) *Percival* v. *Wright*, [1902] 2 Ch. 421.

(*b*) *Wilson* v. *Lord Bury* (1880), 5 Q. B. D. 518; *Poole, Jackson and Whyte's Case* (1878), 9 C. D. 322; this last case seems to overrule *Syke's Case* (1872), 13 Eq. 255. See *Woods Ships Woodite Protection Co.* (1890), 62 L. T. 760; *Mason, Gallagher and Slater's Case* (1882), 46 L. T. 54; but see *Washington Diamond Co.*, [1893] 3 Ch. 95; *Habershon's Case* (1868), 5 Eq. 286.

(*c*) *Bath* v. *Standard Land Co.*, [1911] 1 Ch. 618.

They are trustees of the company's money and property (*d*), but not of debts due to the company (*e*).

Even with regard to the company's money and property, their position is very different from that of ordinary trustees. In the first place, to quote a well-known passage from the judgment of James, L.J., in *Smith* v. *Anderson* (*f*), "A trustee is a man who is the owner of the property, and deals with it as principal as owner and master, subject only to an equitable obligation to account to some persons to whom he stands in relation of trustee and who are his *cestuis que* trust. The same individual may fill the office of director and also be a trustee having property, but that is a rare exceptional and casual circumstance. The office of director is that of a paid servant of the company. A director never enters into contract for himself, but he enters into contracts for his principal, that is, for the company of whom he is a director and for whom he is acting. He cannot sue on such contracts, nor be sued on them, unless he exceeds his authority." Moreover, his position as regards liability is very different from that of a trustee; thus, except, perhaps, in the most exceptional circumstances, a director who does nothing and simply stays away from the board-room, will not be liable for wrongful acts of his co-directors (*g*). Moreover, where there has been no dishonesty, a director will not, if acting within his authority, be liable for errors of judgment, however great, unless he has been guilty of gross negligence (*h*); or, to put the matter in other words, his duty is to exercise the ordinary diligence which men of common prudence generally exercise about their own affairs (*i*), and he will not be liable unless he commits a breach of such duty.

(*d*) *Great Eastern Railway* v. *Turner* (1872), 8 Ch. 149.

(*e*) *Forest of Dean Coal Mining Co.* (1878), 10 C. D. 450.

(*f*) (1880), 15 C. D. 247, at pp. 275 and 276.

(*g*) *Lord Bute's Case*, [1893] 2 Ch. 100; *Denham & Co.* (1883), 25 C. D. 752; but see *Municipal Freehold Land Co.* v. *Pollington* (1890), 63 L. T. 238.

(*h*) *Overend, Gurney & Co.* v. *Gibb* (1872), L. R. 5 H. L. 480; *Turquand* v. *Marshall* (1869), 4 Ch. 376; *Sheffield and South Yorkshire, etc., Society* v. *Aizlewood* (1889), 44 C. D. 412; *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392; *New Mashonaland Exploration Co.*, [1892] 3 Ch. 577; *Brazilian Rubber Plantations and Estates Co.*, [1911] 1 Ch. 425; see also *London Trust Co.* v. *Mackenzie* (1893), 62 L. J. (CH.) 870; *Liverpool Household Stores Association* (1890), 62 L. T. 873 (a somewhat doubtful case), and *Coats* (*J. and P.*) v. *Crossland* (1904), 20 T. L. R. 800.

(*i*) *Giblin* v. *McMullen* (1869), L. R. 2 P. C. 317, 337, referred to with approval in *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392; *National Bank of Wales*, [1899] 2 Ch. 629. In such cases the question is not what the judge thinks prudent or the reverse, but what an ordinary business man would do in his own business; *Overend, Gurney & Co.* v. *Gurney* (1869), 4 Ch. 701, affirmed, *sub nom.* *Overend, Gurney & Co.* v. *Gibb* (1872), L. R. 5 H. L. 480.

The articles may protect a director against negligence of any sort, and in such case a director who acts honestly will apparently have absolute protection (*k*). Where directors have acted beyond their authority owing to acting on statements or advice given to them, and they have not been guilty of gross negligence in so doing, there also they will not be liable (*l*).

But where directors have acted beyond their authority, and at the time of so acting have had full knowledge of the relevant facts (*m*), they will be liable, and they will be equally liable where they would have had full knowledge of the relevant facts had they not unduly relied on statements made to them by their subordinates (*n*). Thus directors who have paid dividends out of capital have been held liable for so doing, not only where they knew the balance-sheets prepared were wrong (*o*), but also where they have never caused any proper balance-sheet or profit and loss account to be prepared (*p*), where there never has been any profit and they have simply been paying interest on the paid-up capital of the company (*q*), where they have applied moneys devoted to a special purpose to general purposes (*r*), and where they have knowingly paid dividends in a manner not authorized by the constitution of the company (*s*). On the other hand, directors have escaped liability where they have paid dividends out of profits which they *bonâ fide* estimated that the company had made (*t*), and where they have properly relied on a statement of facts which turned out to be untrue, but which, if true, would have justified the dividends declared (*u*). The test whether they have or have not properly relied on a statement, being whether they have been guilty of gross negligence in so doing. Other cases where directors have been held liable for acting beyond the powers

(*k*) *Brazilian Rubber Plantations and Estates Co.*, [1911] 1 Ch. 425. But see Joint Stock Corporation, *Times* Newspaper, February 2, 1912.

(*l*) *Dovey* v. *Cory*, [1901] A. C. 477 ; *Prefontaine* v. *Grenier*, [1907] A. C. 101.

(*m*) *National Funds Assurance Co.* (1878), 10 C. D. 118.

(*n*) *Leeds Estate Building and Investment Co.* v. *Shepherd* (1887), 36 C. D. 787 ; *Municipal Freehold Land Co.* v. *Pollington* (1890), 63 L. T. 238 ; see *National Bank of Wales*, [1899] 2 Ch. 629, *per* WRIGHT, J.: *O'Brien* v. *Mitchelstown Loan Fund*, [1903] 1 Ir. 282.

(*o*) *Flitcroft's Case* (1882), 21 C. D. 519.

(*p*) *Rance's Case* (1870), 6 Ch. 104.

(*q*) *Re Sharpe*, [1892] 1 Ch. 154.

(*r*) *British Guardian Life Assurance* (1880), 14 C. D. 335.

(*s*) *Evans* v. *Coventry* (1857), 8 De G. M. & G. 835 ; *Oxford Benefit Building Society* (1886), 35 C. D. 502 ; *Alexandra Palace Co.* (1882), 21 C. D. 149 ; in this case moneys had been borrowed to pay dividends and the directors were only liable to the extent that the proofs against the company had been increased by such borrowing.

(*t*) *Stringer's Case* (1869), 4 Ch. 475.

(*u*) *Dovey* v. *Cory*, [1901] A. C. 477 ; *Kingston Cotton Mill (No. 2)*, [1896] 1 Ch. 331. See also *Brazilian Rubber Plantations and Estates*, [1911] 1 Ch. 425.

conferred on them are to be found in the cases where they have purchased the company's own shares with the money of the company (x), and where they have issued shares at a discount (y) or paid underwriting commissions (z), or have appointed and paid a managing director, although not authorized to do so (a).

It follows from the fiduciary nature of the office of a director, that no director may make any profit out of his office unless such profit is expressly sanctioned by the company at large, or is authorized by the constitution of the company (b). Any director who infringes this principle or allows a co-director to do so will have to account to the company for the profit, and no director may take or concur in giving to a co-director any bribe for any act done by him as a director (c).

These principles have frequently been illustrated by the case where directors have received gifts of the shares required to qualify him as director.

Thus directors who have received presents of shares from promoters under an agreement entered into before the contract of sale to the company was entered into (d), or after the contract has been

(x) *Land Credit Co.* v. *Fermoy* (1870), 8 Eq. 7, 5 Ch. 763; *Ashhurst* v. *Mason* (1875), 20 Eq. 225; *Joint Stock Discount Co.* v. *Brown* (1866), 3 Eq. 139; *Marzetti's Case* (1880), 28 W. R. 541; *Lands Allotment Co.*, [1894] 1 Ch. 616.

(y) *Hirsche* v. *Sims*, [1894] A. C. 654; *Society for Illustration of Practical Knowledge* v. *Abbot* (1840), 2 Beav. 559.

(z) *Faure Electric Accumulator Co.* (1880), 40 C. D. 141; see also *West of England Paper Mills Co.* v. *Gilbert* (1891), 61 L. J. (CH.) 92; and *Barrow's Case* (1879), 49 L. J. (CH.) 253.

(a) *Boschoek Proprietary* v. *Fuke*, [1906] 1 Ch. 148; and for other cases on the liability of directors, see *Charitable Corporation* v. *Sutton* (1742), 2 Atk. 400; *Young* v. *Naval, Military and Civil Service*, [1905] 1 K. B. 687; *Marmor* v. *Alexander*, [1908] S. C. 78; *Davies' Case* (1890), 45 C. D. 537; *London Financial Association* v. *Kelk* (1884), 26 C. D. 107; *Liverpool House old Stores Association* (1890), 62 L. T. 873; *West of England Paper Mills Co.* v. *Gilbert* (1892), 61 L. J. (CH.) 92; *Imperial Mercantile Association* v. *Chapman* (1871), 19 W. R. 379; *Ottoman Co.* v. *Farley* (1869), 17 W. R. 761; *London Trust Co.* v. *Mackenzie* (1893), 62 L. J. (CH.) 870; *Merchants' Fire Office* v. *Armstrong* (1901), 17 T. L. R. 709.

(b) A company acting as agent or trustee for a person may employ and pay its directors for professional services rendered to such person in the course of the agency or trusteeship, and on an account being taken will be allowed such payments: *Bath* v. *Standard Land Co.*, [1911] 1 Ch. 618.

(c) See *General Exchange Bank* v. *Horner* (1870), 9 Eq. 480.

(d) *De Ruvigne's Case* (1877), 5 C. D. 306; *Pearson's Case* (1877), 5 C. D. 336; see also *Weston's Case* (1879), 10 C. D. 579, where a director bought shares from a promoter at half their value, and was held liable for the difference between the price paid and the par value, as he failed to show that he agreed to buy after the sale to the company had been completed, and other shares had been sold at par.

made, but while questions arising out of it are still open (*e*), has been held to be bound to account to the company for the highest value the shares have had since the date of their allotment, with interest at the rate of 5 per cent. from the date of such allotment till repayment (*f*); and in one case a person who was not a director till after the contract was completed was held accountable for the shares he received as a gift (*g*). In another case (*h*) a promoter agreed that he would take a director's qualification shares off him at their par value when the latter resigned and the director's shares were in pursuance of the agreement purchased from him, it was held that he was accountable to the company for the money he had received; a fictitious arrangement by which directors are given an interest in the property immediately before the sale to the company will not save them from being accountable for any part of the proceeds of sale which they subsequently receive (*i*). And a director will be liable to pay for the amount of his qualification shares where he holds them as trustee for a promoter and can be removed by that promoter at any time (*k*).

It has even been held that an article authorizing promoters to give shares to directors of the company will not protect directors of the company who have received or allowed their co-directors to receive shares (*l*).

Where, however, there has been a full disclosure to the company as a whole (*m*) of the fact that the directors are receiving presents of their qualification shares, there it would appear that the directors will not be accountable (*n*).

(*e*) *Eden* v. *Ridsdale's Lamp and Lighting Co.* (1889), 23 Q. B. D. 368.

(*f*) In ascertaining such value the court will take into account the total number of shares, and the effect that their sale would have on the market: *Shaw* v. *Holland*, [1900] 2 Ch. 305; *Nant-y-Glo and Blaina Ironworks* v. *Grave* (1878), 12 C. D. 738 (where the interest was only 4 per cent.); *Metcalfe's Case* (1879), 13 C. D. 169; *McKay's Case* (1875), 2 C. D. 1, and the cases cited in the preceding and succeeding notes and *Williams* v. *Peel River Land* (1887), 55 L. T. 689. The interest is in the nature of damages and consequently income tax cannot be deducted, *National Bank of Wales*, [1899] 2 Ch. 629.

(*g*) *Ormerod's Case* (1878), 37 L. T. 244.

(*h*) *Archer's Case*, [1892] 1 Ch. 322.

(*i*) *Bland's Case*, [1893] 2 Ch. 612.

(*k*) *London and South Western Canal Co.*, [1911] 1 Ch. 346.

(*l*) *Clarke's* and *Helden's Cases* (1878), 37 L. T. 222.

(*m*) In the case of a company which issues a prospectus, it should be disclosed in the prospectus: *Postage Stamp Automatic Delivery*, [1893] 3 Ch. 566 (a case in which it is very difficult to understand why the founders' shares and the ordinary shares were not treated as being on the same footing); *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392, and cp. also *Re Darby*, [1911] 1 K. B. 95.

(*n*) *British Seamless Paper Box Co.* (1881), 17 C. D. 467; *Innes & Co.*, [1903] 2 Ch. 254; *Felix Hadley & Co.* v. *Hadley* (1897), 77 L. T. 131.

In the cases we have been considering the directors will not be liable to be placed on the list of contributories (*o*), but it will be otherwise where they have not received the shares from the promoters, but have at his direction received the money to pay for their shares directly from the company out of the money due to the promoter; in such cases the company will be able to follow the money, which is treated as wrongfully added to the purchase price and as having been its own from the beginning, in the same way as they could follow trust money which had been misapplied, and will consequently be able to treat the shares allotted to the directors as having been taken but not paid for (*p*). Presents of cash from the promoters of a company will, however, be on a different footing; if these are paid out of the company's own moneys the company can no doubt usually recover them, but it cannot treat shares paid up out of such moneys as unpaid (*q*).

Directors who have sanctioned this class of transaction will be jointly and severally liable to recoup the company (*r*).

Directors will be liable to make good to the company profits which they have made when acting on its behalf, even though their company could not have made the profit itself, *e.g.* profits a director has earned in his character of member of another company for bringing business to such other company (*s*); and they will have to make good to the company profits which they have made when trading in perfect honesty with the company (*t*). It is not unusual for the articles of a company to provide that the office of a director shall be vacated if he deals with the company without disclosing his interest; in such case a director will have to disclose the exact nature of his interest (*u*), that is, in all cases the duty of an agent making a profit at the expense of his principal (*x*). But assuming that this has been done, such an article impliedly authorizes a director

(*o*) *Carling's Case* (1875), 1 C. D. 115.

(*p*) *Disderi & Co.* (1871), 11 Eq. 242; *Hay's Case* (1875), 10 Ch. 593, explained in *Lister & Co.* v. *Stubbs* (1890), 45 C. D. 1 and cp. *Eastwick's Case* (1876), 45 L. J. (CH.) 225.

(*q*) *London and Provincial Starch Co.* (1869), 20 L. T. 390; *Mclean's Case* (1886), 55 L. J. (CH.) 36; *Brighton Brewery, Hunt's Case* (1868), 37 L. J. (CH.) 278; *Ex parte Pelly* (1882), 21 C. D. 492; and cp. *Madrid Bank* v. *Pelly* (1869), 7 Eq. 442, a case which does not seem consistent with the later authorities.

(*r*) *Carriage Co-operative Supply Association* (1884), 27 C. D. 322; *Englefield Colliery Co.* (1878), 8 C. D. 388, and the cases cited in the preceding notes.

(*s*) *Boston Deep Sea Fishing Co.* v. *Ansell* (1888), 39 C. D. 339.

(*t*) *Albion Steel and Wire Co.* v. *Martin* (1875), 1 C. D. 580; there was in this case disclosure to the co-directors of the director concerned, but this was not held to be enough.

(*u*) *Imperial Mercantile Credit Co.* v. *Coleman* (1873), L. R. 6 H. L. 189; *Turnbull* v. *West Riding Athletic* (1894), 70 L. T. 92.

(*x*) *Dunne* v. *English* (1874), 18 Eq. 524.

to deal with his company and keep any profits he makes out of his dealings (*y*). Further, if the article goes on to say that it is not to apply where the interest is only as a member of a company, it will be enough for the director concerned to disclose that he is a member of such other company (*z*).

Where directors are selling their own property to a company, it is their duty to disclose the exact nature of their interest in the property (*a*). If they fail to disclose that they have an interest, this will be tantamount to saying that they have no interest, and will therefore amount to fraud (*b*); and in such case the company can at its option rescind the contract (so long as it can restore the thing bought) or sue the director for damages in an action of deceit (*c*). Where, however, the director has disclosed he has an interest without disclosing its exact nature, the former remedy alone would appear to be open to the company (*d*). Directors cannot appoint one of their number to any office of profit under the company and pay him for acting in such office (*e*), nor, at all events where they are paid, can they pay their travelling expenses out of the company's assets (*f*) or arrange that their salaries shall be paid free of income tax (*g*); but if a company holds shares in another company and arranges for one of its directors to be a director of such other company and provides him with his qualification shares, in such case the director will be entitled to retain any remuneration he is paid for acting as director of the second company (*h*), such remuneration being paid in respect of his services (*h*) and not in respect of his shares.

(*y*) *Imperial Mercantile Credit* v. *Coleman* (1871), 6 Ch. 558, not affected on this point by the fact that the decision was reversed (1873), L. R. 6 H. L. 189; *Costa Rica Railway* v. *Forwood*, [1901] 1 Ch. 746.

(*z*) *Costa Rica Railway* v. *Forwood*, [1901] 1 Ch. 746.

(*a*) *Dunne* v. *English* (1874), 18 Eq. 524.

(*b*) *Cavendish Bentinck* v. *Fenn* (1887), 12 A. C. 652; *Leeds and Henley Theatre of Varieties*, [1902] 2 Ch. 809.

(*c*) *Gluckstein* v. *Barnes*, [1900] A. C. 240; *Hichens* v. *Congreve* (1831), 4 Sim. 420; *Fawcett* v. *Whitehouse* (1829), 1 Russ. & Myl. 132; *Kimber* v. *Barber* (1873), 8 Ch. 56 (in which *Great Luxembourg Railway* v. *Magnay* (1858), 25 Beav. 586, is discussed); *Tyrell* v. *Bank of London* (1862), 10 H. L. C. 26.

(*d*) *Burland* v. *Earle*, [1902] A. C. 83; *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, [1899] 2 Ch. 392; see also *Ambrose Lake Tin and Copper Co.* (1880), 14 C. D. 390, and *Chesterfield and Boythorpe* v. *Black* (1878), 37 L. T. 740.

(*e*) *Benson* v. *Heathorn* (1842), 1 Y. & C. C. C. 326.

(*f*) *Young* v. *Naval, Military and Civil Service*, [1905] 1 K. B. 687; *Marmor* v. *Alexander*, [1908] S. C. 78.

(*g*) *Boschoek Proprietory* v. *Fuke*, [1906] 1 Ch. 148.

(*h*) *Dover Coalfields Extension*, [1908] 1 Ch. 165; apart from any special agreement there is nothing in the position of a director to prevent his becoming a director of another company even if it be a rival company: *London and Mashonaland, etc., Co.* v. *New Mashonaland, etc., Co.* (1891), W. N. 165.

A director who buys up at a discount debentures which have to his knowledge been improperly issued will not be allowed to make a profit out of the transaction (*i*). A company cannot, even where all its members assent, make a present to its directors, if there are no funds available for distribution among the members as dividends (*k*) though a company has power without a special provision in its memorandum or articles to give gratuities to employees, and if there is a power which allows it to do so (*l*), can make presents out of funds available for dividends to directors. Such powers will, it would seem, cease where the company has gone into winding-up, for such powers are based not on the fact that a company can indulge in indiscriminate charity, but that it can make presents where the result of such presents is likely to be that it will be better served in the future (*m*).

Whether the case of *Normandy* v. *Ind, Coope & Co.* (*n*) is good law is a difficult question; there the directors had been overpaying themselves all round, and they sought to alter the articles so as to grant an annuity to one of their number and generally to benefit themselves. The Judge held, somewhat strangely, that these transactions were not *ultra vires* the company, and that the company and the company alone could complain of them. It might well have been held that even if they were not *ultra vires* they were in their nature fraudulent and consequently that a minority of shareholders could complain of them. In cases where there has been no fraud or wrong-doing, but simply acts done in excess of authority, directors will simply have to account for the difference between what

(*i*) *Larking's Case* (1877), 4 C. D. 566; see also *Habershon's Case* (1868), 5 Eq. 286.

(*k*) *George Newman & Co.*, [1895] 1 Ch. 674; it would amount to a reduction of capital.

(*l*) In *Normandy* v. *Ind, Coope & Co.*, [1908] 1 Ch. 84, KEKEWICH, J., seems to have thought such a power unnecessary.

(*m*) *Hutton* v. *West Cork Railway* (1883), 23 C. D. 654; *Stroud* v. *Royal Aquarium* (1903), 89 L. T. 243. These cases are not easy to reconcile with *Kaye* v. *Croydon Tramways*, [1898] 1 Ch. 358; and *Southall* v. *British Mutual* (1871), 6 Ch. 614; probably the explanation of the latter two cases is that it was held that the benefit the directors were to get was really given at the expense of the purchasing and not of the selling company of which they were directors: see also *Tiessen* v. *Henderson*, [1899] 1 Ch. 861.

(*n*) [1908] 1 Ch. 84. On the question of *ultra vires*, this decision seems very difficult to reconcile with *George Newman & Co.*, [1895] 1 Ch. 674, which was a decision of the Court of Appeal, nor does the principle on which presents can be made to employees seem to apply to directors who are managing partners. Moreover, even if the memorandum or articles could validly give a power to make presents to directors where there were no funds available for dividends surely the fact that the articles expressly provided for the directors' remuneration would negative there being any implied power to make them presents in addition.

they gave for the property they acquired and what they would have given had there been no such breach of authority (*o*). In other cases they will have to account for the highest value of the thing acquired with interest at 5 per cent. (*p*), and as the interest is in the nature of damages income tax cannot be deducted from it (*q*).

Where the directors have done an act which is altogether *ultra vires* the company shareholders who have with full knowledge participated in and taken the benefit of the act will not be able to take proceedings to make the directors liable for such act, even on offering to make good to the company any profit they have individually made out of it (*r*) ; and if the directors are rendered liable, such shareholders will have to indemnify them against their liability (*s*). It is otherwise, however, where shareholders have inadvertently benefited by such an act (*t*).

It was said in *Pickering* v. *Stephenson* (*u*) that the Court had a discretion as to whether it would require directors to make good to the company any loss it had sustained by reason of an *ultra vires* act in which they had participated, but this case has been doubted (*x*), and perhaps the true explanation of it lies in the fact that it was not a case of an incorporated company (*y*). At the same time, where an application is made in a winding-up under section 215 of the Act the Court would seem to have a discretion (*z*).

Now, however, if in any proceeding against a director or person occupying the position of a director of a company for negligence or

(*o*) *Hirsche* v. *Sims*, [1894] A. C. 654.

(*p*) *Shaw* v. *Holland*, [1900] 2 Ch. 305 ; but the company must decide whether they will treat their defaulting directors as trustees who have committed a breach of trust, or whether they will sue them in a common law action for negligence : *Exploring Lands and Minerals Co.* v. *Kolckmann* (1905), 94 L. T. 234, in which latter case they can only recover the loss suffered as on the day when the wrongful neglect happened.

(*q*) *National Bank of Wales*, [1899] 2 Ch. 629.

(*r*) *Towers* v. *African Tug*, [1904] 1 Ch. 558 ; but this will not prevent their obtaining relief against a continuance of such acts in the future : *Mosely* v. *Koffyfontein Mines*, [1911] 1 Ch. 73.

(*s*) *Moxham* v. *Grant*, [1900] 1 Q. B. 88.

(*t*) Cp. *Flitcroft's Case* (1882), 21 C. D. 519 ; *National Bank of Wales*, [1899] 2 Ch. 629.

(*u*) (1872), 14 Eq. 322.

(*x*) KAY, J., followed it in *Studdert* v. *Grosvenor* (1886), 33 C. D. 528, but the same judge in *Faure Electric Accumulator* (1888), 40 C. D. 141, said that he could only explain it on the principle of *de minimis non curat lex*. See also *Cullerne* v. *London and Suburban, etc., Building Society* (1890), 25 Q. B. D. 485.

(*y*) See *per* BUCKLEY, L.J., *Peel* v. *London and North Western Railway Co.*, [1907] 1 Ch. 5.

(*z*) *Sunlight Incandescent Gas Lamp Co.* (1900), 16 T. L. R. 535. Neither *Pickering* v. *Stephenson* (1872), 14 Eq. 322, nor *Studdert* v. *Grosvenor* (1886), 33 C. D. 528, was an application under this section ; on the other hand, *Faure Electric Accumulator* (1888), 40 C. D. 141, was.

breach of trust it appears to the Court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, the Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think proper (*a*).

These words follow, more or less closely, the words of section 3 of the Judicial Trustees Act, 1896, relating to trustees. Under that section the difficulty is usually to show that the trustees have acted reasonably. Possibly, however, where it is a question of excess of authority, this difficulty will not be so acute in the case of directors. It is probably not necessary to plead the section, but where there are pleadings it will be advisable to do so (*b*). Before the Trustee Act, 1888, directors could plead the Statute of Limitations where it was a question of having received a bribe, and there was no question of the company following the money, as it had not been paid out of its assets (*c*), and it would seem that even where they could not themselves plead the Statute of Limitations a manager and secretary who had misled them into doing the wrongful acts complained of could do so (*d*). Now, under the Trustee Act, 1888, directors, like other persons who are trustees, can plead the Statute of Limitations, where there is no question of fraud (*e*) ; and it would also seem that no action will apart from fraud lie against a director of a company after the winding-up of such company is completed and the company is dissolved (*f*).

Sometimes, even before the Trustee Act, 1888, although there was no Statute of Limitations applicable, the company or its liquidator was not allowed to set up a stale demand against directors who were alleged to have failed in their duties (*g*) ; but this probably only applied in complicated cases, where the directors were likely to find more difficulty in their defence by reason of their accusers having held their hand (*h*).

Where directors have been guilty of misfeasance, which they have subsequently made good, they are liable to be ordered to

(*a*) Companies (Consolidation) Act, 1908, s. 279.

(*b*) *Singlehurst* v. *Tapscott* (1899), W. N. 133.

(*c*) *Metropolitan Bank* v. *Heiron* (1880), 5 Ex. Div. 319. In *Fitzroy* v. *Bessemer Co.* (1884), 50 L. T. 144, it was held that the Statute did not commence to run from the date of disclosure to the directors, all of whom were concerned in transactions similar to that of the impeached director.

(*d*) *Municipal Freehold Land Co.* v. *Pollington* (1890), 63 L. T. 238.

(*e*) *Lands Allotment Co.*, [1894] 1 Ch. 616 ; *National Bank of Wales*, [1899] 2 Ch. 629 ; and see Trustee Act, 1888.

(*f*) *Coxon* v. *Gorst*, [1891] 2 Ch. 73 ; but of course the dissolution is liable to be declared void under s. 223 of the Act.

(*g*) *Mammoth Corporation of Utah* (1881), 50 L. J. (CH.) 11.

(*h*) *Alexandra Palace Co.* (1882), 21 C. D. 149.

pay the costs of proceedings taken with reference to their misfeasance (*i*).

Directors are also trustees of the powers conferred on them. This does not mean that in the absence of express powers they are tied down by the same rules as ordinary trustees; thus directors with a power of lending money on mortgage are not necessarily tied down to lending money on first mortgages only (*k*), and directors with power to invest moneys need not necessarily invest in trust securities (*l*). What it does mean is that they may not use such powers so as to give themselves an advantage at the expense of their principal, the company. *Parker* v. *McKenna* (*m*) is the leading case on this subject; there, on an issue of new shares of a company, it was arranged that such shares as were not applied for by the existing members of the company at a premium of £25 per share were to be taken up by a third party at a premium of £30 per share, and it was arranged that he should make certain payments at certain times and should give certain guarantees. Subsequently, as the third party was unable to take up all the shares, some of the directors took up some of the shares he had agreed to take before they had been allotted to him, and they also relaxed the conditions as to guarantee and payments. They subsequently sold their shares at a profit, and for this they were held to be accountable to the company. There is, however, of course no rule of law preventing directors allotting shares to themselves at a fair price, whether such shares are preference, ordinary, or founders' shares (*n*).

Directors are similarly trustees of their powers of making calls, and they cannot therefore without incurring liability postpone a call so as to enable one of their own number to transfer his shares (*o*), or, in spite of an article authorizing different amounts being called up on different shares, give their own shares a preference in the matter of the calls that are made (*p*). They cannot expedite a meeting so as to prevent persons who have only recently become members from having votes (*q*), and they cannot make an issue of fresh shares with a view of thereby securing a majority in the company (*r*). They are also trustees of their powers of sanctioning

(*i*) *David Ireland & Co.*, [1905] 1 Ir. 133.

(*k*) *Sheffield and South Yorkshire Permanent Building Society* v. *Aizlewood* (1889), 44 C. D. 412.

(*l*) *Burland* v. *Earle*, [1902] A. C. 83.

(*m*) (1874), 10 Ch. 96, and see also *York and North Midland Railway* v. *Hudson* (1853), 16 Beav. 485.

(*n*) *London and Colonial Finance Corporation* (1898), 77 L. T. 146; cp. also *Campbell's Case* (1876), 4 C. D. 470; *Webb* v. *Shropshire Railway*, [1893] 3 Ch. 307.

(*o*) *Gilbert's Case* (1870), 5 Ch. 559.

(*p*) *Alexander* v. *Automatic Telephone Co.*, [1900] 2 Ch. 56.

(*q*) *Cannon* v. *Trask* (1875), 20 Eq. 669.

(*r*) *Fraser* v. *Whalley* (1864), 2 H. & M. 10; *Punt* v. *Symons*, [1903] 2 Ch. 506; *Abbotsford Hotel Co.* v. *Kingham* (1910), 102 L. T. 119.

transfers (*s*), but they are at full liberty to transfer their shares (*t*), except, perhaps, their qualification shares (*u*), and to vote at general meetings in respect of their shares (*x*) as freely as other members, for these are rights which they have in their characters of members, and not in their characters of directors. Further, a director who knowingly allots shares to an infant will be liable (*y*), and directors cannot make use of a power to delegate powers to a committee so as to exclude one of their number from acting as a director (*z*). But directors may in a *bonâ fide* case put their views before the members, and even spend the moneys of the company in sending out stamped proxies filled up with the name of the person who is to hold the proxy (*a*).

Where the company is asked to sanction any act of its directors on the ground that they are precluded by reason of their personal interest from effectively carrying it out, the directors are bound to give the members notice clearly showing what their interest is (*b*), except, perhaps, where it is simply a case of a contract in the ordinary course of the company's business, or in which the directors are only indirectly interested, *e.g.* as shareholders in another company (*c*). The question that remains to be considered is what is sufficient to make directors liable for the wrongs done by their co-directors. As has already been stated, probably a person who simply takes no part in the affairs of a company will not thereby render himself liable as a director (*d*). The only case which can be cited to the contrary, if one excepts the very old case of *Charitable Corporation* v.

(*s*) *Bennett's Case* (1854), 5 De G. M. & G. 284; but they may vote on the question of sanctioning a transfer though interested: *Bush's Case* (1870), 6 Ch. 246, L. R. 6 H. L. 37.

(*t*) *Cawley & Co.* (1889), 42 C. D. 209.

(*u*) Cp. *Gilbert's Case* (1870), 5 Ch. 559; *South London Fish-market Co.* (1888), 39 C. D. 324; neither of these cases is a clear authority for the exception, which seems extremely doubtful.

(*x*) *North Western Transportation* v. *Beatty* (1887), 12 A. C. 589.

(*y*) *Ex parte Wilson* (1872), 8 Ch. 45.

(*z*) *Bray* v. *Smith* (1908), 124 L. T. Jo. 293.

(*a*) *Peel* v. *London and North Western Railway*, [1907] 1 Ch. 5, overruling *Studdert* v. *Grosvenor* (1886), 33 C. D. 528; and see also *Campbell* v. *Australian Mutual Provident Society* (1908), 77 L. J. (CH.) 116.

(*b*) *Kaye* v. *Croydon Tramways*, [1898] 1 Ch. 358; *Tiessen* v. *Henderson*, [1899] 1 Ch. 861; *Irvine* v. *Union Bank* (1877), 2 A. C. 366; *Boschoek Proprietary* v. *Fuke*, [1906] 1 Ch. 148.

(*c*) *Grant* v. *United Switchback Co.* (1888), 40 C. D. 135. In all these cases the directors can of course vote as members.

(*d*) *Bute's (Marquis) Case*, [1892] 2 Ch. 100; *Denham Co.* (1883), 25 C. D. 752; see also *Wedgwood Coal and Iron Co.* (1882), 47 L. T. 612, where it was held that misfeasance proceedings could not be taken against a director for nonfeasance: *Perry's Case* (1876), 34 L. T. 716.

Sutton (*e*), is *Municipal Freehold Land Co.* v. *Pollington* (*f*), and it may be doubted whether that is very good law on this point.

Further, merely being party to a resolution which proposes to misapply the assets of the company in the future will not, if it cannot be construed into a direction to pay away the assets, be sufficient (*g*), for if it must be shown that the director whom it is sought to make liable has been a party to some act which may be said to be the *causa causans* of the loss the company has suffered (*h*).

But the director will be liable if he has been a party to a resolution which has directed the misapplication of the company's assets, always supposing he has full knowledge of the material facts (*i*), or if with full knowledge of such facts he has signed a cheque for wrongfully paying away the company's moneys (*k*), or if he has signed a cheque without any inquiry and the company has suffered loss thereby (*l*), unless, indeed, he has paid it by the direction of some committee or person to whom the directors have properly left the question of certain expenditure, and is not aware of the fact that they propose to misapply the money (*m*).

It would seem, however, that a director will not be liable for a resolution of the Board to which he has not been a party merely because he signs the minutes at the succeeding meeting (*n*), though it may be otherwise if he makes a speech to the shareholders in which he represents himself as having been a party to or having considered and approved of the previous resolution (*o*). Directors who have been parties to the misapplication of the company's moneys may, at all events where there has been no fraud, recover contribution

(*e*) (1742), 2 Atk. 400. This was rather dicta than a decision.

(*f*) (1891), 63 L. T. 238.

(*g*) *Cullerne* v. *London and Suburban, etc., Building Society* (1890), 25 Q. B. D. 485; *Young* v. *Naval, Military and Civil Service*, [1905] 1 K. B. 687.

(*h*) *Kingston Cotton Mill* (*No.* 2), [1896] 2 Ch. 279; *Davies' Case* (1890), 45 C. D. 537, is a case where the damage certainly seems to have been rather remote.

(*i*) *Joint Stock Discount Co.* v. *Brown* (1866), 8 Eq. 376; *Ashhurst* v. *Mason* (1875), 20 Eq. 225; cp. *London and South Western Canal*, [1911] 1 Ch. 346.

(*k*) *Young* v. *Naval, Military and Civil Service*, [1905] 1 K. B. 687; *Merchants' Fire Office* v. *Armstrong* (1901), 17 T. L. R. 709.

(*l*) *Marzetti's Case* (1880), 28 W. R. 541; *O'Brien* v. *Mitchelstown Loan Fund*, [1903] 1 Ir. 282; *Ramskill* v. *Edwards* (1885), 31 C. D. 100.

(*m*) *Land Credit Co. of Ireland* v. *Lord Fermoy* (1870), 5 Ch. 763.

(*n*) *Lands Allotment Co.*, [1894] 1 Ch. 616; *Ashhurst* v. *Mason* (1875), 20 Eq. 225, can since this last case not be considered law, so far as concerns the director, who was not present at the original meeting. See *National Bank of Wales*, [1899] 2 Ch. at p. 644; *Burton* v. *Bevan*, [1908] 2 Ch. 340; and perhaps *Jackson* v. *Munster Bank* (1885), 15 L. R. Ir. 356, and *Burt* v. *British Nation Life Assurance* (1859), 4 De G. & J. 158, are also not good law.

(*o*) *Lands Allotment Co.*, [1894] 1 Ch. 616.

from one another (*p*), and the personal representatives of a deceased director will, to the extent that they have assets, be liable to contribute (*q*). Directors will not be fixed with notice of the contents of the company's books (*r*).

In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any) and the member who proposes a person for election or appointment to the office of director or manager must add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them, must, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he will be liable to a fine not exceeding £100, and will also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed will not be affected by the default (*s*).

A limited company, if so authorized by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director.

Upon the confirmation of any such special resolution the provisions of the special resolution will be as valid as if they had been originally contained in the memorandum; and a copy thereof must be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

If a company makes default in complying with these requirements, it will be liable to a fine not exceeding £1 for every copy in respect of which default is made, and every director or manager of the company who knowingly and wilfully authorizes or permits the default will be liable to a similar penalty (*t*).

Except in the case of private companies (*u*), a person is not

(*p*) *Ashhurst* v. *Mason* (1875), 20 Eq. 225; cp. also *Power* v. *O'Connor* (1871), 19 W. R. 933. The third party procedure is available in these cases: *Furness, Withy & Co.*, [1908] 1 Ch. 224.

(*q*) *Ramskill* v. *Edwards* (1885), 31 C. D. 100.

(*r*) *Cartmell's Case* (1874), 9 Ch. 691; *Hallmark's Case* (1878), 9 C. D. 329; *Denham & Co.* (1883), 25 C. D. 752; *Coasters, Ltd.*, [1911] 1 Ch. 86; *Ex parte Cammell*, [1894] 1 Ch. 528, overruling *Ex parte Brown* (1854), 19 Beav. 97.

(*s*) Companies (Consolidation) Act, 1908, s. 60.

(*t*) *Ibid.*, s. 61.

(*u*) This does not apply to companies formed before January 1, 1901, or to companies formed before July 1, 1908, which did

capable of being appointed director of a company by the articles, and may not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in any statement in lieu of prospectus filed by or on behalf of the company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorized in writing—

(i) Signed and filed with the Registrar of Joint Stock Companies a consent in writing to act as such director ; and

(ii) Either signed the memorandum of association for a number of shares not less than his qualification (if any), or signed and filed with the Registrar a contract in writing (*x*) to take from the company and pay (*y*) for his qualification shares (if any).

On the application for registration of the memorandum and articles of a company the applicant must deliver to the Registrar a list of the persons who have consented to be directors of the company (*z*), and if this list contains the name of any person who has not so consented, the applicant will be liable to a fine not exceeding £50.

This section does not apply to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business (*a*).

Without prejudice to the restrictions imposed by these provisions, it is the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

The office of director of a company will be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification ;

not offer their shares to the public.

(*x*) The contract need not necessarily be with the company. The registrar of joint stock companies will accept a simple undertaking signed by the director, and to which there is no other party.

(*y*) The payment need not, it is thought, be in cash. Cp. *Drummond's Case* (1869), 4 Ch. 772.

(*z*) This list must be in Form 43 prescribed by the Board of Trade; see this Form, *ante*, p. 15, and see also p. 11.

(*a*) Companies (Consolidation) Act, 1908, s. 72. The offence can be prosecuted under the Summary Jurisdiction Acts, but in Scotland all prosecutions under the section must be at the instance of the Lord Advocate, or a procurator fiscal as the Lord Advocate directs: *ibid.*, s. 276.

and a person vacating office under this section will be incapable of being reappointed director of the company until he has obtained his qualification.

An unqualified person acting as director after the expiration of the period of two months or the shorter time (if any) mentioned in the articles will be liable to a fine not exceeding £5 for every day between the time when he vacates his office under the section and the last day when it is proved he acted as director (*b*).

Every company must keep at its registered office a register containing the names and the addresses and occupations of its directors or managers, and must send to the registrar of joint stock companies a copy thereof, and from time to time notify him of any change among its directors or managers (*c*). Such list should be on Form g (*d*), issued by Somerset House (cost 2*d*.). The form should be signed by the manager or secretary of the company. A 5*s*. registration fee stamp must be impressed.

FORM OF CONSENT TO BE SIGNED AND FILED WITH THE REGISTRAR OF JOINT STOCK COMPANIES BY PERSONS APPOINTED BY THE ARTICLES AND BY PERSONS NAMED AS DIRECTORS OR PROPOSED DIRECTORS IN A STATEMENT IN LIEU OF A PROSPECTUS OR IN A PROSPECTUS ISSUED BY OR ON BEHALF OF A COMPANY BEFORE THE EXPIRATION OF ONE YEAR AFTER THE COMPANY IS ENTITLED TO COMMENCE BUSINESS (*e*).

No. of Certificate . Form No. 42.

COMPANIES (CONSOLIDATION) ACT, 1908.

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

Consent to act as Director of the ______________________

(*b*) Companies (Consolidation) Act, 1908, s. 73. The offence can be prosecuted under the Summary Jurisdiction Acts, but in Scotland prosecutions must be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate directs: *ibid*, s. 276.

(*c*) *Ibid*., s. 75. The penalty for default is £5 for every day during which the default continues for the company, and a like penalty for every director or manager who knowingly and wilfully authorizes or permits such default.

(*d*) A complete list of existing directors must be given. The form contains a column headed changes, a note of the changes since the last list was filed should be made in such column, *e.g.* by placing against a new director's name the words "in place of ——" and, by placing against any former director's name the words, "dead," "resigned," or, as the case may be.

(*e*) Form 42 prescribed by order of the Board of Trade of March 29, 1909.

____Limited,

to be signed and filed pursuant to s. 72 (1) (*i*).

Presented for Filing

by____

To the Registrar of Joint Stock Companies :—

*   , the undersigned, hereby testify † consent to act as director of the______________________________

____Limited,

pursuant to s. 72 (1) (i) of the Companies (Consolidation) Act, 1908.

* Here insert "I" or "We."

† Here insert "my" or "our."

Signature.‡	Address.	Description.

‡ If a director signs by "his agent authorized in writing," the authority must be produced and a copy filed.

Dated this   of   19   .

Section 72 (3) of the Companies (Consolidation) Act, 1908, provides that :—

"This section shall not apply to a private Company nor to a prospectus issued by or on behalf of a Company after the expiration of one year from the date at which the Company is entitled to commence business."

If the qualification is increased while a person is serving his term as director, he will not vacate his office or incur the penalty imposed by section 73 if he fails to increase his holding of shares so as to obtain the increased qualification (*f*).

Where, as is usual, the articles require a director to hold qualification shares, much difficulty has arisen as to how far a person who acts as director without acquiring his qualification becomes a member. The articles themselves do not constitute a contract between the director and the company (*g*), but they give the company power to employ directors on certain terms, and a person who acts as director will, at all events in the absence of evidence to the contrary, be taken to have agreed to act on those terms and no other terms (*h*).

(*f*) *Molineaux* v. *London, Birmingham Insurance Co.*, [1902] 2 K. B. 589.

(*g*) *Eley* v. *Positive Government, etc., Co.* (1876), L. R. 1 Ex. Div. 20, 88.

(*h*) *Salton* v. *New Beeston*, [1899] 1 Ch. 775 ; *Swabey* v. *Port Darwin* (1889), 1 Meg. 385.

There remains the difficulty that the articles usually do not require the director to take his shares from the company; it will be enough if he acquires them in some other way, *e.g.* by purchasing them in the market (*i*).

Putting aside the cases which have been decided under special Acts of Parliament (*k*), the cases on this point seem to group themselves under five headings.

(1) There are the cases where the articles are held not to apply to the directors in question at all, *e.g.* where such directors are original directors, and the articles in question only apply to future directors. *Lord Claude Hamilton's Case* (*l*), *Stock's Case* (*m*), and *Forbes' Case* (*n*) are examples of this class of case. In such cases there can be no question of liability.

(2) There are the cases where the holding of a certain number of shares is a condition precedent to a person becoming a director. In such cases if a person is elected who does not hold the requisite shares, he will not be liable as a member, for he never becomes a director (*o*); and the fact that his name is entered on the company's register of members will make no difference (*p*).

(3) There are the cases where the articles simply provide that directors must hold a certain number of qualification shares. In such cases a director no doubt owes a duty to the company to acquire his qualification shares, and impliedly authorizes the company to enter his name in the register in respect of such shares (*q*); but if nothing beyond the fact of his accepting the office of a director or accepting such office and acting in it, takes place, there will be no liability (*r*). There are one or two cases which seem to form exceptions to this rule. First of all, there is *Stephenson's Case* (*s*). It is stated in Buckley (*t*) that this case must be wrongly reported; it is certainly quite incomprehensible. Then comes *Currie's Case* (*u*). In that

(*i*) Cp. *Brown's Case* (1874), 9 Ch. 102.

(*k*) *Portal* v. *Emmens* (1876), 1 C. P. D. 201, 664; *Forbes' Case* (1875), 19 Eq. 353; *Kincaid's Case* (1870), 11 Eq. 192.

(*l*) (1873), 8 Ch. 548.

(*m*) (1864), 4 De G. J. & S. 426.

(*n*) (1873), 8 Ch. 768; cp. also *Ex parte Cotterell's Case* (1863), 32 L. J. (CH.) 66.

(*o*) *Jenner's Case* (1877), 7 C. D. 132; *Hamley's Case* (1877), 5 C. D. 705.

(*p*) *Barber's Case* (1877), 5 C. D. 963.

(*q*) After allowing a reasonable time for the director to acquire his qualification shares.

(*r*) *Wheal Buller Consols* (1888), 38 C. D. 42; *Hutchinson's*, [1895] 1 Ch. 226; *Brown's Case* (1874), 9 Ch. 102; *Abercorn's Case* (1862), 4 De G. F. & J. 78; *Ballina, etc., Co.* (1888), 21 L. R. Ir. 497. The first two cases seem to dissipate any doubt thrown on this proposition by *Hewitt's* and *Brett's Cases* (1883), 25 C. D. 283, or *Karuth's Case* (1875), 20 Eq. 506; *Bread Supply Association* (1893), 62 L. J. (CH.) 376, is not, it is thought, law.

(*s*) (1876), 45 L. J. (CH.) 488.

(*t*) 9th Ed., p. 53.

(*u*) (1863), 32 L. J. (CH.) 421; 3 De G. J. & S. 367.

case subscribers to the memorandum who had failed to appoint directors, which they were entitled, and, it was held, were bound to do under the articles, were held liable. In this case the subscribers had signed an agreement binding them to take the shares, though this agreement was entered into before the incorporation of the company. Sir George Jessel (*x*) explains the case on this ground, but it is not an easy case to understand, and would very probably not be followed. *Purcell's Case* (*y*) has been explained (*z*) on the ground that there was a contract by letter to take and allot the shares. On the other hand, where there is an application for shares and the company has failed to allot them (*a*) and has not notified the director that his application is acceded to (*b*), there will be no contract. Directors have also been held liable where there has been an allotment by a share committee, but no entry in the register (*c*), and also where there has been only an entry in the ledger (*d*). *Green's Case* (*e*) and *Austin's Case* (*f*) seem to be cases where it was held that the persons sought to be made liable were not in fact directors, and in *Shaw's Case* (*g*) a person who was not validly appointed a director was held not liable for shares he had applied for to qualify him.

(4) Where there is a similar article to that in the foregoing class of cases, but the company have after the lapse of a reasonable time exercised their right to put a director on the register, there the director will practically always be liable. The rule will hold even where the directors have authorized an entry in the register, which has been made prior to the resignation of the director, after his resignation (*h*); it will also hold where the director himself subsequently to registration acquired sufficient shares (*i*). Where directors are allowed to act for a certain specified period before acquiring their qualification shares, such period will be the

(*x*) *Karuth's Case* (1875), 20 Eq. 506.

(*y*) (1880), 29 W. R. 170.

(*z*) *Per* KAY, J., in *Hewitt's* and *Brett's Cases* (1883), 25 C. D. 283.

(*a*) *Chapman's Case* (1866), 2 Eq. 567; *Medical Attendance, etc., Co.*; *Onslow's Case* (1887), 3 T. L. R. 551; see also *Carmichael and Hewitt's Case* (1882), 46 L. T. 253, where the company had no shares to allot. These cases amount to a refusal to allot; see also *Youde's Bill Posting Co.* (1902), 18 T. L. R. 731.

(*b*) *Tothill's Case* (1865), 1 Ch. 85; see *Levita's Case* (1867), 3 Ch. 36.

(*c*) *Harward's Case* (1871), 13 Eq. 30.

(*d*) *Esparto Trading Co.* (1879), 12 C. D. 191; this case followed *Portal* v. *Emmens* (1876), 1 C. P. D. 201, 664, a case which as already stated depended entirely on the special statute there in question; it is therefore a somewhat doubtful authority.

(*e*) (1874), 18 Eq. 428.

(*f*) (1866), 2 Eq. 435.

(*g*) (1876), 34 L. T. 715.

(*h*) *Molineaux* v. *London, Birmingham Insurance*, [1902] 2 K. B. 596.

(*i*) *Lord Inchiquin's Case*, [1891] 3 Ch. 28. In this case the director had allowed more than a reasonable time to elapse.

measure of what is a reasonable time (*k*), though possibly the director will not be liable if he only intends to act and does not act after the period expires (*l*). In other cases a reasonable time will be held to have elapsed when the director does any important act as a director (*m*). Thus attending a board meeting was in one case held to be sufficient (*n*), but apparently acts done while a company is merely in an inchoate condition, *e.g.* before it has gone to allotment, will not be sufficient to entitle the board to put a director's name on the register (*o*). But even where a reasonable time has elapsed, if the director resigns before his name is on the register, and the company sends him an application form for his qualification shares, which he returns unsigned, he will not be a contributory if his name is subsequently placed on the register (*p*). In one case where a person had applied for shares of a certain class in the mistaken belief that they would qualify him, he was held liable not only for such shares, but also for his qualification shares, his name being on the register for both (*q*). Merely being on the register will not make a director a member where he has not applied for shares and there is no question of qualification shares (*r*).

(5) Where there is an article providing that if directors do not obtain their qualification shares within a certain time they shall be deemed to have agreed to take the shares from the company (*rr*), there persons who have accepted a directorship will be liable (*s*), even though they have not acted (*t*), unless perhaps if they have resigned before the prescribed period has elapsed (*u*). But they will not be contributories if they have applied within the period and the directors have refused to allot, or if before the end of the period the company, though not in actual winding-up, has ceased to have an active existence (*x*).

It would seem that directors who have been placed on the register

(*k*) Cp. *Hutchinson's Case*, [1895] 1 Ch. 226.

(*l*) *Ex parte Cammell*, [1894] 1 Ch. 528; affirmed on other grounds, [1894] 2 Ch. 392.

(*m*) *Molineaux* v. *London, Birmingham Insurance*, [1902] 2 K. B. 596.

(*n*) *Miller's Case* (1876), 3 C. D. 661; see also (1877), 5 C. D. 70, where the decision of the Master of the Rolls was affirmed.

(*o*) *Hewitt and Brett's Cases* (1883), 25 C. D. 283; cp. also *Karuth's Case* (1875), 20 Eq. 506.

(*p*) *Ex parte Cammell*, [1894] 2 Ch. 392. This seems to be a case of an agreement revoking the authority of the company; see also *International Cable Co.* (1892), 66 L. T. 253, where it was held that the company or even its directors if they had wide powers could, before the 1900 Act, extend the time for taking qualification shares.

(*q*) *Fowler's Case* (1872), 14 Eq. 316, doubted in *Duke's Case* (1876), 1 C. D. 620.

(*r*) *Hallmark's Case* (1878), 9 C. D. 329.

(*rr*) The Stock Exchange authorities do not approve of such an article; see *supra*, p. 89.

(*s*) *Isaac's Case*, [1892] 2 Ch. 158.

(*t*) *Hercynia Copper Co.*, [1894] 2 Ch. 403.

(*u*) *Salisbury-Jones and Dale's Case*, [1894] 3 Ch. 356; this case turned on the construction of the article there in question.

(*x*) *Youde's Bill Posting Co.* (1902), 18 T. L. R. 731; this company was

as the holders of fully paid shares cannot be treated as holders of unpaid shares even though they have not paid for the shares themselves (*y*), except in cases where the shares have in fact not been paid for at all and the directors in question are aware of the fact (*z*). In such cases, however, the directors may and will often be liable to pay the company the true value of the shares on the footing that they have committed a breach of trust in accepting a present of their qualification shares (*a*); but directors will not be liable in any sort of misfeasance proceedings for not taking their qualification shares (*b*).

The articles not infrequently provide that a director must hold his qualification shares in his own right. This does not mean that he must necessarily be beneficially entitled to them (*c*), but it does mean that he must hold them in such a way that the company can safely deal with him in respect of them, and a director will not for this purpose hold shares in his own right if he is a bankrupt and the company has notice of the fact (*d*), or if he is entered on the register of the company as holding the shares as liquidator (*e*). Sometimes the articles contain a provision that the shares of directors or other officers of a company, shall on their ceasing to hold their office, be forfeited or surrendered to the company. Such a provision is, in the case of a limited company, quite bad—and directors who have taken shares will be liable to be put on the list of contributories (*f*). Shares held by a director jointly with others will satisfy a qualification clause at all events where it does not require the director to hold the shares in his own right (*g*).

formed before 1901, and so had not to obtain a certificate entitling it to commence business.

(*y*) *Carling's Case* (1876), 1 C. D. 115; cp. also *Brown's Case* (1874), 9 Ch. 102; *Eastwick's Case* (1876), 45 L. J. (CH.) 225; *Disderi & Co.* (1871), 11 Eq. 242; and *Aspinall's Case* (1877), 36 L. T. 362.

(*z*) Cp. *Leeke's Case* (1871), 6 Ch. 469; in *Karuth's Case* (1875), 20 Eq. 506, JESSEL, M.R., said that acting after notice could alone support this case after *Brown's Case* (1874), 9 Ch. 902.

(*a*) Cp. *Re Ruvigne's Case* (1877), 5 C. D. 306; *Pearson's Case* (1877), 4 C. D. 222; *London and South Western Canal*, [1911] 1 Ch. 346, *supra*, p. 339.

(*b*) *Coventry's* and *Dixon's Cases* (1880), 14 C. D. 660.

(*c*) *Pulbrook* v. *Richmond Consolidated Mining Co.* (1878), 9 C. D. 610. In *Bainbridge* v. *Smith* (1889), 41 C. D. 462, COTTON, L.J., disagreed with this view, and LINDLEY, L.J., only followed it because he thought it desirable not to disturb a decision of some years' standing. It has since been followed in *Cooper* v. *Griffin*, [1892] 1 Q. B. 740; and *Howard* v. *Sadler*, [1893] 1 Q. B. 1.

(*d*) *Sutton* v. *English and Colonel Produce Co.*, [1902] 2 Ch. 502.

(*e*) *Boschoek Proprietary* v. *Fuke*, [1906] 1 Ch. 148.

(*f*) *Walker and Hacking* (1887), 57 L. T. 763; it would seem clear that *Miller's Case* (1877), 5 C. D. 70, is not good law on this point since *Trevor* v. *Whitworth* (1887), 12 A. C. 409.

(*g*) *Dunster's Case*, [1894] 3 Ch. 473; *Grundy* v. *Briggs*, [1910] 1 Ch. 444.

The articles also provide for the period during which directors are to hold office and for the election of fresh directors—sometimes also they contain provisions for removing directors before the expiration of their term (*gg*)—if there is no such provision, the company cannot remove a director, unless it first alters its articles so as to take power to do so, and then after the confirmatory resolution for the alteration has been passed, it may remove a director in the manner prescribed by its altered articles (*h*). It has, however, been held that, though a company cannot remove a director, the court will not compel it to employ a director against the wish of the majority of its members (*i*). These cases depend on the principle that the court will not give specific performance of a contract of service. They are, however, both cases of orders made upon interlocutory motions, where of course the object would have been rather to keep matters *in statu quo*, than to finally decide the rights of the parties, and *Harben* v. *Phillips* (*k*) is, to say the least of it, difficult to reconcile with the recent decision of the Court of Appeal and House of Lords *in Salmon* v. *Quin and Axtens* (*l*), which decides that the company cannot deprive directors of the powers conferred on them by its articles of association unless it changes its articles—because their position is that of managing partners and not that of mere agents of the company. This case goes further than its predecessors (*m*), because the court interposed to protect the rights of the directors, in effect giving them specific performance of a contract which was only to be found in the articles.

It has also been held (*n*) that a director cannot, even where directors have very wide powers, retire without tendering his resignation to the company as a whole—though it seems to have been admitted that the company could not refuse to accept the

(*gg*) See *supra*, p. 89, for Stock Exchange requirements on this point.

(*h*) *Imperial Hydropathic Hotel Co.* v. *Hampson* (1882), 23 C. D. 1; *Hattersley* v. *Lord Shelburne* (1862), 31 L. J. (CH.) 873, was a case under the Companies Clauses Act, 1845, and s. 91 of that Act empowers a company to remove its directors; *Isle of Wight Railway Co.* v. *Tahourdin* (1883), 25 C. D. 320. See *post*, p. 357, as to cases where a director has misconducted himself.

(*i*) *Harben* v. *Phillips* (1883), 23 C. D. 14 (the case of ordinary directors); *Bainbridge* v. *Smith* (1889), 41 C. D. 462 (the case of a managing director).

(*k*) (1883), 23 C. D. 14.

(*l*) [1909] 1 Ch. 311; [1909] A. C. 442, following dicta contained in *Gramophone and Typewriter Co.* v. *Stanley*, [1908] 2 K. B. 89.

(*m*) Cp. *Automatic Self-cleansing, etc., Co.* v. *Cunningham*, [1906] 2 Ch. 34.

(*n*) *Municipal Freehold Land Co.* v. *Pollington* (1890), 63 L. T. 238; 59 L. J. (CH.) 734; see, however, the dicta in *Glossop* v. *Glossop*, [1907] 2 Ch. 370; and in *Transport, Ltd.* v. *Schomberg* (1905). 21 T. L. R. 304; and *Mosely* v. *Koffyfontein Mines* (1910), 79 L. J. (CH.) 647, *per* EVE, J.; and see also *Maitland's Case* (1853), 4 De G. M. & G. 769, which was, however, a case of a man resigning from a committee of directors.

resignation. The result of *Salmon* v. *Quin and Axtens* (o) is, it is submitted, that a company cannot refuse to employ its directors or any of them. The question remains, Do these remarks apply to the office of a managing director? There seems to be no doubt that a man may cease to be managing director, while retaining his post on the board (p), and as the powers of a managing director are very rarely defined in the articles, it being usually left to the directors to delegate to him such of their powers as they see fit—it would seem that it would be very difficult for a managing director to make out any sort of a contract under the articles conferring on him the powers of a managing partner—and if this is so it would seem that the company could, as a rule, decline to employ him as managing director, because his contract would usually be a mere contract of service and in no way incorporated in or part of the constitution of the company (q).

In other words, a company by its articles confers certain specific powers on its directors (r), and it is beyond its powers to take any of those powers from its directors without first altering its articles. The articles of a company usually confer no specific powers on its managing director, and it, or rather usually its directors, can therefore decline to employ its managing director, for that is not in any sense beyond the powers of the company. The articles usually provide for the directors retiring by rotation (s) and confer on the company the power of filling up the vacancies so occurring (t); they also provide for the office of a director being vacated in certain events, the directors being usually empowered to fill up casual vacancies (u), but a person appointed by the directors is often only to hold office until the next general meeting of the company, or for such time as the person whose place he takes would have held it (x).

The articles also provide for directors whose offices have not been filled up continuing in such offices, and empower the company to increase or reduce the number of directors (y). They sometimes

(o) [1909] 1 Ch. 311; [1909] A. C. 442.

(p) *Glossop* v. *Glossop*, [1907] 2 Ch. 370.

(q) This view would seem to receive some support from *Horn* v. *Henry Faulder & Co.* (1908), 99 L. T. 524.

(r) Cp. also *Browne* v. *La Trinidad* (1887), 37 C. D. 1, which is another case which is not very easy to reconcile with *Salmon* v. *Quin and Axtens*, [1909] 1 Ch. 311; [1909] A. C. 442.

(s) Table A, Clauses 78 and 79. In case of persons who have held office for the same time, the persons to retire are usually determined by lot; the expressions hould not be "by ballot," as that may mean by secret voting.

(t) Table A, Clause 81.

(u) *Ibid.*, Clause 84. Such a power continues to be exercisable even after a general meeting of the company, if the vacancy still continues; *Munster* v. *Cammell* (1882), 21 C. D. 183; *Bennett Bros.* v. *Lewis* (1904), 20 T. L. R. 1.

(x) Table A, Clause 84. See Stock Exchange requirements on this point, *supra*, pp. 88 and 89.

(y) This would be within the limits assigned by the Articles for the number of directors; and see *Bennett Bros.* v. *Lewis* (1904), 20 T. L. R. 1.

also provide for the directors appointing additional or in some cases, where directors are likely to be frequently abroad, alternate directors.

They should empower the company to remove directors by extraordinary or special resolution (*z*); in such case it would seem that there is no need for the company to give the director any hearing in his own defence other than any hearing he may be entitled to as a member of the company (*a*).

In cases where a director has misconducted himself the company may, it would seem, even apart from any special power, dismiss him, for by his misconduct he has in effect declined to perform his contract, and the company may consequently treat him as having resigned (*b*). Moreover, the same rule holds good where he has misconducted himself in the course of a previous contract with the same company, and the company has only discovered the misconduct subsequently, misconduct will not be considered to have been waived unless the company has actual knowledge of the facts (*c*).

In such cases a director accused of misconduct would, it is thought, be entitled to be heard in his own defence (*d*); but in none of these cases will the Court be astute to see that matters have been conducted exactly as they would have been in a Court of justice (*e*).

The articles usually also provide that the office of a director shall be vacated on the happening of certain events. On the happening of any one of such events, the office will be vacated; there can be no question of the director being entitled to a special hearing (*f*), except possibly that the company may by summoning a meeting to consider his case treat him as a continuing director, and thereby give him a right to a hearing (*g*).

The events on which the office of a director is to be vacated will in all cases include the case of a director failing to obtain his qualification within a period of two months from the date of his appointment (*h*), or within the shorter time allowed by the articles,

(*z*) Table A, Clause 86.

(*a*) Cp. *Dean* v. *Bennett* (1871), 6 Ch. 489; *Hayman* v. *Governors of Rugby School* (1874), 18 Eq. 28. It is not thought that the director removed would be entitled to any notice; but see *African Association* v. *Allen*, [1910] 1 K. B. 396.

(*b*) *Boston Deep Sea Fishing Co.* v. *Ansell* (1888), 39 C. D. 339, and see especially the judgment of BOWEN, L.J., herein, and cp. *Kyshe* v. *Alturas Gold Co.* (1888), 36 W. R. 496.

(*c*) *Federal Supply and Cold Storage* v. *Angehrn* (1911), 80 L. J. (P. C.) 1.

(*d*) Cp. *Andrews* v. *Mitchell*, [1905] A. C. 78.

(*e*) *Inderwick* v. *Snell* (1850), 2 Mac. & G. 216.

(*f*) *Bodega Co.*, [1904] 1 Ch. 276.

(*g*) *Turnbull* v. *West Riding Athletic* (1894), 70 L. T. 92, but it is very doubtful whether this case is good law or consistent with the case cited in the preceding note.

(*h*) Query as to the effect of such an article as existed in *Isaac's Case*, [1892] 2 Ch. 158; *supra*, p. 353,

or of his ceasing to hold such shares after the expiration of such period (*i*). A director cannot be said to cease to hold his qualification shares if he has never had them (*k*); but this would seem to be unimportant now, having regard to the terms of the section. If a director's name is wrongfully taken off the register of members and an order to rectify the register is made, this will date back so as to prevent the office being vacated (*l*). Usually, too, the office will be vacated if a director holds any office of profit under the company other than that of a managing director or manager. Under this heading will, it seems, come the office of paid secretary (*m*), of paid trustee of a debenture trust deed (*n*), but not that of a receiver and manager appointed by the Court with a salary (*o*). A subscriber to the memorandum, who is to be deemed to be a director until directors are appointed, will under such a clause vacate his office of director on accepting a salaried post (*p*). The office of a director will also usually be vacated if he becomes bankrupt or insolvent (*q*), or a lunatic, but if the company chooses to appoint a bankrupt or insolvent that will not prevent his continuing to hold office under such a clause (*r*).

Sometimes, too, the office will be vacated if a director absents himself from board meetings for a certain period. In such case the period will begin to run from the first board meeting he does not attend, and will expire at the first board meeting after the period is over (*s*); but the expression "absents himself" in such an article apparently means something more than is absent. If a man is unavoidably absent (*e.g.* through illness), this will not be enough (*t*), but the office will be vacated under such a clause if the director's absence is merely occasioned by his having received medical advice that it would be better for him not to attend (*u*).

There is almost invariably a more or less stringent clause as to

note (*s*); it is thought that a director would, within the meaning of the section, obtain his qualification even without allotment where there is such an article.

(*i*) Companies (Consolidation) Act, 1908, s. 73.

(*k*) *Salton* v. *New Beeston*, [1899] 1 Ch. 775.

(*l*) *Pulbrook* v. *Richmond Consolidated* (1878), 9 C. D. 610.

(*m*) Cp. *Iron Ship Coating Co.* v. *Blunt* (1868), 3 C. P. 484; *British Asbestos* v. *Boyd*, [1903] 2 Ch. 439.

(*n*) *Astley* v. *New Tivoli*, [1899] 1 Ch. 151.

(*o*) Cp. *South Western of Venezuela (Barquisimeto) Railway*, [1902] 1 Ch. 701.

(*p*) *Eales* v. *Cumberland Black Lead Co.* (1861), 6 H. & N. 481.

(*q*) As to the meaning of the word "insolvent" in such case, see *Sissons and Co.* v. *Sissons* (1885), 54 L. J. 802; *James* v. *Rockwood Colliery Co.* (1912), 106 L. T. 128.

(*r*) *Dawson* v. *African Consolidated Land and Trading Co.*, [1898] 1 Ch. 6.

(*s*) *McConnell's Claim*, [1901] 1 Ch. 728.

(*t*) *Mack's Claim*, [1900] W. N. 114; *McConnell's Claim*, [1901] 1 Ch. 728.

(*u*) *McConnell's Claim*, [1901] 1 Ch. 728.

the office of a director being vacated if he is concerned in or participates in the profits (*x*) of contracts with the company, though such a clause often has a saving to the effect that it shall not apply if he discloses his interest, meaning the exact nature of his interest (*y*), to his co-directors or if he is only interested as a member of another company, in which latter case he will have only to disclose the fact of his membership (*z*). The proviso usually adds that he must not vote in such cases. A breach of such proviso would, however, probably not vacate the office (*a*), but if all the directors present when a contract is entered into are interested the company will not be bound, at all events where the other party knows the facts, even though the contract is adopted without a formal vote being taken (*b*). Apart from a provision in the articles a company cannot delegate the power of appointing directors (*c*).

Directors are usually given wide powers, and a liberal construction will be given to the clause conferring such powers (*d*). It would seem that where the directors are given all the powers of the company the company will, except in cases where the Statute requires that something shall be done by the company as a whole, not be entitled to interfere with the directors in the exercise of their powers (*e*); but where such powers are made subject to the control of the company in general meeting, as is the case under the Companies Clauses Consolidation Act, 1845 (*f*), or subject to regulations made by the company in general meeting (*g*), it will be otherwise.

(*x*) In *Buck* v. *Mallalue*, 27 Beav. 398, a director was held to be entitled to lend money to the company at a high rate of interest.

(*y*) *Imperial Mercantile Credit* v. *Coleman* (1873), L. R. 6 H. L. 189.

(*z*) *Costa Rica Railway Co.* v. *Forwood*, [1901] 1 Ch. 746.

(*a*) Cp. *Imperial Mercantile Credit* v. *Coleman* (1871), 6 Ch. 558, which is probably not affected on this point by the fact that the decision was reversed (1873), L. R. 6 H. L. 189; see *Costa Rica Railway* v. *Forwood*, [1901] 1 Ch. 746.

(*b*) *British America Corporation* (1903), 19 T. L. R. 662. Such a clause will of course not prevent a director exercising his vote on such matters at a general meeting of the Company: *North West Transportation Co.* v. *Beattie* (1887), 12 A. C. 589; *Grant* v. *United Kingdom Switchback Co.* (1888), 40 C. D. 135, and usually a director is expressly allowed to vote on questions of security to be given to him in respect of debts of the company for which he is liable.

(*c*) *James* v. *Eve* (1873), L. R. 6 H. L. 335.

(*d*) *Hampson* v. *Price's Patent Candle Co.* (1876), 24 W. R. 754.

(*e*) *Automatic Self-Cleansing, etc., Co.* v. *Cunningham*, [1906] 2 Ch. 34; *Gramophone and Typewriter* v. *Stanley*, [1908] 2 K. B. 89; *Thomas Logan* v. *Davis* (1886), 104 L. T. 914; *Salmon* v. *Quin and Axtens*, [1909] 1 Ch. 311; [1904] A. C. 442. The difficulty the author feels in understanding this last case, lies in the fact that the power the company was forbidden by the Court to exercise, was by the articles only forbidden to directors, and not to the company.

(*f*) *Isle of Wight Railway Co.* v. *Tahourdin* (1883), 25 C. D. 320.

(*g*) Cp. Table A, Clause 71;

The powers of directors are not suspended by the receipt of a requisition for a general meeting (*h*).

It is usual for the articles to authorize the directors to delegate any of their powers to committees of their number, and such a committee may, where that seems to be the intention of the article, consist of a single director (*i*); and it is also usual for the articles to authorize directors to delegate their powers to a manager or managing director, but it is thought that even under such powers the directors cannot completely resign all right of supervision over the acts of the committee or managing director, as the case may be (*k*).

Directors can, apart from such special powers, only act as a board (*l*), and so, apart from such provisions, no one director is in any sense the agent of or capable of binding the company. Probably, however, where all the directors agree to a particular course, it is not necessary for them to meet (*m*).

Notice must be given to all directors who are within reach of every board meeting, and they cannot waive their right to such notice (*n*); but where directors are abroad with the consent of their co-directors, such consent being necessary under the articles to prevent their office from being vacated, or where they are known to be travelling abroad, but their exact whereabouts is unknown, it will be unnecessary to give them notice (*o*). The notice must be reasonably long, and it would seem that what will be a reasonable length for a notice will be to a considerable extent determined by the practice that has prevailed in the particular company (*p*); but a board meeting summoned on short notice will, if the Court

Marshall's Valve Gear v. *Manning Wardle*, [1909] 1 Ch. 267; in *Quin and Axtens* v. *Salmon*, [1909] A. C. 442, it was suggested that the word "regulations" meant the same as Articles of Association; but surely this cannot be so.

(*h*) *Per* JOYCE, J., *Abbotsford Hotel Co.* v. *Kingham* (1910), 101 L. T. 777 (affirmed on other grounds (1910), 102 L. T. 118).

(*i*) *Taurine Co.* (1883), 25 C. D. 118.

(*k*) *Horn* v. *Henry Faulder & Co.* (1908), 99 L. T. 524; cp. also *Cartmell's Case* (1874), 9 Ch. 691.

(*l*) *D'Arcy* v. *The Tamar, etc., Railway* (1867), L. R. 2 Ex. 158; *Howard's Case* (1866), 1 Ch. 561; *John Morley Building Co.* v. *Barras*, [1891] 2 Ch. 386; but cp. *Collie's Claim* (1871), 12 Eq. 246. Some of the remarks as to directors' meetings in this case can probably not be regarded as law.

(*m*) *Ex parte Kennedy* (1890), 44 C. D. 472; *Hallows* v. *Fernie* (1867), 3 Eq. 520, 3 Ch. 467; it is, however, not unusual to have an article providing for this.

(*n*) *Portuguese Consolidated Copper Co. Steele's Case* (1889), 42 C. D. 160. In this case it was held that notice ought to have been given to a director who was known to be in Ireland.

(*o*) *Halifax Sugar Co.* v. *Francklyn* (1890), 59 L. J. (CH.) 591.

(*p*) Cp. *Browne* v. *La Trinidad* (1887), 37 C. D. 1; *Homer Gold Mines* (1888), 39 C. D. 546; and *John Morley Building Co.* v. *Barras*, [1891] 2 Ch. 386, a case of a meeting of subscribers to the Memorandum of Association.

comes to the conclusion that it was so summoned with a view to excluding certain directors, be bad (*q*), and the Court will always interfere to prevent directors excluding a co-director (*r*). At the same time, the Court will always be slow to interfere with the acts of directors simply because there has been some slight informality or irregularity in the summoning of the meeting unless the objection is taken immediately it comes to the knowledge of the person aggrieved (*s*). As directors are a select body, it is their duty to attend meetings whenever they receive a reasonable notice if they can, and it is therefore not necessary for the notice to state the purpose of a meeting (*t*); but of course the articles may require particulars of the business to be transacted at meetings to be inserted on notices.

Where the articles state that there are to be a certain number of directors, this is apparently directory only (*u*), and the directors may act though their number has fallen below the minimum number, but it is otherwise where, as is usual, the articles provide that the directors are not to be less than a certain number. In such case, if there are not the minimum number of directors, the directors cannot act (*x*), and it is therefore usual for the articles to provide that the continuing directors may act, and the scope of such an article will not be limited to cases where there are more than the minimum number or to allowing continuing directors to act in ordinary business only (*y*). It is usual for the articles either to fix a quorum for directors' meetings, or to allow the directors themselves to do so, and the question arises where there is an article allowing continuing directors to act (*z*) whether such directors can only act where they are sufficient to form a quorum. The better opinion seems to be that under such an article continuing directors can act though

(*q*) *Homer Gold Mines* (1888), 39 C. D. 546.

(*r*) *Pulbrook* v. *Richmond Consolidated* (1878), 9 C. D. 610; *Munster* v. *Cammell* (1882), 21 C. D. 183; *Kyshe* v. *Alturas Gold Co.* (1888), 36 W. R. 496, where the excluded director was accused of taking a present of his qualification shares.

(*s*) *Browne* v. *La Trinidad* (1887), 37 C. D. 1.

(*t*) *La Compagnie de Mayville* v. *Whitley*, [1896] 1 Ch. 788; following *Rex* v. *Pulsford* (1828), 8 B. & C. 350.

(*u*) *Thames Haven Dock Co.* v. *Rose* (1842), 4 Man. & G. 552.

(*x*) *Kirk* v. *Bell* (1851), 16 Q. B. 290; *Faure* v. *Phillipart* (1888), 58 L. T. 525; *British Empire Match Co.* (1888), 59 L. T. 291, and for this distinction see *Bottomley's Case* (1880), 16 C. D. 681, which, however, was apparently not altogether approved on this point in *York Tramways* v. *Willows* (1882), 8 Q. B. D. 685.

(*y*) *Scottish Petroleum* (1883), 23 C. D. 413; *York Tramways* v. *Willows* (1882), 8 Q. B. D. 685; *Owen and Ashworth's Claim*, [1900] 2 Ch. 272, [1901] 1 Ch. 115.

(*z*) An article allowing continuing directors does not apply where there never has been the minimum number of directors: *Sly, Spink, & Co.*, [1911] 2 Ch. 430.

there are too few of them to form a quorum (*a*). The case of *Newhaven Local Board* v. *Newhaven School Board* (*b*) forms the principal difficulty to this view, but that was the case of a local board constituted under Act of Parliament. The board was to consist of nine persons, and no business was to be transacted unless at least one-third of the whole number were present, and it was said that a provision that proceedings were not to be invalidated by vacancies only applied while there was a statutory quorum. It will be seen that this turned on a very definite provision forbidding all business, and the later provision was held not to override it. In the ordinary case it is clear that the article as to the minimum number of directors is overridden, and there does not seem any reason why the articles as to a quorum should not be so also. In the absence of any special provision as to quorum or until a quorum is appointed, a majority of the whole number of directors can act (*c*), but it would not seem any smaller number (*d*). As has been seen, this is the case also with subscribers to the memorandum of association (*e*), and it seems to accord with the older cases (*f*) on meetings, the rule as to directors' meetings being different on this point to the rule as to general meetings, owing to the fact that directors are a select body (*e*).

In ascertaining whether there is or is not a sufficient number of directors present to transact any business, directors who for any reason are not competent to vote will not be counted (*g*), and where more than one director is not competent to vote on a particular resolution, the resolution cannot be split up into a number of resolutions so as to count directors who are not competent to vote on part of it, on the part on which they are competent (*h*). Where directors have the power to fix a quorum and have not expressly done so, apparently the number who usually meet will constitute a quorum (*i*). Unless the articles otherwise provide, every director

(*a*) See *Owen and Ashworth's Claim*, [1900] 2 Ch. 272; [1901] 1 Ch. 115; cp. *York Tramways* v. *Willows* (1882), 8 Q. B. D. 685; *Scottish Petroleum Co.* (1883), 23 C. D. 413. See also *post*, p. 450.

(*b*) (1885) 30 C. D. 350. It was held that under certain other words the acts in question were valid, so the remarks referred to were more or less *obiter dicta*.

(*c*) *York Tramways* v. *Willows* (1882), 8 Q. B. D. 685; the subscribers to the memorandum cannot fix the quorum of directors under a power enabling directors to do so: *ibid.*

(*d*) *Portuguese Consolidated Copper Co., Steele's Case* (1889), 42 C. D. 160, *per* NORTH, J., and see *per* FRY, L.J., in the Court of Appeal, where the other members of the Court expressed no opinion on the point.

(*e*) *London and Southern Counties* (1885), 31 C. D. 223.

(*f*) Cp. *Rex* v. *Varlo* (1775), 1 Cowp. 248; and *Rex* v. *Monday* (1877), 2 Cowp. 530, 538.

(*g*) *Greymouth and Port Elizabeth Railway and Coal Co.*, [1904] 1 Ch. 32, and see also *British America Corporation* (1903), 19 T. L. R. 662.

(*h*) *Young* v. *Naval, Military, and Civil Service*, [1905] 1 K. B. 687.

(*i*) *Lyster's Case* (1869), 4 Eq. 233; *Lyon's Case* (1866), 35 Beav. 646.

will have one vote at a directors' meeting (*k*). Most of the other points with regard to directors' meetings which are usually dealt with in the articles, *e.g.* as to who is to preside, adjournment, casting vote, etc., are, in the absence of such provision, governed by the same rules as in the absence of special provision govern general meetings of a company, and may be more conveniently discussed under that heading. It is thought that any one director may, in the absence of special regulation, summon a meeting of directors (*l*), but if there is a summons to a general meeting, a directors' meeting cannot without a separate summons be held directly after such meeting, unless, of course, all the directors happen to be present (*m*). Where all are present, the meeting may be very informal (*n*). Minutes of all meetings of directors and managers must be entered in books kept for that purpose, and such minutes are evidence of the proceedings if purporting to be signed by the chairman of the meeting or of the succeeding meeting, until the contrary is proved. Every meeting of directors or managers in respect of which minutes have been so made will be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had and all appointments of directors or managers will be deemed valid (*o*). It is thought that the chairman may sign at any time and even after winding-up (*p*). The Act further provides that the Acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification (*q*). It is the defect that has to be discovered after the act, not merely the facts that cause the defect (*r*), nor must the word "qualification" in the section be read in the narrow sense of "holding his qualification shares" (*s*).

(*k*) Cp. *Horbury Bridge Coal, Iron and Waggon Co.* (1879), 11 C. D. 109. If provision is made for a quorum, a majority of that quorum will decide the question; if there is no quorum, a majority of the whole number must actually vote for a resolution: cp. *Rex* v. *Varlo* (1775), 1 Cowp. 248; *Rex* v. *Monday* (1877), 2 Cowp. 530, 538; *Perry* v. *Shipway* (1859), 1 Giff. 1; *Wilkinson* v. *Malin* (1832), 2 Tyr. 544.

(*l*) Cp. *Butt* v. *Fellowes* (1843), 3 Curt. 680; this seems to be the common law rule.

(*m*) *Rex* v. *Mayor of Carlisle* (1733), 1 Str. 385; *Rex* v. *Theodorick* (1807), 8 East, 543; *Kynaston* v. *Mayor, etc., of Shrewsbury* (1737), 2 Str. 1051.

(*n*) *Smith* v. *Paringa*, [1906] 2 Ch. 193.

(*o*) Companies (Consolidation) Act, 1908, s. 71. If no minutes have been made the Court will presume against the company that all business which should have been submitted to the meeting was so submitted: *Lane's Case* (1863), 1 De G. J. & Sm. 504.

(*p*) Cp. *Roney's Case* (1864), 4 De G. J. & S. 426; 33 L. J. (CH.) 731.

(*q*) Companies (Consolidation) Act, 1908, s. 74.

(*r*) *Murray* v. *Bush* (1873), L. R. 6 H. L. 37; *British Asbestos Co.* v. *Boyd*, [1903] 2 Ch. 439.

(*s*) *British Asbestos Co.* v. *Boyd*, [1903] 2 Ch. 439. NORTH, J., in

The effect of this section would seem to be that where a company has allowed persons to act as directors, even though they have not any right to do so, persons dealing with such directors will not be bound to inquire into their authority to act, and the company will be as much bound as though they were validly appointed directors (*t*). Moreover, the effect of the section seems to be even wider than this, for persons who have shares in the company will, at all events where there is the common form of article (*u*) validating the acts of such *de facto* directors (*x*), and probably where there is no such article (*y*), not be entitled to object to any act of such directors, done before the defect is discovered, on the ground of the defect; and it would appear that the company would be entitled to enforce acts done by such directors, even where the other party wishes to evade his obligations on the ground that the directors with whom he dealt were not validly appointed (*z*).

But this section will not protect or validate any act done, after all parties knew of the defect (*a*). *De facto* directors will be liable both criminally (*b*) and civilly (*c*) in the same way as *de jure* directors. Closely allied to this subject, is the question of how far persons dealing with the company are fixed with notice of any limitations there may be on the powers of the directors or director with whom they deal if such directors or director purport to act on behalf of the company. Such persons have notice not merely of the contents of the act, but also of the memorandum, and articles of association of the company, for these are public documents open to the inspection of all (*d*); but if any director or *de facto* director does an act which

Portuguese Consolidated Copper Co., Steele's Case (1889), 42 C. D. 160, seems to have taken a different view.

(*t*) *Mahony* v. *East Holyford* (1875), L. R. 7 H. L. 869; *County Life Assurance Co.* (1870), 5 Ch. 288; *Duck* v. *Tower Galvanizing Co.*, [1901] 2 K. B. 314.

(*u*) Cp. Table A, Clause 94.

(*x*) *Dawson* v. *African Consolidated Land Co.*, [1898] 1 Ch. 6; *British Asbestos* v. *Boyd*, [1903] 2 Ch. 439; *Howbeach* v. *Teague* (1860), 5 H. & N. 151, cannot having regard to these authorities be any longer regarded as an authority to the contrary; the point was not argued and perhaps did not arise in *Garden Gully* v. *M'Lister* (1875), 1 A. C. 39.

(*y*) *Briton Medical and General Life Assurance* v. *Jones* (1889), 61 L. T. 384; *Staffordshire Gas and Coke Co., Ex parte Nicholson* (1892), 66 L. T. 413.

(*z*) Cp. *York Tramways* v. *Willows* (1882), 8 Q. B. D. 685; *Briton Medical and General Life Assurance* v. *Jones* (1889), 61 L. T. 384, would also seem to support this view.

(*a*) *Bridport Old Brewery* (1867), 2 Ch. 191; *Tyne Mutual* v. *Brown* (1896), 74 L. T. 283; *Staffordshire Gas and Coke Co., Ex parte Nicholson* (1891), 63 L. T. 413.

(*b*) *Gibson* v. *Barton* (1875), L. R. 10 Q. B. 329; *Rex* v. *Lawson*, [1905] 1 K. B. 541.

(*c*) *Coventry's and Dixon's Case* (1880), 14 C. D. 660; *New Par Consols*, [1898] 1 Q. B. 573.

(*d*) *Bargate* v. *Shortridge* (1885), 5 H. L. C. 297; *County of Gloucester Bank* v. *Rudry Merthyr Steam, etc., Co.*, [1895] 1 Ch. 629.

under the provisions of these documents he might have had authority to do, there the company will as against a person dealing with it be bound, even though the director or *de facto* director had not in fact authority, unless, of course, such person knew of the lack of authority.

Thus where directors have only power to borrow money with the consent of the company in general meeting, a lender may assume that such consent has been obtained (*e*), and he may also assume that a sufficient quorum of the board authorized the seal of the company being affixed to the instrument which gives him a charge (*f*), and where the continuing directors may act that there are sufficient of them to give a charge (*g*). Again, where the directors have power to appoint a committee consisting of one or more of their number (*h*), or a managing director, and to delegate their powers to such committee or managing director, a person may deal with any single director (*i*), or as the case may be with a managing director (*k*), as freely as he can with the board itself.

Where servants of the company have ordered goods and the company has taken delivery without protest, it cannot subsequently repudiate the purchase (*l*). These cases will, however, not extend to protect a person who has been injured by some act of a person who could have no express authority under the articles of the company to do the act, and from his position has no implied authority to do it (*m*).

(*e*) *Royal British Bank* v. *Turquand* (1856), 5 E. & B. 248 (1856), 6 E. & B. 327; *Fountaine* v. *Carmarthen Railway Co.* (1868), 5 Eq. 316. The distinction between these cases and *Irvine* v. *Union Bank of Australia* (1877), 2 A. C. 366, seems extremely fine; probably neither *Pierce* v. *Jersey Waterworks* (1870), L. R. 5 Ex. 209, nor *Premier Industrial Bank* v. *Carlton Manufacturing*, [1909] 1 K. B. 106, is good law.

(*f*) *County of Gloucester Bank* v. *Rudry Merthyr Steam, etc., Co.*, [1895] 1 Ch. 629; cp. also *Davies* v. *R. Bolton and Co.*, [1894] 3 Ch. 678.

(*g*) *Owen and Ashworth's Claim*, [1900] 2 Ch. 272, [1901] 1 Ch. 115. Nor was the debenture in *Whitworth's Claim*, which is reported at the same places, invalid in the hands of a director who had taken it from a *bonâ fide* purchaser for value from the company.

(*h*) On the death of one member of a committee originally consisting of more than one it would appear that the powers of the committee cease: *Liverpool Household Stores Association* (1890), 59 L. J. (CH.) 616.

(*i*) *Totterdell* v. *Fareham Blue Brick and Tile Co.* (1866), L. R. 1 C. P. 674; *Scottish Petroleum Co.*, *Maclagan's Case* (1882), 51 L. J. (CH.) 841; *Duck* v. *Tower Galvanizing Co.*, [1901] 2 K. B. 314 (a *de facto* director).

(*k*) *Biggerstaff* v. *Rowatt's Wharf*, [1896] 2 Ch. 93; *Smith* v. *Hull Glass* (1849), 8 C. B. 668 (1852), 11 C. B. 897; see also *Barned's Banking* (1867), 3 Ch. 105, as to the authority of a managing director to affix the company's seal; and cp. *Cunningham & Co.* (1887), 36 C. D. 532.

(*l*) *Smith* v. *Hull Glass Co.* (1849), 8 C. B. 668 (1852), 11 C. B. 897.

(*m*) *Ruben* v. *Great Fingall*, [1904] 2 K. B. 712, [1906] A. C. 439; *George Whitechurch* v. *Cavanagh*, [1902] A. C. 117.

Where directors have acted in such a way as to bind the company, in spite of the fact that they had no actual authority to do so (*n*), the person with whom the directors have dealt may possibly in some cases repudiate the dealing, unless the company has ratified it, before such repudiation (*o*).

With regard to contracts made by directors on behalf of a company, if such contracts are within the powers of the directors, the directors will usually not be liable on them (*p*) unless by their conduct during the negotiations they have put themselves into the position of principals, acting, as it were, as trustees and not as agents for the company (*q*); except in such cases, the person contracting with the company cannot set up any claim founded on contract against the directors personally or claim that they are trustees for him (*r*). Directors can, of course, only pledge the credit of the company itself, and not that of its members, and so even though they carry on business on behalf of the company in a foreign country, by the law of which every member is liable for the acts of the company, members will in no case be personally liable in the courts of this country for the debts of the company (*s*). But where directors have acted beyond their powers, there the act is their act, and not the act of the company, and they will be personally liable (*t*). In such cases it would seem from the cases cited that the person dealing with the company will not as against the directors be fixed with implied notice of the contents of the articles (*u*).

(*n*) *Bottomley's Case* (1880), 16 C. D. 681; *Portuguese Consolidated Copper, Steele's Case* (1889), 42 C. D. 160; but see *supra*, p. 261 and pp. 363 and 364, as to the effect of s. 74 of the Act, and the usual article validating the acts of *de facto* directors.

(*o*) *Portuguese Consolidated Copper, Badman's* and *Bosanquet's Cases* (1890), 45 C. D. 16; *Austin's Case* (1871), 24 L. T. 932; *Bolton Partners* v. *Lambert* (1889), 41 C. D. 295; but cp. *Fleming and Bank of New Zealand*, [1900] A. C. 577; *Gloucester Municipal Election Petition*, [1901] 1 K. B. 683, on these cases.

(*p*) *Elkington* v. *Hurter*, [1892] 2 Ch. 452; *Ferguson* v. *Wilson* (1866), 2 Ch. 77; *Beattie* v. *Lord Ebury* (1874), L. R. 7 H. L. 102; cp. *McGowan* v. *Dyer* (1873), L. R. 8 Q. B. 141.

(*q*) *Kay* v. *Johnson* (1864), 2 H. & M. 118.

(*r*) *Wilson* v. *Lord Bury* (1880), 5 Q. B. D. 518.

(*s*) *Risdon Iron, etc., Works* v *Furness*, [1906] 1 K. B. 49.

(*t*) *Chapleo* v. *Brunswick* (1881), 6 Q. B. D. 696; *West London Commercial Bank* v. *Kitson* (1884), 13 Q. B. D. 360; *Cherry* v. *Colonial Bank of Australia* (1869), L. R. 3 P. C. 24; *West London Commercial Bank* v. *Kitson* (1884), 13 Q. B. D. 360; *Richardson* v. *Williamson* (1871), L. R. 6 Q. B. 276; *Firbanks Executors* v. *Humphreys* (1886), 18 Q. B. D. 54; and cp. *McCollin* v. *Gilpin* (1880), 5 Q. B. D. 390 (1881), 6 Q. B. D. 516; *Rashdall* v. *Ford* (1866), 2 Eq. 750.

(*u*) These cases depend on an implied contract by the agent that he has authority: *Collen* v. *Wright* (1857), 8 E. & B. 647. Such contract may of course be negatived, as where the agent tells the other party he does not know if he has authority: *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, or the other party

The question of how far a company is fixed with notice by the fact that its directors or one of them has knowledge is dealt with under debentures, the case where it usually occurs (*uu*).

With regard to the question of torts committed by directors in the course of their employment as directors, no doubt the director himself will usually be liable to the person wronged (*x*), but the company itself will also be liable, except in cases where the tort was committed by the director solely for his own purposes, and not with a view to forwarding the interests of the company (*y*), and in spite of contrary views which were at one time held (*z*), it would seem that it is now well settled that negligence, fraud, and malice are exactly on the same footing as other torts, and consequently that a company may be liable for them, although it has reaped no advantage from them (*a*).

At the same time where the directors of a company have conspired with other persons to commit a fraud the company can recover moneys paid by its directors to such other persons to further the fraud (*b*).

A company will not be liable where a director or some other person has committed frauds in the course of transactions, which are quite beyond the scope of any apparent authority he had (*c*).

relies entirely on other facts: *Oliver* v. *Bank of England*, [1902] 1 Ch. 610, at p. 630. Or where the terms of the agent's authority are fully known by the other party, but he mistakes the legal effect of them: *Beattie* v. *Lord Ebury* (1872), 7 Ch. 777 (1874), L. R. 7 H. L. 102.

(*uu*) See *post*, pp. 448 and 449.

(*x*) *Cullen* v. *Thompson's Trustees* (1862), 4 Macq. 424; *Betts* v. *De Vitre* (1868), 3 Ch. 429, 442; and see as to signatories to the memorandum registering a company with a fraudulent name: *Société Panhard et Levassor* v. *Panhard Levasser Co.*, [1901] 2 Ch. 513.

(*y*) *British Mutual Banking Co.* v. *Charnwood Forest Railway* (1887), 18 Q. B. D. 714; *Ruben* v. *Great Fingall*, [1906] A. C. 439.

(*z*) Cp. *per* Lord BRAMWELL, *Abrath* v. *N. E. Railway* (1886), 11 A. C. 247; in *Kettlewell* v. *Refuge*, [1908] 1 K. B. 545, BUCKLEY, L.J., seemed rather to cling to this doctrine: see also *Western Bank of Scotland* v. *Addie* (1867), L. R. 1 H. L. Sc. 145.

(*a*) *Barwick* v. *Joint Stock Bank* (1867), L. R. 2 Ex. 259; *Houldsworth* v. *City of Glasgow Bank* (1880), 5 A. C. 317; *S. Pearson and Son* v. *Dublin Corporation*, [1907] A. C. 351; *Anglo-American Oil* v. *Manning*, [1908] 1 K. B. 536; *Citizens Life Assurance* v. *Brown*, [1904] A. C. 423; *MacKay* v. *Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 394; *Nevill* v. *Fine Art, etc., Co.*, [1897] A. C. 68; *Fitzsimons* v. *Duncan Kemp & Co.*, [1908] 2 Ir. 483; *Limpus* v. *London General Omnibus* (1862), 1 H. & C. 526; and as to whether a corporation can be guilty of maintenance: *Metropolitan Bank* v. *Pooley* (1885), 10 A. C. 210, 218; *British Cash and Parcel* v. *Lamson Store Service*, [1908] 1 K. B. 1006.

(*b*) *British and American Telegraph Co.* v. *Albion Bank* (1872), L. R. 7 Ex. 119.

(*c*) *Ruben* v. *Great Fingall*, [1904] 2 K. B. 712, [1906] A. C. 439; *Bank of Ireland* v. *Trustees of Evans' Charities* (1855), 5 H. L. C. 389; *Merchants of Staple* v. *Bank of England* (1887), 21 Q. B. D. 160; *George Whitechurch* v. *Cavanagh*, [1902] A. C. 117. If *Shaw* v. *Port Philip* (1884), 13 Q. B. D. 103, can be

The question of when directors will be liable for fraud has been fully dealt with under the heading of prospectus, but it may be said that apart from prospectus cases they will not be liable to outside persons for the acts of their co-directors, unless they have taken an active part in them (*d*). Directors are entitled to all expenses incurred by them in the actual execution of their duties as directors (*e*).

In the absence of special provision directors are not entitled to any fees for their services (*f*), and where there is a provision in the articles that does not in itself form a contract with the directors, but from such provision and the fact of the directors acting arises a presumption that they have agreed to serve on those terms and no other terms (*g*). Where the articles provide for a lump sum per annum to be paid whether to each director (*h*), or to the board (*i*), nothing will be payable for any fraction of a year during which the directors or any director has served. But it will be otherwise where the remuneration is to be " at the rate of " so much per annum (*k*). Where there is a lump sum to be divided among the directors as they may decide, the determination of the directors, as to the amount to be paid to any director, is a condition precedent to any action being brought (*l*) : though in one case where the board were entitled to remuneration to be set apart at such rate as the directors saw fit, it was held that in the absence of any sum being set apart for any director, the directors were entitled to have the remuneration distributed equally among them (*m*) : a director will not be entitled to have an order made against his co-directors directing them to decide on the distribution of the fund (*n*) ; where the directors are to decide

supported after *Ruben* v. *Great Fingall*, *supra*, it must be on the ground that the secretary's authority to affix the seal was admitted.

(*d*) *Cargill* v. *Bower* (1878), 10 C. D. 502.

(*e*) *Smith* v. *Duke of Manchester* (1883), 24 C. D. 611 ; but cp., *Young* v. *Naval, Military, and Civil Service*, [1905] 1 K. B. 687 ; *Marmor* v. *Alexander*, [1908] S. C. 78, cited *supra*, p. 340.

(*f*) *Dunston* v. *Imperial Gas Light Co.* (1832), 3 B. & Ad. 125.

(*g*) *Swabey* v. *Port Darwin* (1889), 1 Meg. 385 ; *Orton* v. *Cleveland Fire Brick and Pottery Co.* (1865), 3 H. & C. 868 is not law ; see *Peruvian Guano Co.*, [1894] 3 Ch. 690.

(*h*) *Inman* v. *Acroyd*, [1901] 1 K. B. 613 ; *Salton* v. *New Beeston*, [1899] 1 Ch. 775.

(*i*) *Central de Kaap Gold Mines* (1899), 69 L. J. (CH.) 18. It will, however, be otherwise where practically the whole year has expired—and there would have been no further board meetings in any case : *Shaws, Bryant & Co.*, [1901] W. N. 124.

(*k*) Cp. *South Western of Venezuela* (*Barquisimeto*) *Railway Co.*, [1902] 1 Ch. 701 ; *Swabey* v. *Port Darwin* (1889), 1 Meg. 385, seems to have been decided on this footing, but see *Inman* v. *Acroyd*, *supra*, note (*h*).

(*l*) *Caridad Copper Mining Co.* v. *Swallow*, [1902] 2 K. B. 44 ; *Morrell* v. *The Oxford Portland Cement Co.* (1910), 26 T. L. R. 682.

(*m*) *Nell* v. *Atalanta Gold and Silver* (1895), 11 T. L. R. 407 ; it may be doubted if this case is consistent with those cited in the preceding note.

(*n*) *Dashwood* v. *Cornish* (1897), 13 T. L. R. 337.

on the distribution the Court will not readily interfere with their discretion, and it will be proper for them to decline to pay a director for a part of the year during which he has not acted (*o*).

Where the company in general meeting has to decide what the remuneration of the directors is to be, there can be no remuneration without such decision (*p*), and as the resolution will *primâ facie* only apply prospectively, directors will usually only be entitled to remuneration from the date of the first general meeting (*q*) : their remuneration will usually cease when the company goes into liquidation (*r*), but not on the appointment of a receiver and manager in a debenture-holders' action (*s*).

Directors may be entitled to their fees notwithstanding the fact that the company is doing badly (*t*), and where the company is entitled to commence business they will usually be entitled to them even if the company has not gone to allotment (*u*), and the fact that they have not taken their qualification shares will not disentitle them to their fees (*x*), though in such case the company will be entitled to retain the fees against the amount due in respect of qualification shares, if the director has entered into an enforceable contract to take such shares (*y*).

Although directors are *primâ facie* entitled to their fees regardless of the question whether the company has or has not made profits (*z*), it is, of course, competent for the company to provide by its articles that such fees shall only be payable out of profits, in such case even a resolution of the company will not entitle the directors to their fees where there have been no profits (*a*), they will be entitled to fees out of profits which after being put to a suspense account have been carried to profit and loss immediately before a winding-up (*b*), but not out of profits made by selling the whole concern with a view to a winding-up (*c*).

(*o*) *Gilman* v. *Gulcher Electric Light Co.* (1887), 3 T. L. R. 133.

(*p*) *North Eastern Railway* v. *Jackson* (1871), 19 W. R. 198.

(*q*) *London Gigantic Wheel Co.* (1908), 24 T. L. R. 618.

(*r*) See *South Western of Venezuela (Barquisimeto) Railway*, [1902] 1 Ch. 701 ; *Dale and Plant* (1889), 1 Meg. 338, 61 L. T. 206.

(*s*) *South Western of Venezuela (Barquisimeto) Railway*, [1902] 1 Ch. 701 ; but cp. *Measures Bros.* v. *Measures*, [1910] 1 Ch. 336, [1910] 2 Ch. 248.

(*t*) *Ex parte Johnson* (1857), 27 L. J. (CH.) 803.

(*u*) *A. M. Wood's Ships Woodite Protection Co.* (1890), 62 L. T. 760; in this case there was a statement in the prospectus that all expenses had been paid ; and see also *Moore Bros.*, [1899] 1 Ch. 627, as to the effect of a similar statement.

(*x*) *Walford's Case* (1869), 20 L. T. 74 ; *International Cable Co.* (1892), 66 T. L. 253.

(*y*) *Salton* v. *New Beeston*, [1899] 1 Ch. 775.

(*z*) *Lundy Granite Co.* (1872), 26 L. T. 673.

(*a*) *Whitehall Court, Ltd.* (1887), 56 L. T. 280.

(*b*) *Peruvian Guano Co.*, [1894] 3 Ch. 690 ; and cp. *Spanish Prospecting Co.*, [1910] 1 Ch. 92.

(*c*) *Frames* v. *Bultfontein Mining Co.*, [1891] 1 Ch. 140 ; see also

A resolution by directors to forego fees which they have not actually earned has been held to be unenforceable as being a *nudum pactum*, at all events where the resolution has not been communicated to the company (*d*); but it is otherwise where the resolution relates to fees which have not been actually earned and has been communicated to the company (*e*), and where the directors have agreed to forego their claims and the liquidator (if the company is in liquidation) or it would seem in other cases the company is a party to the agreement (*f*). The company cannot by altering its articles deprive its directors of their right to fees already earned, this being one of the terms of their contract of service (*g*). Not infrequently there is an article enabling directors to renounce their right to fees. The articles also usually authorize special remuneration for special services by any director, there should in case of such remuneration being granted be an entry in the minutes stating the special services, and also a resolution of *de jure* and not *de facto* directors (*h*).

De facto directors are not entitled to any remuneration (*i*), though the company can, when it has full knowledge of the facts, ratify their appointment so as to entitle them to remuneration from the time when they first acted (*h*), and the company, or, where directors are entitled to a lump sum between them, the directors, can recover fees paid to a *de facto* director under the belief that he was a *de jure* director (*k*).

A company can *primâ facie* not make presents to its directors where there are no profits (*l*), but it has been decided that it can make them reasonable presents where it is a going concern, because it may thereby at all events expect to get better service from its directors in the future, it probably (*m*) cannot make them presents when it is going into liquidation (*n*).

In *Kaye* v. *Croydon Tramways* (*o*), and *Southall* v. *British*

Rishton v. *Grissell* (1868), 5 Eq. 326; *Spanish Prospecting Co.* (1911), 1 Ch. 92.

(*d*) *Lambert* v. *Northern Railways of Buenos Ayres* (1870), 18 W. R. 180.

(*e*) *McConnell's Claim*, [1901] 1 Ch. 728.

(*f*) *West Yorkshire Darracq Agency* v. *Coleridge*, [1911] 2 K. B. 326.

(*g*) *Swabey* v. *Port Darwin Co.*, (1889), 1 Meg. 385.

(*h*) *Boschoek Proprietary* v. *Fuke*, [1906] 1 Ch. 148.

(*i*) *Woolf* v. *East Nigel* (1905), 21 T. L. R. 660; *Allison, Johnson, and Foster*, [1904] 2 K. B. 327.

(*k*) *Bodega Co.*, [1904] 1 Ch. 276.

(*l*) *George Newman & Co.*, [1895] 1 Ch. 674.

(*m*) *Normandy* v. *Ind, Coope & Co.*, [1908] 1 Ch. 84—a very strong case; it might have been thought that as the remuneration of directors, unlike that of servants, is provided for by the articles, the articles impliedly forbad any further or other remuneration, and see *supra*, p. 341, as to this case.

(*n*) *Hutton* v. *West Cork Railway* (1883), 23 C. D. 654; *Stroud* v. *Royal Aquarium* (1903), 89 L. T. 243; see also *Yates* v. *Cyclists' Touring Co.* (1908), 24 T. L. R. 581.

(*o*) [1898] 1 Ch. 358.

Mutual (p), the view was apparently taken that the presents were in fact given by the purchasing company; on any other view these cases seem not only inconsistent with the cases cited in the last note, but also with *Bisgood* v. *Henderson's Transvaal Estates* (q).

Where, as is almost always the case, the only document dealing with the remuneration of directors is the articles of a company, the Court cannot give them interest on their remuneration under 3 & 4 Will. 4, c. 42, though in a proper case it may, perhaps, do so by way of damages (r). Directors' fees are not, it is thought, due to them in their character of members, even when they must hold qualification shares, and they may therefore prove for them in a winding-up in competition with other creditors (s). It would seem that directors can borrow moneys to pay their fees (t), or set off their fees against calls which have not been made, under a power to accept payments in advance of calls, even if they know that a winding-up is imminent (u), if such payments do not amount to a fraudulent preference (x), but directors who make payments after a winding-up petition has been presented do so at their own risk, and unless such payments are in the ordinary course of business, they will usually not be allowed in a winding-up (y).

It would seem that where there is a dispute as to who are in fact directors, the Court will appoint a receiver and manager of the business of the company pending the decision of the dispute (z).

The Court has in a voluntary winding-up authorized the summoning of meetings to appoint directors, with a view to their forfeiting

(p) (1871) 6 Ch. 614.

(q) [1908] 1 Ch. 743.

(r) *Peruvian Guano Co.*, [1894] 3 Ch. 690.

(s) *Ex parte Beckwith*, [1898] 1 Ch. 324; *Dale and Plant* (1889), 43 C. D. 255; *A 1 Biscuit Co.*, [1899] W. N. 115; *Dover Coalfields Extension*, [1908] 1 Ch. 65; *Ex parte Cannon* (1885), 30 C. D. 629, would seem to be overruled by these cases, the last of which is a decision of the Court of Appeal.

(t) *Mason, Gallagher, and Slater's Case* (1882), 46 L. T. 54.

(u) *Poole, Jackson, and Whyte's Case* (1878), 9 C. D. 322; probably *Syke's Case* (1872), 13 Eq. 255, and also *Habershon's Case* (1868), 5 Eq. 286, are overruled by this case unless the former was a case of fraudulent preference: see *A. M. Wood's Ships Woodite Protection Co.* (1890), 62 L. T. 760.

(x) See *Washington Diamond Mining Co.*, [1893] 3 Ch. 95; where *Sykes' Case* (1872), 13 Eq. 255, was treated as good law.

(y) *Brighton Brewery, Hunt's Case* (1868), 37 L. J. (CH.) 278; *Neath Harbour Smelting and Rolling Works* (1887), 56 L. T. 727; *Civil Service and General Stores* (1887), 57 L. J. (CH.) 119.

(z) *Featherstone* v. *Cooke and Trade Auxiliary* v. *Vickers* (1873), 16 Eq. 298; these cases are doubted in Buckley, 9th Ed. p. 645, and Lindley, 6th Ed. p. 778, but they seem not inconsistent with the salvage jurisdiction of the Court, as to which see *Leney* v. *Callingham*, [1908] 1 K. B. 79, and the author has known them to be followed.

shares (*a*), and directors have been required to answer interrogatories after the commencement of a winding-up (*b*).

MANAGING DIRECTOR.

The articles usually empower the directors to appoint one of their number to be managing director, and to delegate to him such of their powers as they see fit, and to remunerate him. Probably under powers to delegate to committees and to remunerate for special services, the same result could be attained (*c*). If the articles give such a power to the directors the company cannot complain of the way they are exercising it, or appoint a managing director without first altering the articles (*d*).

Where a managing director is appointed for more than a year, the appointment should be in writing, and should define his powers by reference to the articles or otherwise, otherwise, owing to section 4 of the Statute of Frauds, he will not have any right of action if dismissed (*e*), though he may be entitled to prove for the period during which he has actually served (*f*). On ceasing to be a director, a man will cease to be a managing director, even though there is not the usual express provision to that effect in the articles (*g*), and it is therefore usual to provide that he shall not be liable to retire by rotation.

The duties of a managing director are to attend to the commercial part of the business of the company, and not to things which concern the company itself but not its business, and it would therefore appear doubtful whether the company will be liable if he makes misrepresentations with regard to transfers of shares and things of that nature (*h*), but where it is a question of contract persons dealing with the company may under such an article as is above mentioned

(*a*) *Ladd's Case*, [1893] 8 Ch. 450.

(*b*) *Madrid Bank* v. *Bayley* (1866), L. R. 2 Q. B. 37.

(*c*) *Boschoek Proprietary* v. *Fuke*, [1906] 1 Ch. 148, is no authority to the contrary as there were no proper directors to appoint, and no decision as to what the services were to be; see also *Felix Hadley & Co.* v. *Hadley* (1897), 77 L. T. 131, a case which seems to turn on the full knowledge of all concerned.

(*d*) *Thomas Logan* v. *Davis* (1911), 104 L. T. 914.

(*e*) *Alexander's Timber Co.* (1901), 70 L. J. (CH.) 767.

(*f*) *Dale and Plant* (1889), 1 Meg. 338, 61 L. T. 206.

(*g*) *Bluett* v. *Stutchbury's* (1908), 24 T. L. R. 469; this decision turned on the fact that directors could only appoint one of their own number—it would appear also to apply to a manager—if the directors can only appoint him from amongst themselves.

(*h*) *George Whitechurch* v. *Cavanagh*, [1902] A. C. 117; *Cartmell's Case* (1874), 9 Ch. 691. In the ordinary course of the business of a company it may, unless the articles otherwise provide, be assumed that he has authority to affix the company's seal: *Barned's Banking Co.* (1867), 3 Ch. 105.

assume that the managing director has such of the powers of the director as are requisite for entering into the contract (*i*). Directors cannot appoint a managing director on terms that he is to be free from their supervision (*k*).

A managing director cannot properly be described as a servant of the company (*l*), but he may be dismissed for misconduct, in which case he will not be entitled to his salary for the current term whether that is a year or a quarter or some different period (*m*), and he may retire on giving the directors notice of his intention so to do (*n*). Probably the Court will not give to a managing director specific performance of his contract (*o*). Where a managing director has entered into a contract in his own name, but on behalf of his company, he will not be allowed to claim the benefit of the contract for himself (*p*). Where a manager has entered into a contract to serve a company for a term of years and the company during that period goes into liquidation or has a receiver and manager appointed, the manager will be freed from any term in his contract requiring him not to carry on business, but he cannot make lists of the company's customers for his own use (*q*).

SECRETARY.

The position of a secretary to a limited company is usually the position of a servant (*r*), and his duties are rarely if ever defined by the articles. Apparently the company will not be estopped by his fraud even in cases where it was his duty to deal with the matter. Thus, where it was the duty of the secretary to certify transfers, when the certificates were left with him, the company were in no way liable on his certifying a transfer without the certificate being left (*s*), indeed, it would seem that a company will in no case be liable for the fraud of its secretary (*t*). Thus, a person who has been induced to

(*i*) *Biggerstaff* v. *Rowatt's Wharf*, [1896] 2 Ch. 93.

(*k*) *Horn* v. *Henry Faulder & Co.* (1908), 99 L. T. 524; and see also *Cartmell's Case* (1874), 9 Ch. 691.

(*l*) *Newspaper Proprietary Syndicate*, [1900] 2 Ch. 349; *Normandy* v. *Ind, Coope & Co.*, [1908] 1 Ch. 84.

(*m*) *Boston Deep Sea Fishery* v. *Ansell* (1888), 39 C. D. 339; *Federal Supply and Cold Storage Co.* v. *Angehrn* (1911), 80 L. J. (P. C.) 1.

(*n*) *Glossop* v. *Glossop*, [1907] 2 Ch. 370; and see this case *Reg.* v. *Wigan* (1885), 14 Q. B. D. 908; *Finch* v. *Oake*, [1896] 1 Ch. 409, and *Maitland's Case* (1859), 4 De G. M. & G. 769, as to the withdrawal of a resignation once given.

(*o*) *Bainbridge* v. *Smith* (1889), 41 C. D. 462, and see *supra*, p. 356.

(*p*) *Pickering's Claim* (1871), 6 Ch. 525.

(*q*) *Measures Bros.* v. *Measures*, [1910] 1 Ch. 336; [1910] 2 Ch. 248.

(*r*) *George Whitechurch* v. *Cavanagh*, [1902] A. C. 117; *Elborough* v. *Ayres* (1870), 10 Eq. 367.

(*s*) *George Whitechurch* v. *Cavanagh*, [1902] A. C. 117.

(*t*) *Ruben* v. *Great Fingall*, [1906] A. C. 439; *Bank of Ireland* v. *Evans' Trustees* (1855), 5 H. L. C. 389; see also *Barnett, Hoares &*

take shares in a company by the fraudulent statements of the secretary, will have no remedy against the company (*u*), though, of course, he will have his remedy against the secretary (*x*), it is obvious that these remarks will apply with even greater force where the fraudulent statements are made for the secretary's own benefit (*y*).

A secretary has *primâ facie* no authority to bind a company either by contract (*z*), or by making admissions (*a*), but of course, where actual authority is shown, his signature will be sufficient to bind the company in cases within the Statute of Frauds (*b*), and the company will be liable for his acts (*c*). Misrepresentations by the secretary, even if innocent, will not bind the company (*d*); but it may, it would seem, be liable for his negligence in the ordinary course of his duty (*e*).

It is no part of the duty of a secretary to take a conveyance of property purchased by the company in his own name, and therefore, even assuming that his partners are liable for acts done by him in the ordinary course of his duty, they will not be liable for frauds rendered possible by the fact of property being so conveyed (*f*).

The position of secretary would *primâ facie* not appear to be a fiduciary one (*g*), but he may not bid on an auction of the company's property, where he has instructed the auctioneer himself (*h*). It is the duty of the secretary to prepare and send out notices—subject, of course, to the directions of the board to attend to callers and

Co. v. *South London Tramways* (1887), 18 Q. B. D. 815; possibly the company may in some cases be liable where it has in fact allowed its secretary to occupy rather the position of director than of secretary: *Brandts* v. *Dunlop Rubber Co.*, [1905] A. C. 454, is an instance; it is just possible that *Shaw* v. *Port Philip Mining Co.* (1884), 13 Q. B. D. 103, may be reconciled with the first case cited in this note, on this ground.

(*u*) *Newlands* v. *National Employers Accident Association* (1885), 54 L. J. (Q. B.) 428; *Partridge* v. *Albert Life Assurance* (1871), 16 Sol. J. 199.

(*x*) *Pontifex* v. *Bignold* (1841), 3 Scott (N. S.) 390.

(*y*) *British Mutual Banking* v. *Charnwood Forest Railway* (1887), 18 Q. B. D. 714.

(*z*) *Williams* v. *Chester and Holyhead Railway* (1851), 15 Jur. 828; see also *Wheatcroft's Case* (1873), 29 L. T. 324, where it was held that a secretary had no authority to strike a name off the shareholders' register. There are dicta in *King's Cross Industrial Dwellings* (1870), 11 Eq. 149, that a secretary has implied authority to bind a company by contracts for preliminary advertising, but there was clearly actual authority in this case.

(*a*) *Bruff* v. *Great Northern Railway* (1858), 1 F. & F. 344.

(*b*) *Beer* v. *London and Paris Hotel Co.* (1875), 20 Eq. 412.

(*c*) *Barnett* v. *Crystal Palace* (1861), 4 L. T. 403, 2 F. & F. 443.

(*d*) *Barnett, Hoares & Co.* v. *South London Tramways* (1887), 18 Q. B. D. 815.

(*e*) *Longman* v. *Bath Electric Tramways*, [1905] 1 Ch. 646.

(*f*) *Tendring Hundred* v. *Jones*, [1903] 2 Ch. 615.

(*g*) Cp. *Municipal Freehold Land Co.* v. *Pollington* (1891), 63 L. T. 238.

(*h*) *Martinson* v. *Clowes* (1882), 21 C. D. 857; an appeal by the plaintiff was dismissed because it only related to costs (1885), 52 L. T. 706.

correspondence, to be present at the board meetings, and keep the minute books (*i*). It would seem clear that he will be in no case liable for the acts of the board unless he has in some way intermeddled and made himself a party to such acts (*k*).

The name and address of the secretary must be set out in the statutory report under section 65 of the Act ; he is liable to penalties under section 88 for failing to make due returns of allotments ; under section 99 for failing to comply with the requirements of the Act as to the registration of mortgages ; under section 102 for refusing inspection or not forwarding copies of documents ; under section 92 for failing to issue share certificates at the proper time ; under section 64 for knowingly being a party to a default in calling an annual general meeting.

If he is named in the articles as secretary he may make the statutory declaration requisite under section 17 for the incorporation of the company, and he may under section 87 make the statutory declaration required before it can obtain a certificate entitling it to commence business.

Such are some, at all events, of the duties and liabilities of a secretary of a company. He must also under section 113 sign the balance sheet of a banking company, and he may, if duly authorized, authenticate documents under section 117.

The fact that he has certain knowledge in his capacity of secretary of one company, will not fix another company with notice unless he owes a duty to the former company to give the notice, and to the latter to receive it, and not even then if he has been guilty of fraud, or even irregularity (*l*). He will probably be a servant of a company for the purpose of the preferential payment sections, if he has fixed hours of attendance (*m*). It would seem that the offices of director and secretary are so incompatible that the same man cannot hold both (*n*). Where the secretary of a company has filed an affidavit in opposition to the winding-up petition, and is cross-examined on it, the petitioner on such cross-examination has the

(*i*) Cp. *Cairney* v. *Back*, [1906] 2 K. B. 746 ; *Bett's* v. *Macnaghten*, [1910] 1 Ch. 430 ; and see *Cawley & Co.* (1889), 42 C. D. 209, as to his duty not to fill up blanks in the minutes.

(*k*) *In Municipal Freehold Land Co.* v. *Pollington* (1890), 63 L. T. 238, a secretary was held liable for dividends paid out of capital, because the directors were held to be in fact mere puppets in his hands, but he was only liable for payments within the last six years, although the case was decided before the Trustee Act, 1888 ; see also *Mutual Aid Permanent Benefit Society. Ex parte James* (1883), 49 L. T. 530.

(*l*) *Hampshire Land Co.*, [1896] 2 Ch. 743 ; *Fenwick, Stobart & Co.*, [1902] 1 Ch. 507 ; and see *post*, pp. 448 and 449.

(*m*) *Cairney* v. *Back*, [1906] 2 K. B. 746, and see *post*, p. 1219, as to this.

(*n*) *Iron Ship Coating* v. *Blunt* (1868), 3 C. P. 481 ; and see *Boschoek Proprietary* v. *Fuke*, [1906] 1 Ch. 148.

right to have the company's books and papers produced for the purpose of testing the secretary's evidence, but for no other purpose (*o*).

A secretary cannot claim remuneration under a contract made before the incorporation of the company, and if his rights depend on the articles, he can claim remuneration up to the date of the winding-up of the company, but not damages for loss of employment after that date (*p*); where his salary is to be fixed by the company in general meeting, as under section 91 of the Companies Clauses Act, 1845, the fact that no meeting has been held will not be a defence to an action by him for his salary (*q*). A secretary has not a lien for his remuneration on the books, etc., of the company (*r*).

MEETINGS.

The common law rule on the subject of meetings of an indefinite body like a company appears to be that the vote of the majority of those present at the meeting is the vote of the whole body if all members of the body who are within summoning distance have been duly summoned (*s*).

The Companies Act, 1862, and the Companies (Consolidation) Act, 1908, provide that certain powers of the company shall be exercised by "special resolution," that certain other powers shall be exercised by "extraordinary resolution," and that certain other powers shall be exercised by the company in general meeting, and for the rest (*t*) they leave it to the company itself to decide in what manner it will exercise its powers.

A resolution will be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting, of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

A resolution will be a special resolution when it has been passed in manner required for the passing of an extraordinary resolution, and confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a

(*o*) *Emma Silver Mining Co.* (1875), 10 Ch. 194.

(*p*) *Dale and Plant* (1889), 1 Meg. 338; (1889), 61 L. T. 206.

(*q*) *Bill* v. *Darenth Railway* (1856), 1 H. & N. 305.

(*r*) *Barnton Hotel* v. *Cook* (1899), 1 Fraser, 1190.

(*s*) Cp. *Rex* v. *Varlo* (1775), 1 Cowp. 248; *Rex* v. *Monday* (1877), 2 Cowp. 530; *Grindley* v. *Barker* (1798), 1 Bos. & Pull. 229 at p. 236; *Attorney-General* v. *Davy* (1741), 2 Atk. 212; the dicta of WILLS, J., in *Merchants of Staple of England* v. *Bank of England* (1887), 21 Q. B. D. at p. 165, do not seem to be correct on this point.

(*t*) The powers of class meetings under s. 45 of the Companies (Consolidation) Act, 1908, are separately considered. See *supra*, pp. 318 and 319, and *infra*, pp. 720 and 721.

subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days (*u*) nor more than one month (*x*), from the date of the first meeting (*y*).

At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried will, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution (*z*).

At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded by three persons for the time being entitled according to the articles to vote unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

When a poll is demanded in accordance with this section, in computing the majority on the poll reference will be had to the number of votes to which each member is entitled by the articles of the company.

For the purposes of the section notice of a meeting will be deemed to be duly given and the meeting to be duly held when the notice is given, and the meeting held in manner provided by the articles (*a*).

Even where the Act requires that a thing shall be done by a special resolution, or by an extraordinary resolution, such special or extraordinary resolution will be unnecessary if all the shareholders

(*u*) Fourteen days means fourteen clear days, *Railway Sleepers Supply Co.* (1885), 29 C. D. 204; and see *Goldsmith's Co.* v. *West Metropolitan Railway*, [1904] 1 K. B. 1, as to the mode of computing time. If a resolution which has not been validly passed, owing to the requisite time not having elapsed, has been acted on, the company or its members cannot as against its creditors set up the informality of the resolution: *Miller's Dale and Ashwood Dale Lime Co.* (1885), 31 C. D. 211; see too *Ho Tung* v. *Man On Insurance Co.*, [1902] A. C. 232.

(*x*) "Month" means "calendar month" in an Act of Parliament, Interpretation Act, 1889, s. 3; but not in other documents: *Bruner* v. *Moore*, [1904] 2 Ch. 304. It would appear from the cases cited in the preceding note that the last day on which a confirmatory meeting can be held will be the same day as that on which the first meeting was held, but in the succeeding month; if the succeeding month has not got such a day, then the confirmatory meeting cannot be held later than the last day of such month; see also *Freeman* v. *Read* (1863), 4 B. & S. 174; *Radcliffe* v. *Bartholomew*, [1892] 1 Q. B. 161.

(*y*) It will be noticed that this provision only requires the resolution to be *passed* in the same manner as an extraordinary resolution, and the notice convening the first meeting need not therefore state that the resolution to be proposed is to be proposed "as an extraordinary resolution"; *Penarth Pontoon Slipway and Ship-repairing Co.*, [1911] W. N. 240.

(*z*) See *post*, pp. 393 and 394, as to this.

(*a*) Companies (Consolidation) Act, 1908, s. 69.

acquiesce in the thing, and such acquiescence will be presumed where a long course of dealing on the footing that the thing has been validly done can be shown (*b*); but where anything is *ultra vires* the company even the assent of every shareholder will not bind the company (*c*).

Where the Act empowers a company to do any special thing by extraordinary or special resolution, *e.g.* to alter the articles or to reduce its capital, any provision whether in the memorandum or articles empowering it to do that thing in a different way or taking away the power, will be bad (*d*), and it seems doubtful whether the company can effectually contract itself out of such power (*e*).

A copy of every special and extraordinary resolution must within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the Registrar of Joint Stock Companies, who must record the same (*f*).

Where articles have been registered, a copy of every special resolution for the time being in force must be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution.

Where articles have not been registered, a copy of every special resolution must be forwarded in print to any member at his request, on payment of one shilling or such less sum as the company may direct.

If a company makes default in printing or forwarding a copy of a

(*b*) *Ho Tung* v. *Man On Insurance Co.*, [1902] A. C. 232; *Phosphate of Lime Co.* v. *Green* (1871), L. R. 7 C. P. 43; the cases of *Spackman* v. *Evans* (1868), L. R. 3 H. L. 171; *Evans* v. *Smallcombe* (1868), L. R. 3 H. L. 249; *Houldsworth* v. *Evans* (1868), L. R. 3 H. L. 243, may be consulted as to the amount of knowledge necessary for acquiescence to be presumed.

(*c*) *Ashbury Railway Carriage and Iron Co.* v. *Riche* (1875), L. R. 7 H. L. 653.

(*d*) *Walker* v. *London Tramways Co.* (1879), 12 C. D. 705; *Malleson v. National Insurance and Guarantee Corporation*, [1894] 1 Ch. 200; *Punt* v. *Symons*, [1903] 2 Ch. 506; see too *Ayre* v. *Skelsey's Adamant Cement Co.* (1904), 20 T. L. R. 587 reversed, but not on this point (1905), 21 T. L. R. 464. Query, should article 4 of the articles in this case have been treated as bas *in toto*, if not it would have been good on the increase of capital.

(*e*) Cp. *Punt* v. *Symons*, [1903] 2 Ch. 506; *Baily* v. *British Equitable*, [1904] 1 Ch. 374, reversed on another point, [1906] A. C. 35.

(*f*) The Registrar will decline to register special resolutions which show on their face they are bad as not having complied with the section (*e.g.* where the 14 days between the two meetings have not elapsed); but he is not concerned with questions such as whether the resolution was *ultra vires* or not; he will not register an alteration in the articles of a company authorized to omit the word "Limited" from its name unless the Board of Trade have approved the alteration. He will accept a resolution for filing after the expiration of the 15 days allowed.

special or extraordinary resolution to the registrar it will be liable to a fine not exceeding two pounds for every day during which the default continues.

If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by the section a copy of a special resolution, it will be liable to a fine not exceeding one pound for each copy in respect of which default is made.

Every director and manager of a company who knowingly and wilfully authorizes or permits any default by the company in complying with the requirement of the section, will be liable to the same penalty as is imposed by the section on the company for the default (*g*).

The Companies (Consolidation) Act, 1908, requires every company to hold a general meeting at least once in every calendar year; such meeting must be held not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, will, on conviction, be liable to a fine not exceeding fifty pounds.

When default has been made in holding a meeting of the company in accordance with the provisions of this section, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company (*h*). It would appear that this section will have been complied with if the company summons an extraordinary meeting (*i*), but, in any case, the provisions (*k*) of section 112 of the Act as to the appointment of auditors apply, and auditors must be appointed annually.

In addition, every company limited by shares and registered on or after the 1st of January, 1901, must, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company. Such meeting is called the statutory meeting (*kk*).

The directors must at least seven days before the day on which the meeting is held, forward a report, in the Act called the statutory report, to every member of the company and to every other person entitled under the Act to receive it (*l*).

(*g*) Companies (Consolidation) Act, 1908, s. 70. The section apparently applies to special resolutions which are required by the articles of a company, but not by the Act.

(*h*) Companies (Consolidation) Act, 1908, s. 64. The offence can be prosecuted under the Summary Jurisdiction Acts, but in Scotland all prosecutions under the section must be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate directs: *ibid.*, s. 276.

(*i*) *Lord Claude Hamilton's Case* (1873), 8 Ch. 548.

(*k*) See *post*, pp. 405 *et seq.*, as to these.

(*kk*) Where a meeting of a private company was summoned to confirm a resolution for increasing the company's capital, it was held that it was not intended to be the statutory meeting: *Gardner* v. *Iredale*, [1912] W. N. 93.

(*l*) *I.e.* debenture and debenture stock holders, Companies (Consolidation) Act, 1908, ss. 114 and 285.

The statutory report must be certified by not less than two directors of the company or where there are less than two directors by the sole director and manager, and must state :—

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

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

(*c*) An abstract of the receipts of the company on account of its capital, whether from shares or debentures or debenture stock, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures or debenture stock and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company ;

(*d*) The names and addresses and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company ;

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

The statutory report must, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

The directors must cause a copy of the statutory report, certified as by this section is required, to be filed (*m*) with the Registrar of Joint Stock Companies forthwith after the sending thereof to the members of the company.

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

(*m*) In private companies copies of the statutory report need not be filed or forwarded to any one : *ibid.*, s. 65 (10). In such companies the statutory meeting must be held: *Gardner* v. *Iredale*, [1912] W. N. 93.

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

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

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

In addition to these meetings, extraordinary general meetings of the company are at times summoned, to transact special business of the company.

In default of and subject to any regulations in the articles, any five members of the company may summon a meeting (*p*), it has been held (*q*) that these regulations apply not only where the regulations are silent on the mode of summoning a meeting, but also where they provide that the directors shall summon a meeting, and there are no directors to do so. The articles usually provide that the directors of the company may summon meetings (*r*), and notwithstanding anything in the articles of a company, the directors of a company must, on the requisition of the holders of not less than one-tenth of the issued capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

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

(*o*) Companies (Consolidation) Act, 1908, s. 65.

(*p*) *Ibid.*, s. 67.

(*q*) *Brick and Stone Co.*, [1878] W. N. 140; it may be doubtful whether this decision was good law under the Companies Act, 1862, s. 52, which only applied "in default of any regulations," but it would seem that a similar decision is likely to be come to under the existing section, which applies "in default of and subject to any regulations"; in such case the provisions of s. 66 of the Act as to requisitionists' summoning meetings, even if incorporated in the articles, scarcely seem to apply, for the existence of directors seems to be contemplated by such provisions.

(*r*) Table A, Clause 48.

(*s*) In the case of shares held by joint holders, all must sign the requisition: *Patentwood Keg Syndicate* v. *Pearse*, [1906] W. N. 164.

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

If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors must forthwith convene a further extraordinary general meeting for the purpose of considering the resolution, and, if thought fit, of confirming it as a special resolution ; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

Any meeting convened under this section by the requisitionists must be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors (*t*).

It would appear very doubtful whether the Court can, except in cases coming within section 64 or section 65 of the Act, or where a winding-up petition has been presented or a winding-up is going on under sections 145 and 219, convene a meeting (*u*), and at all events, it is not its practice to do so where there are other persons who can do so (*x*), but it will of course in some cases practically force persons who can call a meeting to do so, when they are parties to an action (*y*).

In convening a meeting the first question that must present itself to the minds of the conveners is, has the company power to do the thing proposed ? Of course, if the thing is *ultra vires* the whole company, there is an end of the matter ; but if it is simply forbidden by the articles, or if the articles are silent on the subject, and the Act empowers the company to do it when, and only when, the articles authorize its being done, then it will be necessary to consider whether it will not be necessary in the first place to hold meetings, to alter the articles, and then subsequently to hold meetings or a meeting for the purpose of sanctioning the course proposed. Where the doing of a particular act is authorized by the Act without further formality if the articles give power to do it, and there is no special provision as to

(*t*) Companies (Consolidation) Act, 1908, s. 66.

(*u*) Cp. *Paris Skating Rink* (1877), 6 C. D. 731, and for winding-up cases, *post*, p. 859, and *Chapel House Colliery Co.* (1883), 24 C. D. 259, and cases there cited. In *Tumacacori Mining Co.* (1874), 17 Eq. 534, MALINS, V.C., said he had jurisdiction to call a meeting, but in *London Joint Stock Coal Co.* (1869), 8 Eq. 146, the same judge said he had no such power where he had not jurisdiction to make a winding-up order.

(*x*) Cp. *Macdougall* v. *Gardiner* (1875), 1 C. D. 13, at pp. 26 and 27 ; *Mason* v. *Harris* (1879), 11 C. D. 97.

(*y*) See *Harben* v. *Phillips* (1883), 23 C. D. 14 ; *Bainbridge* v. *Smith* (1889), 41 C. D. 462.

the manner in which the thing can be done (*z*), there it would seem to be unnecessary to do more than pass a special resolution for the doing of the thing, for the Court will treat this as amounting to an alteration of the articles, coupled with an authority to the directors to exercise the power conferred by such alteration. Thus, a mere resolution to increase capital (*a*), or to purchase the company's shares, though such purchase is forbidden by the articles (*b*), or to accept surrenders of such shares (*c*) have been held good, without the company first altering its articles; but where the step contemplated can only be taken (1) if there is a power in the articles; and (2) a special resolution is passed; there it will be necessary first to alter the articles and then to pass the special resolution (*d*). The distinction probably being that in no case can the thing be done until the articles give power to do it; but that if once there is a resolution which can effect such alteration the Court will assume that the company or its directors exercised the power as they intended to do, unless it is impossible to come to this conclusion owing to the fact that insufficient meetings have been held. The case of *Imperial Hydropathic Hotel Co.* v. *Hampson* (*e*) probably depends on the fact that there was never any intention to alter the articles, but only an intention of not abiding by them in a particular case.

Where an alteration of the articles followed by a special resolution is necessary, the matter can be carried through in three meetings, the first part of the resolution for exercising the power being passed immediately after the resolution confirming the alteration of the articles (*f*).

Where the secretary or some other unauthorized person has without authority from the board issued a notice summoning a meeting, there it would seem that any resolution come to by such meeting will be bad (*g*), unless the notice is subsequently ratified by

(*z*) Or probably if there was a provision in the Act which enabled the power to be exercised without having more than one meeting.

(*a*) *Campbell's Case* (1873), 9 Ch. 1.

(*b*) *Taylor* v. *Gibson, Pilsen, and General Electric Light Co.* (1884), 27 C. D. 268.

(*c*) *Teasdale's Case* (1873), 9 Ch. 54. At the time that this case and the case cited in the previous note were decided, it was thought that a company could purchase or accept a surrender of its shares, if its articles authorised it to do so. This was of course wrong: *Trevor* v. *Whitworth* (1887), 12 A. C. 409.

(*d*) *Patent Invert Sugar Co.* (1885), 31 C. D. 166; *West India and Pacific Steamship Co.* (1868), 9 Ch. 11 *n*; *Oregon Mortgage Co.*, [1910] S. C. 964. These are all reduction of capital cases.

(*e*) (1882) 23 C. D. 1. The notice was, as a matter of fact, insufficient in this case, but the decision did not turn on that alone; in *Boschoek Proprietary* v. *Fuke*, [1906] 1 Ch. 148, there was no special resolution at all.

(*f*) *John Crossley and Sons*, [1892] W. N. 55. Buckley, 9th Ed. pp. 129 and 142.

(*g*) *Haycraft Gold Reduction and Mining Co.*, [1900] 2 Ch. 230; *State of Wyoming Syndicate*, [1901] 2 Ch. 431, where a requisition had been

the board (*h*), and the result will, it would seem, be the same where a so-called board meeting, at which some non-directors have been admitted and some directors have been excluded, has convened the meeting (*i*). But it is not every informality in the board meeting convening a general meeting of the company which will invalidate the resolutions of the general meeting. Thus such resolutions have been held good where *de facto* directors were present at the board meeting (*k*), where there was not a quorum there, and no immediate objection was taken (*l*), and where the notice of the board meeting was too short, but no immediate objection was taken (*m*). Persons requisitioning for a meeting under section 66 of the Act cannot validly call a meeting till the time allowed by the section to the directors for summoning a meeting has expired (*o*).

The common law rule as to notices is, that except where the charter provides that certain business is to be transacted on a certain day, notice of the meeting and of the business to be transacted thereat must be given to every member within reach of such notice (*p*).

The common form of article usually provides that notice of a certain length must be given to each member, and that such notice must specify the place, the day, and the hour of meeting, and in the case of special business, the general nature of such business (*q*). The articles usually go on to define what is special business (*r*). Turning to the contents of the notice under such a clause, notice cannot be given that a meeting will be held on certain contingencies happening, *e.g.* on a resolution at a previous meeting being passed (*s*), unless, indeed, the notice goes on to say that if the contingencies happen, or, if preferred, if they do not happen, further notice will be given (*t*); if there is an absolute notice of a meeting, the fact that

deposited, and a meeting was summoned before the expiration of the 21 days allowed to the directors by the section, and without any board meeting.

(*h*) *Hooper* v. *Kerr Stuart and Co.* (1900), 83 L. T. 729.

(*i*) *Harben* v. *Phillips* (1883), 23 C. D. 14, as explained in *Browne* v. *La Trinidad* (1887), 37 C. D. 1.

(*k*) *Boschoek Proprietary* v. *Fuke*, [1906] 1 Ch. 148; *British Asbestos* v. *Boyd*, [1903] 2 Ch. 439.

(*l*) *Southern Counties Deposit Bank* v. *Ryder* (1895), 73 L. T. 374.

(*m*) *Browne* v. *La Trinidad* (1887), 37 C. D. 1.

(*o*) *State of Wyoming Syndicate*, [1901] 2 Ch. 431. In this case WRIGHT, J., seems to have questioned whether the secretary should sign a notice convening a meeting sent out by requisitionists.

(*p*) *Rex* v. *Hill* (1825), 4 B. & C. 426.

(*q*) Table A, Clause 49; see *Betts* v. *Macnaghten*, [1910] 1 Ch. 430, as to what will amount to a sufficient statement of "the general nature of the business."

(*r*) Table A, Clause 50.

(*s*) *Alexander* v. *Simpson* (1889), 43 C. D. 139.

(*t*) *Espuela Land and Cattle Co.* (1900), 48 W. R. 684.

some (*u*), or it would seem all (*x*), the business to be transacted thereat is in its nature contingent, will apparently not invalidate the notice, and there is nothing in the Act to prevent, even in the case of special or extraordinary resolutions, the articles providing for notices of contingent meetings being given (*y*), it is not unusual to provide that notice of two meetings may be given by one notice, even though the second meeting is only to be held in the contingency of certain resolutions being passed at the first meeting, such a provision being often very convenient in the case of special resolutions (*y*). The notice must state the resolution to be passed in such a way as fairly to state the purpose for which the meeting is convened, so that every shareholder may make up his mind whether he will or will not attend, with knowledge of the result of his act. If the notice complies with these requirements, it will not be construed with excessive strictness. There is nothing to prevent an explanatory circular being sent round, showing the purpose of the resolutions, and in such case the circular and the notice will be read together (*a*).

If the proposed resolution involves an alteration of the articles, it will be unnecessary to say so, for every shareholder will be taken to have a knowledge of the contents of the articles of his company (*b*); again, if the resolution is beyond the directors' powers owing to their being personally interested in a contract which it proposes to confirm, the notice need not state the reason why the meeting is summoned (*c*); but a notice to sanction an agreement for the sale of the assets of the company will not be a sufficient notice if the agreement contains clauses giving special advantages to the directors (*d*), for in such case there are in reality two proposals, and only one of them is set out in the resolution.

When the resolution is to substitute new articles for old, unless the new articles simply bring the old ones up to date or involve a change of form, it would seem necessary in most cases, to show what the proposed alterations are, *e.g.* by sending copies of the new regulations round showing the alterations. In many cases merely sending

(*u*) *Tiessen* v. *Henderson*, [1899] 1 Ch. 861.

(*x*) *Jenner Institute of Preventive Medicine* (1899), 15 T. L. R. 394.

(*y*) *North of England Steamship Co.*, [1905] 2 Ch. 15.

(*a*) *Young* v. *South African and Australian Exploration and Development*, [1896] 2 Ch. 208; *Tiessen* v. *Henderson*, [1899] 1 Ch. 861; *Boschoek Proprietary* v. *Fuke*, [1906] 1 Ch. 148; and see *Betts* v. *Macnaghten*, [1910] 1 Ch. 430.

(*b*) *Campbell's Case* (1873), 9 Ch. 1. But the thing proposed must be clearly set out: *Laws' Case* (1852), 1 De G. M. & G. 421.

(*c*) *Grant* v. *United Kingdom Switchback Railways* (1888), 40 C. D. 135; cp. *Irvine* v. *Union Bank of Australia* (1877), 2 A. C. 366; *Boschoek Proprietary* v. *Fuke*, [1906] 1 Ch. 148.

(*d*) *Kaye* v. *Croydon Tramways*, [1898] 1 Ch. 358; *Tiessen* v. *Henderson*, [1899] 1 Ch. 861.

copies of the new articles without indicating the alterations would not be enough (*e*).

If it is proposed that the company shall go into winding-up under section 182 (3) because it cannot by reason of its liabilities continue its business, this fact should be clearly set out in the notice (*f*), otherwise a shareholder will be entitled to assume that a confirmatory meeting is necessary (*g*). Where a reconstruction is to be proposed under section 192, the fact that such reconstruction is to be carried out under that section should appear in the notice (*h*). Even in the case of a special resolution it is not necessary that the resolution which appears in the notice should be passed without amendment (*i*), but in the case of a meeting for confirming a resolution as a special resolution, no amendment will be in order, for there it is simply a question of yes or no: is the resolution to be passed? (*k*). The notice for such a resolution should set out the resolution which has been passed, and which it is proposed to confirm (*l*).

But though amendments may usually be brought forward and passed at meetings, they must be amendments pertinent to the business mentioned in the notice. Thus, an amendment to a resolution for appointing certain persons directors, may provide for the appointment of additional persons as directors (*m*), and where the resolution is dealing with the remuneration of directors the remuneration proposed may be altered (*n*).

Again, on a resolution for altering voting rights and restricting the right of recent transferees to vote, an amendment striking out the restriction would be good, but not one altering the directors' qualification (*o*). It is also competent for a meeting to deal with

(*e*) *Normandy* v. *Ind, Coope & Co.*, [1908] 1 Ch. 84, where KEKEWICH, J., did not follow the opinion expressed by him in *Young* v. *South African and Australian Exploration and Development*, [1896] 2 Ch. 208.

(*f*) As in *Stone* v. *City and County Bank* (1877), 3 C. P. D. 282.

(*g*) *Bridport Old Brewery* (1867), 2 Ch. 191; *Silkstone Fall Co.* (1875), 1 C. D. 38.

(*h*) *Irrigation Company of France* (1871), 6 Ch. 176; *Imperial Bank of China* v. *Bank of Hindustan* (1868), 6 Eq. 91; but possibly *Bisgood* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 743, alters this.

(*i*) *Torbock* v. *Lord Westbury*, [1902] 2 Ch. 871.

(*k*) *Wall* v. *London and Northern Assets Corporation*, [1898] 2 Ch. 469; *Torbock* v. *Lord Westbury*, [1902] 2 Ch. 871.

(*l*) *Dean* v. *Bennett* (1871), 6 Ch. 489.

(*m*) *Betts and Co.* v. *Macnaghten*, [1910] 1 Ch. 430; it was only necessary to state the general nature of the business, and not the resolution to be proposed in this case.

(*n*) *Torbock* v. *Lord Westbury*, [1902] 2 Ch. 871.

(*o*) *Henderson* v. *Bank of Australasia* (1890), 45 C. D. 330. The remarks of COTTON, L.J., in *Isle of Wight Railway Co.* v. *Tahourdin* (1883), 25 C. D. 320, turn on the provisions of the Companies Clauses Act, 1845.

business which is incidental to the business specified in the notice, thus, on a winding-up resolution it has been held to be competent for them to appoint a liquidator (*p*), and where a liquidator is named in the notice to appoint some other person as liquidator (*q*).

But it is not competent to a meeting to drop the resolution mentioned in the notice, and to substitute a fresh resolution which is of such a nature that notice of it should have been given, and so on a notice to pass a resolution to enter into winding-up for the purpose of reconstruction, it is not competent to pass a resolution for winding-up without more (*r*). But where the notice deals with two separate resolutions, the failure of one will not invalidate the other, even in cases where they are closely connected. Thus, where there are separate resolutions for a winding-up and a sale to another company, the winding-up will be good even where the sale for any reason falls through (*s*).

In the absence of special provision in the articles no notice need be given of an adjourned meeting, but without notice the adjourned meeting cannot transact any business except business left unfinished at the previous meeting (*t*). Occasionally the articles contain provisions enabling any shareholder to give notice that he proposes to move a resolution, if he leaves notice of such resolution at the office of the company a certain time before the meeting, the time mentioned being usually less than the time prescribed for notices of the meetings, such a provision will only allow of business which is ancillary or incidental to the main business of the meeting being brought forward (*u*).

The notice must be given to every member within reach (*x*), unless the articles contain anything to the contrary. Probably mere absence abroad will not be enough to disentitle a member to notice; but if he is somewhere where it would be impossible to get hold of him in time or his whereabouts is unknown, that would in most cases be sufficient to excuse a notice being given (*y*). As failure to give

(*p*) *Indian Zoedone Co.* (1884), 26 C. D. 70; *Welsh Flannel and Tweed Co.* (1875), 20 Eq. 360. The older cases on this point seem to be overruled so far as they did not turn on the provisions of the Acts there in question: see *Wright's Case* (1868), 12 Eq. 333 *n.*, as to what may be incidental.

(*q*) *Trench Tubeless Co.*, [1900] 1 Ch. 408.

(*r*) *Teede and Bishop* (1901), 84 L. T. 561.

(*s*) *Thomson* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 765; *Cleve* v. *Financial Corporation* (1873), 16 Eq. 363.

(*t*) *Scadding* v. *Lorant* (1851), 3 H. L. C. 418; *Rex* v. *Harris* (1831), 1 B. & Ad. 936; *Reg.* v. *Grimshaw* (1875), 10 Q. B. 747.

(*u*) *Imperial Hydropathic Hotel Co.* v. *Hampson* (1882), 23 C. D. 1.

(*x*) *Smyth* v. *Darley* (1849), 2 H. L. C. 789.

(*y*) See *Halifax Sugar Co.* v. *Francklyn* (1890), 59 L. J. (CH.) 591; *Portuguese Consolidated Copper Mines* (1889), 42 C. D. 160, both cases of directors' meetings; but see *Union Hill Silver Co.* (1870), 22 L. T. 400, where it was held that

notice to even one shareholder who is entitled to a notice will apart from special provision invalidate the meeting (z), unless such shareholder has by lying by and not objecting disentitled himself to complain, it is usual to provide that the accidental omission to give any notice shall not invalidate the meeting. Notice to a member on the register will be well given even if the register is subsequently rectified retrospectively (a).

In default of and subject to any regulations in the articles, meetings may be summoned by seven days' notice in writing served on every member in manner in which notices are required to be served by Table A (b). These provisions are :—

110. A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post (c).

111. If a member has no registered address in the United Kingdom, and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him, and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears (d).

112. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share (e).

absence abroad was in all cases a sufficient reason for not giving notice. Probably neither of these cases applies where the provisions of the existing Table A or similar Articles are applicable.

(z) *British Sugar Refining Co.* (1857), 3 K. & J. 408.

(a) *Sussex Brick Co.*, [1904] 1 Ch. 598.

(b) Companies (Consolidation) Act, 1908, s. 67 (1).

(c) It is better to provide for notices being served at the time of being put in the post office or within 24 hours after, otherwise one is liable to get into the difficulties exemplified by *Doogan* v. *Colquhoun*, [1899] W. N. 148, 20 L. R. Ir. 361. It is thought that apart from special provision, the rule in *Henthorn* v. *Fraser*, [1892] 2 Ch. 27, does not apply to notices of meetings; see the case in the next note, but see *London and Staffordshire Fire Insurance Co.* (1883), 24 C. D. 149.

(d) Where notice is by advertisement, this would appear apart from special provision to be the rule: *Mercantile Investment and General Trust Co.* v. *International Co. of Mexico*, [1893] 2 Ch. 484 *n.*, a case which decides that, apart from special provision, notice by advertisement is the ordinary way of summoning meetings.

(e) This would probably not be sufficient apart from special provision; cp. *Patentwood Keg Syndicate* v. *Pearse*, [1906] W. N. 164.

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name or by the title of representatives of the deceased, or trustee of the bankrupt or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred (*f*).

114. Notice of every general meeting shall be given in some manner hereinbefore authorized to (*a*) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them; and also to (*b*) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other person shall be entitled to receive notices of general meetings.

With regard to the question of the length of the notice which is necessary under the articles, this is usually a certain number of days, often seven. The rule for computing time in such cases is, apart from anything in the articles to the contrary (*g*), to exclude both the day of service and the day of meeting, the simplest way of working the matter out being to reduce the time to one day. Thus, in the case of a seven days' notice given on the 1st of January, the 2nd would not be counted, for there would be no interval of one day, and as the meeting could only be held on the 3rd if it were a one-day notice, it can only be held on the 9th with a seven days' notice (*h*). The word "month" in articles of association would, apart from provision to the contrary in the articles, mean lunar month (*i*). Directors have apparently no power to postpone a meeting which has once been summoned (*k*).

(*f*) It would seem that, apart from special provision, persons entitled on death or bankruptcy are not entitled to notice: *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656; and see *James* v. *Buena Ventura*, [1896] 1 Ch. 456; and *New Zealand Gold Extraction Co.* v. *Peacock*, [1894] 1 Q. B. 622.

(*g*) Cp. *The Pavilion, Newcastle-upon-Tyne*, [1911] W. N. 235, where an article dealing with notices generally was held not to apply to notices of meetings, as it did apply to certain other notices, and another article required seven clear days' notice for a meeting.

(*h*) *Mercantile Investment and General Trust Co.* v. *International Company of Mexico*, [1893] 1 Ch. 484 *n.*; *Railway Sleepers Supply Co.* (1885), 29 C. D. 204; *Reg.* v. *Shropshire* (1838), 8 A. & E. 173; *Goldsmith's Co.* v. *West Metropolitan Railway*, [1904] 1 K. B. 1.

(*i*) *Bruner* v. *Moore*, [1904] 1 Ch. 305. Usually the definition clause in the articles defines month as meaning calendar month. The Interpretation Act, 1889, makes the word mean calendar month where it occurs in a statute.

(*k*) *Smith* v. *Paringa*, [1906] 2 Ch. 193.

With regard to the actual meeting, there is usually a provision in the articles as to what number of members is to constitute a quorum, and as to what is to happen in the event of there being no quorum (*l*). If there is not such a provision a majority of those present can bind the company (*m*), persons who are present but who do not vote do not, it is thought, count for this purpose (*n*); but where, as in the case of a special or an extraordinary resolution, a specified majority of those present is requisite, there such persons must be counted (*o*). It would seem, however, that in all cases, unless the articles otherwise provide, there must be something which can in a reasonable sense be called a meeting, *i.e.*, there must be two members present (*p*). In computing a quorum, proxies (*q*) and members not entitled to vote (*r*) are not counted, and even where there has been a quorum at a meeting, the meeting cannot transact any business after the members present have ceased to be sufficient to constitute a quorum (*s*).

The first business of the meeting is to elect a chairman (*t*), but usually the articles provide for this, either naming a particular person or the chairman of the board, and providing that in his absence the directors present may choose one of their own number to preside. The duties of the chairman are to preserve order, and to take care that proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question that is before the meeting (*u*).

(*l*) Cp. Table A, Clauses 51 and 52; cp. *Hemans* v. *Hotckiss Ordnance Co.*, [1899] 1 Ch. 115.

(*m*) *Rex* v. *Varlo* (1775), 1 Cowp. 248; *Rex* v. *Monday* (1877), 2 Cowp. 530; *Grindley* v. *Barker* (1798), 1 Bos. & Pull. 229.

(*n*) Of course this only applies where the question is properly put to the meeting: see *Horbury Bridge Coal, Iron, and Waggon Co.* (1879), 11 C. D. 109.

(*o*) *John T. Clark & Co.*, [1911] S. C. 243; *Re Eynsham* (1849), 12 Q. B. 398 *n.*; 18 L. J. (Q. B.) 310; and see the remarks in *Hadleigh Castle Gold Mines*, [1900] 2 Ch. 419, at p. 422; and see also *Gosling* v. *Veley* (1853), 4 H. L. C. 679; *Reg.* v. *Christchurch* (1858), 27 L. J. (M. C.) 23; *Garton* v. *Southampton* (1893), 57 J. P. 328; *Black* v. *Tennent* (1899), 1 Fra 423; *Oldknow* v. *Wainwright* (1760), 2 Burr. 1017, 1 W. Bl. 229; *Rex* v. *Monday* (1877), 2 Cowp. 530; in *Gold Co.* (1879), 11 C. D. 701, 704; MALINS, V.C., treated members who abstained from voting as not being present.

(*p*) *Sharp* v. *Dawes* (1876), 2 Q. B. D. 26; *Sanitary Carbon Co.* (1877), W. N. 223. It will be otherwise where there is only one person who is eligible to attend the meeting: see *East* v. *Bennett Bros.*, [1911] 1 Ch. 163.

(*q*) Cp. *Cambrian Peat and Fuel Co.* (1875), 23 W. R. 405, 31 L. T. 773, where the point seems not to have been decided.

(*r*) *Henderson* v. *Louttit & Co.* (1894), 21 Rettie 674; *Greymouth Point Elizabeth Railway and Coal Co.*, [1904] 1 Ch. 32.

(*s*) *Henderson* v. *Louttit & Co.* (1894), 21 Rettie 674.

(*t*) See Companies (Consolidation) Act, 1908, s. 67, as to members present electing a chairman in default of and subject to regulations to the contrary.

(*u*) *National Dwellings Society* v. *Sykes*, [1894] 3 Ch. 159.

The question of whether the power of adjourning the meeting is in the chairman or in the meeting itself is a somewhat difficult one. It would seem quite clear that a chairman cannot at his own will and pleasure adjourn a meeting so as to prevent its transacting the business it was convened for, and that if he does this the meeting may elect a new chairman, and proceed with the business (x). Probably where it is impossible to conduct the business properly the chairman has power to adjourn the meeting (y). Where the power of adjournment is in the chairman with the consent of the meeting, as is not uncommonly provided by the articles, the chairman is not bound to adjourn a meeting though the majority desire it (z). After the chairman has taken his seat it is usual to read the minutes of the previous meeting, and the chairman, when such minutes are approved, signs them. The secretary will then usually read the notice of the meeting (a).

The usual practice is for each motion to be proposed and seconded; but this would appear to be unnecessary in the case of a motion from the chair, and the fact that a proposal has not been seconded would, it is thought, not affect the validity of a resolution passing it (b).

It is not right to put the resolutions which are before the meeting *en bloc*, each resolution should be separately put to the meeting (c), but where it is a question of electing a board of directors who are to act together, it would seem to be right to put the names of all who are to be elected together as one resolution (d).

It is the chairman's duty to decide whether any amendment which is duly proposed and seconded is in order, and if any amendment is so brought forward, it need not necessarily be reduced to writing—all that is required is that such amendment should be

(x) *National Dwellings Society* v. *Sykes*, [1894] 3 Ch. 159.

(y) See *Reg.* v. *D'Oyly* (1840), 12 A. & E. 139; *Rex* v. *Chester* (1834), 1 A. &. E. 342; in both of these cases the adjournment was for the purpose of a poll, *i.e.* where the business was not in progress, a distinction taken in the last cited but earlier case. *Stoughton* v. *Reynolds* (1736), 2 Str. 1045 Cas. *temp.*, Hard, 174, Fortescue, 168, which was supposed to decide that the question of adjournment was in the meeting, was stated in *Reg.* v. *D'Oyly, supra*, only to decide that if the chairman adjourns so as to disturb the proceedings the Court will interfere; see also *Rex* v. *Wilts* (1811), 13 East, 352; see *Ex parte Till* (1875), 10 Ch. 631, as to adjourning for improper reasons, viz. to get a particular majority.

(z) *Salisbury Gold Mining Co.* v. *Hathorn*, [1897] A. C. 268.

(a) See *Betts* v. *Macnaghten*, [1910] 1 Ch. 430, as to reading such notice as part of the minutes—when it is taken as read.

(b) See *Horbury Bridge Coal, Iron, and Waggon Co.* (1879), 11 C. D. 109.

(c) *Patentwood Keg Syndicate* v. *Pearse*, [1906] W. N. 164; *Rex* v. *Player* (1819), 2 B. & Ald. 707.

(d) *Reg.* v. *Brightwell* (1839), 10 A. & E. 171, apparently overruling the dicta in *Rex* v. *Monday* (1777), 2 Cowp. 530; cp., however, *Patentwood Keg Syndicate* v. *Pearse*, [1906] W. N. 176.

sufficiently definite (*e*). A shareholder voting on the resolution will not thereby be precluded from subsequently raising the objection that the chairman has ruled out an amendment which he ought to have put to the meeting (*e*).

Where an amendment has been carried it should be put to the meeting as a substantive resolution.

Business mentioned in the notice may be dropped, and a resolution which does not itself require a notice be substituted (*f*).

Primâ facie every shareholder has a right to be heard on every question (*g*), but where the meeting has listened for a reasonable time it will be competent for the chairman, at all events with the consent of the meeting, to apply the closure (*h*).

It would seem that speeches or reports made by directors (*i*) or shareholders (*k*) at meetings, will in the absence of malice be privileged if they contain libellous statements. Newspaper reporters have no right to attend company meetings (*l*), but if they are present it would seem that this will not usually take away the privilege of a speaker at the meeting (*m*); newspapers in publishing the reports of speeches at meetings will, it would seem, be entitled to claim privilege if the matter is one of public interest, but not otherwise (*n*).

It is the chairman's business to ascertain the sense of the meeting. This is done in the first instance by a show of hands. On a show of hands apart from anything very special in the articles, each member present will have one vote only (*o*), and even on a special resolution proxies will not, unless they are held by a person not otherwise entitled to a vote, be counted (*p*). The Act provides that a company which is a member of another company may, by resolution of the directors, authorize any of its officials or any other person to act as its representative at any meeting of that other company, and that the person so authorized shall be entitled to exercise the same powers

(*e*) *Henderson* v. *Bank of Australasia* (1890), 45 C. D. 330.

(*f*) *rench Tubeless Co.*, [1900] 1 Ch. 408.

(*g*) *Const* v. *Harris* (1824), T. & R. 496, at p. 525.

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

(*i*) *Lawless* v. *Anglo Egyptian* (1869), L. R. 4 Q. B. 262.

(*k*) *Quartz Hill Consolidated Gold Mining Co.* v. *Beall* (1882), 20 C. D. 501.

(*l*) *Tenby Corporation* v. *Mason*, [1908] 1 Ch. 457.

(*m*) *Pittard* v. *Oliver*, [1891] 1 Q. B. 474.

(*n*) *South Hetton Coal Co.* v. *North Eastern News Association*, [1894] 1 Q. B. 133; cp. also *Liverpool Household Stores Association* v. *Smith* (1888), 37 C. D. 170.

(*o*) *Horbury Bridge Coal, Iron, and Waggon Co.* (1879), 11 C. D. 109. Where the articles are silent as to votes, this will be the case on a poll also: Companies (Consolidation) Act, 1908, s. 67.

(*p*) *Ernest* v. *Loma Gold Mines*, [1897] 1 Ch. 1; *Caloric Engines and Siren Fog Signals Co.* (1885), 52 L. T. 846: the former case overrules *Bidwell Bros.*, [1893] 1 Ch. 603.

on behalf of the company which he represents as if he were an individual shareholder of that other company (q).

A person appointed under this section could presumably vote on a show of hands. Presumably also committees or other persons representing lunatic members (r), executors or administrators of deceased members (s), and trustees of bankrupt members can, at all events where they are authorized by the articles, exercise the same powers of voting as the person whom they represent could have exercised. Other persons are not members, and cannot, therefore, it is thought, vote on special or extraordinary resolutions; but there is nothing to prevent the articles authorizing them to vote on other matters. There is nothing to prevent any class of shareholder being excluded from voting altogether (t).

Apart from special provisions in the articles, and there should always be such a provision, the chairman will not have a casting vote either on a show of hands or at a poll (u). If there is not such a provision it would seem that any proposition brought forward will, if there be an equality of votes, fall to the ground (x). A casting vote will be in addition to any other vote the chairman may have (u), and if there is a doubt, some of the votes may be received contingently (y). The chairman then declares the result of the voting on the show of hands. If the matter before the meeting is an extraordinary or special resolution, then a declaration by the chairman that a resolution is carried (z) will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution unless a poll is demanded by three persons entitled according to the articles to vote, unless the articles require a demand by a specified number of such persons not in any case exceeding five (a), in which case presumably such number of persons

(q) Companies (Consolidation) Act, 1908, s. 68.

(r) Table A, Clause 62.

(s) Cp. *James* v. *Buena Ventura Nitrate Grounds Syndicate*, [1896] 1 Ch. 456.

(t) It would seem doubtful whether such persons would be entitled to be present; cp. *Tenby Corporation* v. *Mason*, [1908] 1 Ch. 457, unless perhaps the articles direct notices to be sent to them, it would certainly seem that they could not be counted for the purposes of a quorum: *Henderson* v. *Louttit & Co.* (1894), 21 Rattie 674; *Greymouth Point Elizabeth Railway and Coal Co.*, [1904] 1 Ch. 32, and see also *Cambrian Peat and Fuel Co.* (1875), 23 W. R. 405, 31 L. T. 773.

(u) *Nell* v. *Longbottom*, [1894] 1 Q. B. 767.

(x) Cp. *Reg.* v. *Chapman* (1704), Holt 443; *Rex* v. *Ginever* (1796), 6 T. R. 732; *Rex* v. *Tipperary*, [1903] 2 Ir. 108.

(y) *Bland* v. *Buchanan*, [1901] 2 K. B. 75.

(z) Articles usually contain a similar provision, but add after the word "carried" the words "or carried by a particular majority or lost": see *post*, p. 394.

(a) Companies (Consolidation) Act, 1908, s. 69 (3) & (4).

entitled according to the articles to vote as is specified in the articles may demand a poll.

If, in making such a declaration, the chairman, after saying that the resolution is carried, goes on to state the number of votes on each side, and such further statement shows that the resolution is not in fact carried or carried by the requisite majority, it would appear that the Court will consider whether the resolution has, in fact, been carried (*b*), but, except in this case and in a case where there has been fraud, the court will not go behind the chairman's declaration (*c*).

In other cases the chairman's declaration will be *primâ facie* evidence (*d*) both on a show of hands and on a poll; but it is not at all uncommon to have an article providing that his decision as to whether a resolution has been carried or carried by a particular majority or lost shall be conclusive evidence.

Where there is an article providing that votes tendered at a meeting and not disallowed at such meeting shall be valid for all purposes, the decision of the chairman allowing them can, in the absence of fraud, not be questioned after the meeting (*e*). Any voter is entitled, but subject to the provisions of the articles and the provisions in the case of extraordinary and special resolutions above referred to, to demand a poll (*f*); but persons holding proxies may not make such demand in the name of the person whom they represent or in their character of holders of such proxies (*g*). A poll may be demanded by the requisite number privately before the meeting, but if the demand is challenged at the meeting, it must be justified (*h*).

The effect of such demand is to do away with the preceding show of hands altogether (*i*), and a demand for a poll cannot be withdrawn

(*b*) *Caratal (New) Mines*, [1902] 2 Ch. 498; it may be doubted whether this decision is consistent with *Gold Co.* (1879), 48 L. J. (CH.) 281, 286, 11 C. D. 701, but the facts on this point do not very clearly appear from the report; see also *Cowan* v. *Scottish Publishing Co.* (1892), 19 Rettie 437, and *John T. Clark and Co.*, [1911] S. C. 243, the latter of which, at all events, can scarcely be law.

(*c*) *Hadleigh Castle Gold Mines*, [1900] 2 Ch. 419; and *Arnot* v. *United African Lands*, [1901] 1 Ch. 518, overruling *Young* v. *South African and Australian Exploration and Development*, [1896] 2 Ch. 268; on this point see also *Brynmawr Coal Co.* (1877), W. N. 45.

(*d*) *Wandsworth Gas Light Co.* v. *Wright* (1870), 22 L. T. 404; *Indian Zoedone Co.* (1884), 26 C. D. 70.

(*e*) *Wall* v. *London and Northern Assets*, [1899] 1 Ch. 550.

(*f*) *Campbell* v. *Maund* (1836), 5 A. & E. 865; *Reg.* v. *St. Pancras* (1839), 11 A. & E. 15; *Reg.* v. *Wimbledon Local Board* (1882), 8 Q. B. D. 459; *Reg.* v. *St. Matthew, Bethnal Green* (1875), 32 L. T. 558.

(*g*) *Reg.* v. *Government Stock Investment* (1878), 3 Q. B. D. 442; *Haven Gold Mining Co.* (1882), 20 C. D. 151.

(*h*) *Phœnix Electric Light and Power Co.* (1883), 48 L. T. 260.

(*i*) *Anthony* v. *Segar* (1789), 1 Hag. C. C. 13; *Reg.* v. *St. Matthew, Bethnal Green* (1875), 32 L. T. 558;

after the meeting has been terminated, at all events where it has been "seconded" by a person who does not consent to the withdrawal (*k*). The articles not infrequently provide that there shall be no poll on a question of adjournment or the election of a chairman, and in one case a point was raised but not decided as to whether there could, apart from such an article, be a poll on a question of adjournment (*l*). The question of adjournment in this case was a matter for the consent of the meeting, but it is thought that there was nothing in this point which was based on the inaccurate argument (*m*), that a poll could not be taken at once. Even persons not present at the meeting may appear and vote at the poll (*n*), but probably if it is a question of obtaining the consent of the meeting or of the members present (*o*), or choosing a chairman, the poll would have to be taken at once (*p*). The right time to demand a poll would seem to be immediately after the chairman's declaration on the show of hands (*q*).

The decision of when and where the poll is to be held would, apart from any special provision in the articles (*r*), appear to be a matter for the chairman of the meeting (*s*). In the absence of a special provision in the articles a poll cannot be taken by sending polling papers to members with directions that they are to be left with the company before a certain day (*t*). On a poll the number of votes each member has, and also proxies, will be counted. Not infrequently scrutineers are appointed, but the result of the poll should be declared by the chairman (*u*).

Where there has been an adjournment, the question may some day arise as to what is the date of the meeting, for the purpose of a special resolution which must be confirmed "at a subsequent general meeting . . . held after an interval of not less than fourteen days nor more than one month from the date of the first meeting" (*x*), *Scadding* v. *Lorant* (*y*), and the authorities there cited seem to suggest

Reg. v. *Cooper* (1870), L. R. 5 Q. B. 457; explaining *Reg.* v. *Hillingdon* (1852), 18 Q. B. 718.

(*k*) *Rex* v. *Dover*, [1903] 1 K. B. 668. One person was entitled to demand a poll in this case.

(*l*) *Macdougall* v. *Gardiner* (1875), 1 C. D. 13.

(*m*) *Chillington Iron Co.* (1885), 29 C. D. 159; *Reg.* v. *D'Oyly* (1840), 12 A. & E. 139.

(*n*) *Reg.* v. *Lambeth* (1838), 8 A. & E. 356; *Campbell* v. *Maund* (1836), 5 A. & E. 865; *Reg.* v. *Wimbledon* (1882), 8 Q. B. D. 459.

(*o*) But see *Reg.* v. *Hedger* (1840), 12 A. & E. 139.

(*p*) Not infrequently the articles contain a provision to this effect.

(*q*) *Campbell* v. *Maund* (1836), 5 A. & E. 865.

(*r*) See *British Flax Producers Co.* (1889), 60 L. T. 215.

(*s*) *Reg.* v. *D'Oyly* (1840), 12 A. & E. 139; *Rex* v. *Chester* (1834), 1 A. & E. 342; *Chillington Iron Co.* (1885), 29 C. D. 159.

(*t*) *McMillan* v. *Le Roi Mining Co.*, [1906] 1 Ch. 331.

(*u*) *Indian Zoedone Co.* (1884), 26 C. D. 70.

(*x*) Companies (Consolidation) Act, 1908, s. 69. The wording of this section is slightly different from s. 51 of the Act of 1862, which it replaces.

(*y*) (1851), 3 H. L. C. 418.

that the date of the original meeting is the date of the meeting however many times it may be adjourned; but this would cause two difficulties: firstly, the confirmatory meeting could be indefinitely adjourned, unless, indeed, it could be said that it was not "held" within the meaning of the section until it was completed; secondly, where the first meeting was adjourned for more than fourteen days, the confirmatory resolution could be held at the same time as the adjourned meeting, there being an interval of not less than fourteen days from the date of the original meeting. Having regard to these considerations, it would seem that the section will be satisfied if the two resolutions are actually passed at an interval of not less than fourteen days or more than one month from one another (*a*).

It would seem that where, as in the case of extraordinary resolutions, a particular majority is required, a bare majority may not decide to adjourn because they know that they have not that majority present (*b*).

Every company must cause minutes of all proceedings of general meetings to be entered in books kept for the purpose; any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting, will be evidence of the proceedings (*bb*).

The Court will very rarely if ever restrain a company from holding a meeting, however useless it may be, as the company has a right to discuss what it pleases (*c*). Where the wrong complained of is one done to the company, and not to an individual shareholder, the Court will not interfere at the suit of any shareholder, whether suing on behalf of himself and all other shareholders, or on his own behalf alone, if a majority of the company assembled in general meeting could ratify it. The only exception to this rule would seem to be where the majority of the company are using their powers to benefit themselves at the expense of the minority or to defraud the minority.

Thus, in the leading case on the subject, *Foss* v. *Harbottle* (*d*), the plaintiff charged the directors with defrauding the company, but could not show that he had taken any steps to ascertain the views of the company on the matter, and this was held to be fatal to his claim. Again, the Court has declined to interfere where the company

(*a*) This seems in accordance with the practice; see *Wall* v. *London and Northern Assets*, [1898] 2 Ch. 469; *Thomson* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 765, in both of which the point arose, but was not argued.

(*b*) *Ex parte Till* (1875), 10 Ch. 631, a bankruptcy case which perhaps is not really in point.

(*bb*) Companies (Consolidation) Act, 1908, s. 71.

(*c*) *Mason* v. *Motor Traction Co.* [1905] 1 Ch. 419; *Isle of Wight Railway Co.* v. *Tahourdin* (1883), 25 C. D. 320. The Court will grant an injunction to restrain a company from acting on a resolution which has been invalidly passed as an extraordinary resolution, and which it is proposed to confirm as a special resolution: *Young* v. *South African and Australian Exploration and Development*, [1896] 2 Ch. 268.

(*d*) (1843), 2 Ha. 461.

has omitted to appoint new directors, the power of appointment being in the company in general meeting (*e*) and where the company in general meeting had confirmed the act complained of and no question of fraud was fairly raised, although it was suggested (*f*). Again, an injunction was refused, where the chairman refused to grant a poll, it being under the circumstances of the case perfectly competent for the plaintiff to summon a fresh meeting and to put the matter complained of right in that way (*g*), and, in another case, the Court declined to grant an injunction restraining a company from extending its business in a way authorised by its memorandum of association (*h*). Further, the Court will not allow an action by one member of a company to set aside a contract which the company was fraudulently induced to enter into, if the company is willing to be made plaintiff (*i*), it will be otherwise if the company declines to bring the action because the persons who were guilty of the fraud hold or control a majority of votes (*k*), and the Court will restrain a majority from entering into an arrangement for a sale to another company, where such sale will in effect put the assets of the vendor company or a substantial part of them into the pockets of the majority, at the expense of the minority (*l*).

The Court has allowed a suit by a single shareholder to set aside an agreement with a company (*m*), where the name of the company has in a previous action (*n*) been struck out at the direction of a majority of the company, such majority including the persons who had sold to the company.

In *Burland* v. *Earle* (*o*) although the company was not plaintiff, and no relief was given on other heads of claim (*p*), a director was ordered to repay overpayments made to himself under the mistaken belief that the payments were authorized by a resolution of the company. In this case the director in question held at the time of the

(*e*) Cp. *Mozley* v. *Alston* (1847), 1 Phil. 790.

(*f*) *Lord* v. *Copper Miners* (1848), 2 Phil. 740.

(*g*) *Macdougall* v. *Gardiner* (1875), 1 C. D. 13; cp. *Reg.* v. *Government Stock Investment Co.* (1878), 3 Q. B. D. 412, where a mandamus was granted to admit a director elected on a show of hands as against one elected on a poll which had not been duly demanded.

(*h*) *Campbell* v. *Australasian Mutual Provident Society* (1908), 77 L. J. (CH.) 116.

(*i*) *Duckett* v. *Gover* (1877), 6 C. D. 82; see also *Gray* v. *Lewis* (1873), 8 Ch. 1035.

(*k*) *Mason* v. *Harris* (1879), 11 C. D. 97.

(*l*) *Menier* v. *Hooper's Telegraph Works* (1874), 9 Ch. 350; *Kerry* v. *Maori Dream Gold Mines* (1898), 14 T. L. R. 402; see also *Consolidated South Rand Mines Deep*, [1909] 1 Ch. 491.

(*m*) *Atwool* v. *Merryweather* (1867), 5 Eq. 464 *n.*

(*n*) *East Pant du United Lead Mining Co.* v. *Merryweather* (1864), 2 H. & M. 254.

(*o*) [1902] A. C. 83.

(*p*) Including a claim for relief from a contract by which the director in question had sold his property to the company.

suit an absolute majority of the shares; but the case is somewhat difficult to distinguish from *Normandy* v. *Ind, Coope & Co.* (*q*).

Again, an individual member suing on behalf of himself and others may restrain directors, who have a preponderating number of votes, from abusing their powers (*r*).

In these cases it is not necessary to show that the company has actually declined to take proceedings, it will be enough to show that the delinquents have such a number of votes that it would be useless to convene a meeting or that the company has so lain by after knowing of a fraud on it, as to make it extremely improbable that it will take proceedings (*s*).

These remarks do not apply to cases where a company is acting beyond the powers conferred on it by its memorandum or articles of association (*t*), nor do they apply to the case where the rights of property of any given shareholder are being ignored (*u*); in all these cases an individual shareholder may bring an action either in his own name where the act complained of is *ultra vires* of the company (*x*), or in other cases in his own name and that of all shareholders of the defendant company other than those who are made defendants; in such actions discovery can be had against the company (*y*), but the plaintiff must be a person who has not precluded himself by his acquiescence from bringing the action (*z*), at all events, where he is complaining of an act that has been done and is not seeking to prevent something being done (*a*).

It would seem that only the directors or the company in general meeting can authorize the name of the company being used in any proceedings (*b*); where the company's name is used without authority the name of the company will be struck out and the solicitor appearing for it will be ordered to pay the costs of the company whether plaintiff (*c*) or defendant (*d*) as between solicitor and client and that of the other party to the action as between party and party; where

(*q*) [1908] 1 Ch. 84.

(*r*) *Alexander* v. *Automatic Telephone Co.*, [1900] 2 Ch. 56.

(*s*) *Russell* v. *Wakefield Waterworks* (1875), 20 Eq. 474.

(*t*) In spite of the remarks of PHILLIMORE, J., in *Steele* v. *South Wales Miners Federation*, [1907] 1 K. B. 361 at p. 370, it is thought that any member can complain of acts which are beyond the powers conferred on the company by its articles; see *Salmon* v. *Quin*, [1909] 1 Ch. 311, [1909] A. C. 442.

(*u*) *Pender* v. *Lushington* (1877), 6 C. D. 70; *Simpson* v. *Westminster Palace Hotel* (1860), 8 H. L. C. 712.

(*x*) See *supra*, p. 306.

(*y*) *Spokes* v. *Grosvenor Hotel*, [1897] 2 Q. B. 124.

(*z*) *Towers* v. *African Tug*, [1904] 1 Ch. 558.

(*a*) *Mosely* v. *Koffyfontein Mines*, [1911] 1 Ch. 73.

(*b*) *La Compagnie de Mayville* v. *Whitley*, [1896] 1 Ch. 788.

(*c*) *Newbiggin-by-the-Sea Gas Co.* v. *Armstrong* (1879), 13 C. D. 310; *John Morley Building Society* v. *Barras*, [1891] 2 Ch. 386.

(*d*) *Marshall's Valve Gear* v. *Manning Wardle*, [1909] 1 Ch. 267.

the company is co-plaintiff with another, that person and not the solicitor will be ordered to pay the costs (*e*).

Where a solicitor enters an appearance and conducts proceedings for a non-existent company, the Court will order him personally to pay the costs, even though there is a partnership who are in fact his clients, and carry on business under the name and style of such company (*f*).

VARIOUS FORMS OF NOTICES OF MEETINGS.

FORM OF NOTICE FOR ANNUAL GENERAL MEETING.

THE A.B. COMPANY LIMITED.

Notice is hereby given that the first Annual General Meeting of the A.B. Company Limited will be held at on Wednesday the day of 19 at o'clock in the forenoon for the purposes following :—

1. To receive and consider the annual statement of accounts and the balance sheet of the Company and the reports of the Directors and Auditors thereon.
2. To elect Directors in place of those retiring by rotation.
3. To elect Auditors for the ensuing year and fix their remuneration.
4. To transact such other ordinary business as may occur.

[Holders of share warrants who propose to attend the above meeting must deposit their share warrants at least 24 hours before the meeting at the registered office of the company No. Street E.C.] (*g*)

By Order of the Board,
X.Y.
Secretary.

FORM OF NOTICE OF EXTRAORDINARY GENERAL MEETING TO PASS AN ORDINARY RESOLUTION FOR AN INCREASE OF CAPITAL (*h*).

THE A.B. COMPANY LIMITED.

Notice is hereby given that an Extraordinary General Meeting of the above-named Company will be held at on day the day of 19 at o'clock in the noon for the purpose of considering and if thought fit passing the following resolution as an ordinary resolution that is to say, THAT the capital of the Company

(*e*) *La Compagnie de Mayville* v. *Whitley*, [1896] 1 Ch. 788 ; but see *Gold Reefs of Western Australia* v. *Dawson*, [1897] 1 Ch. 115, which shows that the discontinuance of the action will not prevent such an order being made ; see *Yonge* v. *Toynbee*, [1910] 1 K. B. 215 ; *Salton* v. *New Beeston Cycle Co.*, [1900] 1 Ch. 43, as to a solicitor acting for a dissolved company.

(*f*) *Simmons* v. *Liberal Opinion, Ltd.*, [1911] 1 K. B. 966.

(*g*) The words in brackets may be usefully inserted where there are share warrants, and the articles require them to be deposited before voting.

(*h*) A special or extraordinary resolution is only necessary for this where the articles require it.

be increased from £ to £ by the issue of preference shares of £1 each and that such preference shares do confer the following and no further rights that is to say, (1) The right to a cumulative preferential dividend at the rate of per cent. per annum on the capital paid up thereon ranking in priority to any dividend on the existing capital of the Company. (2) The right on a winding-up to repayment of the capital paid up thereon in priority to any payment in respect of the other shares in the existing capital of the Company.

By Order of the Board,
X.Y.
Secretary.

NOTICE OF EXTRAORDINARY GENERAL MEETING TO PASS AN EXTRAORDINARY RESOLUTION TO INCREASE THE CAPITAL OF THE COMPANY (*i*).

THE A.B. COMPANY LIMITED.

Notice is hereby given that an Extraordinary General Meeting of the above-named Company will be held at on day the day of 19 at o'clock in the noon for the purpose of considering and if thought fit passing as an extraordinary resolution the following resolution that is to say :—

THAT the capital of the company be increased from £50,000 divided into 50,000 shares of £1 each to £100,000 divided into 100,000 shares of £1 each.

By Order of the Board,
X.Y.
Secretary.

FORM OF NOTICE OF EXTRAORDINARY GENERAL MEETING TO PASS AN EXTRAORDINARY RESOLUTION THAT WILL REQUIRE CONFIRMATION AT A SUBSEQUENT MEETING AS A SPECIAL RESOLUTION.

THE A.B. COMPANY LIMITED.

Notice is hereby given that an Extraordinary General Meeting of the above-named Company will be held at on day the day of 19 at o'clock in the noon for the purpose of considering and if thought fit of passing the following resolution as an Extraordinary resolution that is to say :—

THAT subject to the provisions and restrictions in section 91 of the Companies (Consolidation) Act 1908 contained interest at the rate of 4 per cent. per annum be paid on the amount for the time being paid up on the 10,000 Ordinary Shares of the company which were issued for the purpose of defraying the expenses of the construction of the works of the company at and that the interest so paid may be charged to capital as part of the cost of construction of the said works.

(*i*) An extraordinary resolution will only be necessary in this case where (as under Article 41 of Table A) the articles require it.

Should the above resolution be passed as an extraordinary resolution, it will be submitted for confirmation as a special resolution at a meeting to be subsequently convened (*k*).

By Order of the Board,
X.Y.
Secretary.

FORM OF NOTICE OF EXTRAORDINARY GENERAL MEETING TO CONFIRM A RESOLUTION AS A SPECIAL RESOLUTION ALREADY PASSED AS AN EXTRAORDINARY RESOLUTION FOR A SUBDIVISION OF SHARES.

THE A.B. COMPANY LIMITED.

Notice is hereby given that an Extraordinary General Meeting of the above-named Company will be held at on day the day of 19 at o'clock in the noon for the purpose of considering and if thought fit confirming as a special resolution the following resolution which was passed as an Extraordinary Resolution at an Extraordinary General Meeting of the Company held on the day of 19 that is to say :—

That each of the £1 shares in the capital of the Company be subdivided into 2 shares of 10*s*. each.

By Order of the Board (*l*),
X.Y.
Secretary.

OTHER FORMS OF RESOLUTIONS.

ALTERATION OF ARTICLES.

"That Articles of Association in the form of a draft set of Articles of Association which has for the purpose of identification been signed by A. B. a solicitor of the Supreme Court be substituted for the existing Articles of Association of the Company."

Where the new articles of association do more than bring the old ones up to date, it is desirable to accompany this notice by a circular (*m*) which may, with the alterations necessary to meet the case, be in the following form :—

(*k*) Or where the articles allow of two meetings being called by one notice "to be held at the above address at o'clock in the noon on day the day of 19 ," even where the articles do not allow of this it is thought that the notice might validly give notice that the second resolution will be held at a meeting to be held on a future date, unless notice to the contrary is given: see *supra*, pp. 384 and 385.

(*l*) These words must, of course, be omitted where the meeting is summoned by requisitionists under s. 66. In spite of the doubt expressed in *State of Wyoming Syndicate*, [1901] 2 Ch. 431, it is thought that the notice may be signed by the secretary; it need not be signed by the requisitionists.

(*m*) *Normandy* v. *Ind, Coope & Co.*, [1908] 1 Ch. 84.

THE A. B. COMPANY LIMITED.

The new Articles of Association which it is proposed that the Company shall adopt contain the following provisions, amongst others, which are different from those of the existing Articles of Association of the Company.

1. THEY give the Company power to pay a commission of 20 per cent. instead of 10 per cent. to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares of the Company, and procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the Company.

2. THEY extend the lien, which the Company has at present over partly paid shares only, to all shares.

3. THEY enable the directors to refuse to register transfers of shares and persons claiming shares by transmission, in cases where the shares are fully paid, and not only as under the existing articles where they are partly paid.

4. THEY increase the maximum number of Directors from 4 to 6.

5. THEY increase the remuneration of each Director from £100 per annum to a remuneration calculated at the rate of £200 per annum.

The new Articles are intended also to bring the Articles of Association of the Company up to date ; a copy of them can be seen at the registered office of the Company and at the offices of Messrs.   Solicitors to the Company No.   Street E.C. during business hours at any time before the confirmatory meeting (*n*).

RESERVE CAPITAL.

That the sum of £   per share, being part of the capital of the Company which has not been already called up, shall not be capable of being called up except in the event and for the purposes of a winding-up.

CONVERSION OF PRIVATE INTO PUBLIC COMPANY: SECTION 121 (2).

That this Company do turn itself into a public Company.

[Here will follow any change of articles that may be required.]

CONSOLIDATION OF SHARE CAPITAL.

That each of the following sets of five shares of £1 each, namely the shares numbered 1 to 5 both inclusive the shares numbered 16 to 20 both inclusive the shares numbered 30, 31, 43, 99, and 105 in the Capital of the

(*n*) Where there is not a circular, the notice itself should state where the new articles can be seen, unless they are sent round with the notice. In some cases instead of a circular it may be desirable to send round a copy of the new articles, with the material alterations marked, say, in red ink.

Company and each consecutive set of five shares of £1 each of the shares numbered from 201 to 300 both inclusive in the capital of the Company be consolidated and subdivided into shares of £5 each.

CONVERSION OF FULLY PAID-UP SHARES INTO STOCK.

THAT the shares numbered   to   both inclusive be converted into stock.

RECONVERSION OF STOCK INTO FULLY PAID SHARES.

THAT the sum of £   stock of the Company now standing in the name of A. B. be reconverted into fully paid shares of £   each (*o*).

FORM OF WRIT IN ACTION BY A SHAREHOLDER ON HIS REPRESENTATIVE CAPACITY AGAINST A COMPANY AND ITS DIRECTORS.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.
MR. JUSTICE

Between A.B. (on behalf of himself and all other shareholders in the defendant company other than the defendants C.D. and E.F.)
Plaintiff
and
X.Y. Ld., C.D. and E.F.
Defendants.

GEORGE V. BY THE GRACE OF GOD, ETC.
The plaintiff claims.

(1) An injunction restraining the defendants and each of them from acting upon or in any way giving effect to any of the resolutions passed at an adjourned extraordinary general meeting of the defendant company held on the   day of   19   .
(2) Damages.
(3) Costs.

FORM OF ORDER IN ABOVE ACTION.

(*Title and Formal Parts.*)

This Court doth order that the defendants, X.Y. Ld., C.D. and E.F. and each of them be restrained [until judgment in this action] from acting upon or in any way giving effect to numbers   of the resolutions passed at an adjourned general meeting of the defendant company held on the   and it is ordered that the defendants X.Y. Ld., C.D. and E.F. do pay to the plaintiff his costs occasioned by this appeal and of the

(*o*) For other resolutions, see the chapter on Petitions, pp. 637 *et seq.*, where the resolutions are set out in the petitions themselves, and also pp. 686 *et seq.*

said orders. Such costs to be taxed by the taxing master. [*Salmon* v. *Quin and Axteno, Ltd. and Others*, 1908, S. 4090. Order of C.A. dated 5th December, 1908.]

INSPECTION.

The Board of Trade (*p*) may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the board direct :—

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

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

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

The application must be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring the investigation ; and the Board of Trade may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

It is the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

An inspector may examine on oath the officers (*q*) and agents of the company in relation to its business, and may administer an oath accordingly.

If any officer or agent refuses to produce any book or document which under the section it is his duty to produce, or to answer any question relating to the affairs of the company, he will be liable to a fine not exceeding five pounds in respect of each offence.

On the conclusion of the investigation the inspectors must report their opinion to the Board of Trade, and a copy of the report must be forwarded by the Board of Trade to the registered office of the company, and a further copy must, at the request of the applicants for the inspection, be delivered to them. The report will be written or printed as the Board direct.

All expenses of and incidental to the investigation must be

(*p*) A writ of prohibition will not lie against the Board of Trade or an inspector appointed by it under the provisions as the inspection is not a judicial matter, but only a scheme for obtaining information, and the report is only evidence of the opinion of the inspectors: *Grosvenor* v. *West-end Railway* (1897), 76 L. T. 337.

(*q*) But not ex-officers: *Grosvenor* v. *West-End Railway* (1897), 76 L. T. 337.

defrayed by the applicants, unless the Board of Trade direct the same to be paid by the company, which the Board of Trade is authorized to do (*r*). Where an application is made under these provisions the Board of Trade always require a statutory declaration showing that the applicants have good reason for and are not actuated by malicious motives in requiring such investigation. The applicants are also required to make a deposit varying according to the amount the investigation is likely to cost.

A company may by special resolution appoint inspectors to investigate its affairs.

Inspectors so appointed have the same powers and duties as inspectors appointed by the Board of Trade, except that, instead of reporting to the Board of Trade, they must report in such manner and to such persons as the company in general meeting may direct.

Officers and agents of the company incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Board of Trade (*s*).

A copy of the report of any inspectors appointed under the Act, authenticated by the seal of the company whose affairs they have investigated will be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report (*t*).

AUDITORS.

Every company must at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

If an appointment of auditors is not made at an annual general meeting, the Board of Trade may on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid him by the company for his services (*x*). A director or officer of the company is not capable of being appointed auditor of a company.

A person, other than a retiring auditor, is not capable of being appointed auditor at an annual general meeting unless notice of an

(*r*) Companies (Consolidation) Act, 1908, s. 109. The section is scarcely ever made use of.

(*s*) *Ibid.*, s. 110.

(*t*) *Ibid.*, s. 111.

(*x*) Where the non-appointment of auditors arises from some slip the old auditors will usually be reappointed. In other cases the Board of Trade will appoint some auditor of standing. The remuneration usually paid by the company to its auditors will no doubt be some guide to the Board of Trade in fixing the remuneration of an auditor, but as they necessarily appoint a person of standing a larger fee may be necessary.

intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company must send a copy of any such notice to the retiring auditor, and give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting; but if, after a notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after that notice has been given, the notice, though not given within the time required by this provision will be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed will hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint auditors.

The directors of a company may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

The remuneration of the auditors of a company must be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors (*y*).

Every auditor of the company has a right of access at all times to the books and accounts and vouchers of the company, and is entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

The auditors must make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report must state :—

(*a*) Whether or not they have obtained all the information and explanations they have required; and

(*y*) Companies (Consolidation) Act, 1908, s. 112. It will be noticed that neither the directors nor the company are expressly empowered by the section to appoint auditors between the statutory meeting and the first annual general meeting. It is thought that the effect of this section is to prevent auditors recovering any remuneration fixed otherwise than in the way provided by the section: see *Page* v. *Eastern and Midlands Railway* (1884)), 1 Cab. & E. 280, a case decided under s. 91 of the Companies Clauses Act, 1845.

(b) Whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

The balance sheet must be signed on behalf of the board by two of the directors of the company, or, if there is only one director, by that director, and the auditors' report must be attached to the balance sheet, or there must be inserted at the foot of the balance sheet a reference to the report, and the report must be read before the company in general meeting, and be open to inspection by any shareholder. Any shareholder is entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

If any copy of a balance sheet is issued, circulated, or published without being signed as required by this provision, or without having a copy of the auditors' report attached thereto or containing such reference to that report as is required by the section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, will on conviction be liable to a fine not exceeding fifty pounds (z).

In the case of a banking company registered after the fifteenth day of August, eighteen hundred and seventy-nine—

(a) If the company has branch banks beyond the limits of Europe, it will be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the registered office of the company in the United Kingdom; and

(b) the balance sheet must be signed by the secretary or manager (if any), and where there are more than three directors by at least three of those directors and where there are not more than three directors by all the directors (a).

Holders of preference shares and debentures of a company have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company, except in the case of private companies, or companies registered before the 1st of July, 1908 (b).

(z) The offence can be prosecuted under the Summary Jurisdiction Acts, but in Scotland all prosecutions under the section must be at the instance of the Lord Advocate or a procurator fiscal, as the Lord Advocate directs: Companies (Consolidation) Act, 1908, s. 276.

(a) Companies (Consolidation) Act, 1908, s. 113.

(b) *Ibid.*, s. 114.

Where the accounts of an assurance company to which the Assurance Companies Act, 1909, applies, are not subject to audit in accordance with the provisions of the Companies (Consolidation) Act, 1908, or the Companies Clauses Consolidation Act, 1845, relating to audit, the accounts of the company are to be audited annually in such manner as the Board of Trade prescribes, and the regulations made for the purpose may apply to any such company the provisions of the Companies Consolidation Act, 1908, relating to audit, subject to such adaptations and modifications as may appear necessary or expedient (*c*).

Under the power conferred by this provision the following rules have been made :—

The accounts of every assurance company not subject to audit in accordance with the provisions of the Companies (Consolidation) Act, 1908, or of the Companies Clauses Consolidation Act, 1845, relating to audit shall be audited in accordance with the provisions of section 113 (1) and (2) of the Companies (Consolidation) Act, 1908 (*d*).

No director or officer of the company shall be capable of being appointed an auditor.

In the case of a company having a share capital, the auditor or auditors shall be elected annually by the shareholders (*e*).

Section 113 of the Companies (Consolidation) Act, 1908, impliedly requires an annual balance sheet and audit (*f*), and the Act also imposes other duties on auditors. They must audit that part of the summary which the company, if not a private company, is required to make in the form of a balance sheet containing a summary of its share capital, its liabilities, and its assets (*g*). If auditors have been appointed before the statutory meeting they must certify the correctness of the statutory report so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares and the receipts and payments on capital account (*h*).

Auditors appointed under the above provisions have a *primâ facie* right to rely on their appointment, and if they are improperly dismissed will be entitled to bring an action ; but the Court will not force their services on the company, particularly where proceedings against them are threatened, and there is a possibility of their using their position to obtain discovery in such proceedings. If the auditors have been dismissed by the directors, the Court will usually direct a meeting of the company to ascertain its wishes. Where an auditor is excluded, he will not be liable for the non-performance of his statutory duties (*hh*).

Not infrequently the articles contain directions with reference to the duties of the auditors ; and in such case the auditors are

(*c*) Assurance Companies Act, 1909, s. 9. See *supra*, pp. 16 and 17.

(*d*) *I.e.* the provisions of s. 113, giving the auditors right of access to the books of the company and to making inquiries and also the provisions of that section relating to the auditors' report.

(*e*) Order of Board of Trade of June 6, 1910. Rules relating to the audit of accounts of assurance companies, Rules 1, 2, and 3.

(*f*) *Newton* v. *Birmingham Small Arms Co.*, [1906] 2 Ch. 378.

(*g*) Companies (Consolidation) Act, 1908, s. 26.

(*h*) *Ibid.*, s. 65 (4).

(*hh*) *Cuff* v. *London and County Land and Building Co.*, [1912] 1 Ch. 440.

bound to comply with such requirements (*i*). The first question that arises in considering the duties of auditors is as to the extent to which they are bound to go behind the books of the company. It will be seen that auditors in their report have to say whether the balance sheet shows a true and correct view of the company's affairs, according not only to the books of the company, but also according to the best of their information and the explanations given to them (*k*). These latter words were first introduced by the Companies Act, 1907, but they do not seem to alter the law as previously laid down to any considerable extent. It is not the duty of auditors to consider whether the business of the company is, or is not, being prudently carried on: they have simply to ascertain the true financial position of the company at the time of the audit (*l*). To do this they are not bound to go through every document and paper of the company; they may, for instance, take a few vouchers at haphazard, and if these are in order they may assume that the other vouchers are in like case (*m*); or again, they may rely on the certificate of the managing director as to the value of the stock which the company has in hand (*n*). It has been stated that it is the duty of an auditor to examine the register of members, and that a proper certificate cannot be given unless this is done (*o*).

If an auditor does come across any suspicious circumstance, then it is his duty to probe the matter to the bottom, and if such inquiry does not do away with his suspicions, he must report to the shareholders; except in very rare cases, it will be necessary to report suspicious facts to the shareholders, and it will not be sufficient to indicate to them a source from which they can get the requisite information (*p*). Thus, if auditors find that without any apparent reason the stock of the company, or any other asset, has become very largely inflated in value from one year to another, that is a matter for inquiry, and, if necessary, for them to report on; and the same remark would probably be true where assets of a wasting character or book debts of long standing stand from year to year at the original value placed on them; again, if the company is applying its moneys in a manner which is *ultra vires*, *e.g.* in the purchase of its own shares, the auditors should report on that. In a proper case the auditors of a company can call in an expert on any particular subject to assist them in their labours (*q*).

A company cannot have a secret reserve fund, and keep the particulars of such fund from its auditors. But previously to the Act

(*i*) *Kingston Cotton Mill (No. 2)*, [1896] 2 Ch. 279. An article providing that the books shall not be open to inspection of members will not prevent discovery in an action; *Cartland v. Houston, etc., Co.* (1912), 132 L. T. Jo. 132.

(*k*) Companies (Consolidation) Act, 1908, s. 113 (2) (*b*).

(*l*) *London and General Bank (No. 3)*, [1895] 2 Ch. 673; see also *per* FARWELL, L.J., in *Rex v. Roberts*, [1908] 1 K. B. 407.

(*m*) *London and General Bank (No. 3)*, [1895] 2 Ch. 673; cp. also *Thomas v. Devonport Corporation*, [1900] 1 Q. B. 16, a case under the Municipal Corporation Act, 1882.

(*n*) *Kingston Cotton Mills (No. 2)*, [1896] 2 Ch. 279.

(*o*) *Wheatcroft's Case* (1873), 29 L. T. 324.

(*p*) *London and General Bank (No. 3)*, [1895] 2 Ch. 673; *Newton v. Birmingham Small Arms Co.*, [1906] 2 Ch. 378.

(*q*) *Kingston Cotton Mill (No. 2)*, [1896] 2 Ch. 279.

of 1907, it was held that if a company had such a fund, and its auditors were satisfied with what was being done with it, it would be enough for the balance sheet to indicate that there were other undisclosed assets; but that if they were dissatisfied with the state of such fund, *e.g.* if it was invested in partly paid shares which might expose the company to serious liability, they must disclose the fact to the shareholders (*r*). If this decision was ever law (*rr*), it is not thought that it can be so regarded (in the case of companies other than private companies) now, for the statement in the form of a balance sheet (*s*) which such companies have to make under section 26 (3) of the Companies (Consolidation) Act, 1908, must contain a summary of the company's share capital and of its liabilities and assets, giving such particulars as will disclose the general nature of those liabilities and assets, and how the value of the fixed assets have been arrived at (*t*). The form of balance sheet to be laid before the company in general meeting is a question of very great importance, having regard to the law that limited companies cannot pay dividends out of capital.

According to the authorities, it may be right either (*a*) to have a balance sheet containing on the liability side all liabilities of the company, including the amounts paid up on the shares of the company, and on the other side all assets of the company, the balance (if any) on one side or the other, being credited or debited to profit and loss (*u*); or (*b*) to treat the balance sheet and profit and loss account as entirely separate, in which latter case the balance sheet will contain all capital liabilities of the company, including the amounts paid up on the shares of the company, and also all capital assets of the company, and the profit and loss account will contain, on the one side, all current expenses of the company, and on the other, all current earnings of the company (*x*).

The proper course to be adopted being dependent, apart from

(*r*) *Newton* v. *Birmingham Small Arms Co.*, [1906] 2 Ch. 378.

(*rr*) It has recently been approved in Scotland: *Young* v. *Brownlee & Co.*, [1911] S. C. 677.

(*s*) This document is a public document, for not only must a copy of it be forwarded to the Registrar of Joint Stock Companies, Companies (Consolidation) Act, 1908, s. 26 (4), but it is open to the inspection of any member gratis, and of any other person on payment of a fee not exceeding 1*s.*: *ibid.* s. 30 (1) and (2).

(*t*) The question of the value to be put on fixed assets is apparently a purely domestic question, and so to be decided by the company alone: cp. *Spanish Prospecting Co.*, [1911] 1 Ch. 92; see also *Young* v. *Brownlee & Co.*, [1911] S. C. 677, where it was held that a member had no cause of action because the stock in trade was undervalued in the balance sheet.

(*u*) See *Lubbock* v. *British Bank of South America*, [1892] 2 Ch. 198.

(*x*) See *Lee* v. *Neuchatel Asphalte Co.* (1889), 41 C. D. 1; *Verner* v. *General and Commercial Investment Trust Co.*, [1894] 2 Ch. 239; *National Bank of Wales*, [1899] 2 Ch. 629, and on appeal *sub nom.*; *Dovey* v. *Cory*, [1901] A. C. 477; *Bond* v. *Barrow Hœmatite*, [1902] 1 Ch. 353.

any special provisions in the articles, on the nature of the business of the company, and on what is usual or the reverse in businesses of a similar nature; if the latter form is adopted there would appear to be no obligation on the company to set aside a reserve fund, even when the property of the company is of a wasting nature (*y*), and the question of what is to be charged to capital and what to profit and loss is generally speaking dependent on the same considerations as are applicable to the determination of the form of balance sheet to be adopted (*z*).

It would seem, however, that if there is to be any force in the rule that dividends cannot be paid out of capital, there must be some payments which must be charged to profit and loss, even though an ordinary honest trader might see fit to charge them to capital. Thus, debts which are payable only out of profits would not be chargeable to capital (*a*), and it would seem that remuneration to directors, even where it is for special services rendered, must be charged to profit and loss, and that an article providing to the contrary will be bad (*b*).

A more difficult question arises with regard to interest on sums borrowed (*c*) or raised for purposes of construction—can a company treat moneys so paid for interest during the period of construction as a charge upon capital? It would appear clear (*d*) that moneys raised by the issue of shares for construction purposes are not available for the payment of interest on such shares or on any other shares, except in cases where the provisions of section 91 of the Companies (Consolidation) Act, 1908, or of the Indian Railways Acts, apply; but it is argued that moneys borrowed are not in any sense capital, that the buildings or works when completed represent not only the moneys expended on them, but also any interest that has been paid to raise such moneys, and that under these circumstances, if it can be shown to be usual for individual traders to charge such moneys to capital there is no reason why a limited company should not do so. This line of argument proved successful in *Bardwell* v. *Sheffield Waterworks* (*e*), a case not decided under the Companies Acts, in which interest on moneys raised by the issue of shares

(*y*) *Lee* v. *Neuchatel Asphalte Co.* (1889), 41 C. D. 1.

(*z*) *Bond* v. *Barrow Hæmatite*, [1902] 1 Ch. 353.

(*a*) *Bury* v. *Famatina Development Corporation*, [1909] 1 Ch. 754, [1910] A. C. 439.

(*b*) *Ashton* v. *Honey* (1907), 23 T. L. R. 253.

(*c*) For an instance of an injunction at the suit of debenture holders restraining excessive sums being placed to reserve, the interest being only payable out of the profits of each year: see *Heslop* v. *Paraguay Central Railway* (1910), 54 Sol. J. 234. For order in this case *infra*, p. 419.

(*d*) Otherwise the Indian Railways Act, 1894, and the Acts amending it, and also s. 91 of the Companies (Consolidation) Act, 1908, would seem unnecessary: see also *Guinness* v. *Land Corporation* (1882), 22 C. D. 349; *Re Sharpe*, [1892] 1 Ch. 154; *Alexandra Palace Co.* (1882), 21 C. D. 149.

(*e*) (1872), 14 Eq. 517.

was allowed to be charged to capital, and also in *Hinds* v. *Buenos Ayres Grand National Tramways* (*f*); it was treated as a very difficult question, but not decided on the appeal, in *Bloxam* v. *Metropolitan Railway* (*g*), but in the court below in that case it was considered to be wrong; and it was treated very summarily in *Alexandra Palace Co.* (*h*), where Fry, J., considered that such an argument could not be considered for a moment, as it was based entirely on paper transactions, which had no existence in sober fact.

It is submitted (*i*) that the view taken in this last cited case is the preferable one, for if it is right in the case of borrowed capital to treat the works constructed with such capital as representing alike the capital and interest charged on them, why should not such treatment be right in the case of moneys raised by the issue of shares? In either case the works constructed would be of precisely the same value, and to hold that they cannot be so treated in one case without so holding in the other, would seem to be paying attention to the words, rather than to the spirit, of the rule that dividends cannot be paid out of capital. If such interest is properly a charge on profit and loss it clearly cannot be charged to capital on the ground that the matter is one of internal management only, for it is obvious that to do this would be to increase the fund available for distribution (*k*).

Accretions to capital can, it is thought, unless the articles otherwise provide, always be credited to profit and loss (*l*); but before distributing accretions it will be necessary to ascertain that there has really been an increase in the value of the capital assets as a whole—the mere fact that one or two of those assets have increased in value will not justify such a course (*m*).

If sums properly payable out of capital have been paid out of profit and loss, such sums can subsequently be repaid to profit and loss (*n*).

It is thought that premiums obtained on the issue of shares at a premium are capital moneys (*o*); but moneys paid by way of interest for the delay of a contractor would seem rightly to be credited to profit and loss (*p*). A company can split an extraordinary expenditure which occurs in any given year, and which

(*f*) [1906] 2 Ch. 654.

(*g*) (1868), 3 Ch. 337, also a case not decided under the Companies Acts.

(*h*) (1882), 21 C. D. 149.

(*i*) It should be stated that the view here set out is contrary to that taken by BUCKLEY, L.J., see Buckley, 9th Edition, p. 652.

(*k*) See *Famatina Development Corporation* v. *Bury*, [1909] 1 Ch. 754, [1910] A. C. 439.

(*l*) *Lubbock* v. *British Bank of South America*, [1892] 2 Ch. 198.

(*m*) *Foster* v. *New Trinidad Lake Asphalt Co.*, [1901] 1 Ch. 208.

(*n*) *Hoole* v. *Great Western Railway* (1867), 3 Ch. 262.

(*o*) See *National Bank of Wales*, [1899] 2 Ch. 629.

(*p*) *Bloxam* v. *Metropolitan Railway* (1868), 3 Ch. 337.

is properly chargeable to profit and loss, so as to distribute it over two or three years (*q*).

Interest payable under section 91 of the Companies (Consolidation) Act, 1908, or under the Indian Railways Acts, may be charged to capital (*r*).

Where any commission has been paid in respect of any shares or debentures, or any sum has been allowed by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, must be stated in every balance sheet of the company, until the whole amount thereof has been written off (*s*).

Where a balance sheet has been fairly and honestly made out, the court will be very slow to interfere, or to say that it is not a proper balance sheet (*t*).

Auditors are expected to display reasonable care and skill, and if they act honestly they will, it would seem, only be liable if they display gross negligence, or are grossly incompetent (*u*), and but for such negligence or incompetence would have sent in a different report or would have cautioned their clients as to the affairs of the company (*x*). They must remember above all things that they are the servants of the company (*y*) and not of the directors, and that if they feel doubt or difficulty on any point, and such doubt or difficulty is not removed by any explanation that is vouchsafed to them, it is their duty to report on the point to the shareholders, a report of the directors will not be sufficient. Moreover, it will be the wildest folly on their part if they withdrew anything contained in a report they have made merely to please the directors; probably, the very few cases in which auditors have been held liable have turned mainly on their having proved too obliging in this respect (*z*).

The Statute of Limitations will protect auditors after six years (*a*).

(*q*) Cp. *Jamaica Railway* v. *Attorney-General of Jamaica*, [1893] A. C. 127, and Clause 80 of Table A. to the Companies Act, 1862.

(*r*) See Companies (Consolidation) Act, 1908, s. 91, and Indian Railways Act, 1894, *supra*, pp. 80 and 81.

(*s*) Companies (Consolidation) Act, 1908, s. 90.

(*t*) *Jamaica Railways* v. *Attorney-General of Jamaica*, [1893] A. C. 127; *Hinds* v. *Buenos Ayres Grand National Tramways*, [1906] 2 Ch. 654.

(*u*) *London and General Bank* (*No.* 3), [1895] 2 Ch. 673, and cp. also *Purves* v. *Landell* (1845), 12 Cl. & Fin. 91.

(*x*) *Henry Squire, Cash Chemist* v. *Ball, Baker & Co.* (1911), 106 L. T. 197.

(*y*) Notice to the auditors of a company will not constitute notice to its members: *Spackman* v. *Evans* (1868), L. R. 3 H. L. 171.

(*z*) *Leeds Estate Building and Investment Co.* v. *Shepherd* (1887), 36 C. D. 787; *London and General Bank* [No. 3] [1895] 2 Ch. 673: and see also *Kingston Cotton Mill* (*No.* 2), [1896] 2 Ch. 279.

(*a*) *Leeds Estate Building and Investment Co.* v. *Shepherd* (1887), 36 C. D. 787.

It has been laid down in Scotland that an auditor will be entitled to retain any papers handed to him for the purpose of performing his duties until his fees are paid, but that he has no general lien (*b*).

If any auditor in any return, report, certificate, balance sheet, or other document required by or for the purposes of sections 26, 65, 112 or 113 of the Act, makes a statement false in any material particular knowing it to be false, he will be guilty of a misdemeanour, and will be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to each imprisonment; the fine on summary conviction must not exceed £100 (*c*).

Misfeasance proceedings can usually be taken against auditors under section 215 of the Act, as they are in most cases officers of a company (*d*), and are liable where, as a direct consequence of a breach of duty on their part, the funds of the company have been misapplied (*e*).

ASSURANCE COMPANIES.

The Assurance Companies Act, 1909, contains special provisions for companies which are assurance companies within the meaning of that Act (*ee*).

Every assurance company must, at the expiration of each financial year of the company, prepare—

(*a*) A revenue account for the year in the form or forms set forth in the First Schedule to the Assurance Companies Act, 1909, and applicable to the class or classes of assurance business carried on by the company;

(*b*) A profit and loss account in the form set forth in the Second Schedule to such Act, except where the company carries on assurance business of one class only and no other business;

(*c*) A balance sheet in the form set forth in the Third Schedule to such Act (*f*).

With the exceptions mentioned below, every assurance company must, once in every five years, or at shorter intervals as may be prescribed by the instrument constituting the company, or by its regulations or byelaws, cause an investigation to be made into its financial condition, including a valuation of its liabilities by an

(*b*) *Findlay* v. *Waddell*, [1910] S. C. 670.

(*c*) Companies (Consolidation) Act, 1908, s. 281, and Fifth Schedule, and Perjury Act, 1911, s. 5.

(*d*) *London and General Bank* (*No.* 2), [1895] 2 Ch. 166; *Kingston Cotton Mill*, [*No.* 1] [1896] 1 Ch. 6; but see *Western Counties Steam Bakeries and Milling Co.*, [1897] 1 Ch. 617; *Findlay* v. *Waddell*, [1910] S. C. 670.

(*e*) *Kingston Cotton Mill* (*No.* 2), [1896] 2 Ch. 279.

(*ee*) See *supra*, pp. 16 and 17.

(*f*) Assurance Companies Act, 1908, s. 4. For these forms, see pp. 420 *et seq.* See s. 108 of the Companies (Consolidation) Act, 1908, *supra*, p. 251, as to the statements to be made by banking companies, insurance companies to which the Assurance Companies Act, 1909, does not apply, and certain other bodies.

actuary, and must cause an abstract of the report of such actuary to be made in the form or forms set forth in the Fourth Schedule to the Act and applicable to the class or classes of assurance business carried on by the company.

The last foregoing provisions also apply whenever at any other time an investigation into the financial condition of an assurance company is made with a view to the distribution of profits, or the results of which are made public (*g*).

The exception with regard to the business of life assurance is that in the case of a mutual company whose profits are allocated to members wholly or mainly by annual abatements of premium, the abstract of the report of the actuary on the financial condition of the company, prepared in accordance with the Fourth Schedule to this Act, may, notwithstanding anything in section five of the Act, be made and returned at intervals not exceeding five years, provided that, where such return is not made annually, it must include particulars as to the rates of abatement of premiums applicable to different classes or series of assurances allowed in each year during the period which has elapsed since the previous return under the Fourth Schedule (*h*).

A fire insurance company need not with respect to that business prepare a statement in accordance with the Fourth and Fifth Schedules to the Act (*i*).

The section (5) does not apply to either accident insurance companies or employers' liability insurance companies in respect of their business, but the following provisions are substituted for the provisions of sections 5 and 6 (see *infra*) of the Act, for these companies, so far as such businesses are concerned—that is to say—with regard to accident insurance companies.

The company must annually prepare a statement of its accident insurance business in the form set forth in the Fourth Schedule to this Act and applicable to accident insurance business, and the statement must be printed, signed, and deposited at the Board of Trade in accordance with section 7 of the Act (*k*):

With regard to employers' liability companies a company must annually prepare a statement of its employers' liability insurance business in the form set forth in the Fourth Schedule to this Act and applicable to employers' liability insurance business, and must cause an investigation of its estimated liabilities to be made by an actuary so far as may be necessary to enable the provisions of that form to be complied with, and the statement must be printed, signed, and deposited at the Board of Trade in accordance with section 7 of the Act (*l*).

(*g*) Assurance Companies Act, 1908, s. 5. See pp. 427 *et seq.* for form for life assurance business, and pp. 438 *et seq.* for form for bond investment business.

(*h*) *Ibid.*, s. 30 (*h*).

(*i*) *Ibid.*, s. 31 (*a*).

(*k*) *Ibid.*, s. 32 (*a*). For form, *post*, pp. 432 *et seq.*

(*l*) *Ibid.*, s. 33 (*c*). Business of this

The expression actuary in the Assurance Companies Act, 1909, means an actuary possessing such qualifications as may be prescribed by rules made by the Board of Trade (*m*).

Such rules have been made and are as follows :—

1. Any person signing as actuary valuation returns of life assurance business, sinking fund or capital redemption insurance business, or bond investment business shall be either—

(1) a Fellow of the Institute of Actuaries or of the Faculty of Actuaries ; or

(2) where application is made by a company and where, in the opinion of the Board of Trade, special circumstances exist, an Associate of the Institute of Actuaries or of the Faculty of Actuaries ; or

(3) the actuary at the date of making these Rules to a company under the Assurance Companies Act, 1909, having its head office within the United Kingdom or to any closed fund of such a company established in consequence of an amalgamation or transfer ; or

(4) such other person having actuarial knowledge as the Board of Trade may, on the application of a company, approve.

2. Any person signing as actuary returns with regard to employers' liability business shall be either—

(1) a Fellow or Associate of the Institute of Actuaries or of the Faculty of Actuaries ; or

(2) the actuary at the date of making these Rules to a company under the said Act having its head office within the United Kingdom or to any closed fund of such a company established in consequence of an amalgamation or transfer ; or

(3) such other person as the Board of Trade may, on the application of a company, approve (*n*).

Every assurance company carrying on life assurance or bond investment business must prepare a statement of any assurance business it has of either of these kinds at the date to which the accounts of the company are made up for the purposes of any investigation into its financial condition with a view to the distribution of profits or the results of which are made public in the form or forms set forth in the Fifth Schedule to the Assurance Companies Act, 1909, and applicable to the class or classes of assurance business carried on by the company : Provided that, if the investigation is made annually by any company, the company may prepare such a

class carried on outside the United Kingdom is not part of the company's employers' liability business for the purposes of the Act : Assurance Companies Act, 1908, s. 33 (1) (*i*). For form, *infra*, pp. 434 *et seq.*

(*m*) Assurance Companies Act, 1908, s. 29.

(*n*) Order of Board of Trade of June 6, 1910, rules relating to the qualification of actuaries, rr. 1 and 2.

statement at any time, so that it be made at least once in every five years (*o*).

Every account, balance sheet, abstract, or statement by the preceding sections of the Act required to be made must in the case, of all assurance companies to which the Act applies, be printed and four copies thereof, one of which must be signed by the chairman (*p*) and two directors of the company and by the principal officer of the company and, if the company has a managing director, by the managing director, must be deposited at the Board of Trade within six months after the close of the period to which the account, balance sheet, abstract, or statement relates: but, if in any case it is made to appear to the Board of Trade that the circumstances are such that a longer period than six months should be allowed, the Board may extend that period by such period not exceeding three months as they think fit.

The Board of Trade must consider the accounts, balance sheets, abstracts, and statements so deposited, and, if any such account, balance sheet, abstract, or statement appears to the Board to be inaccurate or incomplete in any respect, the Board must communicate with the company with a view to the correction of any such inaccuracies and the supply of deficiencies.

There must be deposited with every revenue account and balance sheet of a company any report on the affairs of the company submitted to the shareholders or policy-holders (*q*) of the company in respect of the financial year (*r*) to which the account and balance sheet relates.

Where an assurance company registered under the Companies Acts in any year deposits its accounts and balance sheet in accordance with these provisions, the company may, at the same time, send to the Registrar a copy of such accounts and balance sheet; and, where such copy is so sent, it is not necessary for the company to send to the Registrar a statement in the form of a balance sheet as required by sub-section (3) of section 26 of the Companies (Consolidation) Act, 1908, and the copy of the accounts and balance

(*o*) Assurance Companies Act, 1909, ss. 6, 31 (*a*), 32 (*a*), and 33 (*c*).

(*p*) "Chairman" means the person for the time being presiding over the board of directors or other governing body of the company: *ibid.*, s. 29.

(*q*) "Policy-holder" means the person who for the time being is the legal holder of the policy for securing the contract with the company: *ibid.*, s. 29. It includes an annuitant in the case of a life assurance company: *ibid.*, s. 30 (*b*); and in the case of a bond investment company it means the person who is for the time being the legal holder of a policy, which includes any bond, certificate, receipt, or other instrument evidencing the contract with the company: *ibid.*, s. 34 (*a*).

(*r*) "Financial year" means each period of twelve months at the end of which the balance of the accounts is struck or if no such balance is struck then the calendar year: *ibid.*, s. 29.

sheet so sent will be dealt with in all respects as if it were a statement sent in accordance with that sub-section (*s*). The first statement of the bond investment business of a company had to be deposited at the Board of Trade on or before the 30th June, 1911 (*t*).

A printed copy of the last-deposited accounts, balance sheet, abstract, or statement, must on the application of any shareholder or policy holder of the company be forwarded to him by the company by post or otherwise (*u*).

The Board of Trade may direct any documents deposited with them under the Act, or certified copies thereof to be kept by the Registrar of joint stock companies, and any such documents and copies will be open to inspection, and copies thereof may be procured by any person on payment of such fees as the Board of Trade may direct (*x*).

By the order of the Board of Trade of June 6, 1910, rules relating to the custody, inspection, and certification of documents, it is provided that a copy of every account, balance sheet, abstract, statement, or report, required by the Assurance Companies Act, 1909, to be deposited with the Board of Trade shall be kept by the Registrar of Joint Stock Companies, and shall be open to inspection by any person on payment of a fee of 1*s*. for each inspection, and any person may procure a copy of any such document or any part thereof on payment of 4*d*. a folio of 72 words.

Every document deposited under the Act with the Board of Trade, and certified by the Registrar of Joint Stock Companies, or by any person appointed in that behalf by the President of the Board of Trade to be a document so deposited, will be deemed to be a document so deposited.

Every document purporting to be certified by such Registrar, or by any person appointed in that behalf by the President of the Board of Trade, to be a copy of a document so deposited will be deemed to be a copy of that document, and will be received in evidence as if it were the original document, unless some variation between it and the original document be proved (*y*). The assistant Registrars have been appointed in addition to the Registrar for the purpose of certifying documents under this section (*z*).

The Board of Trade may, on the application or with the consent of an assurance company, alter the forms contained in the schedules

(*s*) Assurance Companies Act, 1909, s. 7.

(*t*) *Ibid.*, s. 34 (*d*).

(*u*) *Ibid.*, s. 8, and see ss. 23, 24, and 25, *supra*, p. 23, as to penalties.

(*x*) *Ibid.*, s. 20.

(*y*) *Ibid.*, s. 21.

(*z*) Order of Board of Trade of June 6, 1910. Rules relating to the custody, inspection, and certification of documents.

to the Assurance Companies Act, 1909, as respects that company, for the purpose of adapting them to the circumstances of that company (*a*).

The Board of Trade must lay annually before Parliament the accounts, balance sheets, abstracts, statements, and other documents under the Assurance Companies Act, or purporting to be under that Act, deposited with them during the preceding year, except reports on the affairs of assurance companies submitted to the shareholders or policy-holders thereof, and may append to such accounts, balance sheets, abstracts, statements, or other documents any note of the Board thereon, and any correspondence in relation thereto (*b*).

ORDER AS TO DISTRIBUTION OF PROFITS ON ACTION BY DEBENTURE-HOLDERS, WITH CHARGE ON PROFITS ONLY.

(*Title.*)

UPON motion for an injunction this day made unto the Court by counsel for the plaintiffs and upon reading the writ of summons issued in this action on the 21st December 1909 an affidavit of the plaintiff J.A.H. filed the 11th January 1910 and the several exhibits therein referred to and an affidavit of F.L.L. filed the 7th January 1910 and the plaintiffs and the defendant company by their counsel consenting to the hearing of the said motion being treated as the trial of the action,

This Court doth declare that upon the true construction of the trust deed in the said writ mentioned the defendant company is entitled to set aside a proper sum in each year out of profits for renewals and maintenance of the security comprised in the said deed but is not entitled to carry forward any balance of such profits to the revenue account of the following year but is bound to apply the same in or towards payment of interest on the 5 p.c. debenture stock issued by the defendant company and doth declare that the reserve fund of £ must be taken to have been set aside in equal moieties out of the profits carried forward from previous years and out of the profits of the current year, and that the balance of such last mentioned profits ought now to be paid to the plaintiffs. [*Heslop* v. *The Paraguay Central Railway Co.*, 1909—H—3590 EVE, J., January 21st, 1910.]

(*a*) Assurance Companies Act, 1909, s. 22.

(*b*) *Ibid.*, s. 27.

FORMS REFERRED TO IN THE PRECEDING SECTIONS.

FIRST SCHEDULE. (See section 4 (*a*) of the Act, *supra*, p. 414.)

N.B.—Where marine insurance business or sinking fund or capital redemption insurance business is carried on, the income and expenditure thereof to be stated in like manner in separate accounts. Any additional businesses (including employers' liability insurance business transacted out of the United Kingdom) to be shown in a separate inclusive general account.

(A.)—*Form applicable to Life Assurance Business.*

Revenue Account of the ______________ for the Year ending ______________ in respect of Life Assurance Business.

—	Business within the United Kingdom.	Business out of the United Kingdom.	Total.
	£ s. d.	£ s. d.	£ s. d.
Amount of life assurance fund at the beginning of the year	—	—	
Premiums:—			
Consideration for annuities granted - - - -			
Interest, dividends, and rents - - (£ s. d.)			
Less income tax thereon - -	—	—	
Other receipts (accounts to be specified) - - - -	—	—	
£			

—	Business within the United Kingdom.	Business out of the United Kingdom.	Total.
	£ s. d.	£ s. d.	£ s. d.
Claims under policies paid and outstanding:—			
By death - - -			
By maturity - - - -			
Surrenders, including surrenders of bonus - - -			
Annuities - - - - -			
Bonuses in cash - - -			
Bonuses in reduction of premiums - - - -			
Commission - - - -			
Expenses of management -	—	—	
Other payments (accounts to be specified) - - -	—	—	
Amount of life assurance fund at the end of the year, as per Third Schedule -	—	—	
£			

NOTE 1.—Companies having separate accounts for annuities to return the particulars of their annuity business in a separate statement.
NOTE 2.—Companies having both Ordinary and Industrial branches to return the particulars of the business in each department separately.
NOTE 3.—Items in this Account to be net amounts after deduction of the amounts paid and received in respect of re-assurances of the Company's risks.
NOTE 4.—If any sum has been deducted from the expenses of management account, and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Account.

NOTE 5.—Particulars of the new life assurances effected during the year of account to be appended to the above Account showing separately, as respects business within and business out of the United Kingdom, the number of policies, the total sums assured, the amount received by way of single premiums, and the amount of the yearly renewal premium income, the items to be net amounts after deduction of the amounts paid and received in respect of re-assurances of the company's risks. The particulars as to yearly renewal premium income need not be furnished in respect of Industrial business.

NOTE 6.—The columns headed "Business out of the United Kingdom" in the case of companies having their head office ...

(B.)—*Form applicable to Fire Insurance Business.*

Revenue Account of the__________for the Year ending__________19__in respect of Fire Insurance Business.

		£ s. d.	£ s. d.			£ s. d.	£ s. d.
	Amount of fire insurance fund at the beginning of the year :—				Claims under policies paid and outstanding - -		
	Reserve for unexpired risks -				Commission - - - - - - -		
	Additional reserve (if any) - -				Expenses of management - - - - -		
					Contributions to fire brigades - - - -		
	Premiums - - - - - - - -				Other payments (accounts to be specified) - -		
		£ s. d.				£ s. d.	
	Interest, dividends, and rents - -				Amount of fire insurance fund at the end of the year as per Third Schedule :—		
	Less income tax thereon - -				Reserve for unexpired risks being per cent. of premium income for the year - -		
	Other receipts (accounts to be specified) - -				Additional Reserve (if any) -		
		£				£	

NOTE 1.—Items in this Account to be the net amounts after deduction of the amounts paid and received in respect of re-insurances of the Company's risks.

NOTE 2.—If any sum has been deducted from the Expenses of management account, and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Account.

(C.)—*Form applicable to Accident Insurance Business.*

Revenue Account of the____________for the Year ending____________19___in respect of Accident Insurance Business.

		£ s. d.	£ s. d.			£ s. d.	£ s. d.
	Amount of accident insurance fund at the beginning of the year :—				Payments under policies, including medical and legal expenses in connection therewith - -		
	Reserve for unexpired risks -				Commission - - - - - - - -		
	Total estimated liability in respect of outstanding claims -				Expenses of management - - - - - -		
	Additional reserve (if any) - -				Other payments (accounts to be specified) - -		
					Amount of accident insurance fund at the end of the year as per Third Schedule :—		
	Premiums—				Reserve for unexpired risks being per cent. of premium income for the year - -		
	Interest, dividends, and rents - -	£ s. d.			Total estimated liability in respect of outstanding claims as per Fourth Schedule (C) - -		
	Less income tax thereon - -				Additional reserve (if any) - -		
	Other receipts (accounts to be specified) - -						
	£				£		

NOTE 1.—Items in this Account to be the net amounts after deduction of the amounts paid and received in respect of re-insurances of the Company's risks.

NOTE 2.—If any sum has been deducted from the Expenses of management account, and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Account.

(D.)—*Form applicable to Employers' Liability Insurance Business.*

Revenue Account of the__________for the Year ending__________19__ in respect of Employers' Liability Insurance Business transacted within the United Kingdom.

		£ s. d.	£ s. d.			£ s. d.	£ s. d.
	Amount of employers' liability insurance fund at the beginning of the year:—				Payments under policies, including medical and legal expenses in connection therewith - -		
	Reserve for unexpired risks -				Commission - - - - - - - -		
	Total estimated liability in respect of outstanding claims -				Expenses of management - - - - -		
	Additional reserve (if any) - -				Other payments (accounts to be specified) - -		
					Amount of employers' liability insurance fund at the end of the year, as per Third Schedule:—	£ s. d.	
	Premiums - - - - - - - -	£ s. d.			Reserved for unexpired risks, being per cent. of premium income for the year -		
	Interest, dividends, and rents - -				Total estimated liability in respect of outstanding claims, as per Fourth Schedule (D) - -		
	Less income tax thereon - -				Additional reserve (if any) - -		
	Other receipts (accounts to be specified) - -						
	£				£		

NOTE 1.—Items in this Account to be the net amounts after deduction of the amounts paid and received in respect of re-insurances of the Company's risks.

NOTE 2.—If any sum has been deducted from the Expenses of management account, and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Account.

(E.)—*Form applicable to Bond Investment Business.*

Revenue Account of the____________for the Year ending____________19_ in respect of Bond Investment and Endowment Certificate Business.

	£ s. d.	£ s. d.		£ s. d.	£ s. d.
Amount of Bond Investment and Endowment Certificate Fund at the beginning of the year - - -			Claims under bonds and certificates, paid and outstanding - - - - - - -		
Additional reserve (if any) - -			Commission - - - - - - -		
Premiums - - - - - - - - -			Expenses of management - - - - -		
	£ s. d.		Other payments (accounts to be specified) - -		
Interest, dividends, and rents - -			Amount of Bond Investment and Endowment Certificate Fund at the end of the year as per Third Schedule - - - - -		
Less income tax thereon - -			Additional reserve (if any) - -		
Other receipts (accounts to be specified) - -					
		£			£

NOTE 1.—Items in this Account to be the net amounts after deduction of the amounts paid and received in respect of re-insurances of the Company's risks.

NOTE 2.—If any sum has been deducted from the Expenses of management account, and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Account.

SECOND SCHEDULE. (See section 4 (*b*) of the Act, *supra*, p. 414.)

PROFIT AND LOSS ACCOUNT OF THE FOR THE YEAR ENDING 19 .

	£ s. d.	£ s. d.		£ s. d.
Balance of last year's account			Dividends and bonuses to shareholders	
Interest and dividends not carried to other accounts			Expenses not charged to other accounts	
Less income tax thereon			Loss realized (accounts to be specified)	
Profit realized (accounts to be specified)			Other payments (accounts to be specified)	
Other receipts (accounts to be specified)			Balance as per Third Schedule	
£			£	

THIRD SCHEDULE. (See section 4 (*c*) of the Act, *supra*, p. 414.)

Balance Sheet of the ——— on the ——— 19 ———

LIABILITIES.		£ s. d.
Shareholders' capital paid up (if any)	£	
Life assurance funds* :—		
Ordinary branch		
Industrial do.		
Annuity fund*		
Fire insurance fund		
Accident insurance fund		
Employers' liability insurance fund		
Bond investment and endowment certificate fund		
Marine insurance fund		
Sinking fund and capital redemption fund		
Profit and loss account		
Other funds (if any) to be specified		
		£
Claims admitted or intimated but not paid†		
Life assurance		
Fire insurance		
Bond investment		
Annuities due and unpaid†		
Other sums owing by the company † (to be stated separately under each class of business).		
£		

ASSETS.	£ s. d.
Mortgages on property within the United Kingdom	
Do. do. out of the United Kingdom	
Loans on parochial and other public rates	
Do. Life interests	
Do. Reversions	
Do. Stocks and shares	
Do. Company's policies within their surrender values	
Do. Personal security	
Investments :	
Deposit with the High Court (securities to be specified)	
British Government securities	
Municipal and county securities, United Kingdom	
Indian and Colonial Government securities	
Do. provincial securities	
Do. municipal do.	
Foreign Government securities	
Do. provincial securities	
Do. municipal do.	
Railway and other debentures and debenture stocks—Home and Foreign	
Railway and other preference and guaranteed stocks	
Do. ordinary stocks	
Rent charges	
Freehold ground rents	
Leasehold do.	
House property	
Life interests	
Reversions	
Agents' balances	
Outstanding premiums†	
Do. interest, dividends, and rents†	
Interest accrued but not payable†	
Bills receivable	
Cash :	
On deposit	
In hand and on current account	
Other assets (to be specified)	
£	

* Life companies having separate annuity fund to show amount thereof separately. † These items are or have been included in the corresponding items in the First Schedule.

NOTE 1.—When part of the assets of the company are specifically deposited, under local laws, in various places out of the United Kingdom, as security to holders of policies there issued, each such place and the amount compulsorily lodged therein must be specified in respect of each class of business, except that, in the case of fire, accident, or employers' liability insurance business, it shall be sufficient to state the fact that a part of the assets has been so deposited.

NOTE 2.—A Balance Sheet in the above form must be rendered in respect of each separate fund for which separate investments are made.

NOTE 3.—The Balance Sheet must state how the values of the Stock Exchange securities are arrived at, and a certificate must be appended, signed by the same persons as sign the Balance Sheet, to the effect that in their belief the assets set forth in the Balance Sheet are in the aggregate fully of the value stated therein, less any investment reserve fund taken into account. In the case of a company transacting life assurance business or bond investment business, this certificate is to be given on the occasions only when a statement respecting valuation under the Fourth Schedule is made.

NOTE 4.—In the case of a company required to keep separate funds under section 3 of this Act, a certificate must be appended, signed by the same persons as signed the Balance Sheet and by the auditor, to the effect that no part of any such fund has been applied, directly or indirectly, for any purpose other than the class of business to which it is applicable.

FOURTH SCHEDULE. (See section 5 of the Act, *supra*, pp. 414 and 415.)

N.B.—Where sinking fund or capital redemption insurance business is carried on, a separate statement signed by the actuary must be furnished, showing the total number of policies valued, the total sums assured, and the total office yearly premiums, and also showing the total net liability in respect of such business and the basis on which such liability is calculated.

(A.)—*Form applicable to Life Assurance Business.*

STATEMENT respecting the VALUATION of the LIABILITIES under LIFE POLICIES and ANNUITIES of the , to be made and signed by the ACTUARY.

(The answers should be numbered to accord with the numbers of the corresponding questions.)

1. The date up to which the valuation is made.

2. The general principles adopted in the valuation, and the method followed in the valuation of particular classes of assurances, including a statement of the method by which the net premiums have been arrived at, and whether these principles were determined by the instrument constituting the company, or by its regulations or byelaws, or how otherwise; together with a statement of the manner in which policies on under average lives are dealt with.

3. The table or tables of mortality used in the valuation. In cases where the tables employed are not published, specimen policy values are to be given, at the rate of interest employed in the valuation, in respect of whole-life assurance policies effected at the respective ages of 20, 30, 40, and 50, and having been respectively in force for five years, ten years, and upwards at intervals of five years respectively; with similar specimen policy values in respect of endowment assurance policies, according to age at entry, original term of policy, and duration.

4. The rate or rates of interest assumed in the calculations.

5. The actual proportion of the annual premium income, if any, reserved as a provision for future expenses and profits, separately specified in respect of assurances with immediate profits, with deferred profits, and without profits. (If none, state how this provision is made.)

6. The consolidated revenue account since the last valuation, or, in case of a company which has made no valuation, since the commencement of the business. (This return should be made in the form annexed. No return under this heading will be required where a statement under this schedule is deposited annually.)

7. The liabilities of the company under life policies and annuities at the date of the valuation, showing the number of policies, the amount assured, and the amount of premiums payable annually under each class of policies, both with and without participation in profits; and also the net liabilities and assets of the company, with the amount of surplus or deficiency. (These returns to be made in the forms annexed.)

8. The principles upon which the distribution of profits among the shareholders and policy holders is made, and whether these principles were determined by the instrument constituting the company or by its regulations or byelaws or how otherwise, and the number of years' premiums to be paid before a bonus (*a*) is allotted, and (*b*) vests.

9. The results of the valuation, showing—

(1) The total amount of profit made by the company, allocated as follows :—

(*a*) Among the policy holders with immediate participation, and the number and amount of the policies which participated ;

(*b*) Among policy holders with deferred participation, and the number and amount of the policies which participated ;

(*c*) Among the shareholders ;

(*d*) To reserve funds, or other accounts ;

(*e*) Carried forward unappropriated.

(2) Specimens of bonuses allotted to whole-life assurance policies for £100 effected at the respective ages of 20, 30, 40, and 50, and having been respectively in force for five years, ten years, and upwards at intervals of five years respectively, together with the amounts apportioned under the various modes in which the bonus might be received ; with similar specimen bonuses and particulars in respect of endowment assurance policies, according to age at entry, original term of policy, and duration.

Note.—Separate statements to be furnished throughout in respect of Ordinary and Industrial business respectively, the basis of the division being stated.

(FORM referred to under Heading No. 6 in Fourth Schedule (A).)

Consolidated Revenue Account of the ______ for ______ years commencing ______ and ending ______.

		£ s. d.			£ s. d.
Amount of life assurance fund at the beginning of the period			Claims under policies paid and outstanding .	£ s. d.	
Premiums			By death		
Consideration for annuities granted			By maturity		
	£ s. d.		Surrenders		
Interest, dividends, and rents . . .			Annuities		
Less income tax thereon . . .			Bonuses in cash		
Other receipts (accounts to be specified)			Bonuses in reduction of premiums		
			Commission		
			Expenses of management		
			Other payments (accounts to be specified) . . .		
			Amount of life assurance fund at the end of the period, as per Third Schedule		
£			£		

NOTE.—If any sum has been deducted from the expenses of management account and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Statement.

SUMMARY and VALUATION of the POLICIES of the __________ as at __________ 19___.

Description of Transactions.	Particulars of the POLICIES for Valuation.				VALUATION. Value by the Table, Interest per cent.			
	Number of Policies.	Sums assured and Bonuses.	Office Yearly Premiums.	Net Yearly Premiums.	Sums assured and Bonuses.	Office Yearly Premiums.	Net Yearly Premiums.	Net Liability.
ASSURANCES.								
I. *With immediate participation in profits.*								
For whole term of life								
Other classes (to be specified)								
Extra premiums payable								
II. *With deferred participation in profits.*								
For whole term of life								
Other classes (to be specified)								
Extra premiums payable								
Total assurances with profits . . .								
III. *Without participation in profits.*								
For whole term of life								
Other classes (to be specified)								
Extra premiums payable								
Total assurances without profits								
Total assurances								
Deduct re-assurances (to be specified according to class in a separate statement) . . .								
Net amount of assurances.								
Adjustments, if any (to be separately specified) .								
ANNUITIES ON LIVES.								
Immediate								
Other classes (to be specified) . . .								
Total of the results								

NOTE 1.—The term "extra premium" in this Act shall be taken to mean the charge for any risk not provided for in the minimum contract premium. If policies are issued in or for any country at rates of premium deduced from tables other than the European mortality tables adopted by the company, separate schedules similar in form to the above must be furnished.

NOTE 2.—**Separate returns and valuation results must be furnished in respect of classes of policies valued by different tables of mortality, or at different rates of interest, also for business at other than European rates.**

NOTE 3.—In cases also where separate valuations of any portion of the business are required under local laws in places outside the United Kingdom, a summary statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured and bonuses, the total office yearly premiums, and the total net liability on the bases as to mortality and interest adopted in each such place, with a statement as to such bases respectively.

(FORM referred to under Heading No. 7 in Fourth Schedule (A).)

VALUATION BALANCE SHEET of __________ as at __________ 19__ .

Dr.	£	Cr.	£
To net liability under Life Assurance and Annuity transactions (as per summary statement provided in Fourth Schedule (A))		By Life Assurance and Annuity funds (as per balance sheet under Schedule 3)	
To surplus, if any		By deficiency, if any	

(C.)—*Form applicable to Accident Insurance Business.* (See section 32 (*a*) of the Act, *supra*, p. 415.)

STATEMENT of the ESTIMATED LIABILITY in respect of OUTSTANDING CLAIMS arising in the year of Account, and in the preceding year or years; computed as at the end of the year in which the claims arose, and as at the end of the year of Account; with particulars as to the number and amount of the claims actually paid in the intervening period.

I.—Claims arising during the year of account ending 19

(*a*) Particulars as to Claims arising, and settled, during the year of Account:—

Class of Claim.	No. of Claims.	Total amount paid.	
		By Sums insured.	By Weekly Allowance.
(1)	(2)	(3)	(4)
(i) Fatal claims . . .			
(ii) Non-fatal claims . ..			
Totals			

(*b*) Particulars as to Claims arising during and outstanding at the end of the year of Account:—

Class of Claim.	No. of Claims.	Amount paid during Year of Account.	Estimated Liability.
(1)	(2)	(3)	(4)
(i) Fatal claims			
(ii) Non-fatal claims, involving payment of sums insured.			
(iii) Non-fatal claims, involving payment of temporary weekly allowances:—			
With maximum duration, not exceeding 26 weeks.			
With maximum duration exceeding 26 weeks, but not exceeding 52 weeks.			
And so on, at intervals of 26 weeks, up to the longest period over which temporary weekly allowanees are granted.			
(iv) Non-fatal claims, involving payment of yearly allowances during permanent total disablement.			
Totals			

II.—Outstanding claims which arose during the *first year* preceding the year of account, ending 19 .

Particulars of Claims.	Estimated Liability in respect of Claims Outstanding as at the above Date.		Claims paid during the Period of One Year between the above Date and the End of Year of Account.				Estimated Liability in respect of Claims Outstanding as at the End of Year of Account.		Totals of Columns (3), (4), and (5).	
			Terminated within such Period.		Not terminated within such Period.					
(1)	(2)		(3)		(4)		(5)		(6)	
	No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.
(i) Fatal claims . .										
(ii) Non-fatal claims, involving payment of sums insured.										
(iii) Non-fatal claims, involving payment of temporary weekly allowances :—										
With maximum duration not exceeding 26 weeks.										
With maximum duration exceeding 26 weeks, but not exceeding 52 weeks.										
And so on, at intervals of 26 weeks, up to the longest period over which temporary weekly allowances are granted.										
(iv) Non-fatal claims, involving payment of yearly allowances during permanent total disablement.										
Totals . . .										

NOTE.—If temporary weekly allowances are granted by the Company for periods exceeding 52 weeks, particulars are to be furnished, in a form or forms similar to II above, showing, in respect of claims involving such extended allowances, the estimated liability as at the end of the year in which such claims arose, and as at the end of the year of account; and the number and amount of such actual claims paid during the intervening period of two (or more) years; distinguishing claims terminated, and not terminated, within such period.

III.—Summary of estimated liability, in respect of claims outstanding as at the end of the year of account—

As per column (4) of Statement I. (*b*) . . £

,, ,, (5) ,, ,, II. . .

,, ,, (5) of further schedules in the form of Statement II. (if required).

In respect of yearly allowances during permanent total disablement, outstanding at the end of the year of account, but not included in the above Statements – –

Total estimated liability, in respect of outstanding claims as at the end of the year of account, as per First Schedule (C.) – £

(D.)—*Form applicable to Employers' Liability Insurance Business.* (See section 33 (*c*), of the Act, *supra*, p. 415.)

STATEMENT of the ESTIMATED LIABILITY in respect of outstanding CLAIMS arising during each of the Five Years preceding the Year of ACCOUNT, and in such Year; computed as at the end of the Year in which the CLAIMS arose, and as at the end of the Year of ACCOUNT; with Particulars as to the Number and Amount of the CLAIMS actually paid in the intervening Period.

I.—Claims arising during the year of account ending the 19 .

(*a*) Particulars as to claims arising and settled during the year of account:—

Class of Claim. (1)	Number. (2)	Amount paid. (3)
Fatal claims		£
Non-fatal claims . . .		
Total . . .		

(*b*) Particulars as to claims arising during, and outstanding at end of the year of account:—

Class of Claim. (1)	Number. (2)	Amount paid during year of account. (3)	Estimated Liability. (4)
Fatal claims . . .		£	£
Non-fatal claims . .			
Total . .			

II.—Outstanding claims which arose during the first year preceding the year of account, ending the 19 .

Particulars of Claims. (1)	Estimated Liability in respect of Claims outstanding as at the above date. (2)		Claims paid during the period of 1 year between the above date and the end of the year of Account. (3)		Estimated Liability in respect of Claims outstanding as at the end of the year of Account. (4)		Total of Columns (3) and (4). (5)	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount
		£		£		£		£
Fatal claims .								
Non-fatal claims—								
Terminated .					—	—		
Not terminated								
Total .								

III.—Outstanding claims which arose during the second year preceding the year of account, ending the 19 .

Particulars of Claims. (1)	Estimated Liability in respect of Claims outstanding as at the above date. (2)		Claims paid during the period of 2 years between the above date and the end of the year of Account. (3)		Estimated Liability in respect of Claims outstanding as at the end of the year of Account. (4)		Total of Columns (3) and (4). (5)	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount
		£		£		£		£
Fatal claims .								
Non-fatal claims—								
Terminated .					—	—		
Not terminated								
Total .								

IV.—Outstanding claims which arose during the third year preceding the year of account, ending the 19 .

Particulars of Claims. (1)	Estimated Liability in respect of Claims outstanding as at the above date. (2)		Claims paid during the period of 3 years between the above date and the end of the year of Account. (3)		Estimated Liability in respect of Claims outstanding as at the end of the year of Account. (4)		Total of Columns (3) and (4). (5)	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount
		£		£		£		£
Fatal claims .								
Non-fatal claims—								
Terminated .					—	—		
Not terminated								
Total .								

V.—Outstanding claims which arose during the fourth year preceding the year of account, ending the 19 .

Particulars of Claims. (1)	Estimated Liability in respect of Claims outstanding as at the above date. (2)		Claims paid during the period of 4 years between the above date and the end of the year of Account. (3)		Estimated Liability in respect of Claims outstanding as at the end of the year of Account. (4)		Total of Columns (3) and (4). (5)	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount
		£		£		£		£
Fatal claims .								
Non-fatal claims—								
Terminated .					—	—		
Not terminated								
Total .								

VI.—Outstanding claims which arose during the fifth year preceding the year of account, ending the 19 .

Particulars of Claims.	Estimated Liability in respect of Claim outstanding as at the above date.		Claims paid during the period of 5 years between the above date and the end of the year of Account.		Estimated Liability (included in Statement VII. and valued by the method there specified) in respect of Claims outstanding as at the end of the year of Account.		Total of Columns (3) and (4).	
(1)	(2)		(3)		(4)		(5)	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount
		£		£		£		£
Fatal claims .								
Non-fatal claims—								
Terminated .					—	—		
Not terminated								
Total .								

NOTE.—In cases where the date at which the estimated liability, required under column (2), in Forms IV., V., and VI. above, would fall in any year prior to 1908, such estimated liability is to be returned as at the end of the year of account terminated in 1908, and the claims paid, required under column (3) of such forms, are to be in respect of the period between the end of the year of account terminated in 1908 and the end of the year of account rendered.

VII.—Statement respecting Claims of five years' duration and upwards outstanding as at the end of the year of account. (To be made and signed by an Actuary.)

(1) The number of claims incumbent and having durations of five years and upwards as at the end of the year of account, including those separately returned under Form VI. above; and the amount of the weekly payment, and of the annual payment, due in respect of such claims; separately stated in respect of each year of life of the workmen, from the youngest to the oldest. (These particulars to be returned under columns (1) to (4) of the tabular statement given below.)

(2) The estimated liability in respect of the claims specified above, computed, as at the end of the year of account, on the basis of the amount which would be required to purchase from the National Debt Commissioners, through the Post Office Savings Bank, an immediate life annuity for the workmen equal to 75 per cent. of the value of the weekly payment, according to the sex and true age of the workers. (These particulars to be returned under column (5) of the tabular statement given below, in respect of each year of life of the workmen, from the youngest to the oldest.)

(3) If the estimated liability, as reserved under the First Schedule in respect of the claims specified above, is computed on any basis other than that specified under Heading No. (2) above, the whole of the particulars

required under Headings (1) and (2) above are to be returned in columns (1) to (5) of the tabular statement given below, together with the following additional particulars :—

(i) If the estimated liability is determined on the basis of the value of an immediate life annuity :—

(*a*) The table of mortality upon which such life annuity values are based ;

(*b*) The rate of interest at which such life annuity values are computed ;

(*c*) Whether such life annuity values are discriminated according to the sex of the workers ;

(*d*) The proportion of such life annuity values representing the estimated liability ;

(*e*) The modifications (if any) made in the true ages of the workmen, in deducing the estimated liability ;

(*f*) The amount of the estimated liability. (To be returned, in respect of each year of life, in column (6) of the tabular statement given below.)

(ii) If the estimated liability is not determined on the basis of the value of an immediate life annuity, full particulars are to be specified as to the precise method adopted in deducing such estimated liability, and the total amount of estimated liability is to be returned under column (6) of the tabular statement given below.

Number of Claims. (1)	Ages of the Workmen as at the end of the Year of Account. (2)	Amount of Weekly Payment. (3)	Amount of Annual Payment. (4)	Estimated Liability computed on Basis of 75 per Cent. of Value of Life Annuity purchased through the Post Office. (5)	Estimated Liability, if computed on Basis other than that specified in Column 5. (6)

NOTE.—Separate particulars to be furnished in respect of male and female workers.

Summary of estimated liability in respect of outstanding claims as at the end of the year of account—

	£
As per column (4) of Statement I (*b*) . . .	
,, ,, (4) ,, II . . .	
,, ,, (4) ,, III . . .	
,, ,, (4) ,, IV . . .	
,, ,, (4) ,, V . . .	
,, ,, (5) or (6) ,, VII . . .	
Total estimated liability in respect of outstanding claims as at the end of the year of account as per First Schedule (D.)	£

(E.)—*Form applicable to Bond Investment Business.* (See section 5 of the Act, *supra*, pp. 414 and 415.)

Statement respecting the Valuation of the Liability under Bonds and Endowment Certificates of the   to be made and signed by the Actuary.

(The answers should be numbered to accord with the numbers of the corresponding questions.)

1. The date up to which the valuation is made.

2. The principles adopted in the valuation of the liabilities under bond investment policies and endowment certificates, and whether these principles were determined by the instrument constituting the company, or by its regulations or byelaws, or how otherwise.

3. The rate or rates of interest assumed in the calculations.

4. The actual proportion of the annual income from contributions, if any, reserved as a provision for future expenses and profits. (If none, state how this provision is made.)

5. The consolidated revenue account since the last valuation, or, in the case of a company which has made no valuation, since the commencement of the business. (This return should be made in the form annexed. No return under this heading will be required where the valuation is made annually.)

6. The liabilities of the company under bond investment policies and endowment certificates at the date of the valuation, showing the number of policies or certificates, the amounts assured, the amount of contribution payable annually, and the provision for future expenses and profits; also the net liabilities and assets of the company, with the amount of surplus or deficiency. (These returns should be made in the forms annexed.)

7. The principles upon which the distribution of profits among the bond and certificate holders and shareholders is made, and whether those principles are determined by the instrument constituting the company, or by its regulations or byelaws, or how otherwise, and the time during which a bond investment policy or endowment certificate must be in force to entitle it to share in the profits.

8. The results of the valuation, showing—

(1) The total amount of profit made by the company, allocated as follows:—

(*a*) among participating bond or certificate holders, with the number so participating and the total amount of their bonds or certificates;

(*b*) among the shareholders;

(*c*) to reserve funds, or other accounts;

(*d*) carried forward unappropriated.

(2) Specimens of profit allotted to policies or certificates for £100 effected for different periods, and having been in force for different durations.

(FORM referred to under Heading No. 5 in Fourth Schedule (E.).)

CONSOLIDATED REVENUE ACCOUNT of the ______ for ______ Years commencing ______ 19__ and ending ______ 19__.

	£ s. d.	£ s. d.		£ s. d.
Amount of Bond Investment and Endowment Certificate Fund at the beginning of the period			Claims under Bonds and Certificates	
Additional reserve, if any			Commission	
Premiums			Expenses of management	
	£ s. d.			
Interest, dividends, and rents			Other payments (accounts to be specified) . . .	
Less Income Tax thereon . . .			Amount of Bond Investment and Endowment Certificate Fund at the end of the period, as per Third Schedule .	
Other receipts (accounts to be specified)				

NOTE.—If any sum has been deducted for the Expenses of management account and taken credit for in the Balance Sheet as an asset, the sum so deducted to be separately shown in the above Statement.

(FORMS referred to under Heading No. 6 in Fourth Schedule (E.).)

SUMMARY and VALUATION of the BOND INVESTMENT POLICIES or ENDOWMENT CERTIFICATES of the __________ as at __________ 19____.

Description of Transactions.	Particulars of the Policies or Certificates for Valuation.			Valuation (Interest at per cent.).			
	No. of Policies.	Sums Assured and Bonuses (if any).	Full Yearly Premiums.	Value of Sums Assured and Bonuses (if any).	Value of Full Yearly Premiums.	Provisions for future Expenses and Profits.	Net Liability.
With participation in profits .							
Without participation in profits .							
Totals							
Deduct re-assurances (to be specified according to class)							
Net Totals							
Adjustments (if any) . .							
Total of the results . .							

(FORM referred to under Heading No. 6 in Fourth Schedule (E).)

VALUATION BALANCE SHEET of the ____________ as at ____________ 19 ____.

Dr.	£	Cr.	£
To net liability under Bond Investment and Endowment Certificate transactions (as per summary statement provided in Fourth Schedule (E))		By Bond Investment and Endowment Certificate Fund (as per balance sheet under Schedule 3)	
To surplus (if any)		By deficiency (if any)	

FIFTH SCHEDULE. (See section 6 of the Act, *supra*, pp. 416 and 417.)

N.B.—Where sinking fund or capital redemption business is carried on, a separate statement, signed by the actuary, must be furnished showing the total sums assured maturing in each calendar year and the corresponding office premiums.

(A.)—*Form applicable to Life Assurance Business.*

STATEMENT of the LIFE ASSURANCE and ANNUITY BUSINESS of the on the 19 , to be signed by the Actuary.

(The answers should be numbered to accord with the numbers of the corresponding questions. Statements of re-assurances corresponding to the statements in respect of assurances are to be given throughout.) Separate statements are to be furnished in the replies to all the headings under this schedule for business at other than European rates. Separate statements are to be also furnished throughout in respect of ordinary and industrial business respectively.

1. The published table or tables of premiums for assurances for the whole term of life and for endowment assurances which are in use at the date above mentioned.

2. The total amount assured on lives for the whole term of life which are in existence at the date above-mentioned, distinguishing the portions assured with immediate profits, with deferred profits, and without profits, stating separately the total reversionary bonuses and specifying the sums assured for each year of life from the youngest to the oldest ages, the basis of division as to immediate and deferred profits being stated.

3. The amount of premiums receivable annually for each year of life, after deducting the abatements made by the application of bonuses, in respect of the respective assurances mentioned under Heading No. 2, distinguishing ordinary from extra premiums. A separate statement is to be given of premiums payable for a limited number of years, classified according to the number of years' payments remaining to be made.

4. The total amount assured under endowment assurances, specifying sums assured and office premiums separately in respect of each year in which such assurances will mature for payment. The reversionary bonuses must also be separately specified, and the sums assured with immediate profits, with deferred profits, and without profits, separately returned.

5. The total amount assured under classes of assurance business, other than assurances dealt with under Questions 2 and 4, distinguishing the sums assured under each class, and stating separately the amount assured with immediate profits, with deferred profits, and without profits, and the total amount of reversionary bonuses.

6. The amount of premiums receivable annually in respect of each such special class of assurances mentioned under Heading No. 5, distinguishing ordinary from extra premiums.

7. The total amount of premiums which has been received from the

commencement upon pure endowment policies which are in force at the date above mentioned.

8. The total amount of immediate annuities on lives, distinguishing the amounts for each year of life, and distinguishing male and female lives.

9. The amount of all annuities on lives other than those specified under Heading No. 8, distinguishing the amount of annuities payable under each class, and the amount of premiums annually receivable.

10. The average rate of interest yielded by the assets, whether invested or uninvested, constituting the life assurance fund of the company, calculated upon the mean fund of each year during the period since the last investigation, without deduction of income tax.

It must be stated whether or not the mean fund upon which the average rate of interest is calculated includes reversionary investments.

11. A table of minimum values, if any, allowed for the surrender of policies for the whole term of life and for endowments and endowment assurances, or a statement of the method pursued in calculating such surrender values, with instances of the application of such method to policies of different standing and taken out at various interval ages from the youngest to the oldest. In the case of industrial policies, where free or paid up policies are granted in lieu of surrender values, the conditions under which such policies are granted must be stated, with specimens as prescribed for surrender values.

(E.)—*Form applicable to Bond Investment Business.*

STATEMENT of the BOND INVESTMENT BUSINESS of the
on the 19 . (To be signed by the Actuary.)

(The answers should be numbered to accord with the numbers of the corresponding questions. Statements of re-insurances, corresponding to the statements in respect of insurances, are throughout to be given.)

1. The published table or tables of rates of contribution for bond investment policies and endowment certificates which are in use at the date above-mentioned; with full particulars as to the terms and conditions on which advances are made under such policies or certificates, whether on security of house property or land, or otherwise.

2. The total amounts assured under policies or certificates which are in existence at the date above-mentioned, distinguishing the portions insured with and without profits, stating separately the total additions by way of bonus, and specifying such sums insured and bonuses respectively according to the number of complete years unexpired at such date.

3. The amount of premiums receivable annually, in respect of the respective insurances mentioned under Heading No. 2, separately specified according to the number of complete years unexpired at the date above mentioned.

4. The total amount of premiums which have been received from the commencement upon all policies or certificates mentioned under Headings Nos. 2 and 3, separately specified according to the number of complete years unexpired at the date above mentioned.

5. The average rate of interest realized by the assets, whether invested or uninvested, constituting the bond investment and endowment certificate fund of the company, calculated upon the mean fund of each year during the period since the last investigation, without deduction of income tax.

6. Full particulars as to the terms and conditions upon which surrenders of policies and certificates are granted, with specimens of the values allowed in respect of different durations, and different unexpired terms at the date of surrender.

7. Full particulars as to the terms and conditions upon which allowances are made on the death of a policy or certificate holder, with specimen values as required under Heading No. 6.

8. Full particulars as to the terms and conditions upon which transfers of the interest in a policy or certificate are granted, whether on the death of the policy or certificate holder, or during his lifetime.

9. Full particulars as to the terms and conditions upon which redemption of advances is granted, with specimens of redemption values in respect of bonds or certificates of different durations, and having different unexpired terms, at the date of redemption.

10. A tabular statement in respect of policies or certificates lapsed during the period since the last investigation, showing the number, the amount insured, the yearly premiums, and the total premiums received from the commencement; classified according to the year in which such policies or certificates were effected, and lapsed, respectively; with a similar tabular statement in respect of policies or certificates surrendered during the period: Provided that policies or certificates which have lapsed and been revived shall not be entered as lapses.

11. A statement of the total number of advances made under policies or certificates to the holders thereof, whether on the security of house property or land or otherwise, and the total amount of such advances outstanding at the date above mentioned, distinguishing the advances on first mortgage and those on second or subsequent mortgage.

CHAPTER VII.

DEBENTURES.

BORROWING POWERS OF A COMPANY (*a*).

A TRADING company may, unless prohibited by its memorandum or articles of association, borrow money (*b*); and this rule extends to the great bulk of companies formed under the Companies Act, 1862, or the present Act (*c*). The right to borrow money carries with it the right to give security for the money so borrowed, unless the company is forbidden to do so by its memorandum or articles of association (*d*). Borrowing powers are, however, usually given either by the company's memorandum or by its articles of association, and as such power is not a matter which the Act requires to be in the memorandum, the articles may be looked at for the purpose of explaining a power given by the memorandum; but in case of conflict it has been held that the provisions of the memorandum will prevail (*e*). In one case an Irish Court suggested that though a company might have a power of borrowing for the purposes of its business, it could not do so for the purpose of raising capital to acquire such business (*f*); the author knows of no authority for this distinction. In construing powers of borrowing and giving security, the question often arises what can the company charge, and in particular can it charge its uncalled capital? It is well settled that

(*a*) See also the Forged Transfer Acts, 1891 and 1892, *supra*, p. 298, and the Mortgage Debenture Acts, 1865 and 1870, *supra*, pp. 68 and 69.

(*b*) *Australian Auxiliary Steam Clipper* v. *Mounsey* (1858), 4 K. & J. 733; *Phœnix Bessemer Co.* (1871), 40 L. J. (CH.) 109; *Bryon* v. *Metropolitan Saloon Omnibus* (1858), 3 De G. & J. 123; *General Auction Estate Co.* v. *Smith*, [1891] 3 Ch. 432. The doctrine of MALINS, V.C., in *Gibbs and West's Case* (1870), 10 Eq. 312; and *Hamilton Windsor Ironworks* (1879), 12 C. D. 707, viz. that a company, which had no express borrowing power could borrow a reasonable amount for current expenses only, does not seem good law.

(*c*) Cp. *Re Badger*, [1905] 1 Ch. 568; *Reg.* v. *Sir Charles Reed* (1880), 5 Q. B. D. 483; *Agnew* v. *Murray* (1884), 9 A. C. 519, cases under other statutes in which the corporations were held to have no borrowing powers.

(*d*) *Patent File Co.* (1870), 6 Ch. 83; *General Auction Estate Co.* v. *Smith*, [1891] 3 Ch. 432.

(*e*) *Southern Brazilian, Rio Grande, etc., Railway*, [1905] 2 Ch. 78; *Phœnix Bessemer Co.* (1875), 44 L. J. (CH.) 683; but see *supra*, pp. 317 and 318.

(*f*) *Lough-Neagh Ship Co.*, [1895] 1 Ir. 533.

a power to charge uncalled capital conferred by the memorandum or articles of association of a company is good (*g*); but a power to charge "the property" of a company (*h*) or its "property both present and future" (*i*), or "its property and effects" (*k*), or "its estate" (*l*), will not in the absence of a sufficient context authorize a charge on capital which is not called up while the company is a going concern, but such words will authorize a charge on capital not called up at the date of charge, but called up before the company goes into liquidation (*m*). On the other hand, a power to charge "the assets" (*n*) or "the rights" (*o*) of a company, or to borrow "upon any security of the company, or upon the security of any property of the company" (*p*), or "upon the property and effects of the company, or in such other manner as the company may determine" (*q*), are sufficient to charge all uncalled capital, except capital which, under the provisions of section 5 of the Companies Act, 1879, or section 58 or 59 of the existing Act, can only be called up for the purpose of a winding up, or the amount guaranteed by members of a company limited by guarantee, which can in no case be charged by the company (*r*). The question remains whether a company which has no express power of giving security, can under its implied power of giving security charge its uncalled capital ?—there are dicta in one case (*s*) that it cannot do so. *Stanley's Case* (*t*) and the other cases which followed it were decided upon the construction of the powers of charging in each case (*u*), and as those powers did not authorize a charge of uncalled capital,

(*g*) *Pyle Works* (1890), 44 C. D. 534; *Newton* v. *Anglo Australian Investment Co.*, [1895] A. C. 244.

(*h*) *Bank of South Australia* v. *Abrahams* (1875), L. R. 6 P. C. 265; *Colonial Trusts Corporation* (1879), 15 C. D. 465; *Bower* v. *Foreign and Colonial*, [1877] W. N. 222. Under such a power book debts not yet accrued may be charged; *Bloomer* v. *Union Coal and Iron Co.* (1873), 16 Eq. 383.

(*i*) *Streatham and General Estates Co.*, [1897] 1 Ch. 15; *Russian Spratts Patent*, [1898] 2 Ch. 149; *C. P. Holme* v. *Drachenfels Banket* (1895), 2 Mans. 146.

(*k*) *Stanley's Case* (1864), 4 De G. J. & S. 407; *Sankey Brook Coal Co.* (No. 2), 10 Eq. 381; and see also *Jackson* v. *Rainford Coal Co.*, [1896] 2 Ch. 340.

(*l*) *King* v. *Marshall* (1864), 33 Beav. 565.

(*m*) *Sankey Brook Coal Co.* (1870), 9 Eq. 721; *Colonial Trusts* (1880), 15 C. D. 465.

(*n*) *Page* v. *International Agency and Industrial Trust* (1893), 68 L. T. 435.

(*o*) *Howard* v. *Patent Ivory* (1888), 38 C. D. 156.

(*p*) *Newton* v. *Anglo-Australian Investment Co.*, [1895] A. C. 244; and cp. *Phœnix Bessemer Co.* (1875), 44 L. J. (CH.) 683.

(*q*) *Jackson* v. *Rainford Coal Co.*, [1896] 2 Ch. 340.

(*r*) *Mayfair Property Co.*, [1898] 2 Ch. 28. As to the amounts guaranteed by members of a guarantee company; *Irish Club Co.*, [1906] W. N. 127.

(*s*) *Page* v. *International Agency and Industrial Trust* (1893), 68 L. T. 435.

(*t*) (1864), 4 De G. J. & S. 407.

(*u*) Cp. *Newton* v. *Anglo-Australian Investment Co.*, [1895] A. C. 244.

they impliedly forbade such a charge; these cases therefore are not opposed to the view that a company may have implied power to charge its uncalled capital, and it is difficult to see why such a power should not be implied (*x*).

In the construction of charging powers it is often necessary to ascertain what exactly is meant by borrowing or lending money or similar words. A power to borrow and give security for the money borrowed authorizes the giving of security for existing debts of the company (*y*), or of another person (*z*), if the company is liable to such other person for such debt, or for a guarantee which has been given to secure a debt of the company: but it does not, it would seem, authorize a company to give security for a guarantee given to carriers with a view to obtaining their services on credit (*a*); it would seem that a power to borrow and secure the repayment of the money borrowed will authorize the issue of debentures at a discount (*b*). An overdraft at a bank is a borrowing (*c*); a power to charge the property of the company will apparently enable a charge on future property to be given (*d*); and a power "to issue" debentures, etc., conferred by the memorandum may, if there are wider words in the articles, authorize a verbal charge on uncalled capital (*e*).

If a company has power to issue debentures, whether such power be express or implied, there is no reason why such debentures should not be issued to its principal shareholder, or given to the vendor as the consideration for the sale, for the company is an entirely separate entity from its shareholders or vendors (even when the latter retain the bulk of the shares) (*f*).

It must, however, be remembered that in a winding up a floating charge on the undertaking or property (*g*) of the company created

(*x*) The reasoning of JESSEL, M.R., in *Colonial Trusts Corporation* (1879), 15 C. D. 465, which proceeds on the basis that capital called up in a winding-up is not assets of the company at all, but arises under a distinct liability is opposed to this view, and does not seem consistent with *Pyle Works* (1890), 44 C. D. 534.

(*y*) *Bank of Australasia* v. *Breillat* (1847), 6 Moore P. C. 152; *Inns of Court Hotel Co.* (1868), 6 Eq. 82; *Howard* v. *Patent Ivory* (1888), 38 C. D. 156; *Davies* v. *R. Bolton and Co.*, [1895] 1 Ch. 674.

(*z*) *Seligman* v. *Prince & Co.*, [1895] 2 Ch. 617.

(*a*) *Pyle Works* (*No.* 2), [1891] 1 Ch. 173.

(*b*) *Webb* v. *Shropshire Railways*, [1893] 3 Ch. 307; in *Anglo-Danubian Steam Navigation* (1875), 20 Eq. 339, the words were "to secure the repayment of or raise," and the transaction was held to be good: see also *Campbell's Case* (1877), 4 C. D. 470.

(*c*) *Brooks and Co.* v. *Blackburn Benefit Building Society* (1884), 9 A. C. 857.

(*d*) *Anderson* v. *Butler's Wharf Co.* (1879), 48 L. J. (CH.) 824.

(*e*) *Tilbury Portland Cement Co.* (1893), 62 L. J. (CH.) 814. The Statute of Frauds will not infrequently cause difficulties in the case of verbal charges, see *post*, p. 453.

(*f*) *Salomon* v. *Salomon*, [1897] A. C. 22; and see *Re Slobodinsky*, [1903] 2 K. B. 517.

(*g*) Possibly this does not apply

within three months of the commencement of the winding-up will, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid (*h*) to the company at the time of, or subsequently to, the creation of, and in consideration for, the charge, together with interest on that amount at the rate of 5 per cent. per annum (*i*). The fixed assets of a company will not be taken into account in ascertaining whether the company was or was not solvent at the date of giving a charge (*ii*).

A power to borrow does not authorize a joint borrowing by the company and other persons, but where a company has entered into such a transaction, it will be liable and any charge given by it will be good to the extent to which such company has received the proceeds of such joint borrowing (*k*). Usually a person who lends money to a company, which has power to borrow for the purposes of its business, is not bound to see that the money lent is wanted for a proper or *intra vires* purpose, and unless he has at the time of lending the money knowledge that the money is going to be applied for an improper or *ultra vires* purpose, his security will not be affected by the fact that the money is so applied (*l*); but where a company carries on an *ultra vires* business, which is in no way ancillary to its proper business, there a person who has advanced money to the company in the course of carrying on its *ultra vires* business, will, if he wishes to rank as a creditor, have to show that the money was used in the company's proper business (*ll*). If the lender be a company, the company will not be fixed with notice because one of its officers who is also an officer of the borrowing company knows the facts, unless such officer owes a duty to the borrowing company to give notice of such facts, and to the lending company to receive such notice (*m*). Even if the officer does owe such duties it would seem that

to a charge on uncalled capital, see the cases on construction of powers to charge, *supra*, p. 446. If this is the right view it would seem a debenture-holder could pay himself, the amount allowed by the section out of the undertaking and property of the company, and could then look to its unpaid capital for the balance. In s. 186 of the Act, however, the word "property" has been held to include uncalled capital: see *Webb* v. *Whiffin* (1872), L. R. 5 H. L. 711, and it seems probable that it will be held to do so under this section.

(*h*) *Spargo's Case* (1873), 8 Ch. 407, and the cases following it as to what will amount to a payment in cash for shares, do not apply in construing this section: *Orleans Motor Car Co.*, [1911] 2 Ch. 41.

(*i*) Companies (Consolidation) Act, 1908, s. 212. The question whether money is or is not paid "at the time of the creation of the charge" is in all cases a question of fact and payments made in consideration of the security and in anticipation of its creation, and in reliance on a promise to execute it, will be protected by the later words of the section as being paid "at the time of the creation of the charge": *Columbian Fireproofing Co.*, [1910] 2 Ch. 120; cp. also *Orleans Motor Car Co.*, [1911] 2 Ch. 41, where the charge was held to be bad, as it was given for moneys paid in satisfaction of a guarantee previously given.

(*ii*) *Hodson* v. *Blanchards* (1911), 131 L. T. Jo. 9.

(*k*) *Johnstone Foreign Patents Co.*, [1904] 2 Ch. 234, a company may guarantee the interest on the debentures of another company, where it is desirable in the interests of its own business to do so: *Ex parte Booker* (1880), 14 C. D. 317.

(*l*) *David Payne & Co.*, [1904] 2 Ch. 608, overruling *Davis's Case* (1871), 12 Eq. 516.

(*ll*) *Birkbeck Permanent Benefit Building Society*, *Times* Newspaper, May 20th, 1912.

(*m*) *Marseilles Extension Railway* (1871), 7 Ch. 161; *Hampshire Land Co.*, [1896] 2 Ch. 743; *David Payne & Co., Ltd.*, [1904] 2 Ch. 108; *Sale* v. *Lewis* (1845), 8 Q. B. 730; *Alletson* v. *Chichester* (1875),

the lending company will not be fixed with notice if the officer has an interest to conceal, and does conceal, the true facts (*n*).

A person lending money to a company on mortgage is bound to ascertain that the company has power to borrow and give security; and for this purpose he must look at the company's memorandum and articles of association. In other words, he takes with notice of the contents of these documents, which are public documents and accessible to the public (*o*). Thus, if the memorandum or articles of association of a company provide that the company, or its directors, shall not borrow beyond a certain amount, persons negotiating with the company (*p*) or (as the case may be) with its directors (*q*) with a view to lending money, are bound to see that the limit has not been exceeded. Again, where powers are given to the company or its directors, the lenders are bound to see that they do not deal with any other person, even if he does purport to have authority to act (*r*).

But if the company, or its directors, or any other person with whom the lender deals, would have authority under the company's memorandum and articles to act in a particular way, if certain preliminaries had been gone through, the lender may assume that those preliminaries have been gone through, unless he has notice that this is not so (*s*). A person dealing with *de facto* directors of a

L. R. 10 C. P. 319; *Deep Sea Fishery's Claim*, [1902] 1 Ch. 507

(*n*) *European Bank* (1870), 5 Ch. 358.

(*o*) *Bargate* v. *Shortridge* (1855), 5 H. L. C. 297, at p. 318; *Ernest* v. *Nicholls* (1857), 6 H. L. C. 419; *Balfour* v. *Ernest* (1859), 5 C. B. (N. S.) 601.

(*p*) *Chapleo* v. *Brunswick* (1881), 6 Q. B. D. 696; *Bansha Woollen Co.* (1888), 21 L. R. Ir. 181; *Fountaine* v. *Carmarthen Railway* (1868), 5 Eq. 316.

(*q*) *Irvine* v. *Union Bank of Australia* (1877), 2 A. C. 366; cp. *Hampshire Land Co.*, [1896] 2 Ch. 743; *Bosehock Proprietary* v. *Fuke*, [1906] 1 Ch. 149.

(*r*) *Cartmell's Case* (1874), 9 Ch. 691; *Howard's Case* (1866), 1 Ch. 561.

(*s*) *Royal British Bank* v. *Turquand* (1885), 5 E. & B. 248; (1886), 6 E. & B. 327, where the directors had power to borrow beyond a certain sum if they obtained the consent of the company in general meeting, and it was held that a lender was not bound to inquire if such consent had been obtained; *Barned's Banking Co.* (1867), 3 Ch. 105; *Fountaine* v. *Carmarthen Ry. Co.* (1868), 5 Eq. 314; *County of Gloucester* v. *Rudry Merthyr, etc., Co.*, [1895] 1 Ch. 629; *Biggerstaff* v. *Rowatt's Wharf*, [1896] 2 Ch. 93; *Toterdell* v. *Fareham Brick Co.* (1866), L. R. 1 C. P. 674; *Davies* v. *R. Bolton & Co.*, [1894] 3 Ch. 678. In all these cases the company was bound by something in the nature of an estoppel, but this was not the case in *D'Arcy* v. *Tamar, etc., Ry.* (1867), 36 L. J. (EX.) 37, L. R. 2 Ex. 958, where as BRAMWELL, B., points out the plaintiff had suffered no injury, but see *Premier Industrial Bank* v. *Carlton Manufacturing Co.*, [1909] 1 K. B. 106, a case turning on the Bill of Exchange sections of the Act, and it is submitted contrary to these cases, and consequently of very doubtful authority; and see *supra*, p. 323, as to this case.

company can, in the absence of notice of any defect in their appointment, treat them in the same way in all respects as if they were *de jure* directors (*t*), and a document which requires to be signed by a certain number of directors will, at all events where the requisite number of directors exist, bind the company if signed by that number of *de facto* directors (*u*). Where the articles require a certain minimum number of directors, and also provide that the continuing directors may act notwithstanding any vacancy, directors, either *de jure* or *de facto*, may act, though there are not the minimum number of directors, at all events, in cases where there are enough directors to form any quorum required by the articles for directors' meetings (*x*). Probably, in cases where directors have power to delegate to a managing director or to any one of their number, an act done by a managing director or, as the case may be, by one director would, if good on the face of it, bind the company even where such managing director or director was the only director and the articles required several directors, and a quorum of more than one, and made no provision for continuing directors acting, in dealings with a person who had no knowledge of these defects (*y*).

This view is borne out by sections 71 and 74 of the Act. The former section requires minutes of all proceedings of directors or managers to be entered in books kept for that purpose, and provides that any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, is to be evidence of the proceedings, and that until the contrary is proved every such meeting in respect of the proceedings of which minutes have been so made, is to be deemed to have been duly had and convened, and all proceedings at such meeting to have been duly had. The latter section provides that the acts of a director or manager are to be valid in spite of any defect that may afterwards be discovered in his appointment or qualification. A person dealing with a company may, under this section, treat the acts of *de facto* directors as valid until he has notice of the fact that they are only *de facto* directors (*z*). If a company

(*t*) *Mahoney* v. *East Holyford Mining Co.* (1875), L. R. 7 H. L. 869.

(*u*) *County Life Assurance Co.* (1870), 5 Ch. 288.

(*x*) *Owen and Ashworth's Claim*, [1900] 2 Ch. 272; [1900] 1 Ch. 115.

(*y*) Cp. *Barned Banking Co.* (1867), 3 Ch. 105; *Duck* v. *Tower Galvanizing Co.*, [1901] 2 K. B. 314. If the company has supplied the Registrar of Joint Stock Companies with copies of its register of directors, and has notified him of every change in its directorate (see Companies (Consolidation) Act, 1908, s. 75), it may be that a lender will take with notice of the constitution of the Board, but it is not thought that this is so. See also *supra*, pp. 361 and 362.

(*z*) *Murray* v. *Bush* (1873), L. R. 6 H. L. 37 (*per* Lords CAIRNS and HATHERLEY); *York Tramways* v. *Willows* (1882), 8 Q. B. D. 685; *Bridport Old Brewery* (1867), 2 Ch. 191.

which has exhausted its borrowing powers does in fact borrow further money, the lender will be entitled to repayment of such part of such money as has been applied in paying the lawful debts of the company (*a*), whether such debts existed at the time of the loan or were incurred subsequently to it (*b*)—the test in each case being whether the company has substantially increased its debt by the unauthorized borrowing (*c*); the lender may retain any security given him for moneys so borrowed and applied (*d*), but he is not entitled to the benefit of any securities held by a creditor of the company who has been paid off out of his money (*e*). It is necessary in these cases to show an actual payment of the debts and a mere adjustment of the accounts will not be enough (*f*). A creditor who has lent money to a company in excess of its borrowing powers cannot repay himself such moneys out of other moneys of the company which have come into his hands (*g*), though if he can identify the money lent he can recover it (*gg*). Possibly where all the members of the borrowing company have been paid 20*s.* in the £, any surplus will be divisible among the *ultra vires* lenders rateably (*ggg*). A loan made to a third party at the request of the company does not, even if applied in payment of the debts of the company, give any right against the company in cases where it has exceeded its borrowing powers (*h*). A person who has lent money to a company which has no power to borrow such money is a creditor neither at law nor in equity, he cannot maintain an action for money had and received (*gg*), and it is doubtful whether the company can so alter its regulations as to affirm the transaction (*hh*).

Where a company or its directors are authorized to borrow to the extent of its capital not called up, the expression "capital not called up" includes unissued shares (*i*). A power to borrow any sum not exceeding the amount of the preference share capital of the company will not limit the powers of borrowing of the company

(*a*) *Cork and Youghal Railway* (1869), 4 Ch. 748; *Magdalena Steam Navigation Co.* (1860), Johnson, 690; *Blackburn Benefit Building Society* v. *Cunliffe Brooks* (1882), 22 C. D. 61; (1884), 9 A. C. 857; *Baroness Wenlock* v. *River Dee* (1883), 36 C. D. 675 *n.*

(*b*) *Baroness Wenlock* v. *River Dee* (1887), 19 Q. B. D. 155; see also *Wrexham Mold and Connah's Quay*, [1899] 1 Ch. 440, judgments of LINDLEY, M.R., and VAUGHAN WILLIAMS, L.J.

(*c*) *Bannatyne* v. *MacIver*, [1906] 1 K. B. 103, citing Lord SELBORNE'S judgment in *Blackburn Benefit Building Society* v. *Cunliffe Brooks* (1882), 22 C. D. 61, 71; and RIGBY, L.J.'s judgment in *Wrexham Mold and Connah's Quay*, [1899] 1 Ch. 440, 451.

(*d*) *Blackburn Benefit Building Society* v. *Cunliffe Brooks* (1882), 22 C. D. 61.

(*e*) *Wrexham Mold and Connah's Quay*, [1899] 1 Ch. 440.

(*f*) *Blackburn Benefit Building Society* v. *Cunliffe Brooks* (1882), 22 C. D. 61; (1884), 9 A. C. 857; *Bannatyne* v. *MacIver*, [1906] 1 K. B. 103.

(*g*) *Blackburn Benefit Building Society* v. *Cunliffe Brooks* (1885), 29 C. D. 902.

(*gg*) *Birkbeck Permanent Benefit Building Society*, *Times* Newspaper, May 20th, 1912.

(*ggg*) *Birkbeck Permanent Benefit Building Society*, *Times* Newspaper, May 20th, 1912; *Guardian Permanent Benefit Building Society* (1882), 23 C. D. 440.

(*h*) *Portsea Island Building Society* v. *Barclay*, [1895] 2 Ch. 298.

(*hh*) *Birkbeck Permanent Benefit Building Society*, *Times* Newspaper, May 20th, 1912, citing *Ex parte Watson* (1888), 21 Q. B. D. 301; *Bottomgate Industrial Co-operative Society* (1895), 75 L. T. 712.

(*i*) *English Channel Steamship Co.* v. *Rolt* (1881), 17 C. D. 715.

or its directors, until preference shares have actually been issued (*k*). Debentures, etc., issued after the borrowing powers of a company have been exhausted are void and not merely voidable (*l*). Directors who issue debentures after the company has exhausted its borrowing powers, will be liable to an action for breach of warranty of authority, the measure of damages being the loss the person to whom such debentures were issued has suffered (*m*); but this rule does not apply where directors with power to issue debentures, agree to issue them but fail to do so (*n*).

The Bills of Sale Acts, like the Deeds of Arrangement Act (*o*), do not apply to mortgages issued by a company whether such mortgages take the form of debentures (*p*) or of a trust deed for securing debentures or debenture stock (*q*), or it would seem any other form, for the Act contains its own provisions as to registration.

The mortgages issued by a company very commonly take the form of either debentures or debenture stock. A debenture is an instrument under seal. It may be either a simple acknowledgment of a debt or a covenant to pay a certain sum, or such an acknowledgment or covenant coupled with a charge on all or some part of the assets of the company (*r*). Usually a number of debentures are issued at the same or practically the same time, these will have priority according to the dates of their issue unless, as is practically always the case, they contain something to show a contrary intention (*s*) (as *e.g.* a condition that they are all to rank *pari passu*).

Debenture stock is borrowed money capitalized (*t*), and each lender of such money usually gets a certificate under the common seal of the company stating the amount of stock he is entitled to.

Debenture stock is almost always secured by a trust deed which is usually referred to in the stock certificates, and although what is called a floating charge is usually contained in debentures, a specific charge is very rarely contained in them, and a trust deed is often requisite for the purpose of giving the holders of the debentures a specific charge on part of the company's assets.

" A floating security is an equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying condition in which it happens to be from time to time. It is of the essence of such a charge that it remains dormant until

(*k*) *Johnston Foreign Patents, Ltd.*, [1904] 2 Ch. 234.

(*l*) *Pooley Hall Colliery* (1869), 21 L. T. 690.

(*m*) *Firbanks Executors* v. *Humphreys* (1886), 18 Q. B. D. 54.

(*n*) *Elkington & Co.* v. *Hurter*, [1892] 2 Ch. 452.

(*o*) *Rileys Limited*, [1903] 2 Ch. 590.

(*p*) *Standard Manufacturing Co.*, [1891] 1 Ch. 627. This is the case even when the company is incorporated abroad: *Clark* v. *Balm Hill Co.*, [1908] 1 K. B. 667.

(*q*) *Richards* v. *Kidderminster*, [1896] 2 Ch. 212.

(*r*) Cp. *Edmonds* v. *Blaina Furnace Co.* (1887), 36 C. D. 214; *Levy* v. *Abercorris Co.* (1887), 37 C. D. 260; *English and Scottish Mercantile Investment Trust* v. *Brunton*, [1892] 2 Q. B. 1 and 700.

(*s*) *James* v. *Boythorpe Colliery Co.* (1890), 2 Meg. 55, [1890] W. N. 28; *Gartside* v. *Silkstone and Dockworth Coal Co.* (1882), 21 C. D. 712; *Norton* v. *Florence Land Co.* (1878), 7 C. D. 332; see also *Lister* v. *H. Lister* (1893), 62 L. J. (CH.) 568. It is of course possible for a company to issue a single debenture: *Edmonds* v. *Blaina Furnace Co.* (1887), 36 C. D. 214.

(*t*) Cp. *Re Bodman*, [1891] 3 Ch. 135, 138.

the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes. His right to intervene may, of course, be suspended by agreement. But if there is no agreement for suspension he may exercise his right whenever he pleases after default" (u). The charge exists from the moment when the floating security comes into operation, and so debenture holders are necessary parties to a foreclosure action by a prior mortgagee (x), and they may apply to the Court for the appointment of a receiver even before the mortgage money is due (y); and debentures secured by a floating charge over land confer an interest in land within the meaning of section 4 of the Statute of Frauds (z). There are, however, dicta of all the law lords in *De Beers Consolidated* v. *British South Africa Co.* (zz), which point to the equitable doctrine against clogging the equity of redemption not being applicable to a floating charge. It follows from the very nature of a floating charge that the company can, notwithstanding its existence and until the charge attaches, carry on its business, and in the ordinary course of such business deal with its property (a).

Thus a company may, unless expressly forbidden by the instrument creating the charge, create specific mortgages ranking in priority to the floating charge (b), or assign a debt due to it as security for moneys owing by it (c); and it may pay debts due to its directors and consent to judgment in an action brought by them (d); and it may in some cases sell the whole of its assets, except certain specified securities, for shares in another company and preclude

(u) *Per* Lord MACNAGHTEN, *Governments Stocks Investment Co.* v. *Manila Railway*, [1897] A. C. 81, 86, see also his definition in *Illingworth* v. *Houldsworth*, [1904] A. C. 355, 358, "a specific charge, I think, is one that without more fastens on ascertained and definite property or property capable of being ascertained and defined; a floating charge, on the other hand, is ambulatory and shifting in its nature, hovering over and so to speak floating with the property which it is intended to affect until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp."

(x) *Wallace* v. *Evershed*, [1899] 1 Ch. 891.

(y) *Carshalton Park Estate*, [1908] 2 Ch. 62.

(z) *Driver* v. *Broad*, [1893] 1 Q. B. 744.

(zz) [1912] A. C. 52. If these remarks, which were admittedly not necessary for the decision, are right, the whole question of what rights are conferred by a floating charge may have to be reopened.

(a) *Panama, New Zealand, etc., Royal Mail Co.* (1870), 5 Ch. 318; *Marine Mansions Co.* (1867), 4 Eq. 601; *Florence Land Co., Ex parte Moor* (1878), 10 C. D. 530; and see the cases cited in the succeeding notes. In *Queensland Mercantile, etc., Co.* (1891), 2 Meg. 394, NORTH, J., apparently considered the charge to be a specific charge.

(b) *Wheatley* v. *Silkstone and Haigh Moor Coal Co.* (1885), 29 C. D. 715; *Bank of Ireland* v. *Cogry Spinning Co.*, [1900] 1 Ir. 219 (equitable mortgages by deposit of title deeds); *Ward* v. *Royal Exchange Shipping Co.* (1887), 58 L. T. 174 (hypothecation of freight); *Governments Stock Investment Co.* v. *Manila Railway*, [1895] 2 Ch. 551, [1897] A. C. 81; *Cox Moore* v. *Peruvian Corporation*, [1908] 1 Ch. 604; see also *Colonial Trusts Corporation* (1879), 15 C. D. 463; *Florence Land Co., Ex parte Moor* (1879), 10 C. D. 530.

(c) *Hamilton* v. *Windsor Ironworks* (1879), 12 C. D. 707.

(d) *Wilmott* v. *London Celluloid* (1886), 34 C. D. 147.

itself from carrying on the business which is, on the construction of its memorandum of association, its main object (e); and it may sell one out of three businesses carried on by it (f); but it may not by the sale of its business entirely preclude itself from carrying on all the business (g) which it was formed to carry on. The existence of debenture will not prevent a person who is indebted to the company setting off debts due to him from the company, if such debts are presently payable before steps are taken to enforce the security given by the debentures (h); and a landlord may validly distrain on property subject to debentures, secured by a floating charge which has not become fixed, for he is simply exercising a power given him by the company (i). A company can moreover assign all the debts to come from a specific source, and such assignment will be good against the debenture-holders (k), to the extent of all such debts which have actually been paid over or in respect of which remittances have been despatched by post before notice that the company has stopped business has been given to the debtor (l). A company may in spite of the issue of debentures pay money to a sheriff to induce him to go out of possession (m).

Not infrequently debentures provide that the company is not to be at liberty to create a mortgage or charge ranking *pari passu* with or in priority to the debentures; if the company commits a breach of such an obligation the mortgagee will, of course, if he takes with actual notice of the condition, rank after the holders of such debentures (n); but a mortgagee who only knows that debentures have been issued, and does not know whether they do or do not contain

(e) *Borax Co.*, [1901] 1 Ch. 326.

(f) *H. H. Vivian & Co.*, [1900] 2 Ch. 654. It may be doubted whether *Re Horne and Hellard* (1885), 29 C. D. 736, which says that a purchaser is entitled to evidence that a vendor company, which has not stopped business, has not made default in payments under its debentures, is good law: see *Governments Stocks Investment Co.* v. *Manila Railway*, [1895] 2 Ch. 551, [1897] A. C. 81.

(g) *Hubbuck* v. *Helms* (1887), 56 L. J. (CH.) 536.

(h) *Biggerstaff* v. *Rowatt's Wharf*, [1896] 2 Ch. 93; *Edward Nelson & Co., Ltd.* v. *Faber*, [1903] 2 K. B. 36; see also *Peak Hill Goldfield*, [1909] 1 K. B. 430.

(i) *Roundwood Colliery Co.*, [1897] 1 Ch. 373; see also *Marriage, Neave & Co.*, [1896] 2 Ch. 663; *Adolphe Crosbie* (1910), 74 J. P. 25.

(k) Notice to the debtors will not be necessary where the company is entitled to make the assignment, and if a debt due to a debtor is paid out of the company's assets, the debtor will be entitled to the benefit of such payment, even where the debt or part of it might have been satisfied by a set off: *Ind, Coope & Co.*, [1911] 2 Ch. 223.

(l) *Arauco Co.* (1898), 79 L. T. 336.

(m) *Robinson* v. *Burnell's Brewery*, [1904] 2 K. B. 624.

(n) *Old Bushmills Co., Ex parte Brydon*, [1896] 1 Ir. 301, a case of a sale, which was held in reality to be a mortgage; *Cox* v. *Dublin Distillery*, [1906] 1 Ir. 446; and see *Old Bushmills Co.* v. *Brett*, [1897] 1 Ir. 488, where the sale was held to be genuine; *Coveney* v.

such a condition, will rank before the debentures (*o*), even if he has made no inquiry about the conditions (*p*), or if he is only entitled to a vendor's lien or has obtained a legal mortgage for securing such lien after notice of the existence of a floating charge, and its conditions (*q*); or if he is only an equitable mortgagee by deposit of title-deeds (*r*). Such a condition will not affect a solicitor's lien (*s*), or an interest which has priority to the company's own interest (*ss*).

Though a company may carry on its business in the ordinary way after the issue of debentures, a person levying execution on a company takes subject to the rights of the debenture-holders, at all events, where the sheriff has not sold (*t*), and according to the decision of Kekewich, J., in *Taunton* v. *Sheriff of Warwickshire* (*u*), where he has sold but not distributed the proceeds of sale; this rule will not, however, apparently apply where no receiver has been appointed (*x*). Where a receiver is appointed a person who has obtained a garnishee order, whether *nisi* (*y*) or absolute (*z*) against a debtor of the company, will obtain no title to the debt as against debenture-holders, even if the debentures have been issued after the order was made, and all parties knew of it (*a*). But if a garnishor before a receiver has been appointed, has had the money actually

Persse, [1910] 1 Ir. 198, where the sale was held to be good, as the company was not entitled to demand a resale though the mortgagee could require it to repurchase.

(*o*) *English and Scottish Mercantile, etc., Co.* v. *Brunton*, [1892] 2 Q. B. 700; *Coveney* v. *Persse*, [1910] 1 Ir. 198; see also *Wilson* v. *Kelland*, [1910] 2 Ch. 306, where the debenture allowed of such a charge, and the trust deed did not, and it was held that a debenture-holder had the two securities, and that as one of them forbade the charge a subsequent encumbrancer with notice must be postponed.

(*p*) *Valletort Sanitary Steam Co.*, [1903] 2 Ch. 654; *Standard Rotary Co.* (1907), 95 L. T. 829; and see *Wilson* v. *Kelland*, [1910] 2 Ch. 306, which shows that registration of the particulars required by s. 93 of the Act, will not be notice of such a condition.

(*q*) *Wilson* v. *Kelland*, [1910] 2 Ch. 306.

(*r*) *Castell and Brown, Ltd.*, [1898] 1 Ch. 315.

(*s*) *Brunton* v. *Electrical Engineering Co.*, [1892] 1 Ch. 434. If the solicitor acts for both mortgagor and mortgagee he will have no lien unless it is expressly reserved, for he cannot be heard to say that, contrary to his duty, he does not hold the deeds for the mortgagee: *Re Snell* (1877), 6 C. D. 105; but cp. *Macfarlane* v. *Lister* (1888), 37 C. D. 88 (where there was no question of title deeds).

(*ss*) *Re Connolly Bros.* (1912), 56 Sol. J. 360. In this case priority was given to a person who had provided the purchase money.

(*t*) *Standard Manufacturing Co.*, [1891] 1 Ch. 627; *Opera, Ltd.*, [1891] 3 Ch. 260; *Taunton* v. *Sheriff of Warwickshire*, [1895] 2 Ch. 319.

(*u*) [1895] 1 Ch. 734.

(*x*) *Evans* v. *Rival Granite Quarries*, [1910] 2 K. B. 979, overruling it is thought on this point *Davey* v. *Williamson*, [1898] 2 Q. B. 194; *Duck* v. *Tower Galvanizing Co.*, [1901] 2 K. B. 314; and *Simultaneous Colour Printing* v. *Foweraker*, [1901] 1 K. B. 771.

(*y*) *Norton* v. *Yates*, [1906] 1 K. B. 112.

(*z*) *Cairney* v. *Back*, [1906] 2 K. B. 746.

(*a*) *Geisse* v. *Taylor*, [1905] 2 K. B. 658.

paid over to him, even after he knows of the debentures, he will not be liable to refund it (*b*), and the Court will not on the application of a debenture-holder whose money is due, but who has taken no step to enforce his rights except demanding payment refuse to make a garnishee order *nisi* absolute (*c*). Debenture-holders cannot gain priority, while their charge is a floating one, and the company is entitled to create prior charges, by giving notice to persons indebted to the company (*d*).

It follows from the very nature of a floating security that the security becomes fixed as, and from the date when the company ceases to carry on business, otherwise there would be outgoings continuing for the purposes of the winding-up, but no incomings; and the security of the debenture-holders would gradually disappear; and so, even though the debenture-holders may not be able to sue on their covenant, if the time for payment mentioned in the debentures has not arrived, they are entitled on the company stopping business to a declaration that they are entitled to a charge for the full amount of their debentures, with interest and to an account on that footing (*e*).

For this purpose a company ceases to carry on business at the commencement of a winding-up, even though it be a voluntary winding-up, or a winding-up subject to the supervision of the Court (*f*); on the appointment of a receiver and manager, or a receiver in a debenture-holder's action (*g*), but not on the issue of a writ in such an action (*h*); and the security will attach on the appointment of a receiver under a power in a debenture or debenture trust deed (*i*); and also if the company ceases (*k*), or agrees to cease to carry on business (*l*). Persons who are general creditors at the date when the charge attaches, will be postponed to the persons entitled to the charge (*m*). A debenture-holder cannot, however, seize part of the assets subject to his charge, he

(*b*) *Robson* v. *Smith*, [1895] 2 Ch. 118; see also *Wilmott* v. *London Celluloid* (1886), 34 C. D. 147.

(*c*) *Evans* v. *Rival Granite Quarry Co.*, [1910] 2 K. B. 979.

(*d*) *Ind, Coope & Co.*, [1911] 2 Ch. 223; citing *Ward* v. *Royal Exchange Shipping Co.* (1887), 58 L. T. 174.

(*e*) *Panama New Zealand, etc., Co.* (1870), 5 Ch. 218; *Wallace* v. *Universal Automatic, etc., Co.*, [1894] 2 Ch. 547.

(*f*) *Hodson* v. *Tea Co.* (1880), 14 C. D. 859; see as to the appointment of a provisional liquidator *Colonial Trusts Corporation* (1879), 15 C. D. 465.

(*g*) *London Pressed Hinge Co.*, [1905] 1 Ch. 576; *Carshalton Park Estate*, [1908] 2 Ch. 62.

(*h*) *Hubbard and Co.* (1898), 68 L. J. (CH.) 54.

(*i*) Cp. *Edward Nelson and Co.* v. *Faber*, [1903] 2 K. B. 367; *Chic, Ltd.*, [1905] 2 Ch. 345; *Alfred Melson*, [1906] 1 Ch. 841; *Marshall* v. *Rogers* (1898), 14 T. L. R. 217.

(*k*) *Hubbuck* v. *Helms* (1887), 56 L. J. (CH.) 536.

(*l*) See *per* VAUGHAN WILLIAMS, L.J., *Borax Co.*, [1901] 1 Ch. 326 343.

(*m*) *London Pressed Hinge*, [1905] 2 Ch. 576; *Anglo-American Leather Co.* (1886), 43 L. T. 438, and the cases above cited.

must determine the company's licence to carry on business altogether or not at all (*n*).

A contract with a company to take up and pay for debentures or debenture stock of a company may now be enforced by specific performance (*o*); where money has not been advanced a contract to issue debentures could not and, it is thought, cannot be enforced by specific performance (*p*). But where money has been advanced a contract to issue debentures might always be enforced by specific performance, and so agreements to issue debentures (*q*), or debentures issued in blank (*r*) or debentures secured by a trust deed which contained no description of the property charged (*s*), although not debentures at law, confer the same rights as the debentures would have done, if validly issued; but the contract must comply with the requirements of the Statute of Frauds (*t*). Such an agreement, if not followed by the issue of debentures requires registration under section 93 of the Companies (Consolidation) Act, 1908 (*u*). An agreement to issue debentures when called for does not create any charge, until the debentures have been called for (*x*).

An arrangement to issue a series of unregistered debentures on the terms that the debentures issued shall be withdrawn at the expiration of each 14 days, and fresh ones issued; and giving the debenture-holders the right to register on default is apparently a perfectly valid arrangement (*y*), but such an arrangement is now rendered difficult to carry out by the provisions of section 212 of the Companies (Consolidation) Act, 1908 (*z*). A company can issue

(*n*) *Evans* v. *Rival Granite Quarries*, [1910] 2 K. B. 979.

(*o*) Companies (Consolidation) Act, 1908, s. 105, altering the previous law as laid down in *South African Territories* v. *Wallington*, [1898] A. C. 309.

(*p*) *Rogers* v. *Challis* (1859), 27 Beav. 175, and *per* CHITTY, L.J., *South African Territories* v. *Wallington*, [1897] 1 Q. B. 692, 696; *Western Wagon and Property Co.* v. *West*, [1892] 1 Ch. 271, 275.

(*q*) *Strand Music Hall* (1865), 3 De G. J. & S. 147; *Ross* v. *Army and Navy Hotel Co.* (1886), 34 C. D. 43; *Pegge* v. *Neath and District Tramways*, [1898] 1 Ch. 183; *Simultaneous Colour Printing* v. *Foweraker*, [1901] 1 Q. B. 771.

(*r*) *Queensland Land and Coal Co.*, [1894] 3 Ch. 181, 63 L. J. (CH.) 810.

(*s*) *New Durham Salt Co., Stevenson's* and *Quin's Cases* (1890), 2 Meg. 360.

(*t*) *Queensland Land and Coal Co.* (1894), 63 L. J. (CH.) 810; *New Durham Salt Co., Stevenson's* and *Quin's Cases* (1890), 2 Meg. 360; and see also *Driver* v. *Broad*, [1893] 1 Q. B. 744.

(*u*) *Jackson and Bassford*, [1906] 2 Ch. 467; cp. *Columbian Fire-proofing Co.*, [1910] 2 Ch. 120, where it was decided that the 21 days allowed for registration by s. 93 of the Companies (Consolidation) Act, 1908, ran from the date when the debenture was issued, and not from the earlier date when the money was advanced and the company agreed to give a debenture, if the company subsequently gave the debenture.

(*x*) *Jackson and Bassford*, [1906] 2 Ch. 467.

(*y*) *Renshaw and Co., Ltd.*, [1908] W. N. 210.

(*z*) *Supra*, pp. 447 and 448.

debentures at a discount (*a*), and it can issue them as security for moneys advanced, such moneys not being the amount of the debt mentioned in the mortgage, in which cases the debentures are, as it were, mortgaged, and the holders of such debentures can prove *pari passu* with other debenture-holders of the same issue, but cannot receive more than the amount due to them for principal, interest and costs (*b*). Where the amount secured by debentures or debenture stock is payable by instalments, it has always been usual to provide that on non-payment of any instalment, the company may cancel the debentures and forfeit the instalments already paid; notwithstanding section 105 of the Companies (Consolidation) Act, 1908, it still seems desirable to insert such a provision. If there be a winding-up petition pending before any such instalment becomes due and payable, the person liable may decline to pay further instalments, and will not by non-payment render his previous payments liable to forfeiture or impair the security he has for them (*c*).

With regard to a prospectus on the issue of debentures or debenture stock the provisions of the Act, which relate to a prospectus on the issue of shares, apply (*d*).

The stock exchange requirements for a prospectus in cases where an official quotation is desired have already been mentioned (*dd*).

Once the security has been issued, neither the prospectus nor the form of application may be looked at for the purpose of ascertaining the contract between the company and the person to whom the security is issued, though they may be taken into consideration where rectification is sought (*e*).

A company must within two months after the allotment of any debentures or debenture stock, and after the registration of a transfer of the same, have ready for delivery the debentures or debenture stock certificates unless the conditions of issue otherwise provide (*f*).

(*a*) *Anglo-Danubian Steamship Co.* (1875), 20 Eq. 339; *Campbell's Case* (1876), 4 C. D. 470 (as to the particulars to be registered with the Registrar of Joint Stock Companies in such case, see *post*, pp. 538 and 539).

(*b*) *Regent's Canal Ironworks* (1876), 3 C. D. 43, a proof in such case extends not merely to the face value of the debentures, but also to the interest secured by them: *Vint and Sons*, [1905] 1 Ir. 112.

(*c*) *Ellerby's Claim* (1872), 20 W. R. 855.

(*d*) Companies (Consolidation) Act, 1908, ss. 80, 81, and 84, and see also *supra*, pp. 214 *et seq.* See, however, s. 81 (1) (d). S. 38 of the Companies Act, 1867, did not apply to any prospectus which did not offer shares for subscription.

(*dd*) *Supra*, p. 218.

(*e*) *Morrison* v. *Chicago Granaries*, [1898] 1 Ch. 263; *Tewkesbury Gas Co.*, [1911] 2 Ch. 279; affirmed, [1912] 1 Ch. 1. If the company seeks rectification, a purchaser for value without notice will have a good defence: *ibid.*

(*f*) Companies (Consolidation) Act, 1908, s. 92. If default is made the company and every director, manager, secretary, and other officer of the company who is knowingly a party to the default will be liable to a fine not exceeding £5 for every day during which the default con-

Where an official quotation on the Stock Exchange is required (*ff*), the trust deed must contain the following provisions: (1) Where provision is made that the security shall be repayable at a premium, either at a fixed date or at any time upon notice having been given, the trust deed must further provide that, should the company go into voluntary liquidation for the purpose of amalgamation or reconstruction, the security shall not be repayable at a lower price. (2) A clause providing that "the statutory power of appointing new trustees hereof shall be vested in the company, but a trustee so appointed must in the first place be approved by a resolution of the debenture (or debenture stock holders), passed in the manner specified in the schedule hereto. A corporation or a company may be appointed a trustee of those presents." (3) In the clause regulating the convening of meetings of the debenture (or debenture stock holders), the following words must be inserted: "and the trustee, or trustees, shall do so upon a requisition in writing signed by holders of at least one-tenth of the nominal amount of debentures (or debenture stock) for the time being outstanding." (4) The clause defining an "Extraordinary Resolution" must provide that "the expression "Extraordinary Resolution" means a resolution passed at a meeting of the debenture (or debenture stock) holders, duly convened and held, at which a clear majority in value of the whole of the debenture (or debenture stock) holders is present in person or by proxy, and carried by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands, and if a poll is demanded then by a majority consisting of not less than three-fourths in value of the votes given on such poll (*g*). (5) If debentures or debenture stock are entitled "first mortgage" provision must be made for the creation of a specific first mortgage in favour of the debenture or debenture stock holders (*gg*).

FORM OF DEBENTURES AND DEBENTURE STOCK.

We have already dealt with the distinction between debentures which give a charge, and debentures which do not do so.

We now come to another sort of distinction, viz. the distinction between (*a*) registered debentures or debenture stock; and (*b*) debentures or debenture stock payable to bearer.

(*a*) In the case of *registered debentures or debenture stock*, the company keeps a register containing the names (and usually the addresses and descriptions) of the holders of the debentures or debenture stock, and the numbers of the debentures or the amount of the stock held by them.

tinues: *ibid.* The offence can be prosecuted under the Summary Jurisdiction Acts; in Scotland prosecutions must be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate directs: *ibid.*, s. 276.

(*ff*) See the Stock Exchange Rules and Appendices set out in the Appendix to this book, pp. 1508 *et seq.*, as to the steps to be taken where a special settlement or official quotation is desired.

(*g*) In practice the Stock Exchange authorities will allow the form used in the debenture stock deed below set out, instead of this clause.

(*gg*) There must be a specific first mortgage on some part of the property comprised in the charge.

Every such register must except when closed in accordance with the articles of the company during such period or periods (not exceeding in the whole 30 days in any year) as is specified in the articles be open to the inspection of the registered holder of any such debentures or debenture stock, and of any holder of shares in the company, but subject to such reasonable restrictions as the company in general meeting may impose, so that at least two hours in each day are appointed for inspection; and every such holder may require a copy of such register or any part thereof on payment of 6*d.* for every 100 words required to be copied (*h*). A person demanding inspection cannot himself take copies (*i*).

The conditions endorsed on the debentures usually provide that the debentures shall be transferable by writing under the hand of the transferor or his legal personal representatives, and that on the transfer being left at the registered office of the company with the necessary evidence of identity and title, and on payment of a fee the transfer shall be registered.

Now debentures and interests in debentures are choses in action, and in the absence of any special condition the transferee of a chose in action takes it subject to the equities which affected it in the hands of his transferor.

Thus the company may raise against any such transferee any counter claim which arises out of and is inseparably connected with the dealings which gave rise to the original claim (*k*); and the transferee will have no higher rights than a predecessor in title who obtained the debentures from the company by fraud or misrepresentation (*l*), or for a consideration that has failed (*m*). Again the company may, where it is not inequitable for it to do so, set off against a transferee claims which it had against his transferor at the date when it received notice of the assignment to the transferee, and this will be so whether such claims are at such date due and payable, or

(*h*) Companies (Consolidation) Act, 1908, s. 102 (1). The offence can be prosecuted under the Summary Jurisdiction Acts; in Scotland prosecutions must be at the instance of the Lord Advocate or the procurator fiscal, as the Lord Advocate directs: *ibid.*, s. 276. The penalty for refusing inspection or refusing or not forwarding a copy is that the company is liable on conviction to a fine not exceeding £5 and to a further fine not exceeding £2 for every day during which the refusal continues, and every director, manager, secretary, or other officer who knowingly authorizes or permits such refusal is liable to a like penalty: *ibid.*, s. 102 (3).

(*i*) *Balaghât Gold Mining*, [1901] 2 K. B. 665.

(*k*) *Government of Newfoundland* v. *Newfoundland Railway* (1888), 13 A. C. 199.

(*l*) *Athenæum Life Assurance* v. *Pooley* (1858), 4 De G. & J. 294; *Palmer's Decoration and Furnishing Co.*, [1904] 2 Ch. 743.

(*m*) *Natal Investment Co.* (1868), 3 Ch. 355; *South Blackpool Hotel Co.* (1869), 8 Eq. 225.

merely due, but not presently payable (*n*); but the case is different where at the time of such notice being given there is merely an inchoate claim, which has not ripened into a debt, and which does not constitute a legal set-off (*o*). The bankruptcy doctrine of set-off, which is imported into the liquidation of companies by section 207 of the Act which replaces section 10 of the Judicature Act, 1875 (*p*), only applies to cross claims existing at the date of winding-up (*q*). Where the company has gone into liquidation at the date of the transfer, there the transferee will, in the absence of a condition to the contrary, take only the rights of the person, who was entitled at the commencement of the winding up (*r*), for he cannot take out of a fund, without first putting into it what is due from him (*s*), and the rights of the parties would seem to be fixed at the time of the liquidation (*t*). This rule applies whether it operates for the benefit of the company or for the benefit of the debenture-holder (*u*).

The company may estop itself from taking the benefit of this rule or it may contract itself out of this rule either by the form of the debenture it gives or, as is usual nowadays, by inserting an express condition that the debenture shall be transferable free from equities.

Turning first to the cases where the company has been held to have estopped itself from setting up an equity there are (1) the cases where a company has given to the transferee a certificate stating that he is the proprietor of certain debentures (*x*). (2) The cases where the transferee has obtained a judgment against the company on the footing that he was entitled to the debentures free from equities, without the company having taken any steps to contest his title (*y*). (3) There are the cases where a company has issued debentures, for the purpose of enabling the person to whom they were issued to raise money on them (*z*), and he has done so. In all these cases

(*n*) *Christie* v. *Taunton, Delmard & Co.*, [1893] 2 Ch. 175; *Watson* v. *Mid-Wales Railway Co.* (1867), L. R. 2 C. P. 593.

(*o*) *Christie* v. *Taunton, Delmard & Co.*, [1893] 2 Ch., 175; *Aslatt* v. *Farquharson* (1862), 10 W. R. 458; *Ex parte Theys* (1884), 25 C. D. 587.

(*p*) *Mersey Steel and Iron Co.* v. *Naylor* (1879), 9 A. C. 434.

(*q*) *Ex parte Theys* (1884), 25 C. D. 587; *Auriferous Co.* (*No.* 2), [1898] 2 Ch. 428.

(*r*) *Goy & Co.*, [1900] 2 Ch. 149; *Ex parte Theys* (1884), 25 C. D. 587; cp. *Ex parte Mackenzie* (1869), 7 Eq. 240.

(*s*) *Gwelo Matabeleland Co.*, [1901] 1 Ir. 38; *Rhodesia Goldfields Co.*, [1910] 1 Ch. 239.

(*t*) This view seems to explain the difference between *Christie* v. *Taunton, Delmard & Co.*, [1893] 2 Ch. 175; and *Goy & Co.*, [1900] 2 Ch. 249.

(*u*) *Ex parte Theys* (1884), 25 C. D. 587.

(*x*) *Northern Assam Tea Co.* (1870), 10 Eq. 458; *Higgs* v. *Northern Assam Tea Co.* (1869), L. R. 4 Ex. 387. (A case which turned partly on the form of the debenture).

(*y*) *Hullet's Case* (1862), 2 J. & H. 306; *Ex parte Chorley* (1870), 11 Eq. 162.

(*z*) *Dickson* v. *Swansea, etc., Railway* (1868), L. R. 4 Q. B. 44; *Romford Canal Co.* (1883), 24 C. D. 84; *Robinson* v. *Montgomeryshire*

the equity of the transferee has been held to prevail over that of the company, and the company has consequently not been allowed to set up its prior equity, and Malins, V.C., took the same view where the company had received notice of the assignment of a debenture (*a*), and even where it had received notice of the assignment of, and had registered another bond of the same issue as the bond in question (*b*). But it must be borne in mind that the debenture-holders of a company are not always bound by an estoppel that binds the company (*c*).

The form of debentures has been held to make them transferable free from equities: *e.g.* where they were payable to bearer (*d*), or to the holder for the time being (*e*), or to the order of a certain person (*f*), and this apart from any question of custom or of the law merchant. But if the debentures are payable to a person "or his assigns," or to a person or "his assigns or the holder for the time being of the debentures," in such cases it would appear that the assignee does not get a higher right than his assignor, for the word assigns always meant equitable assigns before the Judicature Act, 1873 (*g*), and as that Act only enables a chose in action to be assigned "subject to all equities which would have been entitled to priority over the right of the assignee" (*h*), if it had not been passed, it does not alter the position of an assignee on this point. Where a debenture is payable to a person or the registered holder for the time being of the debenture there it would appear that a person who is not the registered holder or even a person who is the registered holder gets no higher right than any other transferee of a chose in action; as this is usually not desired by the parties, and as they can unquestionably contract themselves out of the rule (*i*), it is usual to insert a condition providing that the principal moneys and interest secured by

Brewery, [1896] 2 Ch. 841; see also *Webb* v. *Herne Bay Commissioners* (1870), L. R. 5 Q. B. 642 (a case turning on a special act).

(*a*) *Brunton's Claim* (1874), 19 Eq. 302.

(*b*) *Carey's Claim* (1873), W. N. 17; cp. *Richard Smith & Co.*, [1910] 1 Ir. 73.

(*c*) *Mowatt* v. *Castle Steam, etc., Works* (1886), 34 C. D. 58; *W. Tasker and Sons*, [1905] 2 Ch. 587; cp. the remarks on the former case in *Robinson* v. *Montgomeryshire Brewery*, [1896] 2 Ch. 841.

(*d*) *Ex parte Colborne and Strawbridge* (1870), 11 Eq. 478; *Blakely Ordnance Co., Ex parte New Zealand Banking, etc., Co.* (1867), 3 Ch. 154.

(*e*) Cp. *Higgs* v. *Northern Assam Tea Co.* (1869), L. R. 4 Ex. 387; *Aslatt* v. *Farquharson* (1862), 10 W. R. 458.

(*f*) *Ex parte City Bank* (1868), 3 Ch. 758; *Agra and Masterman's Bank* (1867), 2 Ch. 391; and *Woodhams* v. *Anglo-Australian* (1861), 3 Giff. 238, were cases which turned upon the particular instruments, viz. a letter of credit and a deposit note, which were in question in those cases.

(*g*) *Natal Investment Co.* (1868), 3 Ch. 355; *Romford Canal Co.* (1883), 24 C. D. 85.

(*h*) *Judicature Act*, 1873, s. 25.

(*i*) *Richard Smith & Co.*, [1901] 1 Ir. 73; *Goy & Co.*, [1900] 2 Ch. 149; *Palmer's Decoration and Furnishing Co.*, [1904] 2 Ch. 743.

the debentures shall be paid to the registered holder thereof without regard to any equities existing between the company and any prior holder thereof. Under such a condition it would seem that a person who is registered even after winding-up as the holder of a debenture, and even a person to whom a transfer has been made after winding-up, and who is entitled to claim registration of such transfer is protected (*k*); but it may be that a transferee who at the date of winding-up was unregistered, will not be protected where the condition goes on to say that the receipt of the registered holder for such principal moneys or interest shall be a good discharge to the company (*l*). Having regard to conditions of this sort, it would seem to be usually desirable to have a condition enabling the company to refuse to register a transfer, if the transferor or any person through whom he claims otherwise than by transfer is indebted to the company (*m*). A registered holder of debentures will not under such a condition be protected from equities to which the holders of the other debentures of the same issue are entitled (*n*), nor will such a condition apparently protect a registered holder, who is not a *bonâ fide* purchaser for value, from claims which but for his registration could have been made against his transferor (*o*).

(*b*) *Bearer Debentures and Debenture Stock.*—These instruments are transferable by mere delivery and are now considered negotiable by the law merchant (*p*). It is not any longer necessary to bring evidence to prove that there is a custom to treat them as negotiable (*q*). These remarks would seem to apply not only where the debentures contain an express condition making them negotiable as was the case in *Edelstein* v. *Schuler* (*r*), but also where they do not, they would appear also to apply to scrip certificates to bearer (*s*),

(*k*) *Goy and Co.*, [1900] 2 Ch. 149.

(*l*) *Palmer's Decoration and Furnishing Co.*, [1904] 2 Ch. 743. The distinction seems miserably fine; see also *Smith & Co.*, [1901] 1 Ir. 73.

(*m*) See the cases cited in the two preceding notes, as to the construction of the old common form conditions as to the transfer. They certainly do not appear to be reconcileable the one with the other. The Stock Exchange authorities do not, however, approve of a condition restricting the right to transfer unless it only applies to partly paid debentures.

(*n*) *W. Tasker and Sons*, [1905] 2 Ch. 587.

(*o*) *Brown, Gregory & Co.*, [1904] 1 Ch. 627; affirmed on another point, [1904] 2 Ch. 448; and see *Gwelo Matabeleland, etc., Co.*, [1901] 1 Ir. 138, as to the position of a person who with knowledge of a winding-up has taken a transfer of a charge on uncalled capital.

(*p*) *Bechuanaland Exploration Co.* v. *London Trading Bank*, [1898] 2 Q. B. 658; *Edelstein* v. *Schuler*, [1902] 2 K. B. 144. Cases which show that *Crouch* v. *Credit Foncier* (1873), L. R. 8 Q. B. 374 was in effect overruled by *Goodwin* v. *Robarts* (1875), L. R. 10 Ex. 337; (1876), 1 A. C. 476.

(*q*) *Edelstein* v. *Schuler*, [1902] 2 K. B. 144.

(*r*) [1902] 2 K. B. 144.

(*s*) Cp. *Webb, Hale & Co.* v. *Alexandra Water Co.* (1905), 93 L. T. 339 (the case of a share warrant to bearer); *Bechuanaland Exploration Co.* v. *London Trading*

to debenture stock to bearer, and to coupons to bearer. Debentures to bearer sometimes contain conditions enabling the bearer of a debenture to register, and conditions to apply only when the debenture is registered, similar to those usually contained in a registered debenture. Bearer debentures, and sometimes also registered debentures, are accompanied by coupons for interest payable to bearer, and provide by their conditions that interest shall be payable at the time and place mentioned in such coupons.

Where an official quotation on the Stock Exchange is required the debentures should state on their face: (1) the authority under which the company is constituted; (2) the nominal capital of the company; (3) the dates when the interest on the debentures is payable (*t*); and the authority under which the issue is made (*i.e.* Articles of Association and resolutions), and on their back the conditions of issue, redemption and transfer (*u*). Each debenture is also usually numbered, and states the amount of the principal moneys thereby secured. The company then proceeds to covenant to pay usually in the case of registered debentures or debenture stock to a specified person (*x*), or other the registered holder, and in the case of bearer securities to the bearer, the principal sum thereby secured, either with or without a premium when the same shall become payable under the endorsed conditions, or as the case may be, on a specified day or on such earlier day when the principal moneys shall become payable in accordance with the endorsed conditions a covenant to pay without specifying a time for payment creates either a present liability to pay, or at least a liability to pay on demand. A covenant to pay on or before a certain day creates a liability to pay on the day named with an option of earlier payment, a covenant to pay on or after a certain day gives an option to pay on the day named, but no liability till after the day is passed and possibly not even then till demand is made, nor is the construction of a covenant in the last preceding form altered by a provision that

Bank, [1898] 2 Q. B. 658; *Rumball* v. *Metropolitan Bank* (1877), 2 Q. B. D. 194; see *Goodwin* v. *Robarts* (1875), L. R. 10 Ex. 337; (1876), 1 A. C. 476; *Picker* v. *London and County Bank* (1887), 18 Q. B. D. 515; *Venables* v. *Baring*, [1892] 3 Ch. 527.

(*t*) Interest on debentures accrues *de die in diem*; *Re Rogers* (1860), 1 Dr. & Sm. 338.

(*u*) See Appendix 36 to the Stock Exchange Rules, 1911, set out in the Appendix to this book, pp. 1508 *et seq.* These remarks also apply to debenture stock certificates.

(*x*) The covenant for principal and interest would appear to create a specialty debt: *Cornwall Mineral Railway*, [1897] 2 Ch. 74. If a blank is left where the name of a grantee should be in a deed it will, subject to questions under the Statute of Frauds, be good in equity though bad in law: *Reeves* v. *Watts* (1866), L. R. 1 Q. B. 412; *Queensland Land and Coal Co.*, 71 L. T. 115, [1894] 3 Ch. 181; *Hibblewhite* v. *M'Morine* (1840), 6 M. & W. 200; *Enthoven* v. *Hoyle* (1853), 13 C. B. 373, but where a covenant is made simply with the registered holder or bearer of a debenture that would appear to be sufficient on the principle of *id certum est quod certum reddi potest.*

the particular debentures to be paid off are to be determined by ballot, except that such a clause may give the mortgagor a right to repay before the day named (*y*). If a covenant to pay contains a proviso that the covenant shall only be enforced at the option of the covenantor, the proviso will be rejected as being repugnant (*z*). The second covenant on the face of the debenture is a covenant to pay interest at a certain rate on certain days (*a*). Such covenant should be to pay interest "until repayment" of the principal moneys (*b*). Where there are coupons for interest the covenant may refer to them. Clause 3, on the face of the debenture contains a floating charge (*c*), usually on the company's undertaking, and all its assets (*d*) whatsoever and wheresoever, including its uncalled capital for the time being, and then comes a clause incorporating or referring to the endorsed conditions; a clause referring to any trust deed there may be for further securing the debentures should be contained either on the face of the debentures or among the endorsed conditions, it is immaterial which.

Turning to the endorsed conditions, the first clause usually puts all the debentures of the issue on an equal footing (*e*), and provides, where that is the intention, that the company is not to be at liberty to create any mortgage or charge ranking *pari passu* with or in priority to the charge created by the debentures.

Condition 2 provides that the company is to keep a register of the debenture-holders or, where the debentures are to bearer and registration is optional, of the debenture-holders who wish to be

(*y*) *Tewkesbury Gas Co.*, [1911] 2 Ch. 279; affirmed, [1912] 1 Ch. 1; and see *Hopkins* v. *Worcester and Birmingham Canal* (1868), 6 Eq. 437, as to the effect of omitting the time for payment.

(*z*) *Tewkesbury Gas Co.*, [1911] 2 Ch. 279; affirmed, [1912] 1 Ch. 1; citing Sheppard's Touchstone, p. 233; and *Watling* v. *Lewis*, [1911] 1 Ch. 414.

(*a*) Interest will not be paid, and the security for it will not be released, merely by a cheque being given and accepted: *J. Defries and Sons*, [1909] 2 Ch. 423.

(*b*) See *European Central Railway* (1876), 4 C. D. 33; *Economic Life Assurance* v. *Usborne*, [1902] A. C. 147.

(*c*) As to the nature of a floating charge, *supra*, pp. 452 *et seq.* Where there is in addition a specific security, this should be given by a trust deed and not by the debentures; see *Illingworth* v. *Houldsworth*, [1902] A. C. 355 for cases where a security will be considered to be floating and not specific.

(*d*) The word "assets" will by itself (unlike the word property) charge the uncalled capital of the company; see *Page* v. *International Agency and Industrial Trust* (1893), 68 L. T. 435, and the cases cited *supra*, pp. 445 *et seq.*, on the question whether a company has power to charge its uncalled capital. It will also presumably charge the goodwill of the company's business; *Leas Hotel Co.*, [1902] 1 Ch. 332.

(*e*) In the absence of such a clause debentures will rank according to their date of issue; *Gartside* v. *Silkstone, etc., Co.* (1882), 21 C. D. 712; *James* v. *Boythorpe Colliery Co.* (1890), 2 Meg. 55, unless they contain some other indication of a contrary intention.

registered. It is unnecessary now to provide for inspection of such register as, as already stated, the Act gives a right to inspection. The next condition usually provides that the company shall not be bound to enter on its register notice of any trust (*f*), and that in the case of debentures which are registered, the company shall not be bound to recognize any one who is not the registered holder or his legal personal representative or the person entitled in his bankruptcy.

In the case of debentures to bearer, which can be, and have been, registered, there should be a right to demand cancellation of the registration. In the case of registered debentures the right to transfer and claim registration of the transfer should be provided for. In the case of registered debentures, which cannot be converted into debentures to bearer, it would seem better to restrict this right where the registered holder or persons through whom he claims otherwise than by purchase for value is indebted to the company; but where the registered debenture can be converted to a bearer debenture, it would seem unnecessary to do this, unless, indeed, the right to cancel registration is similarly restricted.

Then comes the usual, but it would seem somewhat unnecessary, clause, as to joint holders of debentures, to such a clause may be conveniently added provisions as to notices and payments to one of joint holders.

In the case of registered debentures there must in all cases be the clause above referred to, protecting the registered holders against equities which the company has against prior holders; but if there is a clause enabling persons entitled through the death or bankruptcy of a registered holder to be registered such persons should not be protected against any claims the company may have against the deceased or bankrupt person. In the cases of debentures to bearer it is usual, but probably unnecessary, to provide that they are to be negotiable.

A condition is usually inserted providing that the principal moneys and interest secured by the debentures shall be paid at the registered office of the company, $\frac{\text{and}}{\text{or}}$ at some other place mentioned in the debenture, such a clause relieves the company from the obligation, under which it would otherwise be, of going and seeking out each debenture-holder, when moneys become payable to him. The company will, under such a condition, not be in default until a demand

(*f*) Such a clause would seem not to enable a company to avoid receiving notice of a trust, see *supra*, p. 192. S. 27 of the Companies (Consolidation) Act, 1908, of course does not apply to a register of debentures, the point was argued, but not decided on: *Christie* v. *Taunton Delmard & Co.*, [1893] 2 Ch. 175, but it does enable the company to decline to enter any notice it has received on its register.

for payment has been made at the place or at one of the places specified in the condition (*g*). It is thought that it is better to enable the company to pay interest by sending a cheque (*h*) through the post, in the case of registered debentures which have not got coupons for interest attached. Where there are coupons the condition should provide that the interest shall be paid in accordance with the terms in the coupons, and each coupon should provide that it is to be surrendered on payment of the interest therein mentioned. It is as well also to provide that the principal moneys shall only be payable on surrender of the debenture with all coupons for interest not then due (*i*).

The next condition deals with the various events which will make the principal moneys secured by the debentures payable (*k*). These will be failure to pay interest for a certain time after it becomes payable or after it becomes payable and demand for payment has been made; the various events which would enable the debenture-holders to enforce their security, viz. winding-up execution or other process of any Court, the appointment of a receiver, and the company ceasing to carry on business, for though the debenture-holders would apart from such a clause be able to enforce their security in these events, they should be able, if they wish to do so, to sue on their covenant for payment, and claims for damages against the company on the footing that the debenture is irredeemable should be avoided (*l*). The principal moneys are also made payable on the breach of any covenant in the trust deed, if any (*ll*); and usually if a distress is levied against any of the property of the company (*m*).

(*g*) *Thorn* v. *City Riec Mills* (1889), 40 C. D. 357; *Esealera Silver Lead Mining Co.* (1908), 25 T. L. R. 87; and for a condition precluding a debenture-holder from suing the company until he has demanded his money, and there has been default for a specified time, *Rogers & Co.* v. *British and Colonial* (1899), 68 L. J. (Q. B.) 14.

(*h*) But cp. *Thairlwall* v. *Great Northern Railway*, [1910] 2 K. B. 509. The mere holding over of a cheque for interest, or the indorsement of it by a trustee to his *cestui que trust*, will not amount to an agreement to give up the security and rely on the cheque: *J. Defries and Sons*, [1909] 2 Ch. 423; see also *Henderson* v. *Arthur*, [1907] 1 K. B. 10.

(*i*) Coupons for interest when not payable either to any named person or to bearer are simply tokens and part of the debentures and are consequently it would seem negotiable with the debenture, but not without it: *Enthoven* v. *Hoyle* (1853), 13 C. B. 373; *Webb Hale & Co.* v. *Alexandra Water Co.* (1905), 93 L. T. 339. From the evidence in the last case it would appear that a coupon to bearer would be negotiable even it if were only payable if the debenture were not sooner redeemed, without these words it would appear to be clearly negotiable; cp. *Australasian Mortgage, etc., Co.* v. *Inland Revenue* (1888), 16 Rettie 64, but it does seem desirable to add them.

(*k*) The principal moneys become immediately payable if the debenture becomes void for want of registration: Companies (Consolidation) Act, 1908, s. 93 (1).

(*l*) See *post*, p. 471.

(*ll*) Cp. *Melbourne Brewery*, [1901] 1 Ch. 453.

(*m*) Cp. *Central Printing Press* v. *Walker* (1907), 24 T. L. R. 88, as to what will amount to a seizure under a distress.

Finally there are provisions as to notices, and such provisions should always be inserted as they may be useful, for example, on a reduction of capital.

Very frequently debentures, or the trust deed securing them, contain provisions enabling or requiring the company to redeem a certain number of debentures at certain times, and on giving certain notices (*n*). The particular debentures to be drawn being usually determined by drawings (*o*) in the presence of some approved person, usually a notary public, and of any debenture-holder who cares to attend. Sometimes a trust deed requires the company to set aside a sinking fund. It has been suggested that these drawings may, at all events in cases where the drawn debentures are to be redeemed at a premium, be illegal as contravening the provisions of the Lottery Acts. There would seem, however, to be nothing in the point (*p*), and the same remark applies to the redemption, by drawings, at par of debentures issued at a discount. A bond investment company may, however, not give the holder of any policy issued after the 3rd of December, 1909, any advantage dependent on lot or chance; this provision does not prejudice any question as to the application of the law relating to lotteries to such transactions, whether the policy was issued before or after that date (*q*).

With regard to debentures which a company has redeemed or bought on the market, formerly the law was that such debentures were cancelled or spent by the fact that the money secured by them was paid off, and they could not be reissued. The rule applied where the company had bought debentures in the market and had had them registered in its name (*r*); and where the debentures had been registered in the name of a person to whom they had been issued

(*n*) As to the construction of such a condition and the notices to be given thereunder: *First National Bank of Chicago* v. *Orinoco, etc., Co.* (1905), 21 T. L. R. 39; *Morrison* v. *Chicago, etc., Granaries*, [1898] 1 Ch. 263. Where a Stock Exchange quotation is required then if the security is repayable at a premium either at a fixed date or upon notice being given, the trust deed must further provide that should the company go into voluntary liquidation for the purpose of amalgamation or reconstruction, the security shall not be repayable at a lower price. As to what is an amalgamation or reconstruction: *South African Supply and Cold Storage Co.*, [1904] 2 Ch. 268.

(*o*) Cp. *Gordillo* v. *Weguelin* (1877), 5 C. D. 287, as to the rights of persons whose debentures have been drawn but not paid.

(*p*) See *Wallingford* v. *Mutual Society* (1880), 5 A. C. 685. The point was argued in *Smith* v. *Anderson* (1880), 15 C. D. 247; see the following reports of the same case, 43 L. T. 330 (where the headnote on the point seems to go too far), the point was apparently argued, but ultimately abandoned; and 29 W. R. 22; see also on the point, *Sykes* v. *Beadon* (1879)), 11 C. D. 170.

(*q*) Assurance Companies Act, 1909, s. 34 (*e*), and see also the Building Societies Act, 1894, s. 12, which prohibits balloting for advances in such societies.

(*r*) *George Routledge*, [1904] 2 Ch. 474.

as collateral security, and had after the debt was paid off been transferred direct to *bonâ fide* purchasers for value from the company (*s*).

Similarly blank debentures which had been deposited as security for a loan, could not be reissued after the loan had been paid off (*t*); and debentures deposited as security for a particular loan could not be made security for a fresh loan, even though such fresh loan, had been contracted before the original loan was paid off (*u*).

This law was altered by section 15 of the Companies Act, 1907 (*x*). A company which has, either before or after the passing of the Act redeemed (*y*), any debentures previously issued has power, and is deemed always to have had power, to keep the debentures alive for the purposes of reissue; and where the company has purported to exercise such a power, it has power, and is deemed always to have had power to reissue the debentures either (*a*) by reissuing the same debentures; or (*b*) by issuing other debentures in their place. Where debentures have either before or after the passing of the Act been transferred to a nominee of the company with the object of keeping them alive for the purpose of reissue, a transfer from that nominee will be deemed to be a reissue for the purposes of the section (*z*).

These provisions do not apply where (*a*) the articles or the conditions of issue expressly otherwise provide or (*b*) where the debenture has been redeemed in pursuance of an obligation on the company so to do (not being an obligation (*a*) enforceable only by the person to whom the redeemed debentures were issued or his assigns) (*b*). The cases decided before the passing of the Companies Act, 1907, are important still in these two cases, and for stamping purposes.

Upon any such reissue the person entitled to the debentures will have, and is deemed always to have had the same rights and priorities as if the debentures had not been previously issued. The

(*s*) *W. Tasker and Sons*, [1905] 2 Ch. 587.

(*t*) *Perth Electric Tramways*, [1906] 2 Ch. 216.

(*u*) *Russian Petroleum and Liquid Fuel Co.*, [1907] 2 Ch. 540.

(*x*) Now replaced by s. 104 of the Companies (Consolidation) Act, 1908.

(*y*) "Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited": Companies (Consolidation) Act, 1908, s. 104, sub-s. 3. It is doubtful whether this provision alters the law: *Russian Petroleum and Liquid Fuel*, [1907] 2 Ch. 540.

(*z*) Companies (Consolidation) Act, 1908, s. 104, sub-s. 2.

(*a*) A statement that a debenture is "redeemable" would appear not to be such an obligation: *Chicago and North West Granaries*, [1898] 1 Ch. 263.

(*b*) *Fitzgerald* v. *Persse*, [1908] 1 Ir. 279.

question whether such re-issued debentures require registration was raised in *New London and Suburban Omnibus Co.* (*c*), where Neville, J., did not decide the question, but held that in that particular case the debentures did not require registration.

The reissue of a debenture or the issue of another debenture under the powers conferred by the section, whether the re-issue or issue, was made before or after the passing of the Act is for the purposes of stamp duty, but not for the purposes of a provision limiting the amount or number of the debentures to be issued, to be treated as the issue of a new debenture.

A person lending money on the security of a debenture re-issued under the section, which appears to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty, unless he had notice, or, but for his negligence might have discovered that the debenture was not duly stamped ; in any such case the company will be liable to pay the proper stamp duty and penalty (*d*).

The section does not prejudice (*a*) the operation of any judgment or order of a Court of competent jurisdiction pronounced or made before the 7th March, 1907, as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order must be decided as if the Act had not been passed (*e*), or (*b*) any power to issue debentures (*f*) in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same (*g*).

If there is no time specified for the repayment of the principal moneys secured, the principal money will be repayable on demand, unless the mortgage shows an intention to the contrary, but the mortgagee must give the mortgagor a reasonable time to find the money (*h*), and the same rule applies to the mortgagor's right to redeem where the mortgage is an equitable one, but in the case of a legal mortgage the mortgagor must give the mortgagee six months' notice, or pay him six months' interest in lieu of notice (*i*).

Where, however, the covenant for repayment provides that the principal moneys shall be repayable on the happening of events

(*c*) [1908] 1 Ch. 621.

(*d*) Companies (Consolidation) Act, 1908, s. 104 (4).

(*e*) See on this sub-section *New London and Suburban Omnibus Co.*, [1908] 1 Ch. 621.

(*f*) Such debentures would it is thought require to be stamped afresh.

(*g*) Companies (Consolidation) Act, 1908, s. 104.

(*h*) *Fitzgerald's Trustee* v. *Mellersh*, [1892] 1 Ch. 385 ; *Hopkins* v. *Worcester and Birmingham Canal* (1868), 6 Eq. 437 ; *Tewkesbury Gas Co.*, [1911] 2 Ch. 279; affirmed, [1912] 1 Ch. 1; *Deverges* v. *Sandeman, Clarke & Co.*, [1902] 1 Ch. 579, *per* COZENS-HARDY, L.J.

(*i*) *Fitzgerald's Trustee* v. *Mellersh*, [1892] 1 Ch. 385.

which may not happen for an indefinite period (*k*), or where the debenture or debenture stock is stated to be irredeemable, and there is no provision for redemption or covenant for repayment, there the debenture stock or debentures will be what is called perpetual or irredeemable, and the transaction will not be a borrowing of money or come within the provisions of a power to borrow, but will be a sale of a perpetual annuity (*l*).

Formerly there was doubt as to whether a company could create perpetual debentures or debenture stock, as it was said that such stock offended the rule against clogging the equity of redemption of mortgaged property (*m*); and it may be that in some cases such debentures or debenture stock would offend against the perpetuity rule (*n*). These doubts were removed by section 14 of the Companies Act, 1907 (*o*), which applies retrospectively, and a condition contained in any debentures (*p*), or in any deed for securing debentures, will, in spite of any equitable rule to the contrary not be invalid by reason only that it makes the debentures irredeemable or redeemable only on the happening of a contingency, however remote or on the expiration of a period however long. It will be noticed that this section does not affect cases like *Jarrah Timber* v. *Samuel* (*q*), where the question was not whether the company could validly issue the debenture stock, but whether it could give a mortgagee of such stock when issued an option to purchase the stock as part of the mortgage transaction; nor does the section touch the *Southern Brazilian Rio Grande do Sul Railway* (*r*), which turned on the construction of a memorandum of association which gave a power to borrow, but not to raise money; where perpetual debenture stock is secured by a floating security such security will become enforceable on the company being wound up (*s*), but unless the debenture stock is then payable the holder of such stock will have a claim for damages against the company, as it will have broken its covenant to pay him a perpetual annuity (*l*). Such claim will be enforceable in the winding-up.

(*k*) *Per* RIGBY, L.J., in *City of London Brewery* v. *Inland Revenue*, [1899] 1 Q. B. 121, 138, but it would seem, in spite of the remarks in this case, that stock cannot properly be described as irredeemable, where the company has an option to redeem it, see *per* COLLINS, M.R., and ROMER, L.J., in *Jarrah Timber* v. *Samuel*, [1903] 2 Ch. 1.

(*l*) *Southern Brazilian Rio Grande do Sul Railway*, [1905] 2 Ch. 78; *Attree* v. *Hawe* (1878), 9 C. D. 337; *City of London Brewery* v. *Inland Revenue Commissioners*, [1899] 1 Q. B. 121.

(*m*) *Jarrah Timber* v. *Samuel*, [1903] 2 Ch. 1, [1904] A. C. 323; but cp. *De Beers Consolidated Mines* v. *British South Africa Co.*, [1912] A. C. 52, where there are dicta of all the learned law lords suggesting that this doctrine does not apply to floating charges.

(*n*) Cp. Grey on Perpetuities, 2nd Ed., pp. 438 *et seq.*; *London and South Western Railway* v. *Gomm* (1882), 20 C. D. 562; *Woodall* v. *Clifton*, [1905] 2 Ch. 257; *Tyrrell's Estate*, [1907] 1 Ir. 297.

(*o*) Replaced by Companies (Consolidation) Act, 1908, s. 103.

(*p*) The expression "debentures" include debenture Stock Companies (Consolidation) Act, 1908, s. 285, probably it would also include debenture stock certificates: *Cunard Steamship* v. *Hopwood*, [1908] 2 Ch. 564.

(*q*) [1904] A. C. 323.

(*r*) [1905] 2 Ch. 78.

(*s*) Cp. *Hodson* v. *Tea Co.* (1880), 14 C. D. 859; *Wallace* v. *Automatic Machines*, [1894] 2 Ch. 547; *Southern Brazilian Rio Grande do Sul Railway*, [1905] 2 Ch. 78.

It has been said (*t*) that the power of sale given by the Conveyancing and Law of Property Act, 1881, to mortgagees, does not extend to debenture-holders, and that they have consequently no implied power of sale. If this is so, debenture-holders have also no power of appointing a receiver under that Act, it is therefore not unusual to insert a clause in debentures, providing that a certain number of the debenture-holders shall have power to appoint a receiver, it will be as well to incorporate the provisions of the Conveyancing and Law of Property Act, 1881 ; but these provisions will not by themselves be enough, for it is desirable that the receiver should have power to carry on the business of the company to enter into possession, and to sell the property charged by the debentures (*u*) ; and he will also have to deal with capital, and not merely with income. It is important for such a power to expressly provide that the receiver shall be the agent of the company (*x*), otherwise he will be the agent of the debenture-holders (*y*), and they will be personally liable on his contracts ; if the receiver is the agent of the company neither he (*z*) nor the debenture-holders appointing him (*a*) will be personally liable on contracts entered into while the company is a going concern, and the persons appointing him will not be liable after a winding-up order has been made. Where the debentures are set aside under the Bankruptcy Acts of 13 Eliz. c. 5, the debenture-holders and any receiver appointed by them will be jointly and severally liable to account as trespassers for any property which has come to their hands (*aa*). The position of such a receiver after a winding-up order has been made raises a more difficult question, it would seem clear from *Gosling* v. *Gaskell* (*b*), that the receiver will cease to be the agent of the company ; and it would seem probable that he will be personally liable on contracts entered into after such an order ; but the question still remains whether he may carry on the business ? The view of the Court of

(*t*) *Blaker* v. *Herts and Essex Waterworks Co.* (1889), 41 C. D. 399, a case of a statutory undertaking.

(*u*) See for other powers the forms set out below at pp. 528 and 529.

(*x*) The remarks in *Richards* v. *Kidderminster*, [1896] 2 Ch. 212, as to the receiver in that case not being the agent of the company seem inconsistent with *Gosling* v. *Gaskell*, [1897] A. C. 575 ; cp. also *Re Hale*, [1899] 2 Ch. 107 ; *Bissell* v. *Ariel Motors* (1906) *and George Walker* (1910), 27 T. L. R. 73.

(*y*) *Robinson Printing Co.* v. *Chic*, [1905] 2 Ch. 123 ; *Re Vimbos*, [1900] 1 Ch. 470 ; *Deyes* v. *Wood*, [1911] 1 K. B. 806, shows that in the absence of most clear words a receiver to whom the powers, usually given by debentures, are given, will be the agent of the debenture-holders, and not of the company.

(*z*) *D. Owen & Co.* v. *Cronk*, [1895] 1 Q. B. 265 ; *Bissell* v. *Ariel Motors* (1906) *and George Walker* (1910), 27 T. L. R. 73.

(*a*) *Gosling* v. *Gaskell*, [1897] A. C. 575.

(*aa*) *Re Goldburg*, [1912] 1 K. B. 606.

(*b*) *Gosling* v. *Gaskell*, [1897] A. C. 575.

Appeal in *Henry Pound, Son, and Hutchins* (*c*) seems to be that a receiver could not do so, the view of Rigby, L.J., in *Gaskell* v. *Gosling* (*d*) seems to be that he could do so, and would be entitled to be indemnified out of the assets subject to the charge, but not out of any other assets of the company ; this latter view would seem to be preferable and more consistent with the principle that the rights of a mortgagee are altogether outside the winding-up (*e*). Where, as occasionally happens, the power to appoint a receiver is given to one of the debenture-holders, the power is a fiduciary one, and must be exercised in the interest of the debenture-holders as a whole, and not so as to favour the particular debenture-holder or the company (*f*), but in the absence of bad faith the Court will not appoint a receiver, where the debenture-holders have power to do so, and have exercised such power (*g*).

Usually a specified number of the debenture-holders are empowered to appoint a receiver at any time after the principal moneys become payable. It has been asserted that in a matter of this sort powers must be exercised or votes given with the view of benefiting the debenture-holders as a whole (*h*). There does not, however, seem to be any reason why powers or votes of this sort are not as much a right of property, as the votes given to shareholders ; but, of course, where some of the creditors of a particular class have interests which are opposed to the interests of other members of that class, the Court will take this fact into consideration, if, for any reason, its sanction to an appointment or a scheme is required (*i*).

The debenture will provide that the moneys received by the receiver shall be applied in the payment of the expenses incurred by him as receiver, including the payments which have priority under the Conveyancing and Law of Property Act, 1881, section 24, sub-sections (1), (2), and (3), viz. (1) rents, taxes, and outgoings affecting the mortgaged property ; (2) annual sums or other payments, and the interest on all principal sums having priority to the debentures ; (3) his commission (*k*), the premium on fire, life and other insurances

(*c*) (1889) 42 C. D. 402 ; the view of FRY, L.J., seems to turn on the construction of the deed there in question.

(*d*) [1896] 1 Q. B. 669, 700.

(*e*) See *David Lloyd & Co.* (1877), 6 C. D. 339 ; *Longendale Cotton Spinning Co.* (1878), 8 C. D. 150.

(*f*) *Maskelyne British Typewriter*, [1898] 1 Ch. 133.

(*g*) *Joshua Stubbs & Co.*, [1891] 1 Ch. 475 ; and see *Henry Pound, Son, and Hutchins* (1889), 42 C. D. 402.

(*h*) Cp. *Finlay* v. *Mexican Co.*, [1897] 1 Q. B. 517, at p. 522.

(*i*) *Alabama, New Orleans, Texas, and Pacific Junction Railway Co.*, [1891] 1 Ch. 213 (and especially the judgment of BOWEN, L.J., at pp. 243, 244) ; *Wedgwood Coal and Iron Co.* (1877), 6 C. D. 627, and the bankruptcy cases of which *Re Strawbridge* (1883), 25 C. D. 266 is the last, are cases of this class.

(*k*) The Court cannot except by consent fix the remuneration of a receiver on an application in a winding-up : *Vimbos, Ltd.*, [1900] 1 Ch. 470.

(if any) properly payable under the debentures or under the last-mentioned Act, and the cost of executing necessary and proper repairs directed in writing by the mortgagee (*l*).

Then will come the payments which have priority by virtue of section 107 of the Companies (Consolidation) Act, 1908 (*m*); for these expenses will, at all events, where the receiver has taken possession (*n*), and it is thought where he has not done so, have the same priority as in the case of a receiver appointed by the Court. The balance will be applied in paying the moneys secured by the debentures, and if anything remains after making these payments the company will be entitled to it. *Primâ facie* all payments to the debenture-holders will in the first instance be appropriated to interest (*o*); and only when all interest has been paid will moneys be applied in paying off capital. This is usually to the advantage of the debenture-holders, as interest will continue to run on capital, but not on interest unpaid; but where the security is insufficient, as the debenture-holders will not wish to pay income tax on interest received while their capital is unpaid, it is advantageous for them to receive payments on account of their capital in the first instance, in such a case if the security is being enforced by the Court it will order that any property distributed shall not be appropriated to capital or income or shall be applied in the first instance in paying off the capital (*p*), because it will assume that all the debenture-holders would elect to do what is most advantageous to them; but ordinarily such payments will be liable to adjustment, if there should ultimately prove to be sufficient funds (*q*).

Where a receiver is appointed under the powers in an instrument notice of the appointment must be given to the Registrar of Joint Stock Companies in the same way as where a receiver has been appointed by the Court (*r*).

Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, must once in every half-year, while he remains in possession, and also on ceasing to act as receiver or

(*l*) This would be all the debenture-holders, but it is thought that such expenses would be part of the expenses of carrying on the business.

(*m*) See *post*, pp. 572 *et seq.*

(*n*) *Barnbys, Ltd.*, (1899) W. N. 103.

(*o*) *Bower* v. *Marris* (1841), Cr. & Ph. 351.

(*p*) *Smith* v. *Law Guarantee*, [1904] 2 Ch. 569.

(*q*) *Calgary and Medicine Hat, etc., Co.*, [1908] 2 Ch. 652, where the Court had appointed the receiver. Presumably a receiver appointed by debenture-holders under a power would have the same powers as the Court has where it has appointed a receiver, though some may prefer to have a clause enabling him to make payments generally on account of principal and interest, until it is ascertained that the company has sufficient assets to make the other mode of distribution desirable.

(*r*) Companies (Consolidation) Act, 1908, s. 94; for form see *post*, p. 567. A receiver or manager making default is liable to a fine of £5 for every day during which the default continues; in Scotland the prosecution must be at the instance of the Lord Advocate or a procurator fiscal, as the Lord Advocate directs: *ibid.*, s. 276.

manager, file with the Registrar of Joint Stock Companies an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and must also on ceasing to act as receiver or manager file with the Registrar notice to that effect. The Registrar must enter such notice on the register of mortgages and charges. Every receiver or manager who makes default in complying with these provisions will be liable to a fine not exceeding £50 (*s*).

A difficulty sometimes arises on a sale of lands or letters patent, owing to the company having been dissolved before the legal estate has been got in by the mortgagees, or the purchasers from them, it is thought that if the dissolution of the company does not terminate its interest in the property, the Court can, without declaring the dissolution void (*ss*), appoint a new trustee under section 25 of the Trustee Act, 1893, on the ground that there is no existing trustee, and then make a vesting declaration under section 26 (1) of that Act (*t*). Moreover it can probably make a vesting declaration under section 26 (2) of the Trustee Act, 1893, on the ground that the trustee cannot be found (*u*).

But the question remains does the dissolution of the company terminate its rights in its property, *e.g.* in leaseholds or freeholds which it has not assigned. Apparently that is not the effect in the case of property which is held in trust for the company (*x*); but it has been held that a company's interest in leaseholds terminated with its dissolution (*y*), the decision being founded on passages in Blackstone, vol. i. p. 484.; Kyd on Corporations, vol. ii. p. 516; Grant on Corporations, p. 303; the reasoning being that it is an implied condition of every such grant, and that the grant being made to the corporation for beneficent purposes, when the corporation ceases the public spirit of the grantor is rewarded by the property reverting to him (*z*). It may perhaps be doubted whether such condition should be implied to a modern commercial corporation, where there is no beneficent purpose and therefore no public spirit to be rewarded (*a*).

(*s*) Companies (Consolidation) Act, 1908, s. 95. For forms see next page. The offence can be prosecuted under the Summary Jurisdiction Acts; in Scotland prosecution must be at the instance of the Lord Advocate or a procurator fiscal, as the Lord Advocate directs: *ibid.*, s. 276.

(*ss*) As to declaring the dissolution void, cp. *Spottiswoode, Dixon and Hunting*, [1912] 1 Ch. 410.

(*t*) *Re No. 9, Bomore Road*, [1906] 1 Ch. 359; *Re Land at Farnborough*, [1906] 1 Ch. 391; *King of Hanover* v. *Bank of England* (1869), 8 Eq. 350.

(*u*) *General Accident Assurance Corporation*, [1904] 1 Ch. 147: *Richard Mills & Co. (Brierly Hill)* [1905] W. N. 36; but cp. *Taylor's Agreement Trusts*, [1904] 2 Ch. 737; *Niger Patent Co.*, [1904] W. N. 99.

(*x*) *Re Higginson and Dean*, [1899] 1 Q. B. 325.

(*y*) *Hastings Corporation* v. *Letton*, [1908] 1 K. B. 378; but cp. *Pryce Jones* v. *Williams*, [1902] 2 Ch. 517.

(*z*) *Hastings Corporation* v. *Letton*, [1908] 1 K. B. at p. 387.

(*a*) See *post*, p. 993, where the matter is more fully discussed.

NOTICE OF RECEIVER OR MANAGER CEASING TO ACT AS SUCH (*aa*).

Certificate No. Form No. 57A.

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

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Notice to be given by a Receiver or Manager on ceasing to act as such.

(Pursuant to section 95.)

Name of Company Limited.

This notice must be filed by the Receiver or Manager within 21 days from his ceasing to act as such. The penalty for default is a fine not exceeding £50.

Presented for filing by

To the Registrar of Joint Stock Companies.

I, the undersigned, of hereby give you Notice that I ceased to act as Receiver or Manager of the Company Limited, on the day of

Signature,

Date.

ABSTRACT OF RECEIPTS AND PAYMENTS BY RECEIVER OR MANAGER (*aaa*)

Certificate No. Form No. 57.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

[No Registration Fee payable.]

Receiver or Manager's Abstract of Receipts and Payments.

(Pursuant to section 95.)

Name of Company Limited.

Name and Address of Receiver or Manager

Date and description of instrument under which Receiver or Manager is appointed.

Date of taking possession.

Period covered by the Abstract. From To

Presented for filing by

ABSTRACT

Receipts.	£	s.	d.	Payments.	£	s.	d.

Signature.

Date.

(*aa*) Form 57A prescribed by order of the Board of Trade of 29th March, 1909.

(*aaa*) Form 57 prescribed by order of the Board of Trade of 29th March, 1909.

FORM OF TRUST DEEDS.

We now come to the question of covering deeds or trust deeds for securing debentures or debenture stock (*b*). Debenture stock very rarely contains any charge in itself, and is therefore almost always secured by a trust deed. Debentures, although usually conferring a charge, are not infrequently accompanied by a trust deed, so that the debenture-holders may have the benefit of a fixed charge on certain of the property of the company (*e.g.* its freeholds and leaseholds) (*aa*). The covering deed will also usually confer a floating charge over the property not subject to the fixed charge, so as to enable the trustees to utilize all the property of the company in exercising their powers. The requirements of the Stock Exchange Committee where an official quotation is desired have already been mentioned (*bb*).

A covering deed is usually made between a company and the persons who are to act as trustees for the debenture or debenture stock holders, and the question arises how far can an individual debenture-holder or debenture stock holder enforce its provisions? There can be no doubt that a contract by A. with B. to pay C. a sum of money is not ordinarily enforceable by C. (*c*), and a contract by the company with trustees for debenture or debenture stock holders to pay such holders principal or interest is equally unenforceable (*d*); but a contract by A. with B. to deal with certain property in a certain way for the benefit of C., or to pay B. certain money for the benefit of C., or to pay C. money out of certain property would raise a trust on which C. would be entitled to sue (*e*), and consequently a debenture or debenture stock holder is entitled to enforce the provisions of the deed against the property subject to the trusts of the deed. In any case, if there is a covenant for payment with the debenture or debenture stock holder in his debenture or debenture stock certificate, he can sue on it (*f*).

(*b*) A copy of any trust deed for securing any issue of debentures or debenture stock must be forwarded to every holder of any such debentures or of any portion of such stock on payment in the case of a printed trust deed of one shilling or such less sum as may be prescribed by the company, or where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied: Companies (Consolidation) Act, 1908, s. 102 (2). The penalty and the mode of proceeding for it is the same as in the case of a refusal to allow inspection of the register of debenture-holders: see *supra*, p. 460, note (*h*).

(*aa*) A fixed charge may be made to rank after a floating charge: *Robert Stephenson and Co.* (1902), 132 L. T. Jo. 135.

(*bb*) See *supra*, p. 459.

(*c*) *Tweddle* v. *Atkinson* (1861), 1 B. & S. 393.

(*d*) *Dunderland Iron Ore Co.*, [1909] 1 Ch. 446.

(*e*) This would seem to be the result of the cases; see *Empress Engineering Co.* (1880), 16 C. D. 125, 129; *Gandy* v. *Gandy* (1885), 30 C. D. 57; *Re Flavell* (1884), 25 C. D. 89; but such provisions do not make the *cestuis qui trustent* creditors of the company; see *Uruguay Central and Hygueritas Railway of Monte Video* (1879), 11 C. D. 372.

(*f*) *Olathe Silver Mining Co.* (1884), 27 C. D. 278; and see *Robinson* v. *Montgomeryshire Brewery*, [1896] 2 Ch. 841.

The property which is to be subject to the charge is usually conveyed to the trustees—in the case of leaseholds a term by way of sub-demise being created—for the purpose of securing principal interest and other moneys (*g*) payable under the trust deed, and the deed provides that the trustees shall permit the company to carry on its business on the property until (in effect) the security becomes enforceable and is enforced, *i.e.* until the principal moneys shall become payable and the trustees shall enter and take possession or sell or appoint a receiver under the powers for such purposes conferred by the deed. If foreign property is comprised in the deed, and the lender has an equity according to English law, the Court will enforce the charge, even though the deed does not comply with the formalities of the *lex loci* (*h*).

The deed also specifies the events in which the principal moneys shall become payable, such events being the same as in the case of debentures (*hh*), and usually corresponding with those in the debentures (if the deed secures debentures, and not debenture stock).

Then follow a variety of powers which the company with the consent of the trustees or the trustees with the consent of the company may exercise over the property which is subject to a fixed charge, while the company is carrying on its business, *e.g.* powers of sale, exchange, partition, leasing, surrendering, or accepting surrenders of leases, compromising and releasing the property subject to the specific charge on receiving other property of at least equal value.

The deed will then enable the trustees to invest the moneys in the nature of capital moneys arising from such dealings, usually in trust securities or securities of a similar nature or with the consent of the company while it is carrying on its business in paying prior incumbrances, making improvements in the property subject to the fixed charge or in the acquisition of any property which the trustees may consider to be desirable to acquire. The power to acquire property will authorize a purchase from the company of property already subject to the floating charge (*i*).

Moneys arising under such powers and also moneys arising under over-riding powers as, *e.g.*, under powers conferred by the Lands Clauses Act (*k*), or the powers of compensation conferred by the

(*g*) This should include the trustee's remuneration; without these words the trustees would not have a charge for this: *Re Accles* (1903), 51 W. R. 57; and cp. *Piccadilly Hotel Co.*, [1911] 2 Ch. 534. Where solicitors acting for trustees alone have prepared the trust deed and investigated the title to the property, they will have a lien on the trust deed: *Dee Estates*, [1911] 2 Ch. 85.

(*h*) *Mercantile Investment Co.* v. *River Plate Co.*, [1892] 2 Ch. 303; *British South Africa Company* v. *De Beers Consolidated Mines*, [1910] 1 Ch. 354; reversed on another point, [1912] A. C. 52.

(*hh*) See *supra*, pp. 467 and 468.

(*i*) *Bentley's Yorkshire Breweries*, [1909] 2 Ch. 609.

(*k*) *Pile* v. *Pile* (1876), 3 C. D. 36; *King* v. *Midland Railway* (1869), 17 W. R. 113.

Licensing Act, 1904 (*l*), will, if the property affected is part of the specifically mortgaged property, themselves become part of such property. The Court has struggled in cases under the Licensing Act to say that the compensation money arose under powers in the trust deed so as to enable the trustees to invest it in securities authorized for such moneys, instead of investing in trust securities. Thus, Neville, J., held (*m*) that the compensation proceedings were "a controversy in relation to the mortgaged property," and Kekewich, J., held (*n*) that as the trustees had been compelled to sell, the money arose under a power of sale. It is thought desirable, however, in these cases to make the powers of investment above referred to applicable to all moneys which form part of the specifically mortgaged property. Such property when conveyed to the trustees will not now (*o*) have to pay a duty of 6*d*. per cent. on the entire debt as a substituted security, as was formerly the case (*p*).

We now come to the provisions for enforcing the security. It would seem desirable to enable the trustees to obtain a foreclosure decree, though this is not the usual remedy where there is a trust deed, and for this purpose there should be a power of sale, and not a trust for sale (*q*), and the proviso for redemption, which is usually at the end of the deed, should be so framed as to enable the company to redeem only before it has made default in payment of the principal moneys (*r*). The trustees should also be given power to take possession and to appoint a receiver, but frequently there is a proviso for the protection of the company that these powers shall not be exercised except in cases of urgency, or if the company has gone into winding-up, unless the trustees have given the company an opportunity of paying off the principal money, or of remedying the thing which has caused the debentures to become payable before their time. Where, as is frequently the case, trustees can enter on giving a certificate

(*l*) *Law Guarantee* v. *Mitcham*, [1906] 2 Ch. 98, and see also cases in next two notes; but cp. *Bent's Brewery Co.* v. *Dykes* (1909), 100 L. T. 476.

(*m*) *Noakes* v. *Noakes & Co.*, [1907] 1 Ch. 64.

(*n*) *Dawson* v. *Braimes Tadcaster Breweries*, [1907] 2 Ch. 359, and WARRINGTON, J., came to the same conclusion in *Bentley's Yorkshire Breweries*, [1909] 2 Ch. 609.

(*o*) The duty now is not to exceed 10*s*.: Revenue Act, 1903, s. 7; but the Act is not retrospective: *Suffield* v. *Inland Revenue Commissioners*, [1908] 1 K. B. 865.

(*p*) *Gartside* v. *Inland Revenue Commissioners* (1900), 82 L. T. 686; *British Oil and Cake Mills* v. *Inland Revenue Commissioners* [1903] 1 K. B. 689. As to registration of such a deed, see *post*, p. 535, note (*m*).

(*q*) *Jenkin* v. *Row* (1851), 5 De G. & Sm. 107; *Sampson* v. *Pattison* (1842), 1 Ha. 533; *Schweizer* v. *Mayhew* (1862), 31 Beav. 37.

(*r*) *Sampson* v. *Pattison* (1842), 1 Ha. 533; and see also *Re Owen*, [1894] 3 Ch. 220; *Balfe* v. *Lord* (1842), 2 D. & W. 480. Of course such a proviso will not prevent redemption after that date, but, it will, it is thought, create an estate which on default would, before the Judicature Acts, have been absolute at law.

that in their opinion there is a case of urgency, the Court will not go behind such a certificate if given honestly and without recklessness (*s*).

The deed then confers on the trustees wide powers for carrying on the business of the company after they have exercised such powers of entry, etc., and also gives them power to remove receivers and appoint others in their place, and to fix the remuneration of a receiver, and to delegate to any receiver the powers conferred on the trustees or any of such powers; the other provisions as to receivers are the same as those contained in debentures, except that the receiver should pay over the surplus moneys, to the trustees. Then come the provisions as to applying the proceeds of a sale which are again much the same as in debentures, though it is advisable to reserve to the trustees a power not to distribute the funds immediately, where they have only a small sum in their hands. Then follows an investment clause, the range of investments being usually limited to trustee investments, but it is desirable to give the trustees power to leave money on deposit at a bank.

Then follow certain powers applicable whether the trustees have enforced their security or not, for facilitating sales, exchanges, partitions, leases, etc., and for protecting purchasers and others dealing with the trustees, when they exercise the powers conferred on them by the trust deed, and a clause giving power to convey, etc., by reference to the Conveyancing and Law of Property Act, 1881, and the Conveyancing Act, 1911.

Then follow various covenants by the company to keep proper books of account and to supply the trustees with copies of balance sheets, etc., to carry on their business properly, to allow the trustees to inspect all the property subject to the charge. To pay preferential debts, and other debts having priority to the charge, and not to create mortgages having priority to or ranking *pari passu* with the charge. To pay the trustees remuneration (*t*) and hotel and travelling expenses, and the expenses of carrying out the trusts, powers, and provisions of the trust, and to keep a proper register, to insure, to keep buildings, etc., in good repair, and not to pull the same down, without the consent of the trustees, and for further assurance.

Then follow certain powers conferred on the trustees. Power, in

(*s*) *Joplin Brewery* v. *Law Guarantee Trust and Accident Society*, *Times* Newspaper, Nov. 17, 1909.

(*t*) Not infrequently this remuneration is made to continue notwithstanding the appointment of a receiver, and the fact that the trusts are being administered by the Court; if these words are inserted the trustees' remuneration if properly charged on the assets, will be a charge on the fund arising from a sale on a sale by the Court: *Piccadilly Hotel Co.*, [1911] 2 Ch. 534. Without them it has been held that the remuneration will not be allowed after a receiver has been appointed: *Debenture Corporation* v. *Uttoxeter Brewery*, CHITTY, J., April 25, 1895; but it may be doubted whether this case is consistent either with the *Piccadilly Hotel Co.*, [1911] 2 Ch. 534, or with *South Western of Venezuela (Barquisimeto) Railway*, [1902] 1 Ch. 701.

case of default by the company, to insure and to apply the insurance money, to act on information except telephonic (*u*), and to employ solicitors or other agents, further provisions for protecting trustees, a power to appoint trustees (given to the company with the sanction of an ordinary resolution of debenture stock holders, where a Stock Exchange quotation is desired). Power for a majority of the trustees to act, the proviso for reconveyance, a clause incorporating the provisions of the schedules as to the form of debenture stock certificates and as to meetings, and a clause dealing with notices.

This brings us to the form of the debenture stock certificates. It must be borne in mind that this is the only document which gives the debenture stock holder anything in the nature of a direct contract with the company. Not infrequently the conditions of issue of the debenture stock are simply set out in the schedule to the trust deed, but it seems better to give the debenture stock holder the power of suing the company for his principal or interest, and so the conditions should be endorsed on the certificate and should be referred to on the face of the certificate (*x*).

For the purposes of a Stock Exchange quotation the requirements are the same as in the case of debentures (*y*), and the certificate after certifying that the holder is entitled to a certain amount of the stock, refers to the trust deed, and, as already stated, to the conditions of issue of the stock. It is under the company's seal, and has the usual notice as to stock not being transferred unless the certificate is produced.

With regard to the conditions to be endorsed on the certificate, they should provide for the holders of the debenture stock ranking *pari passu*, for the conditions of repayment and redemption and for payment of interest, for a register of debentures being kept, for certificates, for transfers (*z*), and for the transferees taking free from equities. The remarks on these matters which have been made with reference to debentures, may be referred to here. The provisions as to transfers usually contain a clause designed to prevent the stock becoming too much subdivided.

Turning to what is usually the third schedule to the trust deed,

(*u*) The Stock Exchange authorities usually require this exception where a quotation is desired.

(*x*) *Dunderland Iron Ore Co.*, [1909] 1 Ch. 446; and see *Robinson* v. *Montgomeryshire Brewery*, [1896] 2 Ch. 841, which shows that a direct contract will thus be given.

(*y*) See *supra*, p. 464.

(*z*) It is not thought necessary here to repeat what has already been said with reference to forged and fraudulent transfers of shares, and as to certificates obtained by fraud or forgery. These remarks apply in the case of debenture stock or debentures no less than they do in the case of shares (see *supra*, pp. 280 *et seq.*, and pp. 294 *et seq.*

namely, the provisions relating to meetings and the powers conferred on majorities. There is a power to convene meetings usually given to the trustees and the company, also a power for a certain number or a specified proportion of the holders to requisition a meeting. There is a provision for the voting rights of the holders, holders to whom debentures have been issued as collateral security usually ranking as if the face value of their debentures were owing to them (*a*). The schedule provides what number of debenture stock holders are to constitute a quorum, usually the holders of a certain specified amount of stock, *e.g.* half of it, or even three-quarters of it (*b*). It also provides for the chairman and other incidental matters which relate to the actual holding of the meeting.

Then come the powers (*c*) conferred on the debenture stock holders by extraordinary resolution. These usually are: (1) power to remove a trustee; (2) power without any further sanction to bind the debenture stock holders by any compromise or arrangement with the company which the Court could sanction under section 120 of the Companies (Consolidation) Act, 1908, if it had been agreed to at a duly summoned meeting by the statutory majority (*cc*). The decisions under the Joint Stock Companies Arrangement Act, 1870 (which now is replaced by section 120 of the Companies (Consolidation) Act, 1908), which are referred to in discussing that section (*d*), show that such a power enables the persons to whom it is given to do pretty well anything; but the power is usually followed by one which is almost if not quite, equally wide, namely: (3) power to agree to any variation in the provisions of the trust deed, or in the security thereby created, and to release or modify any of the rights of the debenture stock holders, and to discharge or exonerate the trustees from all liability in respect of any breach of trust. This power is somewhat wider that the one used in *Mercantile Investment and General Trust Co.* v. *International Company of Mexico* (*e*), and it would certainly authorize the release of a guarantee in exchange for an increase in the debenture interest (*f*), or a meeting to allow the

(*a*) *Kent Collieries* (1907), 23 T. L. R. 407, 559.

(*b*) Cp. *Clay* v. *Grand Junction* (1905), 21 T. L. R. 31; *Hemans* v. *Hotchkiss Ordnance*, [1899] 1 Ch. 115.

(*c*) A very sweeping power expressed in general words was held in *Hay* v. *Swedish and Norwegian Railway* (1889), 5 T. L. R. 460, not to enable a meeting to sanction anything contradictory to the deed; it is thought that the powers here given which have been tested by decisions, go further, though it would be impossible to exceed the generality of the terms in the case cited.

(*cc*) Under such a power redeemable debenture stock can be converted into irredeemable debenture stock: *Northern Assurance* v. *Farnham Breweries* (1912), 56 Sol. J. 360.

(*d*) See *infra*, pp. 727 and 728, for schemes sanctioned under this section, and see as to such a power in a deed *Labuan and Borneo Co.* (1902), 18 T. L. R. 216, where a sale for shares was held to be authorized.

(*e*) [1893] 1 Ch. 494 *n.*, and see also [1894] 1 Ch. 578; *Sneath* v. *Valley Gold, Ltd.*, [1893] 1 Ch. 477, cases dealing with the question when a power to compromise arises.

(*f*) *Shaw* v. *Boyce, Ltd.*, [1911] 1 Ch. 138.

company to convert redeemable into irredeemable debenture stock (*ff*), to create a loan ranking in priority to the debenture stock (*g*), to give other debenture stock holders the benefit of the deed *pari passu* with the original holders (*h*), or to give the company time at all events in cases where the rights of the debenture stock holders *inter se* are not altered (*i*), such powers usually arise where there is any difficulty in obtaining payment in full of principal money and interest (*k*). Such powers continue even after the equity or redemption has been assigned, and the original debtor has disappeared (*l*). The fact that a debenture-holder has succeeded in an action for interest against the original debtor because the scheme was held to be bad, will not estop the assignee of such debtor even where he has found the money for defending the action, from denying the right of the debenture-holder to the property comprised in the security, and showing the scheme to be valid (*m*). In an action by a debenture stock holder to impeach the exercise of such a power, the other debenture stock holders must be parties (*mm*).

STAMP DUTIES.

(*a*) *Loan Capital.*—Where any company formed or established in the United Kingdom proposes to issue any loan capital, it must, before the issue thereof, deliver to the Inland Revenue Commissioners a statement of the amount proposed to be secured by the issue. Every such statement is charged with an *ad valorem* stamp duty of 2*s*. 6*d*. for every £100 and fraction of £100 over any multiple of £100 proposed to be secured by the issue, but the duty is not charged to the extent to which it is shown to the satisfaction of the Inland Revenue Commissioners that the Stamp Duty payable in respect of a mortgage or marketable security has been paid on any trust deed or other document securing the loan proposed to be issued. A company neglecting to deliver a statement or failing to pay the duty will be liable to pay in addition a sum equal to 10 per cent. upon the amount of the duty for every month during which the neglect or default continues. For the purposes of the section "loan capital" includes debenture stock or funded debt by whatever name known, or any capital raised by any company formed or established in the United Kingdom which is borrowed or has the character of borrowed money, whether it is in the form of stock or in any other form, but does not include any overdraft at the bank or other loan raised for a merely temporary purpose for a period not exceeding twelve months (*n*). The section does not apply

(*ff*) *Joseph Stocks & Co.* (1909), 26 T. L. R. 41.

(*g*) *Follitt* v. *Eddystone Granite*, [1892] 3 Ch. 75.

(*h*) *Kent Collieries* (1907), 23 T. L. R. 407, 559.

(*i*) *Finlay* v. *Mexican Investment*, [1897] 1 Q. B. 517; *Joseph Stocks & Co.* (1910), 26 T. L. R. 41.

(*k*) *Walker* v. *Elmore's German etc., Co.* (1901), 85 L. T. 767.

(*l*) *Sneath* v. *Valley Gold, Ltd.*, [1893] 1 Ch. 477.

(*m*) *Mercantile Investment and General Trust Co.* v. *River Plate Trust, etc., Co.*, [1894] 1 Ch. 578.

(*mm*) *Northern Assurance Co.* v. *Farnham Breweries* (1912), 56 Sol. J. 360.

(*n*) Finance Act, 1899, s. 8, and see s. 10 of the Finance Act, 1907, as to the return of such duty, it has probably no application except where the loan is authorised by Statute. Alpe on Stamp Duties, 12th Ed., p. 229.

where the loan capital proposed to be issued is secured by a trust deed or other document bearing the mortgage or marketable security duty, and in these cases a statement would seem to be unnecessary (*o*).

(*b*) *Mortgages* and *marketable securities* which are not transferable by delivery, or which are so transferable, but are dated and signed before the 6th August, 1885, are liable to the following duties (*p*): for or in respect of the moneys thereby secured, the same *ad valorem* duty according to the nature of the security as in the case of a mortgage.

Under the head of "mortgage bond and debenture" (except a marketable security otherwise specially charged with duty) the following duties are payable:—

1. Being the only or principal or primary security for the payment or repayment of money (*q*):—

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

A marketable security (*r*) is a security of such a description as to be capable of being sold in any stock market in the United Kingdom (*s*). In other words, a marketable security must be capable according to the use and practice of stock markets of being there sold and bought (*t*), they must be what are commonly called

(*o*) Alpe on Stamp Duties, 12th Ed., p. 228, and Official Circular July 6, 1899, therein referred to.

(*p*) Stamp Act, 1891, Schedule, tit. Marketable Security. In the case of bearer debentures this is doubled by s. 76 of the Finance (1909–1910) Act, 1910.

(*q*) Stamp Act, 1891, Schedule, tit. Mortgage, an equitable mortgage within the meaning of the Act only pays 1*s*. per cent.; but such a mortgage can in no case be under seal: Stamp Act, 1891, s. 86,

(*r*) The expression "marketable security" includes "a marketable security made or issued by or on behalf of any company or body of persons corporate or incorporate formed or established in the United Kingdom": Stamp Act, 1891, s. 82; see this section and ss. 4 and 6 of the Finance Act, 1899, as to the foreign marketable securities included.

(*s*) Stamp Act, 1891, s. 122.

(*t*) *Texas Land and Cattle Co.* v. *Commissioners of Inland Revenue* (1888), 16 Court of Sess. Cases 4th Series, 69; *British India Steam Navigation Co.* v. *Commissioners of Inland Revenue* (1881), 7 Q. B. D. 165; *Brown, Shipley & Co.* v. *Commissioners of Inland Revenue.* [1895] 2 Q. B. 598; *Speyer Brothers* v. *Inland Revenue Commissioners*, [1907] 1 K. B. 246, [1908] A. C. 92.

Stock Exchange securities: a marketable security need not necessarily give any charge or any tangible security for it, includes mere personal securities such as promissory notes (*u*). In a word, practically all debentures and debenture stock certificates come within the expression.

Where debentures, etc., can only be redeemed on payment of a premium, the moneys lent plus the amount of the premium will be the moneys thereby secured (*x*); but the premium is not taken into account in ascertaining the stamp, where the premium is only payable at the option of the mortgagors, *e.g.* as the price for allowing them to redeem on a certain date (*y*); but where the mortgagor is bound to repair and if he makes default the mortgagees are entitled to do the repairs, and the moneys so spent by them are charged on the property by virtue of the provisions of the mortgage deed stamp duties are not payable in respect of such moneys (*z*). Registered debentures, then, usually pay a duty of 2*s.* 6*d.* per cent. If they are secured by a trust deed (*a*) that deed will, if the debentures thereby secured are fully stamped, only require a 10*s.* stamp. In the case of registered debenture stock, the deed is stamped with an *ad valorem* mortgage stamp, and not the stock certificates; but where the debenture stock is payable to bearer the deed will only require a 10*s.* stamp.

2. Mortgages other than marketable securities, which confer a collateral or auxiliary or additional or substituted security other than an equitable mortgage or are given by way of further assurance for such purpose, where the principal or primary security is duly stamped, pay the following duties for every £100, and also for any fractional part of £100 of the amount secured, 6*d.* (*b*), but so that in the case of any mortgage created after the 31st August, 1903 (*c*), the whole amount of such duty shall not exceed 10*s.* (*d*).

The following duties are payable on the transfer assignment disposition or assignation of a marketable security of any description:

(*u*) *Per* FARWELL, L.J., *Speyer* v. *Inland Revenue Commissioners*, [1907] 1 K. B. at p. 257.

(*x*) *Rowell* v. *Inland Revenue Commissioners*, [1897] 2 Q. B. 194.

(*y*) *Knight's Deep* v. *Inland Revenue Commissioners*, [1900] 1 Q. B. 217.

(*z*) *Suffield* v. *Inland Revenue Commissioners*, [1908] 1 K. B. 865.

(*a*) See Stamp Act, 1891, s. 86, for definition of "mortgage."

(*b*) See also Stamp Act, 1891, ss. 87, and 88, particularly the latter which deals with securities for future advances.

(*c*) *Gartsides* v. *Inland Revenue* (1900), 82 L. T. 686; *British Oil and Cake Mills* v. *Inland Revenue*, [1903] 1 K. B. 689, where new securities are given for old they are not substituted securities within the section: *City of London Brewery* v. *Inland Revenue*, [1899] 1 Q. B. 121; *Mount Lyell Co.* v. *Inland Revenue*, [1905] 1 K. B. 161.

(*d*) Revenue Act, 1903, s. 7. The section is not retrospective: *Suffield* v. *Inland Revenue*, [1908] 1 K. B. 865.

(1) On a sale the ordinary duty on a conveyance on sale, viz.: 5*s*. for each £50 or fractional part of £50, or, where the sale is for less than £300, the smaller sums mentioned under the title of Conveyance on Sale in the schedule to the Stamp Act, 1891 (*e*).

(2) In the case of a mortgage the same duty as in the case of a mortgage by deed, viz.: 2*s*. 6*d*. for every £100 or fractional part of £100 of the amount secured, or, when the mortgage is to secure less than £100, the smaller sums mentioned in the schedule to the Stamp Act, 1891, under the title of Mortgage Bond, etc. In the case of an equitable mortgage under hand only 1*s*. for every £100 or fractional part of £100 of the amount secured.

(3) In other cases, 10*s*. (*f*).

With regard to marketable securities (except colonial Government securities) being securities transferable by delivery and bearing date or signed or offered for subscription after 6th August, 1885, they pay for every £10 and also for any fractional part of £10 of the money thereby secured 2*s*. (*g*), but if such securities are to be paid off within three years after the date of payment of duty, and the date of repayment is conspicuously stated on the face of the security the duty will be 3*d*. for every £10 if the security is to be paid off within one year, and 6*d*. for every £10 if the security is to be paid off within three years. Full duty will, however, be payable where the security is negotiated in the United Kingdom after the date stated on the face of the security as the date for repayment, allowance being made for duty already paid (*gg*).

If any marketable security of any description is given in substitution (*h*) for a like security duly stamped in conformity with the law in force at the time when it became subject to duty, it will pay for every £20 and also for any fractional part of £20 of the money thereby secured (*i*) 1*s*. It is thought that the Official Circular of March, 1890, which points out that registered securities and bearer securities are not like securities is correct (*k*). An Official Circular of April, 1910 (*l*), states that where a bearer security is issued in exchange for a registered security, the full duty of 2*s*. per £10 is payable (*l*).

Stock certificates to bearer are liable to a duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the certificate if the consideration for the transfer were the nominal value of such stock (*m*).

(*e*) This would appear not to be affected by the Finance (1909–1910) Act, 1910. See as to the duties on transfers *supra*, pp. 291 and 166.

(*f*) Stamp Act, 1891, Schedule, tit. Marketable Security.

(*g*) *Ibid.*, as varied by s. 76 of the Finance (1909–1910) Act, 1910.

(*gg*) Finance Act, 1911, s. 13. A fine of £20 will be incurred by persons who, after the date named for repayment, assign transfer or negotiate any such securities which do not bear the full stamp, or who are concerned as brokers or agents in so doing.

(*h*) *Mount Lyell* v. *Inland Revenue*, [1904] 1 K. B. 757, [1905] 1 K. B. 161, "a like security" it would seem must be one given by the same debtor; see also this case as to what is "a like security."

(*i*) Stamp Act, 1891, Schedule, tit. Marketable Security, as varied by s. 76 of the Finance (1909–1910) Act, 1910. Section 13 of the Finance Act, 1911, makes these provisions inapplicable to securities paying the reduced rates prescribed by that section.

(*k*) *Mount Lyell* v. *Inland Revenue*, [1904] 1 K. B. 757, [1905] 1 K. B. 161.

(*l*) Alpe on Stamp Duties, 12th Ed., p. 168.

(*m*) Stamp Act, 1891, Schedule,

On reconveyance, release, etc., of property comprised in a security a duty of 6*d.* for every £100 and fractional part of £100 is payable. A mere acknowledgment that money secured by a floating charge has been paid off is not within this provision (*n*).

With regard to coupons for interest on marketable securities, whether issued with the security or subsequently in a sheet, these are not chargeable with any duty (*o*).

Scrip certificates are subject to a duty of 1*d.* by the Stamp Act, 1891, and it is thought that sections 5 and 6 of the Finance Act, 1899 do not alter this (*see* Official Circular, September, 1899).

Letters of allotment and letters of renunciation were under the Stamp Act, 1891, subjected to a duty of 1*d.*; but section 9 of the Finance Act, 1899, provides that 6*d.* is to be substituted for 1*d.* as the stamp duty chargeable under the Stamp Act, 1891, on a letter of allotment and letter of renunciation or other document having the effect of a letter of allotment, when the nominal amount which is allotted or to which the letter of renunciation relates is not less than £5. Separate duties are chargeable under this section in respect of letters of allotment and of renunciation, though contained in the same document, and the stamp on a letter of renunciation may be denoted by an adhesive stamp, which must be cancelled by the person by whom the letter of renunciation is executed. Receipts attached to scrip certificates or letters of allotment are not liable to any duty (*p*).

RESOLUTIONS FOR ISSUE OF DEBENTURES.

1. "That an issue of 300 registered mortgage debentures for £100 each bearing interest at 5 per cent. per annum, and conferring a floating charge over all the company's assets, including its uncalled capital and redeemable at the option of the company at 102 per cent. on six months' notice at any time after the   day of   , 19   , be and is hereby authorized and that such issue be further secured by a trust deed conferring a specific charge over the company's freehold property and a floating charge over

tit. Stock Share Warrants issued under the Provisions of the Companies Act, 1867, and Stock Certificates to Bearer. The expression "stock certificate to bearer" is extended by s. 5 of the Finance A 1899, so as to include "any instrument to bearer issued by or on behalf of any company or body of persons formed to established in the United Kingdom, and having a like effect as such a stock certificate to bearer." For penalties for improper stamping, see s. 109 of the Stamp Act, 1891, and s. 5 of the Finance Act, 1899. It would seem that the Finance (1909–1910) Act, 1910, does not affect this, and the duty is still 30*s.* per cent.

(*n*) *Firth* v. *Inland Revenue*, [1904] 2 K. B. 205.

(*o*) *Finance Act*, 1894, s. 40, passed owing to the decision in *Rothschild and Son* v. *Inland Revenue*, [1894] 2 Q. B. 142.

(*p*) *London and Westminster* v. *Inland Revenue*, [1900] 1 Q. B. 166.

the other assets including its uncalled capital, and be offered to the public, and that the solicitor be and is hereby instructed to prepare the necessary prospectus, trust deed, and form of debenture.

2. "That the prospectus trust deed and form of debenture submitted to the board by the solicitor be and is hereby approved, and that the seal of the company be affixed to the trust deed and debentures.

3. "That copies of the prospectus be forthwith printed and sent out, and that such prospectus be forthwith advertised times in each of the following papers.

4. "That the solicitor be instructed to see to the stamping of such trust deed and debentures, and to see that the requirements of the Companies (Consolidation) Act, 1908, as to the filing of a copy of such prospectus and as to the registration of the necessary particulars with reference to such issue of debentures be complied with."

FORM OF DEBENTURE STOCK PROSPECTUS (*pp*).

A copy of this prospectus has been filed with the Registrar of Joint Stock Companies.

The subscription list will close on Monday the day of 19 .

The Company Limited.

(Registered under the Companies (Consolidation) Act, 1908.)

Share Capital £50,000
divided into
25,000 five per cent. cumulative Preference Shares of £1 each
and
25,000 ordinary shares of £1 each.

Issue of £30,000 five per cent. registered First Mortgage Debenture Stock (*q*) of which £20,000 is now offered for subscription at par payable
on application 25 per cent.
on allotment 25 per cent.
on the day 19 50 per cent.
or the whole may be paid up in full on allotment or on the due date of any subsequent instalment under discount at the rate of 4 per cent. per annum.

The stock is issued in amounts of £1 and multiples of £1 and no transfers of any fractions of £1 of the stock will be registered. The stock is redeemable on the day of 1927 at par but the Company may at any time after the day of 1918 redeem any portion of it at £110 per cent. on six months' notice. The stock will be redeemable

(*pp*) As to the liability of directors and others in respect of statements in the prospectus, see s. 84 of the Act, *supra* pp. 238 *et seq.*; and see also ss. 80 and 81 of the Act, and *supra* pp. 214 *et seq.*

(*q*) The Stock Exchange authorities would allow this stock to be entitled first motrgage, *supra* p. 459.

at 110 if at any time before the said day of 1927 the Company goes into voluntary liquidation for the purpose of amalgamation or reconstruction (*r*).

Each sum of £1 of the stock may at any time after it has been paid for in full and before the day of 19 be exchanged for one fully paid ordinary share of the Company.

The stock is secured by a trust deed dated the day of 19 and made between the Company of the one part and the trustees for the debenture stock holders of the other part whereby the Company creates the following charges in favour of the trustees, namely (1) a specific first charge on the whole of the freehold and leasehold property of the Company consisting of acres or thereabouts of freehold land situate at in the county of and the factory buildings plant and fixed machinery thereon erected and acres or thereabouts of freehold land situate at in the said county and acres of leasehold land situate at in the county of held at a rent of £ for the residue of a term of 99 years from the 25th of March 1890 and the buildings thereon erected. (2) A charge by way of floating security (but without any power for the Company to create any mortgage or charge ranking *pari passu* with or in priority to such charge) over the whole of the undertaking and remaining assets of the company including its uncalled capital for the time being. Interest is payable on the 1st day of January and the 1st day of July in each year and the first payment will be made on the 1st day of January 19 and will be calculated from the due dates of payment of the instalments.

TRUSTEES FOR THE DEBENTURE STOCK HOLDERS.

[Fill in names, addresses, and descriptions.]

DIRECTORS.

[Fill in names, addresses, and descriptions (*s*).]

BANK.

The Bank Ltd., Street, E.C.

SOLICITORS FOR THE DEBENTURE STOCK HOLDERS.

[Fill in names and addresses.]

SOLICITORS FOR THE COMPANY.

[Fill in names and addresses.]

AUDITORS.

[Fill in names and addresses.]

(*r*) This is all that will be required to be set out so as to comply with the Stock Exchange requirements as to the terms of redemption where an official quotation is desired.

(*s*) This is unnecessary where the prospectus is issued more than a year after the company is entitled to commence business.

BROKERS.

[Fill in names and addresses.]

SECRETARY.

[Fill in name.]

REGISTERED OFFICE.

[Fill in address.]

The Company was formed in the year 1909 for the purpose of acquiring and working the business of a for many years past carried on by Messrs. and Sons at and elsewhere. The proceeds of this issue will be employed in enlarging and improving the factory and machinery of the Company.

Messrs. of valuers have made a report on the freehold and leasehold lands acquired by the company. This report which is dated the 19 gives the value of

the freehold lands at as £ of the
freehold lands at as £ and of the
leasehold lands at as £

Total valuation £

These freehold and leasehold properties will all be subject to the specific charge created by the trust deed of the 19 above referred to for securing the debenture stock of this issue. Messrs. of valuers have made a report on the plant and machinery and tools and utensils of the Company.

Such report is dated the and estimates the value of the same at £

Messrs. the Company's auditors have given the following certificate

To the Directors of Limited.

Gentlemen,

We beg to report that the assets of the Company exclusive (of the freehold and leasehold properties and the goodwill standing in the books of Messrs and Sons at £ and the plant machinery tools and utensils) is as follows:—

Stock of raw materials (at cost price)	£
Stock of manufactured and partly manufactured articles (at cost price)	£
Sundry other articles (at or under cost price)	£
Book debts	£
Cash in hand and at the Bank	£
Investments	£
Total	£
Less trade liabilities	£
Total	£

The profits of the business after providing for depreciation for the three years ending 19 have been as follows :— 19 £ 19 £ 19 £ . The sales for each year show an increase over those of the previous year.

We are Gentlemen
Yours faithfully
R.O. & Co.

At the above valuations the total value of the assets subject to the trust deed for securing the debenture stock of this issue exclusive of the Company's uncalled capital is as follows :—

Freehold and leasehold property (subject to the specific charge) . . . . . . £
Other property (including goodwill) less trade liabilities to the extent of £ which rank after the charge created by such trust deed . . . £

Total . .

The minimum subscription on which the directors were allowed to proceed to allotment was 25,000 shares of £1 each.

The sum of 2*s*. 6*d*. being payable on application and 2*s*. 6*d*. on allotment in respect of each such share.

30,000 shares were in fact allotted (*t*).

The Articles of Association of the Company contain the following provisions :—

[Here set out articles dealing with the following matters—qualification (*u*) and remuneration (*u*) of the directors and managing director including power if any to remunerate for extra services and the voting rights conferred by each class of share.]

Messrs. and Sons were the vendors to the Company and the sum of £ payable as to £ in cash and £ in fully paid ordinary shares was the amount payable to them as purchase money £ of such amount being payable in respect of goodwill (*x*). The preliminary expenses have been paid by the Company and amounted to £ (*u*) but nothing was paid to any promoter.

Nothing has been paid for underwriting but a brokerage of 1 per cent. will be paid on applications bearing brokers' stamps. Messrs. and two of the directors of are interested in the property acquired by the Company as partners in the firm of and

(*t*) This need apparently not be set out, as it would seem that s. 81 (1) (*d*) has little or no application to a prospectus offering only debentures, at all events where shares have already been issued.

(*u*) These things need not be set out in a prospectus issued more than a year after the company is entitled to commence business.

(*x*) These particulars will be unnecessary if the whole of the money to arise from the issue is to be employed in enlarging and improving the works of the company and the purchase or acquisition of the property has been completed at the date of the issue of the prospectus; see s. 81 (1) (*f*). and (2) of the Act.

Sons. Mr.   of   was also interested in the property sold. as a partner in such firm (*y*).

The following contracts have been entered into within the last two years.

[Set out dates and names of parties.]

The memorandum of association with the names addresses and descriptions of the signatories and the number of shares subscribed for by them respectively will be found within the fold (*z*).

Applications for debenture stock of this issue should be made upon the form accompanying this prospectus and sent to the Company's bankers with the amount payable on application.

If no allotment be made the deposit will be returned in full or if only a partial allotment the balance of the deposit will be applied in reduction of the amount payable on allotment and the excess (if any) returned.

In the case of default in payment of the amount payable on allotment or of any subsequent instalment the Company may at their option either cancel the allotment and forfeit the sums already paid or charge interest at the rate of 10 per cent. per annum on the amount in arrear from the date of default till payment.

Application will in due course be made to the committee of the Stock Exchange for a special settlement and official quotation (*a*),

Scrip certificates will be issued after the payment of the amount due on allotment—and such certificates will when the amount of the debenture stock comprised therein has been paid in full be exchangeable for Debenture Stock Certificates.

Copies of the memorandum and articles and the trust deed and the contracts and certificates above referred may be inspected at the Offices of the Company's Solicitors between the hours of 12 and 4 on any day before the subscription list is closed.

Dated   19   .

APPLICATION FORM TO ACCOMPANY PROSPECTUS.

No. of application   No. of Allotment.

The   Company Limited.

Issue of £30,000 5 per cent. registered mortgage Debenture Stock

FORM OF APPLICATION.

To the Directors of the   Company Limited.

Gentlemen,

Having paid to the Company's bankers The   Bank,

(*y*) This is unnecessary where the prospectus is issued more than a year after the company is entitled to commence business.

(*z*) This is unnecessary in a newspaper advertisement, or if the prospectus be published more than a year after the company is entitled to commence business; it will not be required for the purpose of a Stock Exchange quotation except where the Act requires it.

(*a*) As to the requirements for an official quotation (see *supra*, p. 218), the prospectus will have to be publicly advertised, though not necessarily in a newspaper, it being sufficient if a reasonable number of copies are circulated. Two-thirds of the issue will have to be applied for and unconditionally allotted to the public.

Limited the sum of £ being a deposit of 25 per cent. on the debenture stock applied for by me/us I/we request you to allot me/us £ of the above debenture stock on the terms of the prospectus issued by you dated 19 and I/we agree to pay the amount payable on allotment and the remaining instalment on any allotment that may be made in respect of this application as provided by the said prospectus.

Signatures.

Name in full.

Description.

Date.

I desire to pay in full on allotment.

Signature.

BANKER'S RECEIPT FOR DEPOSIT ON APPLICATION FOR DEBENTURE STOCK.

Received the day of 19 on account of the Company Limited from of the sum of £ being a deposit of 25 per cent. on application for £ 5 per cent. registered first mortgage debenture stock of the Company Limited

For the Bank Limited.

stamp. Cashier.

The receipt when returned by the bankers should be preserved by the applicant to be exchanged for the Scrip Certificate.

REGISTERED DEBENTURE (*aa*).

The Company Limited

(Incorporated under the Companies (Consolidation) Act, 1908.)

Capital £ divided into shares of £1 each.

Issue of £ in debentures of £ each (numbered 1 to (*b*)) authorized by article of the Company's Articles of Association and by a resolution of the board of directors of the Company dated 19 .

No. Debenture £

1. The Company Limited (herein called the Company) hereby covenants to pay to of in the county of or other the registered holder hereof the sum of £ on the day of 19 or on such earlier day as the principal moneys hereby secured shall be payable in accordance with the conditions endorsed hereon.

2. The Company hereby covenants to pay to the registered holder hereof interest on the said sum of £ until repayment thereof at the rate of £ per cent. per annum by equal half-yearly payments on the day of and the day of in each year the first of such payments to be made on the day of 19 .

(*aa*) This form of debenture is suitable where an official quotation on the Stock Exchange is desired.

(*b*) Or where the debentures are of different amounts, Nos. 1 to in debentures of £ each, and Nos. to in debentures of £ each.

3. The Company hereby charges with the payments aforesaid by way of floating security its undertaking and all its assets whatsoever and wheresoever including its uncalled capital for the time being.

4. This debenture is issued subject to and with the benefit of the conditions endorsed hereon.

Given under the common seal of the Company this day of 19 , in the presence of

Directors.

Secretary.

THE CONDITIONS WITHIN REFERRED TO.

1. This debenture is one of an issue of debentures each for securing a sum of £ with interest thereon at the rate of per cent. per annum. All the said debentures are in the same form and rank *pari passu* in point of charge. Although the charge created by the said debentures is a floating charge the Company shall not create any mortgage or charge ranking *pari passu* with or in priority to the charge hereby created.

2. The Company shall keep at its registered office a register (hereinafter called the register) of the holders of debentures of this issue and shall enter therein the names addresses and descriptions of such holders and the debentures held by them respectively.

3. The Company shall not be bound to enter any notice of any trust express implied or constructive in the register and shall not be bound to recognize any one as having any title to this debenture except the registered holder thereof ; but so that the legal personal representatives of a deceased sole registered holder and any person becoming entitled to this debenture by reason of the bankruptcy of any registered holder shall upon producing such evidence as the directors may from time to time require have the same rights and be subject to the same provisions as are herein conferred on and declared concerning a registered holder of this debenture.

4. Every transfer of this debenture shall be in writing under the hand of the transferor. [The Company may decline to register any transfer if the transferor or any person through whom he claims otherwise than by transfer is indebted to the Company, but save as aforesaid] (*c*) any transfer left at the office of the Company together with a fee of 2*s*. 6*d*. and this debenture and such other evidence as the directors may reasonably require to show the right of the transferor to transfer shall be registered. On registration of any such transfer a note of the registration shall be endorsed on the debenture.

5. When this debenture is registered in the name of joint holders the survivors or survivor of them shall be deemed to be the registered holder thereof and any sole survivor shall be deemed to be a sole registered holder, and any notice which the Company may give and any cheque or warrant

(*c*) The words in square brackets will be omitted if an official quotation on the Stock Exchange is required, except if the debentures are issued as partly paid, and the power to decline to register transfers is limited to partly paid debentures.

for interest which it may send to the registered holder of this debenture under the provisions hereinafter contained may be sent to any one of such joint holders at his registered address or to such other person $\frac{\text{and}}{\text{or}}$ address as he may direct.

6. All principal moneys and interest hereby secured shall subject to the provisions of the next condition be paid to the registered holder of this debenture without regard to any equities existing between the Company and any prior holder of this debenture.

7. Any person becoming entitled to this debenture by reason of the death or bankruptcy of a registered holder hereof shall upon such evidence being produced as the directors may from time to time require have the right to be registered as the holder of this debenture but such registration shall not prejudice any right the Company would but for such registration have had against the deceased or bankrupt registered holder.

8. The principal moneys and interest hereby secured will when the same become payable be paid as follows that is to say the principal moneys at the registered office of the Company and the interest by cheque or warrant sent through the post in a prepaid letter addressed to the registered holder of this debenture at his registered address or to such other person $\frac{\text{and}}{\text{or}}$ address as he may direct.

9. The principal moneys hereby secured shall become immediately payable on the happening of any of the following events.

(1) If the Company makes default for a period of two months in payment of any interest hereby secured.

(2) If an order for the winding-up of the Company is made or if the Company shall go into voluntary liquidation.

(3) If any execution or sequestration or other process of any Court or authority or any distress is sued out against or levied upon any of the assets of the Company.

(4) If a receiver is appointed of any of the assets of the Company.

(5) If the Company shall cease to carry on its business [or shall commit any breach of any covenant on its part contained in the trust deed hereinafter referred to.]

10. All notices may be given by the Company to the registered holder of this debenture either personally or by post in a prepaid letter addressed to such registered holder at his registered address or to such other person $\frac{\text{and}}{\text{or}}$ and address as he may direct.

11. Any notice if served by post shall be deemed to have been served within twenty-four hours from the time when the letter containing the same was put into the post office and in proving such service it shall be sufficient to prove that such letter was properly addressed and put into the post office.

[12. This debenture is issued with the benefit of and subject to the charge created by and the terms and conditions contained in a trust deed dated the day of 19 and made between .]

DEBENTURE TO BEARER WITH OPTION TO TURN INTO REGISTERED DEBENTURE (*cc*).

The Company Limited.

(Incorporated under the Companies (Consolidation) Act, 1908.)

Capital £ divided into shares of £ each.

Issue of £ in debentures of £ each (Numbers 1 to) Authorized by Article of the Company's Articles of Association and by a resolution of the board of directors of the Company dated 19 .

No. Debenture £

1. The Company Limited (hereinafter called the Company) hereby covenants to pay to [or other] (*d*) the bearer hereof or (when registered) the registered holder hereof the sum of £ on the day of 19 or on such earlier day as the principal moneys hereby secured shall become payable in accordance with the conditions endorsed hereon.

2. The Company will in the meantime and until repayment of the said sum of £ pay interest at the rate of £ per cent. per annum on the said sum of £ by equal half-yearly payments on the day of and the day of in each year in accordance with the coupons annexed hereto and the conditions endorsed hereon.

3. The Company hereby charges by way of floating security with the payments aforesaid all its undertaking and assets whatsoever and wheresoever including its uncalled capital for the time of being.

4. This debenture is issued subject to and with the benefit of the conditions endorsed hereon.

Given under the common seal of the Company this day of 19 , in the presence of

(L.S.) Directors.
Secretary.

THE CONDITIONS WITHIN REFERRED TO.

1. This debenture is one of an issue of debentures of £ each for securing a total sum of £ with interest at the rate of £ per cent. per annum. All the said debentures are in the same form and rank *pari passu* in point of charge. Notwithstanding that the charge created by the debentures is a floating charge the Company shall not be at liberty to create any mortgage or charge ranking in priority to or *pari passu* with the charge created by the said debentures.

2. The Company shall keep at its registered office a register (hereinafter called the register) of the holders of debentures of this issue who desire to have their debentures registered and shall enter therein the names, addresses, and descriptions of such holders and the debentures held by them. The bearer of this debenture shall at any time when it is unregistered be entitled to have it registered in his name on leaving it together with a fee of 2*s.* 6*d.* and the amount if any of the stamp duty

(*cc*) This form of debenture is suitable where an official quotation on the Stock Exchange is desired.

(*d*) The words, etc., between square brackets are frequently omitted.

payable at the registered office of the Company. The Company shall on registering any debenture endorse thereon a note of such registration.

3. The Company shall not be bound to enter any notice of any trust express implied or constructive in the register and when this debenture is registered the company shall not recognize any one as having any title thereto except the registered holder provided always that the legal personal representatives of a deceased sole registered holder and any person becoming entitled to this debenture by reason of the bankruptcy of any registered holder shall upon producing such evidence as the directors of the Company may from time to time require have the same rights and powers as are hereby conferred on a registered holder of this debenture.

4. When this debenture is registered every request to cancel the registration thereof and every transfer thereof shall be in writing under the hand of the registered holder thereof. Upon such request or transfer being left at the registered office of the Company together with a fee of 2*s.* 6*d.* and the amount if any of the stamp duty payable and this debenture and such other evidence as the directors of the Company may reasonably require to show the right of the person making such request or transfer to make the same the registration of this debenture shall be cancelled or as the case may be the transfer shall be registered. On cancelling the registration of any debenture and on any transfer thereof the Company shall endorse thereon a note of such cancellation or transfer.

5. When this debenture is registered in the name of joint holders the survivors or survivor of them shall be deemed to be the registered holders thereof and any sole survivor shall be deemed to be a sole registered holder and any notice which the Company may give as hereinafter provided to the registered holder of this debenture may be given to any one of such joint holders at his registered address or to such other person and/or address as he may direct.

6. When this debenture is unregistered it shall for all purposes be deemed to be a negotiable instrument and all principal moneys and interest payable hereunder shall when this debenture is registered be paid to the registered holder hereof without regard to any equities existing between the Company and any prior holder of this debenture.

7. All principal moneys and interest will when the same become payable be paid at the registered office of the Company. On the payment of the principal moneys this debenture with all outstanding coupons and on the payment of any interest the coupon relating to such interest must be surrendered to the Company. Coupons for interest down to and including the interest payable on the   day of   19   are annexed to this debenture and all interest will be paid on the dates and in accordance with the terms specified in such coupons, and when such coupons are exhausted the Company will on this debenture being produced issue fresh coupons for the payment of future interest. On the issue of any fresh coupons the Company shall endorse on this debenture a memorandum stating the number of fresh coupons issued.

8. The principal moneys hereby secured will become payable in any of the following events :—

(1) If the Company makes default for a period of three calendar months in payment of any interest hereby secured [and the bearer of this debenture

or when the same is registered the registered holder thereof gives notice in writing before such default is made good calling in the principal moneys].

(2) If an order is made for the winding-up of the Company or if the Company goes into voluntary liquidation.

(3) If any execution sequestration or other process of any court or authority or any distress is sued out against or levied upon any of the assets of the Company.

(4) If a receiver is appointed of any of the assets of the Company.

(5) If the Company shall cease to carry on its business [or shall commit any breach of any covenant on its part contained in the trust deed hereinafter referred to].

9. When this debenture is unregistered all notices may be given by the company to the bearer thereof by advertisement in the *Times* and one other London morning paper when it is registered all notices may be given by the company to the registered holder either personally or by post in a prepaid letter addressed to such registered holder at his registered address or to such other person $\frac{\text{and}}{\text{or}}$ address as he may direct.

10. Any notice if served by post shall be deemed to have been served within twenty-four hours from the time when the letter containing the same was put in the post office and on proving such service it shall be sufficient to prove that such letter was properly addressed and put into the post office.

11. [This debenture is issued with the benefit of and subject to the charge created by and the terms and conditions contained in a trust deed dated the day of 19 and made between .]

FORM OF COUPON TO BE ATTACHED TO THE ABOVE DEBENTURE.

The Company Limited.
Per cent. Debenture for £
No.

Coupon No. £

On the day of 19 unless the principal moneys secured by the above-mentioned debenture shall be sooner paid off and on the surrender of this coupon the Company Limited will pay to the bearer hereof at No. or other the registered office of the said Company the sum of £ (less Income tax) being six months interest then due on the said debenture.

By order of the Board.
A.B.
Secretary.

ALTERNATIVE FORM OF COUPON (e).

The Company Limited.

Coupon No. for pounds for half a year's interest on debenture No. of the Company Limited due the day of 19 .

A.B.
Secretary.

TRUST DEED TO SECURE REGISTERED DEBENTURE STOCK (ee).

THIS INDENTURE made the day of 19 , Between COMPANY LTD. a Company registered under the Companies (Consolidation) Act 1908 and having its registered office at of the one part and of in the county of and of in the county of (hereinafter called the said trustees) of the other part. WHEREAS the Company has by a resolution of its directors passed in pursuance of powers in that behalf contained in its memorandum and articles of association resolved to issue debenture stock to the extent of £ and to secure the payment of the same with interest at the rate hereinafter mentioned in manner hereinafter appearing. AND WHEREAS the said trustees have agreed to act as trustees and to enter into these presents as trustees for the holders of the debenture stock. NOW THIS INDENTURE WITNESSETH AND IT IS HEREBY DECLARED AS FOLLOWS :—

1. IN the construction of these presents including the schedules hereto the following words and expressions shall have the following meanings where the context admits :—

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number.

Words importing the masculine gender only shall include females and words importing persons shall include corporations.

The word "month" shall mean calendar month.

The expression "the debenture stock" shall mean the aggregate amount of the debenture stock issued pursuant to the above recited resolution and for the time being outstanding and unpaid.

The expression "the debenture stock holders" and the "holders of the debenture stock" shall mean the persons who are for the time being the registered holders of the debenture stock.

The expression "the Company" shall mean the above-mentioned Company.

The expression "the trustees" shall mean the said trustees and the survivors and survivor of them and the executors or administrators of such survivor and also all other the trustees or trustee for the time being of these presents.

The expression "the specifically mortgaged property" shall mean the property mentioned in the first schedule hereto and all other property

(e) A coupon in this form would seem to be a mere token and not a negotiable instrument: *Enthoven* v. *Hoyle* (1853), 13 C. B. 373; and see *Rothschild* v. *Inland Revenue*, [1894] 2 Q. B. 142, and *supra*, p. 467, note (*i*).

(*ee*) This form of Trust deed is suitable where an official quotation on the Stock Exchange is desired.

which may from time to time arise from the exercise of any power in relation to such property or any property substituted for or added to it and all such substituted and added property.

The expression "the mortgaged property" shall mean and include as well the specifically mortgaged property as the property and assets from time to time subject to the floating charge hereby created.

2. THE Company hereby covenants with the trustees that it will when the debenture stock shall become payable as hereinafter provided repay to each of the debenture stock holders the amount of the debenture stock then registered in his name and that it will pay to each of the debenture stock holders interest in the meantime and until repayment on the amount of the debenture stock from time to time registered in his name at the rate of per cent. per annum. Such interest to be payable by four equal quarterly payments on the day of the day of the day of and the day of in each year and the first payment of such interest to be made on the day of next.

3. FOR the purpose of securing the debenture stock together with all interest costs and other moneys payable hereunder by the Company.

(1) The Company as beneficial owner hereby grants unto the said trustees their heirs and assigns all the freehold lands tenements and hereditaments specified in the first part of the first schedule hereto to hold the same unto and to the use of the said trustees their heirs and assigns.

(2) The Company as beneficial owner hereby demises unto the said trustees their executors administrators and assigns all the leasehold lands tenements and hereditaments specified in the second part of the first schedule hereto to hold the same unto the said trustees their executors administrators and assigns for all the respective residues now unexpired of the several terms of years granted by the several indentures of lease mentioned in the said part of the said schedule except the last day of each of the said terms. PROVIDED ALWAYS and it is hereby declared that until the debenture stock and all interest and other moneys hereby secured have been paid the Company will stand possessed of the leasehold premises for all the respective residues now unexpired of the several terms of years granted by the said several indentures of lease upon trust for the trustees or as they shall direct and that the trustees shall have power at any time by writing under their hands to remove the Company or any other person from being such a trustee as aforesaid and shall be the persons to exercise the statutory power of appointing new trustees of the respective residues now unexpired of the several terms of years and so that the said statutory power shall arise and be exercisable on any such removal and that on any exercise of the said power the trustees may appoint themselves or any other person to be such new trustees as aforesaid.

(3) The Company as beneficial owner doth hereby covenant that the Company and all other necessary parties if any will forthwith at the cost of the Company effectually surrender into the hands

of the lords of the manor of which the same are respectively holden according to the customs thereof the copyhold lands tenements and hereditaments specified in the third part of the first schedule hereto to the use of the said trustees their heirs and assigns according to the customs of such respective manors and subject to a condition for making void the surrender corresponding with the proviso for redemption hereinafter contained and the Company doth hereby declare that until such surrender shall be made the Company will stand seised of the premises hereby covenanted to be surrendered in trust for the said trustees their heirs and assigns but subject to such right of redemption as would be subsisting therein if the same had been surrendered and doth hereby irrevocably appoint the trustees attorneys of it the Company in its name and on its behalf to make such surrender as aforesaid and to execute and do all deeds documents acts and things which may be necessary in that behalf.

(4) The Company hereby charges by way of floating security in favour of the trustees all its undertaking and assets whatsoever and wheresoever other than the specifically mortgaged property but including its uncalled capital for the time being and so that the Company shall not have power to create any mortgage or charge ranking *pari passu* with or in priority to the charge hereby created.

4. THE debenture stock will become payable on the happening of any one of the following events:—

(1) If the Company shall make default in the payment of any interest hereby secured for a period of two months after the same becomes due.

(2) If a receiver has been appointed of any part of the assets of the Company.

(3) If any execution sequestration or other process of any Court or authority is sued out against any part of the assets of the Company.

(4) If any distress is levied upon any of the assets of the Company.

(5) If any order shall be made for the winding-up of the Company.

(6) If the Company shall enter into voluntary liquidation.

(7) If the Company shall cease to carry on business.

(8) If the Company shall commit any breach of any covenant on its part herein contained.

5. THE trustees shall permit the Company to retain possession and to receive the rents profits and income of the whole of the mortgaged property and to carry on its business thereon and to use and enjoy the same in the ordinary course of carrying on such business until the trustees shall enforce their security under the provisions hereinafter contained or until a receiver shall be appointed by a Court of competent jurisdiction on an application made by the trustees or any one or more of the debenture stock holders.

6. AT any time while the Company is carrying on its business under the provisions hereinbefore contained the trustees may with the consent and at the expense of the Company exercise all or any of the following powers:—

(1) Power to sell exchange partition or lease or to concur in selling

exchanging partitioning or leasing the specifically mortgaged property or any part thereof or any machinery or other fixture which is now or may hereafter be affixed thereto or any easement right or privilege of any kind over or in relation to the same and to give or receive any consideration for equality of exchange or partition.

(2) Power to surrender or accept a surrender of or to concur in surrendering or accepting a surrender of any lease of or in any way affecting the whole or any part of the specifically mortgaged property and to give or receive any consideration in respect of the same and so that any such surrender may be in respect of the whole or any part of the property comprised in a lease and on a surrender of part only of the property comprised in a lease to apportion or agree to the apportionment of any rent and to make any arrangement which may be considered desirable.

(3) Power to accept from the Company or any other person any property real or personal in lieu of or as a substituted security for the specifically mortgaged property or any part thereof on being satisfied that the property to be substituted is at least equal in value to the specifically mortgaged property or the part thereof for which such property is to be substituted.

(4) Power to accept any composition or any security real or personal for any debt or for any property real or personal claimed as or forming part of the specifically mortgaged property and to allow time for payment of any such debt and to compromise compound abandon submit to arbitration or otherwise settle any debt account or thing relating to the whole or any part of the specifically mortgaged property and to concur in doing any of the things aforesaid.

(5) Power in the exercise of any of the powers aforesaid to release or concur in releasing the whole or any part of the specifically mortgaged property.

7. ALL moneys forming part of the specifically mortgaged property and being in the nature of capital moneys including any fine premium fore-gift or other payment of a similar nature whether arising from the exercise of any power conferred by the last preceding clause hereof or otherwise shall be paid to the trustees and they may either invest the same in any manner hereinafter authorized or if they shall see fit so to do they may with the consent of the Company while it is carrying on its business and afterwards at their discretion apply the same in any of the following ways that is to say :—

(1) In discharging any incumbrance affecting the whole or any part of the specifically mortgaged property and having priority to the charge hereby created on such property.

(2) In purchasing taking on lease or otherwise acquiring any property real or personal which the trustees may consider that it is necessary or desirable for the company to acquire. And so that any such property shall when acquired form part of the specifically mortgaged property.

(3) In making any improvements on to or in connection with the specifically mortgaged property or any part thereof.

8. AT any time after the debenture stock has become payable the trustees shall have the following powers :—

(1) Power to enter into possession or into the receipt of the rents and profits of the mortgaged property or of any part thereof.

(2) Power to sell and convert into money the mortgaged property or any part thereof.

(3) Power to appoint a receiver of the mortgaged property or of any part thereof.

Provided always that the trustees shall not be bound to exercise and shall not be liable for the non-exercise of any such power unless they have received a request in writing from the holders of at least half of the debenture stock requiring them to exercise such power.

Provided further that if the debenture stock has become payable by reason of the Company's having made default in the payment of any interest hereby secured or by reason of the breach or non-performance of any covenant herein contained which is capable of being remedied then unless the trustees shall certify in writing that in their opinion the security hereby constituted is likely to be prejudiced by delay they shall not exercise any power in this clause contained whether they have been requested by the debenture stock holders to do so or not unless they have served on the Company notice specifying the particular default or breach or non-performance complained of and requiring the Company to make good such default or to remedy such breach or non-performance and the Company has made default for a period of two months after service of such notice in complying with the requirements of such notice.

9. AT any time after the exercise of any power conferred by the last preceding clause hereof the trustees shall have the following powers :—

(1) Power to carry on the business of the Company and in carrying on such business to do all acts and things and exercise all powers which the Company could have done or exercised while it was carrying on its business.

(2) Power without any consent of the Company to do and exercise all acts things and powers which the trustees could have done with the consent of the Company while it was carrying on its business.

(3) Power to borrow any money which may be required for the purpose of carrying on such business and to secure any money so borrowed by a mortgage or charge over the mortgaged property or any part thereof and so that any such mortgage or charge may rank either in priority to or *pari passu* with or after the charge hereby created.

(4) Power to remove any receiver appointed under the power hereinbefore contained and to appoint another in his place and to fix the remuneration of any receiver appointed under any power herein contained and to delegate to any such receiver any of the powers and duties which are by virtue of these presents exercisable by the trustees.

10. (1) ANY receiver appointed under any power hereinbefore contained shall subject to the payment of all debts having priority to any

charge hereby created by virtue of sections 107 and 209 of the Companies (Consolidation) Act 1908 and to keeping down all annual sums and other payments and the interest on all principal sums having priority to the charge hereby created and to the payment of his own remuneration and of any costs charges and expenses incurred by him as such receiver pay over and transfer the money received by him to the trustees.

(2) Any such receiver shall for all purposes be the agent of the Company and the Company alone shall be responsible for his acts and defaults.

11. ALL moneys received by the trustees after they have exercised or arising from the exercise of any power conferred on them by clause 8 hereof and all moneys in their hands at the date of exercising any such power shall subject to the payment of any prior incumbrance which may be payable thereout and of any debts having priority to the charge hereby created by virtue of the provisions of sections 107 and 209 of the Companies (Consolidation) Act 1908 or otherwise be applied by them in making the following payments in the following order:—

(1) In paying all costs charges and expenses and in satisfying every liability incurred by them in the execution of any of the trusts powers and provisions herein contained and all other moneys except the debenture stock and the interest in respect of the same payable under these presents including any sums payable in respect of their own remuneration.

(2) In payment of all interest due in respect of the debenture stock.

(3) In payment of the debenture stock.

Provided always and it is hereby declared that if after making all payments having precedence as hereinbefore provided to the debenture stock and the interest payable thereon there shall not remain sufficient moneys to pay the debenture stock and interest in full then and in such case the loss shall be borne by the holders of the debenture stock rateably in proportion to their holdings and that in such case the trustees may make any payment on account of the debenture stock or on account of the debenture stock and the interest due thereon without appropriating such payment either to the debenture stock or to the interest due thereon notwithstanding that all such interest may not have been paid and provided further that the trustees shall not be bound to immediately distribute any such moneys among the debenture stock holders if such moneys are insufficient to pay a dividend of one shilling in the pound on the debenture stock and interest then payable.

12. THE trustees may at any time invest any moneys liable to be invested or in their hands hereunder in any of the following investments with power from time to time to vary such investments for others of a like nature that is to say—in any investments in which trustees are or from time to time may be authorized to invest trust moneys—and subject to and pending any application of such moneys the trustees shall have power to place the same on deposit at any bank.

13. ANY power hereinbefore conferred on the trustees may be exercised in such manner and subject to such conditions respecting evidence of title or otherwise and subject to the reservation of such powers of varying or rescinding any contract or of doing any other act or thing as the trustees may in their absolute discretion approve.

14. ANY lease granted under any power hereinbefore contained may be either for any term of years or for a life or lives and either with or without a power of renewal and generally subject to such terms and conditions as the trustees may in their absolute discretion approve.

15. WHERE any contract is made in professed exercise of any power hereinbefore conferred the title of any purchaser or other person claiming under such contract shall not be impeachable on the ground that no case has arisen to authorize the exercise of such power or that the power was otherwise improperly or irregularly exercised nor shall any such purchaser or other person be bound or concerned to inquire whether any money hereby secured remains owing or whether the power is otherwise properly and regularly exercised.

16. THE powers and provisions of sections 21 (1) (4) (5) (6) and (7) and 22 (1) of the Conveyancing and Law of Property Act 1881 as extended by section 4 of the Conveyancing Act 1911 shall apply upon any exercise of any power hereinbefore conferred in the same way as if the person exercising such power were a mortgagee exercising the power of sale conferred by those Acts—and such powers and provisions are with the necessary alterations hereby incorporated.

17. THE Company hereby covenants with the trustees:

(1) To carry on its business in a proper manner.

(2) To keep such books of account and such accounts and to make out such balance sheets and profit and loss accounts as are required by its existing articles of association and to forward to the trustees a copy of every balance sheet and profit and loss account and report laid or read before the Company in general meeting at least seven days before the general meeting of the Company at which such balance sheet or profit and loss account or report is laid or read before the Company in general meeting.

(3) At all reasonable times to allow the trustees or any person authorized by them a right of access to the mortgaged property and to the books and accounts and vouchers of the Company and to give the trustees and any person authorized by them such information and explanation as they or he may require with reference to the premises.

(4) To pay all debts and liabilities of the nature of the debts and liabilities mentioned in section 209 of the Companies (Consolidation) Act 1908 and all debts and liabilities having priority over the charge hereby created as the same become due and not to create any mortgage or charge ranking *pari passu* with or in priority to the charge hereby created.

(5) To pay to each of the trustees by way of remuneration a sum calculated at the rate of £ per annum and on demand to pay to each of the trustees all hotel travelling and other costs charges and expenses which may be incurred by him in the execution of the trusts powers and provisions of these presents, such remuneration to be payable notwithstanding the appointment of a receiver or a judgment obtained in any action instituted by the trustees or any one or more of the debenture stockholders or any other person and a proportionate part thereof to be paid on the day of and the day of in each year.

(6) To cause a proper register to be kept of the names addresses and descriptions of and the debenture stock held by the holders of the debenture stock.

(7) To insure and keep insured with some office approved by the trustees against loss or damage by fire all such buildings effects and property of an insurable nature whether affixed to the

freehold or not which form part of the specifically mortgaged property to the amount that would be required in case of total destruction to restore the property insured and to pay all premiums in respect of such insurance and on demand to produce to the trustees any policy of insurance effected in pursuance of this covenant and the receipt for the last premium payable to the insurer ; and if the trustees so require to apply all moneys received on an insurance effected under this provision in making good all loss or damage in respect of which the money is received.

(8) To repair and keep in good condition and in proper working order all buildings machinery and fixtures affixed to or forming part of the specifically mortgaged property and not to pull down or remove any such building machinery or fixture without the previous consent of the trustee which they are hereby authorized to give.

(9) To pay to the trustees on demand all premiums paid by them under the provision on that behalf hereinafter contained and all other moneys payable to them or any one or more of them hereunder with interest at the rate of 5 per cent. per annum from the date of such demand till payment.

(10) To execute and do all deeds documents and things which the trustees may require for effectually vesting in the trustees any property which may hereafter form part of the specifically mortgaged property either for the whole estate of the Company therein or for such lesser estate as the trustees may consider desirable or for enabling the trustees to carry out the trusts powers and provisions herein contained.

18. THE trustees shall have at all times the following powers in addition to the powers by law conferred on trustees :—

(1) Power if the Company shall fail to make or to keep up such insurance as aforesaid to insure and keep insured against loss or damage by fire all buildings effects and property of an insurable nature whether affixed to the freehold or not which form part of the specifically mortgaged property to the amount which would be required in the case of total destruction to restore the property destroyed and to apply and require the company to apply all moneys received under any insurance effected under these presents in making good all loss or damage in respect of which the money is received but so that without prejudice to any obligation to the contrary imposed by law the trustees may require all moneys received under any such insurance to be paid to them as part of the specifically mortgaged property.

(2) Power in case of default by the Company to put in good repair and condition all buildings machinery and fixtures which the Company is bound to repair and keep in good repair and condition under its covenant in that behalf hereinbefore contained.

(3) Power to act on any information whether conveyed by post cable telegraph or in any other way except only information by telephone.

(4) Power instead of acting personally to employ and pay a solicitor or any other person to transact any business or do any act of

whatever nature required to be done in the premises including the receipt and payment of money. Provided always that a trustee being a solicitor or other person engaged in any profession or business may be so employed or act and shall be entitled to charge and be paid all professional or other charges for any business or act done by him or his firm in connection with the trust including acts which a trustee could have done personally.

(5) Power to take and act upon any expert or professional advice.

19. THE trustees shall not by reason of their entering into possession of the mortgaged property or any part thereof be liable to account as mortgagees in possession or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable.

20. EACH of the trustees shall be answerable only for losses arising from his own wilful defaults and not for involuntary acts nor for the acts or defaults of a co-trustee and in particular any trustee who shall pay over to a co-trustee or do any act or make any omission enabling a co-trustee to receive any moneys shall not be obliged to see to the due application thereof nor be subsequently rendered liable by any express notice of the actual misapplication thereof. Nor shall any trustee be liable for any loss arising from the act or default of any solicitor or other agent employed by the trustees nor for the exercise or non-exercise of any power which the trustees are hereby authorized to exercise.

21. THE statutory power of appointing new trustees of these presents shall be vested in the Company but a trustee so appointed must in the first place be approved by a resolution of the debenture stock holders passed in manner specified in the third schedule hereto. A Corporation or Company may be appointed a trustee of these presents.

22. ANY of the trusts powers and authorities hereby vested in the trustees may be exercised by a majority of the trustees at any time when the number of the trustees exceeds two.

23. IF the Company shall on the day when the debenture stock becomes payable repay the debenture stock together with the interest and all other moneys payable by the Company hereunder the trustees shall at the request and cost of the Company release reconvey reassign surrender or otherwise assure the mortgaged property or such part thereof as shall not have been disposed of under the trusts powers and provisions herein contained to the Company or as it shall direct.

24. THE Company shall not in relation to the specifically mortgaged property have the powers of leasing conferred on a mortgagor by section 18 of the Conveyancing and Law of Property Act 1881 or section 3 of the Conveyancing Act 1911.

25. THE certificates for the debenture stock shall be under the seal of the company (*f*) and in the form set out in the second schedule hereto.

26. THE provisions in the third schedule hereto shall be deemed to be incorporated in and to form part of these presents.

27. ALL notices may be given by the Company or the trustees to any debenture stock holder or in the case of any debenture stock held by

(*f*) Where an official quotation is desired the Stock Exchange authorities like this provision as to the seal to be inserted though they would perhaps not insist on it, where the form of certificate shows that it is to be under the seal of the company.

several joint holders to the joint holders either personally or by sending the notice through the post in a prepaid letter addressed to such debenture stock holder or any one of such joint holders at his registered address or to such person $\frac{\text{and}}{\text{or}}$ address as he or in cases where any other person is entitled to the debenture stock of any debenture stock holder by reason of his death or bankruptcy as such other person may direct; and any notice if served by post shall be deemed to have been served within twenty-four hours from the time when the letter containing the same was put into the post office and in proving such service it shall be sufficient to prove that such letter was properly addressed and put into the post office. IN WITNESS etc.

THE FIRST SCHEDULE HEREINBEFORE REFERRED TO.

PART I.

[Here set out freehold property subject to specific charge.]

PART II.

[Here set out leasehold property subject to specific charge.]

PART III.

[Here set out copyhold property subject to specific charge.]

THE SECOND SCHEDULE HEREINBEFORE REFERRED TO.

The Company Limited (*g*).

(Registered under the Companies (Consolidation) Act 1908.)

Capital £ divided into shares of £ each.

Issue of £ debenture stock bearing interest at the rate of per cent. per annum payable on the of and the of in each year made under the authority of Article of the Company's Articles of Association and of a resolution of the Board of Directors of the Company dated 19 .

No. DEBENTURE STOCK CERTIFICATE £

THIS IS TO CERTIFY that of is the holder of £ of the above-mentioned Debenture stock (*h*) which is constituted and secured by a trust deed dated the day of 19 and made between THE

(*g*) Where a quotation on the Stock Exchange is desired certificates of debenture stock allotted to vendors in lieu of money payments must be enfaced, "Issued to vendors." This will have to be on all certificates issued in exchange for certificates issued to vendors, until certificates to the vendors become good delivery: see Stock Exchange Rules, r. 150 (2), *infra*, p. 1508.

(*h*) If such debenture stock is not fully paid, insert here the words "paid up to the extent of 50 per cent. and payable as to 25 per cent. of the balance on the day of 19 , and as to the remaining 25 per cent. on the day of 19 and."

COMPANY Ltd. of the one part and of the other part and is issued subject to and with the benefit of the provisions of such trust deed and the conditions endorsed hereon.

Given under the common seal of the company this day of 19 in the presence of

(L.S.) } Directors.

Secretary.

NOTE.—The Company will not transfer any stock without the production of the certificate relating to such stock which certificate must be surrendered before any deed of transfer whether for the whole or any portion thereof can be registered or a new certificate issued in exchange.

The conditions within referred to—

1. THE holders of the debenture stock of this issue are entitled *pari passu* to the benefit of a charge created by and the debenture stock is issued subject to and with the benefit of the trusts' powers provisions and conditions contained in the trust deed within referred to.

2. THE Company may at any time after the 19 give to the registered holder of the stock referred to in this certificate six months' notice of its intention to pay off such debenture stock or any part thereof and on the expiration of such notice the debenture stock in respect of which such notice has been given will become payable.

3. THE debenture stock will become payable on the happening of any of the following events:—

[Here follow the terms of the clause in the trust deed dealing with the events which make the debenture stock payable.]

4. THE Company will pay to the registered holder of the debenture stock referred to in this certificate interest on (*i*) such debenture stock at the rate and on the days specified on the face of this certificate. The first of such payments to be made on the day of 1911.

5. THE Company shall pay the debenture stock referred to in this certificate and all interest when the same becomes payable at the registered office of the Company but the Company may if it see fit so to do make any payment of any interest by cheque sent through the post to the registered address of the registered holder of such debenture stock or to such other person and/or address as he may direct in writing (*k*). In the case of several joint holders of debenture stock the holder whose name appears first in the register shall be deemed to be the person entitled to all interest.

6. THE Company shall keep a register wherein they shall enter the names

(*i*) In cases where the debenture stock certificate is issued before payment in full the words "the amount for the time being paid up on" should be inserted. In such case a condition should be added that on each payment being made the secretary of the company or some person authorized on that behalf by the directors of the company shall endorse a note of such payment on this certificate.

(*k*) Where the debenture stock is partly paid the following words may be added here. "All instalment shall be paid at the registered office of the company."

addresses and descriptions of the debenture stock holders and the amount of stock held by them respectively. The Company shall not be bound to enter in the register notice of any trust.

7. EACH registered holder of any part of the debenture stock referred to in this certificate shall be entitled to a certificate under the common seal of the Company specifying the amount of such debenture stock. Provided always that if any part of such debenture stock is registered in the name of several persons jointly the Company shall not be bound to issue more than one certificate in respect of such part and delivery of a certificate to one of several joint holders shall be sufficient delivery to all.

8. IF this certificate is defaced lost or destroyed it may be renewed on payment of such fee if any not exceeding one shilling and on such terms if any as to evidence and indemnity as the directors of the Company think fit (*l*).

9. THE registered holder of the debenture stock referred to in this certificate shall be entitled to transfer such debenture stock or any part thereof by writing under his hand. [The Company may decline to register the transfer of any such debenture stock (*m*) if the transferor or any person through whom he claims otherwise than by transfer is indebted to the Company but save as aforesaid] (*n*) on any transfer being left at the registered office of the Company together with a fee of 2*s*. 6*d*. and this certificate and such other evidence as the directors may reasonably require to show the right of the transferor to transfer the Company shall register such transfer. Provided always that such debenture stock shall only be transferable in amounts of £1 or multiples of £1 (*o*). On the registration of any transfer of the debenture stock referred to in this certificate the transferee thereof shall hold the same free from any equity existing between the Company and the transferor or any other person.

10. THE executors or administrators of a deceased sole registered holder and the survivors or survivor of joint registered holders of the debenture stock referred to in this certificate shall be the only persons recognised by the company as having any title to such debenture stock and any person who has become entitled to such debenture stock in consequence of the bankruptcy of the person entitled thereto may on producing such evidence as the directors may require either transfer such debenture stock or himself be registered as the holder of such debenture stock.

(*l*) Where part of registered debenture stock can be paid off, the Stock Exchange authorities, if an official quotation is desired, require a fresh certificate to be issued on each such payment, as experience has shown a mere indorsement may lead to confusion; this rule does not apply to bearer stock where stamping difficulties might arise if it were enforced.

(*m*) If the debenture stock is partly paid when the certificates are issued add here the words "which is not fully paid or."

(*n*) The words in square brackets must be omitted or limited to partly paid stock, if an official quotation is desired.

(*o*) The Stock Exchange authorities prefer stock to be transferable in multiples of £1 where a quotation is desired, but they do not insist on this.

11. NOTICES may be given in manner directed by the trust deed within referred to (*p*).

THE THIRD SCHEDULE HEREINBEFORE REFERRED TO.

1. THE trustees or the Company may whenever they think fit and the trustees shall upon a requisition in writing signed by holders of at least one-tenth of the nominal amount of the debenture stock for the time being outstanding convene a meeting of the debenture stock holders.

2. ANY such requisition must state the objects of the meeting and must be deposited at the registered office of the Company and notice of such deposit must be sent by the Company through the post by prepaid letter addressed to each of the trustees at his last known or usual place of address. Any such requisition may consist of several documents in like form each signed by one or more requisitionists.

3. IF the trustees do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited the requisitionists or a majority of them in value may themselves convene the meeting but any meeting so convened shall be held within three months from the date of such deposit and shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by the trustees.

4. SEVEN days' notice at the least specifying the place the day and the hour of the meeting and the general nature of the business shall be given to each debenture stock holder and also when the meeting is not summoned by the trustees to each trustee. Notice to any debenture stock holder shall be given in manner in which notices are required to be given by the above written trust deed and notice to any trustee shall be given by sending the same through the post addressed to such trustee at his last known or usual place of address but the accidental omission to give any such notice shall not invalidate the proceedings at any meeting.

5. NO business shall be transacted at any meeting of debenture stock holders unless a quorum is present at the time when the meeting proceeds to business and if within half an hour from the time appointed for the meeting a quorum is not present the meeting shall be dissolved if convened

(*p*) If the stock certificate is issued before the stock is fully paid then in addition to other clauses contained in the preceding notes the following clause should be added, "The registered holder of the debenture stock comprised in this certificate shall pay each instalment payable in respect of such debenture stock as the same becomes due, and if default is made in any such payment the company may at any time before such default is made good, give notice requiring him to make such payment within seven days from the date when such notice is given, and stating that if such payment is not then made the directors of the company may forfeit such debenture stock, and at the expiration of such period such directors may declare such debenture stock to be forfeited, and thereupon all rights to such debenture stock shall cease, but the person who prior to such forfeiture was the registered holder thereof shall remain liable to pay to the company all instalments which at the date of such forfeiture were presently payable."

on the requisition of debenture stock holders; in any other case it shall subject to the provisions hereinafter contained as to an extraordinary resolution stand adjourned to the same day in the next week at the same time and place: and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall constitute a quorum.

6. SUBJECT as hereinafter provided in the case of an extraordinary resolution a quorum shall consist of debenture stock holders representing in person or by proxy one-tenth in value of the debenture stock.

7. AT each meeting the debenture stock holders present shall choose one of the trustees who is present and willing to act to preside as chairman: but if there is no such trustee then they shall choose one of their own number to preside as chairman.

8. THE chairman may with the consent of the meeting adjourn any meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

9. AT any meeting of the debenture stock holders a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by any one of the debenture stock holders and unless a poll is so demanded a declaration by the chairman that a resolution on a show of hands has been carried or carried by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

10. A POLL demanded on the election of a chairman or on a question of the adjournment of a meeting shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and the result of such poll shall be deemed to be the resolution of the meeting.

11. IN the case of an equality of votes whether on a show of hands or at a poll the chairman shall be entitled to a casting vote in addition to the votes if any to which he is entitled.

12. THE trustee shall cause minutes of all resolutions and proceedings of meetings of debenture stock holders to be duly entered in books to be from time to time provided for the purpose: and any such minute as aforesaid if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting shall be receivable in evidence without any further proof: and until the contrary is proved every meeting of debenture stock holders in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened and all resolutions passed thereat or proceedings had to have been duly passed and had.

13. THE debenture stock holders may by extraordinary resolution exercise any of the following powers:—

(1) Power to remove any trustee of these presents.

(2) Power without any further sanction to bind the debenture stock holders by any compromise or arrangement which the court could sanction under section 120 of the Companies (Consolidation)

Act 1908 if it had been agreed to by the statutory majority of the debenture stock holders.

(3) Power to agree to any variation in the provisions of these presents or in the security hereby created and to release or modify any of the rights of the debenture stock holders and to discharge or exonerate the trustees from all liability in respect of any breach of trust.

14. ANY such extraordinary resolution shall without any further sanction be binding on all the debenture stock holders.

15. ON a show of hands every debenture stock holder present shall have one vote and on a poll every debenture stock holder shall have one vote for every £1 of the debenture stock registered in his name.

16. IF any debenture stock holder is an infant or a lunatic or of unsound mind he may vote by his guardian committee *curator bonis* or other legal curator.

17. IF any debenture stock holder is a company any person authorized by resolution of its directors to act at any meeting shall be entitled to exercise the same powers on behalf of such company as if he were himself a debenture stock holder.

18. IF any debenture stock is registered in the name of two or more persons jointly the debenture stock holder whose name appears first in the register of debenture stock holders and no other shall be entitled to vote on respect of the same.

19. ON a poll votes may be given in person or by proxy but no person shall act as a proxy unless he is one of the trustees or is apart from any proxy he holds entitled to be present and vote at the meeting at which he acts as proxy.

20. THE instrument appointing a proxy shall be in writing under the hand of the appointor and shall be in the following form or as near thereto as circumstances will admit:—

THE COMPANY LIMITED.

I of in the County of being the registered holder of £ of the debenture stock of the above-mentioned Company hereby appoint of or failing him of as my proxy at the meeting of the debenture stock holders of the said Company to be held on the day of 19 and at any adjournment thereof.

Dated the day of 19 .

Signed.

21. EVERY proxy shall be deposited at the registered office of the Company not less than two clear days before the day appointed for holding the meeting or adjourned meeting at which the person named in such proxy proposes to vote and in default the proxy shall not be treated as valid.

22. THE expression "extraordinary resolution" when used in this schedule means a resolution passed at a meeting of the debenture stock holders duly convened and held in accordance with the provisions herein contained by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands or if a poll be duly demanded then by a like majority in value at the poll. The quorum of any such meeting shall be a clear majority in value of the whole of the debenture

stockholders but so that where a meeting for the purpose of passing an extraordinary resolution is convened then and in such case if within one hour from the time appointed for the meeting holders of a clear majority in value of the debenture stock are not present so as to form a quorum the meeting shall stand adjourned for twenty-one days and shall accordingly be held on the corresponding day of the week and at the same time and place as that originally fixed by the notice convening the meeting and notice of such adjourned meeting shall be given in the manner provided by Clause 27 of the foregoing indenture and such notice shall state that those debenture stock holders who are present shall form a quorum and if at such adjourned meeting a quorum as above defined is not present then those debenture stock holders who are present shall be a quorum and may transact the business for which the meeting was originally convened and a resolution passed thereat by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands or if a poll is duly demanded then by a majority consisting of not less than three-fourths in value of the votes given on such poll shall be considered as an extraordinary resolution within the meaning of this schedule (*q*).

DEBENTURE TRUST DEED FOR SECURING REGISTERED DEBENTURES.

THIS INDENTURE made the day of 1908, between COMPANY LIMITED a company registered under the Companies (Consolidation) Act 1908 and having its registered office at of the one part and of in the county of and of in the county of (hereinafter called the said trustees) of the other part. WHEREAS the company has by resolution of its directors passed in pursuance of powers in that behalf contained in its memorandum and articles of association resolved to issue debentures for £ each in the form of the debenture set out in the second schedule hereto and to enter into these presents for the purpose of further securing all principal moneys and interest by the debentures secured. AND WHEREAS the said trustees have agreed to act as trustees of these presents and to enter into these presents as trustees for the debenture holders. NOW THIS INDENTURE WITNESSETH AND IT IS HEREBY DECLARED AS FOLLOWS (*r*) :—

1. Follow Clause 1 of the debenture stock trust deed except that (1) for the definition of the expressions "the debenture stock" and "the debenture stock holders" will be substituted the following definitions. The expression "the debentures" shall mean the total number of the debentures issued pursuant to the above recited resolution and for the time being outstanding and unpaid. The expression "the debenture-holders" shall mean the persons who are for the time being the registered holders of the debentures, and (2) In the definition of the mortgaged property the words "subject to the floating charge by the debentures and these presents created" will be substituted for the words "subject to the floating charge hereby created" and add the following definition. "The

(*q*) Where an official quotation on the Stock Exchange is required, the Stock Exchange authorities allow this form in lieu of the one in the schedule to the Stock Exchange Rules.

(*r*) This deed is a variation of the deed for securing debenture stock immediately preceding it, and the clauses are numbered the same.

expressions 'the principal moneys' and 'the interest' shall mean respectively the principal moneys and the interest from time to time by the debentures and these presents secured."

2. Substitute for Clause 2 of the debenture stock deed. The Company hereby covenants with the trustees that it will on the day of 19 or on such earlier day as the principal moneys shall become payable repay to each of the debenture-holders the principal moneys secured by his debentures and that it will pay interest on the same in the meantime and until repayment at the rate and in the manner in the debentures specified.

3. For the first part of Clause 3 of the debenture stock deed ending at the words "by the company" substitute—

"For the purpose of further securing the principal moneys and the interest and all costs and other moneys payable under the debentures or these presents by the company" then follow Clause 3 except that in sub-clause (2) for the words "the debenture stock and all interest and other moneys hereby secured" will be substituted the words "the principal moneys and the interest and all other moneys payable by the company under these presents or under the debentures." The floating charge will correspond with that conferred by the debenture but will be made in favour of the trustees, and the company will be forbidden to create charges ranking *pari passu* with or in priority to "any charge hereby or by the debentures created."

4. Substitute for the words "the debenture stock shall become payable" the words "the principal moneys shall become payable."

And for (1) "If the company shall make default in the payment of any of the interest for a period of two months after the same becomes due."

Then follow the rest of the clause as set out on the debenture stock deed. The conditions in this clause should correspond with those in the debenture.

5. Follow Clause 5 of the debenture stock deed except that "the debenture-holders" will be substituted for "the debenture stock holders" at the end of the clause.

6 and 7. Same as in debenture stock deed.

8. Same as in debenture stock deed, except that for the words "the holders of at least half of the debenture stock" will be substituted the words "the holders of not less than half of the debentures" and for the words "the debenture stock has become payable" in the two places where they occur will be substituted the words "the principal moneys have become payable" and for the words "any interest hereby secured" the words "any of the interest" and for the expression "the debenture stock holders" the expression "the debenture-holders" and for the words "hereby constituted" the words "hereby or by the debentures created."

9 and 10. Same as in debenture stock deed except that in the place where the words "the charge hereby created" occur in 9 (3) (once) and 10 (1) (twice) substitute the words "any charge hereby or by the debentures created."

11. For Clause 11 of the debenture stock deed substitute—

"All moneys received by the trustees after they have exercised or arising from the exercise of any power conferred on them by Clause 8 hereof, and all moneys in their hands at the date of exercising any such

power shall subject to the payment of any prior incumbrance which may be payable thereout and of any debts having priority to any charge hereby or by the debentures created by virtue of the provisions of sections 107 and 209 of the Companies (Consolidation) Act 1908 or otherwise be applied by them in making the following payments in the following order, that is to say :—

(1) In paying all costs charges and expenses and in satisfying every liability incurred by them in the execution of any of the trusts' powers or provisions in the debentures or these presents contained and all other moneys except the principal moneys and the interest payable under the debentures or these presents including any sums payable in respect of their own remuneration and any remuneration paid or agreed to be paid to any receiver appointed by them.

(2) In paying the interest to the debenture-holders *pari passu* in proportion to the debentures held by them.

(3) In paying the principal moneys to the debenture-holders *pari passu* and in proportion to the debentures held by them. Provided always that in case it shall in the opinion of the trustees be doubtful whether the mortgaged property will be sufficient after making such prior payments thereout as aforesaid to pay the principal moneys and the interest in full the trustees may make any payment on account of the principal moneys or on account of the principal moneys and the interest without appropriating such payment to the principal moneys or the interest notwithstanding that the interest may not have been paid and provided also that the trustees shall not be bound to immediately distribute any moneys in their hands among the debenture-holders if such moneys are insufficient to pay a dividend of 5 per cent. on the principal moneys and the interest then payable but they may in their discretion either distribute such moneys or place the same on deposit at any bank or invest the same in any investment hereinafter authorized.

12, 13, 14, 15, 16. Same as in debenture stock deed except that the words "or by the debentures" should be added between the words "hereby" and "secured" towards the end of 15.

17. Same as in trust deed except that for the words "the charge hereby created" occurring twice in (4) substitute the words "any charge created by the debentures or these presents" and in (5) the words "debenture-holders" will be substituted for the words "debenture stock holders" and in (6) for the words "debenture stock" substitute the word "debentures" and for the words "the holders of the debenture stock" the words "the debenture-holders."

18, 19, 20, 21, 22. Same as in the debenture stock deed, except that in Clause 21 the words "the debenture-holders" will be substituted for the words "the debenture stock holders."

23. For Clause 23 of the debenture stock deed substitute—

If on the day when the principal moneys become payable the company shall pay the principal moneys and the interest and all other moneys payable by the company under these presents or the debentures the trustees shall at the request and cost of the company reconvey re-assign surrender or otherwise assure the mortgaged property or such part thereof as shall not have been disposed of under the trusts' powers and provisions herein contained to the company or as it shall direct.

24. Same as in debenture stock deed.

25. Substitute for Clause 25 of the debenture stock deed. The debentures shall be in the form of the debenture set out in the second schedule hereto and shall be under the seal of the company.

26. Same as Clause 26 of the debenture stock deed.

27. Same as Clause 27 of the debenture stock deed except that the words "debenture stock holder" (occurring three times) the words "debenture-holder" will be substituted and for the words "debenture stock" (occurring twice) the words "debenture."

FIRST SCHEDULE.

Same as debenture stock schedule.

SECOND SCHEDULE.

Set out a form of debenture *vide supra* pp. 493 *et seq.*, following conditions in the deed as to the date of payment of principal moneys.

THIRD SCHEDULE.

1. Same as debenture stock deed except that for the words "debenture stock" and "debenture stock holders" substitute the words "debentures" and "debenture-holders."

2 and 3. Same as in debenture stock deed.

4. Same as in debenture stock deed except that for the words "debenture stock holder" (occurring twice) substitute the words "debenture holder."

5. Same as in debenture stock deed except that for "debenture stock holders" (occurring twice) substitute "debenture-holders."

6, 7 and 8. Same as in debenture stock deed—except that for the words "debenture stock holders" (occurring once in 6 and once in 7) substitute the words "debenture-holders" and for the words "debenture stock" in 6 substitute the word "debentures."

9. Same as in debenture stock deed except that for the words "debenture-stock holders" (occurring twice) substitute the words "debenture-holders."

10 and 11. Same as in debenture stock deed.

12. Same as in debenture stock deed except that for the words "debenture stock holders" (occurring twice) substitute the words "debenture-holders."

13 and 14. Same as in debenture stock deed except that for the words "debenture stock holders" (occurring four times in 13 and once in Clause 14) substitute the words "debenture-holders" and in Clause 13 (3) after the word "provisions" insert the words "of the debentures or" and after the word "security" the words "by the debentures or."

15. Same as in debenture stock deed except that for the words "debenture stock holder" (occurring twice) substitute the words "debenture-holder" and for the words "£1 of the debenture stock" substitute the word "debenture."

16, 17, 18, 19, 21, 22. Same as in debenture stock deed except that the word "stock" wherever it occurs after the word "debenture" is omitted and once in 16 and 17. (It occurs five times in Clause 22 three times in Clause 18 twice in Clause 17 and once in Clause 16).

20. In the form of proxy substitute for "£ of the debenture stock" " of the debentures" and strike out the word "stock" where it occurs later in the form.

TRUST DEED TO SECURE DEBENTURE STOCK TO BEARER.

Where the debenture stock is payable to bearer and there is an option to register given to the bearer the debenture stock trust deed above given can be made to apply with the following variations. Where there is no option to register the stock this form can be readily adapted.

1. Insert in the definition of the debenture stock holders at the end of the words "and the bearers of certificates relating to such part of the debenture stock as is not registered" and in the same definition substitute for the words "the debenture stock" the words "such part of the debenture stock as is registered."

2. Substitute for Clause 2. "The Company hereby covenants that it will when the debenture stock shall become payable as hereinafter provided pay to each debenture stock holder the amount of the debenture stock which is then registered in his name and in the case of debenture stock which is not registered the amount of the debenture stock mentioned in any certificate of which he is the bearer and that it will in the meantime and until repayment pay interest on the debenture stock in accordance with the terms of the coupons annexed to the debenture stock certificates.

17. Omit (6) where there is no power to register.

Where there is a power to register substitute for the words "the debenture stock" the words "of such part of the debenture stock as is registered."

25. Add where there is a power to register at the end "but so that the words the registered holder of the debenture stock comprised in this certificate" be inserted in certificates relating to registered stock in lieu of the words "the bearer of this certificate," and that each of such certificates bear a footnote that no transfer of any portion of the holding can be registered without the production of such certificate.

27. Add after the words "the trustees" "to any holders of any part of the debenture stock which is not registered by advertisement in the *Times* and one other London morning paper and to any holder of any part of the debenture stock which is registered or in the case of any such debenture stock which is registered in the name of several joint holders" and omit the words "to any debenture stock holder or in the case of any debenture stock held by several joint holders" and continue as in the debenture stock trust deed except that after the words "entitled to the debenture stock" add the words "registered in the name."

Where there is no option of registering the following clause will be substituted for Clause 27 in the debenture stock deed.

All notices may be served by the Company or the trustees upon the debenture stock holders by advertisement in the *Times* and one other London morning paper.

FORM OF DEBENTURE STOCK CERTIFICATE.

To be Substituted for the Form in the Second Schedule to the Debenture Stock Deed.

The Company Limited.

(Incorporated under the Companies (Consolidation) Act, 1908.)

Capital £ divided into shares of £1 each.

Issue of £ debenture stock bearing interest at the rate of per cent. per annum authorised by Article of the Company's Articles of Association and a resolution of its Directors dated 19 .

Interest payable on the the the and the in each year in accordance with the coupons annexed hereto and the conditions endorsed hereon.

No. Debenture Stock £ .

This is to certify that of or other the bearer of this certificate is the holder of £ of the above-mentioned debentures stock which is issued with the benefit of and subject to the charge created by and the terms and conditions of a trust deed dated and made between of the conditions endorsed hereon.

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

(L.S.) } Directors.

Secretary.

THE CONDITIONS WITHIN REFERRED TO.

1. The holders of the debenture stock of this issue are entitled *pari passu* to the benefit of the charge created by and the debenture stock is issued subject to and with the benefit of the trusts powers and provisions and conditions contained in the trust deed within referred to.

2. The Company may at any time after the 19 give to the holder of this certificate six months' notice of its intention to pay off the whole or any part of the debenture stock in this certificate referred to and the debenture stock referred to in such notice will become payable on the expiration of such notice.

3. The debenture stock of this issue will become payable on the happening of any of the following events that is to say [here follow the terms of the clause in the trust deed dealing with the events which make the debenture stock payable.]

4. The Company shall keep at its registered office a register (hereinafter called the register) of the holders of debenture stock of this issue (hereinafter called the debenture stock) who desire to have their debenture stock registered and shall enter therein the names addresses and descriptions of such holders and the amount of debenture stock held by them. The Company shall on any certificate relating to any part of the debenture stock which is not registered being delivered to it at its registered office together with all outstanding coupons and on payment of a fee of 2*s.* 6*d.* and the amount if any of the stamp duty payable at the request of the bearer of such certificate register the debenture stock therein described,

or any part thereof but so that no amount of stock not being £1 or a multiple of £1 shall be registered.

5. The Company shall not be bound to enter any notice of any trust express implied or constructive in the register. Provided always that the legal personal representatives of a deceased sole registered holder and any person becoming entitled to any of the debenture stock which is registered by reason of the bankruptcy of any registered holder shall upon producing such evidence as the directors of the company may from time to time require have the same rights and powers as are hereby conferred on a registered holder of the debenture stock.

6. When the debenture stock referred to in this certificate is registered every request to cancel the registration of or to transfer such debenture stock or any part thereof shall be in writing under the hand of the registered holder thereof. Upon such request or transfer being left at the registered office of the Company together with a fee of 2*s.* 6*d.* and the certificate relating to such debenture stock and all outstanding coupons and such other evidence as the directors may reasonably require to show the right of the person making such request or transfer to make the same the registration of such of the debenture stock as is referred to in such request shall be cancelled or as the case may be the transfer shall be registered provided always that no such request or transfer shall relate to any amount of such debenture stock not being £1 or a multiple of £1 and that on a request to cancel registration the amount of any stamp duty payable shall be paid to the company.

7. When the debenture stock referred to in this certificate is registered in the names of joint holders the survivors or survivor of them shall be deemed to be the registered holders thereof and any sole survivor the sole registered holder.

8. Each holder of any part of the debenture stock of this issue shall on payment of a fee of 1*s.* for each certificate be entitled to one certificate for any part of such debenture stock which is payable to bearer and held by him $\frac{\text{and}}{\text{or}}$ to one certificate for any of such debenture stock which is registered in his name. Every such certificate shall be under the common seal of the company and shall state whether the debenture stock therein referred to is payable to the bearer of such certificate or the registered holder of the stock therein comprised and shall have coupons attached thereto for the interest payable on the stock therein comprised for a period of five years from the date of such certificate. Provided that in the case of any such debenture stock being held jointly by several persons the company shall not be bound to issue more than one such certificate for each class of stock held by them and delivery of any such certificate to any one of them shall be sufficient delivery to all.

9. If this debenture stock certificate or any coupon attached hereto is defaced lost or destroyed it may be renewed on payment of a fee not exceeding 1*s.* for each such certificate and each such coupon, and on such terms if any as to evidence and indemnity as the directors of the Company think fit.

10. The certificates for any part of the debenture stock which is unregistered shall for all purposes be deemed to be a negotiable instrument and all the debenture stock referred to in this certificate which is

registered and all interest thereon shall be paid by the company to the registered holder thereof without regard to any equity existing between the company and any prior holder thereof.

11. Any person becoming entitled to any of the debenture stock referred to in this certificate by reason of the death or bankruptcy of a registered holder shall upon such evidence being produced as the directors of the company may from time to time require be entitled to be registered as the holder of such debenture stock or of any part thereof but such registration shall not prejudice any right the company would but for such registration have had against the deceased or bankrupt registered holder.

12. The debenture stock referred to in this certificate and all interest thereon will when the same becomes payable be paid at the registered office of the company. On the payment of the debenture stock the certificate and all outstanding coupons and on payment of any interest the coupons relating thereto must be surrendered to the company. Such interest will be payable on the dates and in accordance with the term specified in the coupons annexed hereto and when such coupons are exhausted the company will if necessary issue fresh coupons for the payment of future interest.

13. Notices may be given in manner directed by the trust deed within mentioned.

FORM OF COUPON TO BE ATTACHED TO ABOVE DEBENTURE STOCK CERTIFICATE (s).

The Company Limited.

Issue of per cent. Debenture stock for £ attached to Debenture Stock Certificate No. for £ Coupon No £ . On the day of 19 unless the debenture stock above referred to shall be sooner paid off and on the surrender of this coupon the Company Limited will pay to the bearer hereof at No. or other the registered office of the said company the sum of £ being six months interest less income tax for the debenture stock to which the above debenture stock certificates relates.

By order of the Board
A.B.
Secretary.

VARIATIONS OF THE THIRD SCHEDULE OF DEBENTURE STOCK DEED WHERE THE STOCK IS PAYABLE TO BEARER.

At the beginning insert this clause—

The bearer of a debenture stock certificate relating to debenture stock which is not registered must deposit such certificate at the registered office of the Company with any proxy deposited by him and at least two

(s) This form may be used where it is desired that the coupon shall be negotiable by itself and apart from the debenture; where this is not desired the form under debentures to bearer *supra*, p. 499, should be adapted.

days before signing any requisition or exercising any of the other powers hereby conferred on him in relation to meetings and he shall only be entitled to exercise such powers on producing a certificate that such deposit has been made (hereinafter called a certificate of deposit). A certificate of deposit shall be given by the Company in every case where such deposit as is herein provided for has been made and shall state the name of the person on whose behalf such deposit has been made and the amount of the debenture stock comprised in the certificate deposited by him. The Company shall retain every debenture stock certificate which has been deposited until the certificate of deposit in relation thereto is surrendered unless the directors of the company are satisfied that such certificate of deposit has been lost or destroyed. Any person acting as a proxy for any other person who has obtained a certificate of deposit must produce such certificate of deposit at every meeting where he so acts.

Add at the end of Clause 15, "or in respect of which he has received a certificate of deposit."

Clause 20. Before the word "holder" omit the word "registered."

The variations in the case of a trust deed for securing debentures are similar, a debenture to bearer being, of course, set out in the Second Schedule, and the necessary alterations being made.

OTHER FORMS FOR DEBENTURE OR DEBENTURE STOCK TRUST DEEDS OR DEBENTURES OR DEBENTURE STOCK CERTIFICATES.

LETTERS PATENT ASSIGNMENT IN TRUST DEED.

(See 7 Ed. 7, c. 23, s. 28 (4) as to filing in the Patent Office.)

The Company as beneficial owner doth hereby assign and transfer unto the said trustees their executors administrators and assigns all that the letters patents specified in the   part of the First Schedule hereto and the full and exclusive benefit thereof and any and every improvement extension or renewal thereof and the right to apply for and take out further patents in relation thereto and all rights powers and benefits to the said invention letters patent and premises belonging To Hold the same unto the said trustees their executors administrators and assigns for all the residue of the respective terms for which the same were granted and any further or other term which may be granted in respect of the same patents or any patents for improvements thereto, add

(1) Power for trustees to grant licences with the consent of the company while it is carrying on its business.

(2) A covenant by the company to pay all fees and royalties now or hereafter payable in respect of said patents and any patents for improvements thereto.

(3) Power to trustees to make such payments on default by the company and that any payments so made are to be repaid with interest by the company and until repayment to be a charge.

PUBLIC HOUSES.

Where part of the security is a public-house or public-houses, there should be a covenant by the company in the following form :—

The Company hereby covenants to conduct its business in a proper manner and at all times to apply for and do all things necessary for obtaining the renewal of every licence enjoyed by it and not to do or omit or suffer anything to be done or omitted on any licensed property which will endanger the licences thereof and to insure all licences in their full value to the satisfaction of the trustees and to apply and treat all money received in respect of any such insurance or by way of compensation for the non-renewal of any licence as part of the specifically mortgaged property.

REGISTERED LAND AND FOREIGN LAND.

Where the property dealt with is registered land, there should be a statutory charge on the register in addition to the trust deed. This will not require any stamp (*t*) where the trust deed is already executed. There will also be a covenant to execute and deliver to the trustees for registration instruments of charge in an approved form. Where foreign land is comprised in the security there should be a covenant by the company

"To forthwith execute and do all documents and things for perfecting the title of the trustees to the property and to furnish the trustees with proper evidence of such documents and things having been done as soon as the same have been executed or done."

SHIPS.

If a ship is comprised in the mortgage, such ship should first be mortgaged and the mortgage registered under the Merchant Shipping Act, 1894 (*u*).

Mortgages of ships are exempted from stamp duties under the Schedule to the Stamp Act, 1891 ; but a debenture charging ships will apparently have to be stamped, where the ships are charged by another document in favour of the debenture-holders (*x*).

GUARANTEE.

Not infrequently some guarantee or other company or person agrees to insure debenture stock or moneys secured by debentures. The insurance companies who do this business usually have their own forms; but the following form may be useful for insertion in a trust deed, the surety being made a party, and it can readily be adapted so as to be indorsed on a debenture in cases where there is no trust deed.

1. The   Company Limited (herein called the sureties) hereby covenants with the trustees that—

(1) If the Company (*y*) shall make default in the payment of any interest under these presents for a period of one month then the sureties shall pay such interest to the holders of the debenture stock or such of

(*t*) Land Transfer Rules, 1903, r. 123.

(*u*) S. 31 *et seq.*, and as to the effect of non-registration, see *Barclay and Co.* v. *Poole*, [1907] 2 Ch. 284.

(*x*) *Deddington Steamship Co.* v. *Commissioners of Inland Revenue*, [1911] 1 K. B. 1078.

(*y*) The company means the company issuing the debentures as, it is assumed, there would be a definition to this effect.

them as are entitled thereto within one month after the trustees shall have demanded payment thereof and

(2) If the Company shall make default in the payment of the debenture stock when the same becomes payable under the provisions of these presents then the sureties shall pay such debenture stock to the debenture stock holders within three months after the trustees shall have demanded payment thereof.

2. It is hereby agreed that as between the Company (*z*) and the sureties the sureties shall be sureties only, but that as between the sureties and the trustees and the debenture stock holders the sureties shall be principal debtors so that the sureties shall not be released by time being given or by any other act or thing which would release them if they were only liable hereunder as sureties (*a*).

The deed will also contain a covenant by the company to pay a premium on the amount guaranteed to the sureties. (The proviso for redemption at the end of the deed will be made subject to the rights of the sureties (*b*).)

If the guaranteeing company reinsures, the risk the reinsurer will usually take will be default by the principal debtor, and not merely a liability to make good any insufficiency in the security; but, even if the latter be the true risk, the re-insurer will not be released by any alteration which was in the contemplation of the parties at the date of the contract of reinsurance, and so where the original guarantors were also trustees with very wide discretion as to realization, the fact that they had gone into liquidation and were realizing under a scheme of arrangement sanctioned by the Court was, on the facts of the case, insufficient to release the re-insurers (*c*).

PRINCIPAL MONEYS REPAYABLE WITH PREMIUM.

In some cases the principal sum is repayable with a bonus, such bonus to be payable in any event together with the principal sum.

(*z*) The company means the company issuing the debentures as, it is assumed, there would be a definition to this effect.

(*a*) Sometimes the demand must be made within a specified time, and the sureties are only liable to pay principal moneys after the realization of the security and the distribution of the proceeds.

(*b*) A scheme of arrangement under s. 120 of the Companies (Consolidation) Act, 1908, as it takes effect by operation of law does not affect the liability of a surety: *London Chartered Bank of Australia*, [1893] 2 Ch. 540; *Re Fitzgeorge*, [1905] 1 K. B. 462; *Re Jacobs* (1875), 10 Ch. 211; see, however, *Mortgage Insurance Co.* v. *Pound* (1896), 65 L. J. (Q. B.) 129, which depended on the fact that the company, instead of paying under the original arrangement paid on the footing of the new arrangement. On such an arrangement being made it is the duty of the surety to pay on the footing of the old arrangement at once, and it is therefore usually the surety who is interested in the new scheme: *Dane* v. *Mortgage Insurance Co.*, [1894] 1 Q. B. 54; *Finlay* v. *Mexican Investment Co.*, [1897] 1 Q. B. 517.

(*c*) *Law Guarantee Trust and Accident Society* v. *Munich Reinsurance Corporation*, [1912] 1 Ch. 138.

In such cases, unlike the cases where the company is given an option to redeem, and has to pay a bonus as the price of such redemption (*d*), the debenture or debenture stock deed will have an *ad valorem* stamp, calculated not only on the money lent, but also on the bonus (*e*). This appears to apply in cases where there is no absolute covenant to pay on a given date, if, when principal moneys become payable, even against the will of the company, *e.g.* by a winding-up order, the premium is payable. The debenture stock deed would in such case be varied by inserting in the first recital after the words "payment of the same" and in clause 2 after the words "the amount of the debenture stock then registered in his name," the words "together with a premium of £5 per cent. thereon." Clause 3, by inserting the word "premiums" before the word "interest" at the beginning. Clause 11 (1) and (3) by adding the words "and the premiums thereon" after the words "debenture stock," and the words "and premiums" after the words "debenture stock" wherever these words occur before the words "and the interest" in the provisos to the clause and clause 23 by inserting the words "all premiums and" before the words "interest thereon at the rate aforesaid."

In the conditions endorsed at the back of the debenture stock certificate (schedule 2) condition 2 add at the end "together with a premium of £5 per cent. per annum," and add the same words in clause 3 after the words "The debenture stock will become payable." Condition 5 between the words "and all" and the word "interest" on the first line insert the words "premiums and."

Similarly the registered debenture above given would be varied by striking out of clause 1 the words "the sum of £ " and substituting the words "the sum of £ being the principal moneys hereby secured together with a premium of £ ."

The interest payable under clause 2 would be payable on the principal moneys only. Condition 6 of the endorsed conditions would be varied by inserting the word "premiums" after the words "principal moneys" and the same remark applies to condition 8.

Similar alterations will be made in debenture trust deeds, etc.

Where the redemption is optional, the variations will be the same, except that in clause 2 of the trust deed and clause 1 of the debenture, the variation will be "and any premium which may be payable as hereinafter provided."

Clause 4 of the debenture stock deed will be split into two by inserting a new clause in the following form :—

"The Company may at any time [after the day of 19] give to the debenture stock holders six months notice of its intention to pay off the debenture stock and the debenture stock shall become payable with a premium at the rate of £ per cent. on the expiration of such

(*d*) *Knight's Deep* v. *Inland Revenue*, [1900] 1 Q. B. 217.

(*e*) *Rowell* v. *Inland Revenue*, [1897] 2 Q. B. 194.

notice;" and by commencing the second of the two clauses into which clause 4 is to be split as follows: "The debenture stock will be payable on the happening of any one of the following events" and will continue as in clause 4 except that at the end will be added the following words: "Provided always that such debenture stock shall be payable with a premium at the rate of £ per cent. if the company shall go into voluntary liquidation for the purpose of amalgamation of reconstruction (*f*). Condition 9 of the debenture will be varied by inserting a new condition enabling the company to pay off the debentures at £ on giving notice" and by inserting at the end the following words: "Provided always that the principal moneys shall be payable with a premium at the rate of £5 per cent. if the company shall go into voluntary liquidation for the purpose of amalgamation or reconstruction."

Condition 2 of the debenture stock certificate would be split up and varied so as to make it accord with clause 4 of the trust deed.

POWER TO COMPANY TO REDEEM DEBENTURES TO BE ASCERTAINED BY DRAWINGS.

Not infrequently there are clauses requiring or enabling the company to redeem a certain number of the debentures of a series, the particular debentures to be redeemed are in such case usually ascertained by drawings, and sometimes provisions for a sinking fund are added (*g*). Even when the particular debentures drawn are to be repaid at a premium, and the other debentures are to be paid off at par, it is not thought that the scheme is bad as infringing the Lottery Acts (*h*). The premium would appear rather the price which the company pays to the debenture-holder for any inconvenience he may suffer by their drawing the debenture than a prize given to such debenture-holder. The following forms may be used for the purpose:—

1. The Company may redeem debentures of this issue in the year [or on the day of] and in each subsequent year it may redeem a like number of such debentures and also a number of such debentures equal to the number which it could have redeemed under this condition in any previous year or years but did not then redeem. Each debenture redeemed under this condition shall be redeemed at £ (*i*). All debentures redeemed hereunder shall be redeemed on one of the half-yearly days hereby fixed for payment of interest.

(*f*) The Stock Exchange authorities require this proviso where a quotation is desired, but if the company is given a power to redeem its debentures, etc., at par at any time then the proviso may be so drawn as not to apply at such time.

(*g*) If there are coupons attached to such debentures they should provide that interest shall only run "until the principal moneys are paid or this debenture is drawn for redemption, but subject nevertheless to the conditions in the debenture contained."

(*h*) See *supra*, p. 468.

(*i*) Where redemption is to be compulsory, substitute for this clause the following, "The company shall redeem debentures of this

2. Whenever any such redemption is to be made the Company shall give notice by advertisement in one London daily morning paper stating the number of debentures to be redeemed (*k*), the date and time when the drawing is to be held under the provisions hereinafter contained, and the date for redemption. Such notice shall appear not less than fourteen days before the day fixed for holding any drawing.

3. The particular debentures to be redeemed in each year shall be determined by drawings and all such drawings shall be held at the registered office of the Company in the presence of a notary public and any holder of an undrawn debenture of this issue may on producing such debenture attend. Every drawing shall be held at least one calendar month before the date of redemption of the debentures then drawn and immediately after any drawing has taken place notice will be given in a London daily morning paper of the numbers of the debentures drawn for redemption.

4. A debenture may at any time after it has been drawn for redemption be deposited [with all outstanding coupons] (*l*) for examination at the registered office of the Company and the Company shall on the date fixed for redemption or on the expiration of seven days after the date of such deposit whichever shall last happen pay to the holder of such debenture on demand the principal moneys thereby secured and all arrears of interest and from the date fixed for the redemption of any debenture all interest in respect of such debenture shall cease except that in the event of the company failing to make such payments as aforesaid interest shall continue from the date of such default until the time of actual payment (*m*).

5. Where the Company has redeemed or acquired any debentures of this issue it shall not have power to keep such debentures alive nor shall it have power to re-issue such debentures either by re-issuing the same or by issuing other debentures in their place (*n*).

1. SINKING FUND CONDITION.

(1) The Company shall in each year [after the year 19] set aside [out of the profits made by it in such year] a sum of £ [and if in any year the profits shall not be sufficient then the difference between the amount actually set aside in such year and the said sum of £

issue at £ each on the day of 19 and a like number at a like price on the day of and the day of in each succeeding year until the day of 19 when all the debentures of this issue then outstanding shall be redeemed at par."

(*k*) Omit the words "the number of debentures to be redeemed" where the company is bound to redeem a specified number.

(*l*) Omit the words in brackets where there are no coupons.

(*m*) As to payment of interest, see *Gordillo* v. *Weguelin* (1877), 5 C. D. 287.

(*n*) This clause is put in to meet s. 104 of the Companies (Consolidation) Act, 1908, it is probably unnecessary where the company is bound to redeem, for there is "an obligation on the company so to do," *i.e.* to redeem "not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns," but it is usually desirable to have such a clause where there are provisions for drawings, and often in other cases.

shall be made good out of the profits of succeeding years] such sum and also any sums set aside and invested under this provision in previous years shall be applied in purchasing any debentures at any price not exceeding £ each at which the Company may be able to acquire them and in paying off any debentures which the company may at any time be able to redeem under the provisions hereof. Any moneys which at any time cannot be so applied as aforesaid may pending such application be invested by the Company in the names or under the legal control of the trustees in any investment in which trustees may by law be entitled to invest or may be left on deposit at any bank—and the company shall until the principal moneys hereby secured become payable be entitled to receive the income from and from time to time to vary any such investment for others of a like nature (*o*).

(2) The Company shall not be entitled to reissue any of the debentures which it has purchased or redeemed under this clause.

POWER TO APPOINT A RECEIVER (*p*).

The holder or holders of not less than two-thirds of the debentures of this issue shall have power at any time after the principal moneys hereby secured become payable by writing under his or their hand or hands to appoint a receiver and to remove any such receiver and to appoint another in his place and to fix the remuneration of any such receiver provided always that any such receiver shall be the agent of the Company: and the company alone shall be responsible for his acts and defaults.

A receiver appointed under the foregoing power shall have the following additional powers.

(1) Power to take possession of all or any part of the property and assets hereby charged.

(2) Power to carry on the business of the Company in such manner as he shall in his discretion think proper.

(3) Power without any further notice to exercise the power of sale or the other powers and authorities conferred on a mortgagee by sections 19, 21, and 22 of the Conveyancing and Law of Property Act 1881 and the provisions of the Conveyancing Act 1911 amending the same and so that all the provisions of those sections relating to any of the matters aforesaid shall with the necessary variations apply as though the same were hereby incorporated.

(4) Power to enter into any compromise or arrangement which he may consider expedient (*q*).

(*o*) Where there is a trust deed this covenant should be in such deed, and the money may be paid to the trustees, and the moneys invested will be treated as part of the specifically mortgaged property; see *National Trust Co.* v. *Whicher* (1912), 106 L. T. 310. From which it would appear that where debentures are to be redeemed by tender, regard must be had in most cases to the number offered as well as to the price asked; and so it will be unnecessary to accept a tender which will interfere with the purchase of a larger number of bonds, even at a slightly higher price.

(*p*) The wisdom of having such a power as this is somewhat doubtful. It sometimes deters the Court from appointing a receiver. The fact that the debenture-holders are carrying on the business of the company is a ground for winding-up in some cases: *Re Chic*, [1905] 2 Ch. 345; *Re Alfred Melson*, [1905] 2 Ch. 841, and though the Court will allow such a receiver to take possession after winding-up, it is doubtful if he can, after winding-up, carry on the business of the company: *Henry Pound, Son and Hutchins* (1889), 42 C. D. 402, and see *supra*, pp. 472 and 473, where the question is discussed.

(*q*) This authorizes the receiver to borrow: *Robinson Printing Co.* v. *Chic*, [1905] 2 Ch. 123.

(5) Power subject to the provisions hereinbefore contained to exercise without any further consent all the powers and authorities conferred on a receiver appointed under the powers conferred by the Conveyancing and Law of Property Act 1881.

All moneys received by the receiver shall subject to the payment thereout of (1) the preferential debts referred to in section 209 of the Companies (Consolidation) Act 1908 and (2) all payments having priority to the charge hereby created which may be payable thereout and (3) all costs charges and expenses incurred by him in the exercise of the powers aforesaid and (4) any remuneration payable to such receiver be applied in payment of the principal moneys and interest secured by the debentures of this issue *pari passu.*

MAJORITY POWERS IN DEBENTURE.

The holders of three-fourths of the debentures of this issue for the time being issued and outstanding may by writing under their hands release or modify the rights of the debenture-holders or enter into any compromise or arrangement which the Court could sanction under section 120 of the Companies (Consolidation) Act 1908 if the same had been sanctioned by the statutory majority and every such release modification compromise or arrangement shall be binding on all the debenture-holders of this issue (*r*).

PARTLY PAID DEBENTURES.

Sometimes debentures are issued before payment in full of the sum thereby secured has been made in such case a debenture (in the form of the registered debenture above given) will require the following modifications (*s*).

Clause 1. Add after the words "the sum of £ " the words "or other the amount paid up in respect of this debenture."

Clause 2.—Substitute for the words "the sum of £ " the words "the amount for the time being paid up in respect of this debenture" and insert after condition 1 endorsed on the debenture the following conditions—

1. The registered holder of this debenture shall pay to the company in respect of the principal sum of £ to be hereby secured the following sums at the following dates that is to say:—

£ on application
£ on allotment
£ on the day of 19

and the balance of £ as and when called up—but so that fourteen days' notice of each call shall be given and that no call shall be for a greater amount than £ or be made within one calendar month after the last preceding call. The Company will endorse on this debenture a note of each payment when the same is made.

(*r*) Such a clause will only be necessary in cases where there is no trust deed, as trust deeds almost invariably contain full provisions dealing with this matter.

(*s*) Formerly specific performance of such a contract could not be: *South African Territories* v. *Wallington*, [1898] A. C. 309; but now specific performance of such a contract can be granted, Companies (Consolidation) Act, 1908, s. 105; in addition to the above alterations it may be desirable to give the company power to decline to register transfers of partly paid shares.

2. If before or on the day appointed for payment of any call or instalment the registered holder of this debenture does not pay the same he shall be liable to pay interest on such sum at the rate of 6 per cent. per annum from the date fixed for payment until the time of actual payment and the directors of the company may at any time before such default is made good give notice requiring him to make such payment within seven days from the date when such notice is given and stating that if such payment is not then made the directors of the company may forfeit this debenture and if such payment is not then made such directors may declare this debenture to be forfeited and thereupon this debenture and all sums paid up thereon shall be forfeited but the person who was the registered holder hereof before forfeiture shall remain liable to pay to the Company all calls instalments interest and other moneys presently payable in respect of this debenture before forfeiture.

Not infrequently the same result is arrived at by issuing scrip or provisional certificates usually payable to bearer (*t*), which can be exchanged for debenture or debenture stock when all instalments have been paid, and sometimes a letter of allotment (in a similar form to that given above for shares) is used instead of a scrip certificate. Such letter of allotment should state the dates when the different instalments become payable. It is, however, obvious that these methods have their disadvantages unless a charge is given by some document other than the debenture, as it may well be that if the company goes into liquidation before the final instalment is paid the scrip or allotment letter holders will find themselves to be mere unsecured creditors (*u*), and there may be difficulties under section 212 of the Act if the company goes into liquidation within three months of the debentures being issued. If a charge is given it will certainly have to be registered, and it may be that it will also have to be stamped in addition to the debentures. These last difficulties are to a considerable extent lessened where there is a trust deed; but in other cases partly paid debentures or debenture stock are preferable, except possibly in bearer cases where the specific performance difficulty arises.

FORM OF SCRIP CERTIFICATE (*x*).

The Company Limited.

Issue of £ 5 per cent. debenture stock No. £

This is to certify that the sums of £ and £ having been paid on application for and allotment of pounds of the above-mentioned debenture stock the bearer of this certificate will be entitled to that amount

(*t*) It is obvious that where scrip certificates are payable to bearer, there may be considerable difficulty about obtaining specific performance. Where there is a trust deed it is not unusual to have the form of the scrip certificate, in a schedule thereto. Scrip certificates to bearer are negotiable instruments: *Rumball* v. *Metropolitan Bank* (1877), 2 Q. B. D. 194. Possibly the form of scrip certificate secondly set out below, though not a usual form, may be of use in getting over the difficulty as to specific performance.

(*u*) Cp. *Jackson* v. *Bassford*, [1906] 2 Ch. 467, at pp. 476 and 477.

(*x*) This will bear a 1*d*. stamp: Stamp Act, 1891, Schedule, tit. Scrip Certificate; see also s. 79; but see *ante*, p. 487.

of such debenture stock on payment to the company of the instalments due thereon as under that is to say: £ on the day of 19 £ on the day of 19 and £ on the day of 19 . Payment in full may be made at any time under discount at the rate of £ per cent. per annum. In case of default in payment of any instalment on its due date the person in default will be liable to pay interest at the rate of £ per cent. per annum from such date until the date of payment and such default will entitle the company to cancel the allotment of the debenture stock to which this certificate refers and to forfeit any instalments paid.

At any time after the final instalment has beeen paid this scrip certificate together with all bankers receipts may be lodged at the registered office of the company and on the expiration of one week from the time when the same have been so lodged the company will register £ of the said debenture stock in such name or names as the bearer or bearers hereof may direct and will issue a certificate in respect of the same.

Interest at the rate of £ will be paid on the 19 and on every subsequent and on the various instalments from the last date of payment of interest or in the case of any instalment on which no previous interest has been paid from the date when such instalment became due.

The debenture stock is secured by a trust deed dated constituting a fixed charge on all the freehold and leasehold property of the company and a floating charge on all the rest of its undertaking and assets including its uncalled capital for the time being: the company may redeem the debenture stock at any time by giving six calendar months notice of its intention so to do and the debenture stock becomes payable on the earlier happening of the events specified in the trust deed.

Dated

For the Company Ltd. Director.

Secretary.

Received on the day of £ being the first instalment due on the debenture stock mentioned in the above scrip certificate.

Secretary.

Then will follow the other receipts on the same form. These receipts do not require a stamp (*y*).

ALTERNATIVE FORM OF SCRIP CERTIFICATE (*z*).

The A.B. Company, Ltd.

No. Provisional Scrip Certificate.

This is to certify that A.B. of in the county of will on paying the following instalments that is to say the sum of £ on the day of and the sum of £ on the day of be entitled to debentures (numbered to) of an issue of 300 debentures of £100 each about to be made by the abovementioned Company, and that in the mean time he is entitled to interest

(*y*) *London and Westminster Bank*, [1900] 1 Q. B. 166.

(*z*) The trust deed or debentures must be registered.

at the rate of 5 per cent. per annum on the sum of £ which as the Company doth hereby acknowledge he has already paid in respect of such debentures as from the day of 19 and on the said instalments as from the date when the same are respectively paid. This certificate is issued subject to and with the benefit of the conditions endorsed hereon.

Given under the Common Seal of the Company this , day of 1911, in the presence of

} Directors.

Secretary.

THE CONDITIONS WITHIN REFERRED TO.

1. All persons to whom scrip certificates for debentures of the issue within referred to have been issued will subject as hereinafter provided be entitled to the same rights in respect of the sums actually paid by them respectively in respect of the debentures of such issue mentioned in their respective scrip certificates as though such debentures had actually been issued (*a*).

2. The said A.B. (hereinafter called the scrip-holder) shall pay each of the instalments payable in respect of any of the debentures numbered to (hereinafter called the debentures) as and when the same becomes due and if any such instalment is not paid on its due date then the Company may at any time before such instalment is paid give the scrip-holder notice in writing requiring him to pay such instalment within seven days from the date when such notice is given and stating if such instalment is not then paid the directors of the Company may forfeit the rights conferred by or mentioned in this certificate and if such payment is not made by such date such directors may accordingly declare all rights conferred by or mentioned in this certificate to be forfeited and thereupon such rights shall be forfeited—but such forfeiture shall not relieve the scrip-holder from his liability to pay such instalment and all further instalments payable hereunder as and when such further instalments become due.

3. If the scrip-holder at any time while he is not in arrear with the payment of any instalment shall desire to renounce his right to the debentures or any of them then he shall leave at the registered office of the Company (1) this certificate and (2) a letter of renunciation showing the distinctive numbers of the debentures he proposes to renounce and signed by him and containing an agreement signed by the person in whose favour such renunciation is made to pay all instalments which shall thereafter become payable in respect of such of the debentures as are so renounced as and when the same become due and thereupon the Company shall cancel this certificate and shall issue such fresh certificate or certificates as may be necessary for showing what rights the person renouncing and the person in whose favour the renunciation is made respectively

(*a*) Condition 1 should be omitted where there is a trust deed, and the trust deed should be referred to. There will be clauses in the trust deed giving scrip-holders a charge.

have to any of the debentures provided always that nothing in this clause contained and nothing done hereunder shall in any way relieve the scrip-holder from liability to pay any instalments in respect of any of the debentures the right to which he has renounced.

4. Any person acquiring any rights in manner mentioned in the last preceding condition hereof shall take the same free from all equities existing between the Company and any person previously entitled to such rights.

5. The scrip-holder may pay any instalments before the same become due and interest on any sum so paid shall run as from the date of such payment.

6. On payment of any instalment in respect of any of the debentures within mentioned the secretary of the Company or some other person authorized by the directors of the Company in that behalf shall endorse hereon a note of such payment.

7. All instalments and interest shall be paid to and by the Company at its registered office and this certificate shall when all instalments in respect of the debentures have been paid be exchangeable for the debentures at such registered office.

8. All notices to be given by the Company to the scrip-holder shall be given to him by letter sent through the post to him at some address to be supplied by him for the purpose or if he has given no such address at his within-mentioned address and any such notice shall be deemed to have been duly given within twenty-four hours from the time when the envelope containing the same was put into the post office (*b*).

FORM WHERE DEBENTURES ARE TO BE EXCHANGEABLE FOR SHARES.

The registered holder of this debenture shall be entitled at any time before the day of 19 to exchange this debenture for fully paid ordinary shares in the capital of the Company (*c*).

FORM EMPOWERING DEBENTURE-HOLDERS TO APPOINT DIRECTORS OF THE COMPANY (*cc*).

The holders of a majority of the debentures of this issue may appoint two directors of the Company and they shall be entitled at all times before the principal moneys hereby secured are paid to fill up any vacancy in the office of any director so appointed. The holders of three-fourths

(*b*) If there is a trust deed it will be enough to provide that notices may be given in manner given by the trust deed. In such case it will often be convenient instead of indorsing conditions to set them out in the trust deed, and to have a reference on the face of the scrip certificate to the trust deed.

(*c*) Such a clause is bad, where the debenture-holder is paying for his debenture a less sum than the par value of the shares he is to get in exchange for his shares: *Mosely v. Koffyfontein Mines*, [1904] 2 Ch. 108; it may, however, be good where the exchange can only be effected at a future date: *ibid.*, 120.

(*cc*) Provisions in the articles will also be necessary, see *supra*, p. 131.

of the said debentures may remove any director so appointed (*d*). The Company shall pay every such director by way of remuneration a sum calculated at the rate of £   per annum.

POWER OF DEBENTURE-HOLDERS TO VOTE AT MEETINGS OF THE COMPANY (*e*).

Except upon the passing or confirmation of a special or extraordinary resolution each debenture-holder shall be entitled at every meeting of the company to   votes for every debenture held by him.

REGISTRATION OF MORTGAGES AND CHARGES.

The Companies Act, 1900, introduced certain provisions as to registration of mortgages or charges, these provisions were altered to a certain extent by the Act of 1907, and as so altered have been incorporated in the Consolidation Act. The provisions of the Act of 1900 apply to mortgages and charges created after the 1st of January, 1900, the provisions of the later Acts apply to mortgages and charges created after the 1st day of July, 1908 (*f*). None of these provisions apply to Scotland. A certain amount of difficulty has arisen as to what is the date of the "creation" of a charge on the one hand, Buckley, J., has held (*g*) that the date when the seal of the company is affixed to the debentures or a debenture trust deed is not the date when the charge is created. On the other hand, Joyce (*h*) and Neville, JJ. (*i*), have held that that is the date. According to the former view, which is, it is submitted, the preferable view, the date of the actual issue of the debenture is not necessarily the

(*d*) Where there is a trust deed, this power should be conferred on a meeting. The articles of the company must, of course, also deal with the point.

(*e*) The articles of the company must likewise deal with this point. It is not thought that even now persons other than members can vote on special or extraordinary resolutions, for "members" only can under s. 69 of the Act of 1908, vote, though "persons entitled by the articles to a vote may demand a poll." This last expression first occurs in the Companies Act, 1907. It seems to have arisen from a recommendation of the Company Law Committee who reported in 1906 (see their report, paragraph 62), the committee apparently did wish to enable debenture-holders to vote where the articles of a company allowed it, but the Act does not seem to carry out this intention. The point is sometimes met by giving debenture-holders shares of a farthing each with voting powers.

(*f*) Companies Act, 1900, s. 34; Companies Act, 1907, s. 52, and Companies (Consolidation) Act, 1908, s. 93.

(*g*) *Abrahams and Sons, Ltd.*, [1902] 1 Ch. 695; *Harrogate Estates, Ltd.*, [1903] 1 Ch. 498; *N. Defries & Co.*, [1904] 1 Ch. 37; in *I. C. Johnson, Ltd.*, [1902] 2 Ch. 101, the point was not argued before the Court of Appeal, and it does not appear from the report when the debentures there in question were sealed.

(*h*) *Spiral Globe* (*No.* 2), [1902] 2 Ch. 209.

(*i*) *New London and Suburban Omnibus*, [1908] 1 Ch. 621. S. 93 (3) of the Consolidation Act seems to make it clear that this decision and the one cited in the preceding note would not be law in cases of registration under that Act, and to throw doubt on the decisions themselves.

date when the charge is created, it would be enough that the money had been lent pursuant to an agreement that it should be secured by debentures; under such an agreement either a present equitable charge is given, in which case immediate registration is necessary, or a charge is to be given when called for, in which case the holder runs the risk of his security being a fraudulent preference or being avoided by section 212 of the Act (*k*).

The Consolidation Act (*l*) then provides that every mortgage or charge created (*m*) after the 1st day of July, 1908, which is either—

(1) a mortgage or charge for the purpose of securing any issue of debentures; or
(2) a mortgage or charge on uncalled share capital of the Company; or
(3) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or
(4) a mortgage or charge on any land, wherever situate or any interest therein (*n*); or
(5) a mortgage or charge on any book debts of the Company; (*o*) or
(6) a floating charge on the undertaking or property of the Company;

shall, so far as any security on the Company's property (*p*) or undertaking is thereby conferred, be void against the liquidator and any creditor of the Company, unless the prescribed (*q*) particulars of the mortgage or

(*k*) *Jackson* v. *Bassford, Ltd.*, [1906] 2 Ch. 467; and see *N. Defries & Co.*, [1904] 1 Ch. 376, where unregistered debentures were cancelled, and fresh ones issued in exchange were held entitled to register within the twenty-one days; and *Renshaw & Co.*, [1908] W. N. 210, where there was an agreement to issue fresh debentures during each succeeding period of fourteen days, and debentures so issued, and which had been registered, were held to be valid in the hands of a purchaser for value without notice, to whom they had been transferred after the liquidation of the company had commenced.

(*l*) Companies (Consolidation) Act, 1908, s. 93.

(*m*) A mortgage will be created for the purposes of this section where property purchased by a company and paid for out of its own moneys is subsequently conveyed to the trustees of an existing covering deed on their repaying such money to the company: *Cornbrook Brewery* v. *Law Debenture Corporation*, [1904] 1 Ch. 103; but not where there is a conveyance direct from the vendor to the trustees: *Bristol United Breweries* v. *Abbot*, [1908] 1 Ch. 279.

(*n*) These words were not contained in the 1900 Act.

(*o*) These words were not contained in the 1900 Act, but a charge or assignment of all a company's book debts, would usually be a floating charge: *Illingworth* v. *Houldsworth*, [1904] A. C. 355.

(*p*) The section only applies to mortgages or charges on the company's property, and not to mortgages or charges on property in which the company may have an interest in certain events which have not happened at the date of the mortgagee's claim: *Law, Car, and General Insurance Corporation*, [1911] W. N. 90 and 101.

(*q*) *I.e.* prescribed by the Board of Trade Companies (Consolidation) Act, 1908, s. 285. For forms of such particulars, see *post*, p. 541.

charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the Registrar of Joint Stock Companies for registration in manner required by the Act within twenty-one days after the date of its creation. These provisions are without prejudice to any contract or obligation for repayment of the money secured by the charge and when a mortgage or charge becomes void under this section the money secured thereby immediately becomes payable (*r*).

These provisions are, however, modified by the following provisions :—

(i) In the case of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the Registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed (*s*) manner, has the same effect for the purposes of the section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post and if despatched with due diligence have been received in the United Kingdom is substituted for twenty-one days after the date of the creation of the mortgage or charge as the time within which the particulars and instrument or copy are to be delivered to the Registrar of Joint Stock Companies. The copy of the instrument by which the mortgage or charge is created or evidenced must under the Order of the Board of Trade of March 29th, 1909, be certified to be a true copy under the seal of the Company or under the hand of some person interested therein, otherwise than on behalf of the company.

(ii) Where the mortgage or charge is created in the United Kingdom but comprises property outside the United Kingdom the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make such mortgage or charge valid or effectual according to the law of the country in which such property is situate (*t*).

(*r*) Under the 1900 Act the charge itself had to be filed within the 21 days; but as was pointed out in *Yolland, Husson, and Birkett, Ltd.*, [1908] 1 Ch. 152, the word "filed" was wrongly used; what the section really meant was supplied or furnished to the Registrar, the 1900 Act, moreover, did not make the principal moneys repayable in case of default.

(*s*) Prescribed by the Board of Trade and Companies (Consolidation) Act, 1908, s. 285.

(*t*) The Act of 1900 contains 14 (2) the following provision in place of these two provisions :— "Where the mortgage or charge "comprises property out of the "United Kingdom it shall so far as "that property is concerned be "sufficient compliance with the re-"quirements of this section if a deed "purporting to specifically charge "such property be registered, not-"withstanding that further pro-"ceedings may be necessary to make "such mortgage or charge valid or "effectual according to the law of "the country in which such property "is situate."

(iii) If a negotiable instrument has been given to secure the payment of any book debts of a Company, the deposit of such instrument for the purpose of securing an advance to the Company is not for the purpose of the section to be treated as a mortgage or charge on those book debts; and the holding of debentures entitling the holder to a charge on land will not be deemed to be an interest in land (*u*).

The Registrar must keep, with respect to each company, a register in the prescribed form of all such mortgages and charges created by the company after the 1st day of July, 1908, and requiring registration under the section, and must on payment of the prescribed fee (*x*), enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge (*y*).

Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it is sufficient if there are delivered to or received by the Registrar within twenty-one days after the execution of the deed containing the charge, or, if there is no such deed, after the execution of any debentures of the series the following particulars:—

(*a*) the total amount secured by the whole series; and

(*b*) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and

(*c*) a general description of the property charged; and

(*d*) the names of the trustees, if any, for the debenture-holders;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the Registrar must, on payment of the prescribed fee (*x*), enter such particulars in the register (*z*).

Where more than one issue is made of debentures in the series, there must be sent to the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this does not affect the validity of the debentures issued (*a*).

(*u*) There are no similar provisions in the 1900 Act; see *Driver* v. *Broad*, [1893] 1 Q. B. 539, 744, as to debentures which confer a floating charge on land, being an interest in land within s. 4 of the Statute of Frauds.

(*x*) 10*s*. where the amount of the mortgage or charge or as the case may be the total amount secured by the whole series does not exceed £200, £1 in other cases. Order as to fees of March 29, 1909.

(*y*) Companies (Consolidation) Act, 1908, s. 93 (2).

(*z*) For forms of such particulars, *post*, pp. 542 and 543.

(*a*) *Ibid.*, s. 93 (3). For forms of such particulars, *post*, pp. 542 and 543.

Sub-section (3) slightly varies the provisions of the 1900 Act, but the only material difference would seem to be that this sub-section, which in cases which come within it affords an alternative method of registration, gives a limit of time within which there must be registration, while under the corresponding section of the Act of 1900, registration of a trust deed to secure debentures (*b*), or debenture stock (*c*), or of a series of debentures (*d*) could be made at any time, but only those debentures or that part of the debenture stock which had been created either within the twenty-one days preceding such registration or after such registration were protected (*e*), now it would appear that registration would protect the whole series. It will be observed that in this clause the twenty-one days runs not from the date of the creation of the mortgage or charge but from the date of the execution of the deed containing the charge, or, if there is no such deed of any debentures of the series, this wording, coupled with the fact that the sub-section speaks of the resolution authorizing, and not of the resolution creating, the charge, seems to make it clear that under the existing Act, at all events, a mortgage or charge cannot be said to be created by the mere sealing of the debentures, which are to confer the charge, and it would seem to be, at all events, very arguable that it amounts to a statutory reversal of the decisions under the 1900 Act, declaring that the date of sealing was the date of the creation of a mortgage or charge within the meaning of that Act (*f*). An issue of debenture stock can be registered under this provision (*h*).

Where fresh property has been substituted for that originally comprised in the mortgage under powers contained in the trust deed, the registration of the trust deed and other particulars required by this sub-section will be sufficient for the purposes of the section, as only a general description of the property charged is required (*h*).

Where any commission allowance, or discount has been paid or made, either directly or indirectly, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of a company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required for registration under the section include particulars as to the amount or rate per

(*b*) *Harrogate Estates, Ld.*, [1903] 1 Ch. 498.

(*c*) *Cunard Steamship Co.*, [1908] 2 Ch. 564.

(*d*) *Yolland, Husson and Birkett, Ltd.*, [1908] 1 Ch. 152.

(*e*) *Harrogate Estates, Ltd.*, [1903] 1 Ch. 498.

(*f*) *Supra*, pp. 534 and 535.

(*h*) *Cunard Steamship Co.* v. *Hopwood*, [1908] 2 Ch. 564.

cent. of the commission, discount, or allowance so paid or made, but an omission to do this does not affect the validity of the debentures issued.

The deposit of debentures as security for any debt of the company is not for the purposes of this provision an issue of the debentures at a discount.

The Registrar gives a certificate under his hand of the registration of any mortgage or charge registered in pursuance of the section, stating the amount thereby secured, and the certificate is conclusive evidence (*i*) that the requirements of the section as to registration have been complied with.

The company must cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered; but if any debenture or certificate of debenture stock has been issued before the mortgage or charge was created the company need not endorse on it any such certificate of registration (*k*). It is the company's duty to send to the Registrar for registration, particulars of every mortgage or charge created by the company and of issues of debentures of a series requiring registration under the section, but such registration may be effected on the application of any person interested, and such person will be entitled to recover all fees properly paid to the Registrar on such registration.

The register kept in pursuance of the section is open to the inspection of any person on payment of the prescribed fee (*l*) not exceeding one shilling for each inspection. Every company must keep at its registered office a copy of every instrument creating a mortgage or charge requiring registration under the section; but in the case of a series of uniform debentures, a copy of one of such debentures is sufficient (*m*).

The Registrar of Joint Stock Companies may, on evidence being

(*i*) This certificate is absolutely conclusive even in cases where the Registrar has made a mistake: *Yolland, Husson, Birkett & Co., Ltd.*, [1908] 1 Ch. 152; or has omitted some of the necessary particulars: *Cunard Steamship Co.* v. *Hopwood*, [1908] 2 Ch. 564; in this case, EADY, J., did not think it necessary to order rectification of the particulars, although the date of the resolutions had been omitted; but BUCKLEY, J., did, on a motion to extend the time for registration, order the rectification of the particulars where a wrong date had been given as the date of the resolutions: *Harrogate Estates, Ltd.*, [1903] 1 Ch. 498.

(*k*) These words were not in the 1900 Act; they are apparently designed to meet the difficulty felt in *Spiral Globe* (*No.* 2), [1902] 2 Ch. 209.

(*l*) 1*s*. order as to fees of March 29, 1909.

(*m*) Companies (Consolidation) Act, 1908, s. 93 (4), (5), (6), (7), (8), and (9).

given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and must, if required, furnish the company with a copy thereof (*n*), and he must keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under the Act (*o*).

If any company makes default in sending to the Registrar for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series, requiring registration with the Registrar under the foregoing provisions of the Act, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, will on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues (*p*). And if any company makes default in complying with any of the other requirements of the Act as to the registration with the Registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorized or permitted the default will, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds, unless registration has been effected on the application of some other person (*q*).

Any person who knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock requiring registration with the Registrar of Joint Stock Companies without a copy of the certificate of registration being endorsed upon it will without prejudice to any other liability be liable on summary conviction to a fine not exceeding one hundred pounds (*r*).

(*n*) Companies (Consolidation) Act, 1908, s. 97. For form of statutory declaration, see *post*, p. 544; and for form of memorandum, *post*, p. 546.

(*o*) *Ibid.*, s. 98. For form, see *post*, p. 545. See *post*, p. 554, as to registration of mortgages or charges created before January 1, 1901, and *supra*, p. 474, and *infra*, pp. 566 *et seq.*, as to registration of enforcement of securities, and *supra*, pp. 474 *et seq.*, as to filing of accounts of receivers and managers.

(*p*) Companies (Consolidation) Act, 1908, s. 99 (1).

(*q*) *Ibid.*, s. 99 (2).

(*r*) *Ibid.*, s. 99 (3).

FORM OF PARTICULARS UNDER SECTION 93 (1) OF THE ACT (*s*).

Certificate No. Form No. 47.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

PARTICULARS to be supplied to the Registrar pursuant to section 93 of a mortgage or charge created by the Limited, and being

(*a*) a mortgage or charge for the purpose of securing any issue of debentures ; or

(*b*) a mortgage or charge on uncalled share capital of the Company ; or

(*c*) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale ; or

(*d*) a mortgage or charge on any land wherever situate or any interest therein ; or

(*e*) a mortgage or charge on any book debts of the Company ; or

(*f*) a floating charge on the undertaking or property of the Company.

Strike out the sub-heads (*a*), (*b*), (*c*), (*d*), (*e*), or (*f*), which do not apply.

Presented for filing by

Particulars of a Mortgage or Charge created by the Limited.

(1) Date of the instrument creating or evidencing the Mortgage or Charge and Description thereof (*).	(2) Amount secured by the Mortgage or Charge.	(3) Short particulars of the Property Mortgaged or Charged.	(4) Names (with Addresses and Descriptions) of the Mortgagees or Persons entitled to the charge.	(5) Amount or rate per cent. of the Commission Allowance or Discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the Debentures included in this Return.

Signature,

Designation of position in relation to the Company,

Date,

(*s*) Form 47 prescribed by order of the Board of Trade of 29th March, 1909.

NOTE.—The fees payable on registration of Mortgagees and Charges are as follows:—

Where the amount of the Mortgage or Charge does not exceed £200 ..10*s*.

Where the amount of the Mortgage or Charge exceeds £200..£1.

* A description of the instrument, *e.g.* trust deed, mortgage, debenture, etc., as the case may be, should be given. As to delivery of the instrument, or, in certain cases, a copy thereof, with these particulars, see s. 93 (1) and provisos (i) and (ii).

FORM OF PARTICULARS WHERE THERE IS A SERIES OF DEBENTURES (*ss*).

Certificate No. Form No. 47A.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Particulars to be delivered to the Registrar pursuant to section 93 (3) relating to the Series of Debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture-holders of the said series are entitled *pari passu* created by the Limited.

NOTE.—The deed if any containing the charge must be delivered with these particulars to the Registrar within twenty-one days after the execution of such deed; or if there is no such deed, one of the debentures must be so delivered within twenty-one days after the execution of any debentures of the series.

Presented for filing by

Particulars to be delivered to the Registrar pursuant to section 93 (3) of the Companies (Consolidation) Act, 1908, of a series of debentures created by the Limited.

(1) Total Amount secured by the whole series.	(2) Amount of the present issue of the series.	(3) Dates of Resolutions authorizing the issue of the series.	(4) Date of the Covering Deed (if any) by which the security is created or defined; or, if there is no such Deed, the date of the first execution of Debentures of the series.	(5) General Description of the Property charged.	(6) Names of Trustees (if any) for the Debenture-holders.	(7) Amount or rate per cent. of the Commission, Allowance, or Discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the Debentures included in this Return.

Signature,

Designation of position in relation to the Company,

(*ss*) Form 47A prescribed by order of the Board of Trade of 29th March, 1909.

Section 93 (3) of the Companies (Consolidation) Act, 1908, provides that—

Where a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there are delivered to or received by the Registrar within twenty-one days after the execution of the deed containing the charge, or, if there is no such deed, after the execution of any debentures of the series the following particulars :—

(*a*) The total amount secured by the whole series ; and

(*b*) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined ; and

(*c*) a general description of the property charged ; and

(*d*) the names of the trustees, if any for the debenture-holders ;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the Registrar, shall, on payment of the prescribed fee, enter such particulars in the register ;

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry on the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

NOTE.—The fees payable on the registration of these Particulars are as follows :—

Where the amount of the whole series does not exceed £200. .10*s*.
" " " £200. .£1.

FORM OF PARTICULARS WHERE THERE IS MORE THAN ONE ISSUE OF A SERIES OF DEBENTURES (*a*).

Certificate No. Form 48.

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

THE COMPANIES (CONSOLIDATION) ACT, 1908.

The Limited.

Statement of Particulars as required by sub-section 3 of section 93, when more than one issue is made of Debentures in a series.

NOTE.—Sub-section 3 of section 93 above-mentioned provides—

(1) For registration of particulars of the entire series (for which purpose Form No. 47A must be used), and

(2) When there is more than one issue of Debentures of the series, for the registration of the amount and date of each issue (for which purpose this Form No. 48 must be used.)

Presented for filing by

Particulars of an Issue of Debentures made by the Limited.

To be entered on the Register pursuant to section 93 (3) of the Companies (Consolidation) Act, 1908.

(*a*) Form 48 prescribed by order of the Board of Trade of 29th March, 1909.

(1) Date of present issue.	(2) Amount of present issue.	(3) Particulars as to the amount or rate per cent. of the commission, allowance, or discount (if any) paid, or made, either directly or indirectly, by the Company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the Debentures included in this Return.

Signature,

Designation of position in relation to the Company,

Date,

Section 93 (3) of the Companies (Consolidation) Act, 1908, provides *inter alia*, that—

Where more than one issue is made of Debentures in the series, there shall be sent to the Registrar for entry on the register particulars of the date and amount of each issue.

DECLARATION AS TO SATISFACTION OF MORTGAGE OR CHARGE (*b*).

No. of Certificate _____ Form No. 49.

COMPANIES (CONSOLIDATION) ACT, 1908.

DECLARATION VERIFYING MEMORANDUM OF SATISFACTION OF MORTGAGE OR CHARGE TO BE ENTERED ON THE REGISTER PURSUANT TO SECTION 97.

The ____________________

____________________ Limited,

We, __________ of __________, a Director of the above-named Company, and __________ of __________, the Secretary of the above-named Company, solemnly and sincerely declare that the particulars contained in the Memorandum of Satisfaction annexed hereto and dated _______, are true to the best of our knowledge, information and belief.

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

Declared at __________

the _____ day of __________
one thousand nine hundred and ______
before me,

____
A Commissioner for Oaths.

Presented for filing by ____________________

(*b*) Form 49 prescribed by order of the Board of Trade of 29th March, 1909. For form of memorandum of satisfaction, see *post*, p. 546.

FORM OF REGISTER OF MORTGAGES AND CHARGES TO BE KEPT BY THE REGISTRAR. (a)

Certificate No. . No. 91.

REGISTER OF MORTGAGES AND CHARGES, AND OF MEMORANDUMS OF SATISFACTION OF THE , LIMITED.

(1)	(2)	(3)	(4)	(5)	(6)	Particulars relating to the issues of Debentures of a series.							(13)	(14)	(15) Receiver or Manager.	
						(7)	(8)		(9)	(10)	(11)	(12)				
Date of Registration.	Serial Number of Document on File.	Date of Creation of each Mortgage or Charge and Description thereof.	Amount secured by the Mortgage or Charge	Short particulars of the Property Mortgaged or Charged.	Names of the Mortgagees or Persons entitled to the Charge.	Total Amount Secured by a series of Debentures.	Date and amounts of each issue of the series. Date.	Amount.	Dates of the Resolutions authorizing the issue of the series.	Date of the Covering Deed.	General Description of the Property Charged.	Names of the Trustees for the Debenture Holders.	Memorandums of Satisfaction. Amount.	Amount or Rate per cent. of the Commission, Allowance or Discount.	Name and Date of Appointment.	Date of ceasing to act.
			£			£		£					£			

(a) Form 91 prescribed by Order of the Board of Trade of 29th March, 1909.

MEMORANDUM OF SATISFACTION OF MORTGAGE OR CHARGE (*ss*).

The ____ Limited hereby gives notice that the (*a*)________________ dated the ______ day of ________ one thousand nine hundred and ________, and created by the Company for securing the sum of £________ was satisfied to the extent of £____________ on the ______ day of ____________ 19 .

(*a*) Insert here "mortgage" or "charge," "debentures" or "debenture stock," as the case may be.

In witness whereof the common seal of the Company was hereunto affixed the ______ day of ____________ one thousand nine hundred and ______ in the presence of

______________________ Directors.

____

______________________ Secretary.

FORM OF REGISTRAR'S CERTIFICATE WHERE THERE HAS BEEN REGISTRATION UNDER SECTION 93 (1) OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (*t*).

CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE.

Pursuant to section 93 (5) of the Companies (Consolidation) Act 1908 (8 Edw. VII. c. 69).

I hereby certify that a Mortgage or Charge (*u*) dated the day of one thousand nine hundred and and created by Limited for securing the sum of (*x*) was this day registered pursuant to section 93 of the Companies (Consolidation) Act 1908.

(*ss*) See *supra*, p. 544.

(*t*) This is the common form of certificate (69 (*a*)) issued by the Registrar where registration is effected under s. 93 (1) of the Act. There are three other forms varying this form, namely, Forms 69 (*b*), (*c*), and (*d*). The differences are mentioned below.

(*u*) The words "a mortgage or charge" are omitted from Form 69 (*b*), which is intended for a security by deposit of title deeds, and from Form 69 (*d*), which is intended for a security on special conditions, *e.g.* money lent on a contingency. The only difference between these two forms is a difference in the size of the spaces left.

(*x*) In Form 69 (*c*) for the words "the sum of" are substituted the words "all moneys now due or hereafter to become due from the company to the on any account whatsoever."

Given under my hand at London this day of one thousand nine hundred and .

Registrar of Joint Stock Companies (*y*).

Companies (Consolidation) Act 1908.

FORMS OF REGISTRAR'S CERTIFICATES WHERE THERE HAS BEEN REGISTRATION UNDER SECTION 93 (3) OF THE COMPANIES (CONSOLIDATION) ACT, 1908.

CERTIFICATE OF REGISTRATION OF A SERIES OF DEBENTURES WHERE THERE IS NO TRUST DEED (*z*).

Pursuant to section 93 (5) of the Companies (Consolidation) Act, 1908 (8 Edw. VII. c. 69).

Application having this day been made for the entry on the register of the particulars required by sub-section 3 of section 93 of the Companies (Consolidation) Act 1908 in relation to a series of debentures (containing a charge to the benefit of which the holders of the said series are entitled *pari passu*) created by Limited and the issue of the series having been authorised by resolution passed on the day of 19 , and one of such debentures having been duly produced I hereby certify that the total amount secured or intended to be secured by the said series is £ and that all the particulars required by sub-section 3 of section 93 of the said Act in relation to the said series have been duly entered on the register.

Given under my hand this day of one thousand nine hundred and .

Registrar of Joint Stock Companies (*a*).

Companies (Consolidation) Act 1908 section 93 (5).

CERTIFICATE OF REGISTRATION OF A TRUST DEED AND SERIES OF DEBENTURES (*b*).

Pursuant to section 93 (5) of the Companies (Consolidation) Act, 1908 (8 Edw. VII. c. 69).

APPLICATION having this day been made for the registration of a Trust Deed dated ______ and executed by the ______________________________

______________________________ Limited, for the purpose of securing the series of debentures hereinafter mentioned, and application having been also made this day for the entry on the Register of the particulars required by sub-section 3 of section 93 of the Companies (Consolidation) Act, 1908, in relation to a series of debentures (containing, or giving by reference to any other instrument, a charge to the benefit of which the debenture-holders of such series are entitled *pari passu*), the

(*y*) Sub-ss. 5 and 6 of the 93rd section of the Act are endorsed, except in Form 69 (*c*), which has no "P. T. O." and no endorsement.

(*z*) This is Form 69 (*e*).

(*a*) On this and each of the succeeding forms of certificate sub-ss. 5 and 6, except the proviso at the end of sub-s. 6 are indorsed

(*b*) Form 69 (*f*).

issue of which was authorized by the said Company by resolution passed on the ______ day of ______ 19___, and the said Trust Deed having been brought in for registration within twenty-one days after its execution, I HEREBY CERTIFY that the total amount secured or intended to be secured by the said Trust Deed and series of debentures is £______ and that the said Trust Deed has this day been registered pursuant to section 93, sub-section 1, of the said Act, and that all the particulars required by sub-section 3 of section 93 of the said Act in relation to the said series have been entered on the register.

Given under my hand at London, this ______ day of ______ one thousand nine hundred and ______.

Registrar of Joint Stock Companies.

Companies (Consolidation) Act, 1908, section 93 (5).

CERTIFICATE OF REGISTRATION OF A SERIES OF DEBENTURES WHERE THERE IS A TRUST DEED (c).

Pursuant to section 93 (5) of the Companies (Consolidation) Act, 1908 (8 Edw. VII. c. 69).

APPLICATION having this day been made for the entry on the Register of the particulars required by sub-section 3 of section 93 of the Companies (Consolidation) Act, 1908, in relation to a series of debentures (containing, or giving by reference to any other instrument, a charge to the benefit of which the debenture-holders of the said series are entitled *pari passu*), the issue of which was authorised by the ______ Limited, by resolution passed on the ______ day of ______ 19___, each debenture of the said series being also entitled to the benefit of a Trust Deed dated the ______ day of ______ 19___, and registered the ______ day of ______ 19___ (and one of the debentures of the said series having been duly produced) I HEREBY CERTIFY that the total amount secured or intended to be secured by the said series is £______ and that all the particulars required by sub-section 3 of section 93 of the said Act in relation to the said series have been this day entered on the Register.

Given under my hand at London, this ______ day of ______ one thousand nine hundred and ______.

Registrar of Joint Stock Companies.

Companies (Consolidation) Act, 1908, section 93 (5).

CERTIFICATE OF REGISTRATION OF A TRUST DEED AND PARTICULARS OF DEBENTURE STOCK (d).

Pursuant to section 93 (5) of the Companies (Consolidation) Act, 1908 (8 Edw. VII. c. 69).

APPLICATION having this day been made for the registration of a Trust Deed dated ______ and executed by the ______

(c) Form 69 (*g*).

(*d*) Form 69 (*h*).

Limited for the purpose of securing the Certificates of debenture stock hereinafter mentioned, and application having been also made this day for the entry on the Register of the particulars required by sub-section 3 of section 93 of the Companies (Consolidation) Act, 1908, in relation to Certificates of debenture stock (containing, or giving by reference to any other instrument, a charge to the benefit of which the debenture stockholders are entitled *pari passu*), the issue of which was authorised by the said Company by resolution passed on the ____ day of ____ 19 , and the said Trust Deed having been brought in for registration within twenty-one days after its execution, I HEREBY CERTIFY that the total amount secured or intended to be secured by the said Trust Deed is £____ and that the said Trust Deed has this day been registered pursuant to section 93, sub-section 1, of the said Act, and that all the particulars required by sub-section 3 of section 93 of the said Act in relation to the said debenture stock have been entered on the register.

Given under my hand at London, this ____ day of ____ one thousand nine hundred and ____.

Registrar of Joint Stock Companies.

Companies (Consolidation) Act, 1908, section 93 (5).

CERTIFICATE OF REGISTRATION OF PARTICULARS OF DEBENTURE STOCK (e).

Pursuant to section 93 (5) of the Companies (Consolidation) Act, 1908 (8 Edw. VII. c. 69).

APPLICATION having this day been made for the entry on the Register of the particulars required by sub-section 3 of section 93 of the Companies (Consolidation) Act, 1908, in relation to Certificates of debenture stock (containing, or giving by reference to any other instrument, a charge to the benefit of which the debenture stockholders are entitled *pari passu*), the issue of which was authorised by the ____ Limited, by resolution passed on the day of 19 , the stockholders being also entitled to the benefit of a Trust Deed dated the day of 19 , and registered the day of 19 (and one of the stock certificates having been duly produced), I HEREBY CERTIFY that the total amount secured or intended to be secured is £ and that all the particulars required by sub-section 3 of section 93 of the said Act in relation to the said debenture stock have been this day entered on the Register.

Given under my hand at London, this ____ day of ____ one thousand nine hundred and ____.

Registrar of Joint Stock Companies.

Companies (Consolidation) Act, 1908, section 93 (5).

A Judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time required by the section, or that the omission or misstatement of any particular with

(e) Form 69 (j).

respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified (*f*).

These applications can, no doubt, be made by originating summons, but, as a matter of fact, they are almost always made by motion, the motion or summons being assigned by ballot to a particular Judge by application in the central office in the ordinary way (*g*). Where the company is the applicant, the application is usually *ex parte*, in other cases the company is made respondent. On a motion to extend the time for registration the Court will not decide whether or no the debenture requires registration (*h*). There must be evidence to show that the omission to register or the misstatement of a particular with respect to the mortgage or charge in question was "accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company or that on other grounds it is just and equitable to grant relief." The evidence consists of an affidavit not infrequently sworn by the secretary of the company.

In *E. F. Beattie & Co., Ltd.* (*i*), an application was granted on the ground of *bonâ fide* belief that registration was not required; in *Bootle Cold Storage Co.* (*k*) on the ground of a misunderstanding of the act and delay of the Stamp authorities; in *Joplin Breweries* (*l*) on the ground that the delay had been caused by the illness of a director; in *Mendip Press* (*m*) on the ground that there had been a misunderstanding of the law; in *Cunard Steamship Co.* (*n*) the application proceeded and was granted on the same ground. The *Tingri Tea Co.* (*o*) was the case of an Indian deed, and the application was made as the persons responsible had no knowledge that registration was required. It is stated in Buckley (*p*) that it is the practice to support the application with evidence that no winding-up order is pending and that no judgment has been recovered against the company and is unsatisfied. In *Tingri Tea Co.* (*q*), which is cited

(*f*) Companies (Consolidation) Act, 1908, s. 96. For forms of Orders see *post*, pp. 552 and 553.

(*g*) *Legal and General Investment Co.*, [1901] W. N. 72. Sometimes they are taken to the winding-up department, and in these cases the winding-up Judge deals with them.

(*h*) *Cunard Steamship Co.* (1908), 99 L. T. 549.

(*i*) [1901] W. N. 152

(*k*) [1901] W. N. 54.

(*l*) [1902] 1 Ch. 79.

(*m*) (1901), 18 T. L. R. 38; see also *T. Almond & Son* (1905), 49 Sol. J. 283.

(*n*) (1908), 99 L. T. 549.

(*o*) [1901] W. N. 165.

(*p*) 9th Edition, p. 255.

(*q*) [1901] W. N. 165.

for this proposition, there was also evidence that no notice of a meeting for the purpose of winding-up had been given, and in *Bootle Cold Storage Co.* (*r*) there was the same evidence, and, in addition, evidence that the company was carrying on business. It has been suggested (*s*) that in a case of sufficient magnitude it may be well to give notice to some of the largest unsecured creditors so as to enable them to be heard, and that the Court may suspend the order so as to enable unsecured creditors to come in and demand payment or security before the order goes. The Court has jurisdiction to make more than one order extending the time for registering a debenture. Joyce, J., made such an order with a view to an appeal in *I. C. Johnson & Co.* (*t*) and it has been done in other unreported cases. The power to extend the time for registering mortgages or charges created between the 1st of January, 1901, and the 1st of July, 1908, and which require registration under the Companies Act, 1900, is preserved by the Interpretation Act, 1889 (*u*).

In *Joplin Brewery Co.* (*x*), Buckley, J., following the analogy of the Bills of Sale Acts, intimated that orders for extension of time for registration of debentures, should be made without prejudice to the rights of parties acquired prior to the time when the debentures are actually registered. This was followed by Eady, J., in *Spiral Globe Co.* (*y*), but he made the order, though a winding-up was in progress. In *S. Abrahams & Co.* (*z*), Buckley, J., declined to make an order as there was a winding-up in progress, and an order qualified in the usual way would, he said, be useless. In this case the only persons who would have been injured by the making of the order were other holders of debentures of the same series as those it was sought to register; these persons were not entitled to benefit by the non-registration of the debentures, for it was part of their contract that such debentures should rank *pari passu* with those held by them, and it is therefore thought that an order in the form of that in *I. C. Johnson & Co.* (*a*) ought to have been made notwithstanding the winding-up. The effect of qualifying an order in this way, is to render it nugatory against unsecured creditors, if a winding-up has commenced before actual registration (*b*). While the company is a going concern, the words qualifying the order will

(*r*) [1901] W. N. 54.

(*s*) *Per* BUCKLEY, J., *Cardiff Workmen's Cottage*, [1906] 2 Ch. at p. 630; see also *Herts and Essex Waterworks Co.*, [1909] W. N. 48.

(*t*) [1902] 2 Ch. 101.

(*u*) *Herts and Essex Waterworks Co.*, [1909] W. N. 48. In this case, owing to the lapse of time from the creation of the charge, EADY, J., made the order subject to the consent in writing of the company's principal creditors being produced.

(*x*) [1902] 1 Ch. 79.

(*y*) [1902] 1 Ch. 39.

(*z*) [1902] 2 Ch. 695.

(*a*) See *I. C. Johnson & Co.*, [1902] 2 Ch. 101. See *post*, p. 553, for this order.

(*b*) *Anglo-Oriental Carpet*, [1903] 1 Ch. 914.

not protect an ordinary creditor who has no charge, and has not issued execution (*c*).

NOTICE OF MOTION FOR EXTENDING THE TIME FOR REGISTERING MORTGAGES OR CHARGES UNDER SECTION 96 OF THE COMPANIES (CONSOLIDATION) ACT, 1908.

IN THE HIGH COURT OF JUSTICE,

Chancery Division.

MR. JUSTICE

In the Matter of the Company Limited,

and

In the Matter of the Companies (Consolidation) Act 1908.

Take notice that this Honourable Court will be moved before his Lordship Mr. Justice on day the day of next at o'clock in the noon or so soon thereafter as Counsel can be heard by counsel on behalf of the above named Company, for an order that the time for filing with the Registrar of Companies the particulars required by section 93 (3) of the above mentioned Act in relation to a series of mortgage debentures issued by the company pursuant to a resolution dated 19 be extended until fourteen days after the date of the order on this motion or that such further or other order may be made in the premises as to this Court may seem meet.

Signed

The Company's Solicitors.

Dated

ORDER EXTENDING THE TIME TO REGISTER INSTRUMENTS OF CHARGE.

(*Title.*)

Upon Motion this day made unto this Court by Counsel on behalf of the above-named Moors' and Robson's Breweries Limited. And upon reading the Affidavit of P. R. filed the 24th April 1909 and the several exhibits therein referred to.

The Court being satisfied that the omission to file with the Registrar of Joint Stock Companies pursuant to Section 14 of The Companies Act 1900 Section 10 of The Companies Act 1907 and Section 93 of The Companies (Consolidation) Act 1908 respectively the several Instruments the particulars whereof are set out in the Schedule hereto (being Mortgages or Charges created by Moors' and Robson's Breweries Limited for the purpose of securing Debenture Stock of the said Company) was due to inadvertence and that it is just and equitable to grant relief doth pursuant to Section 15 of The Companies Act 1900 and Section 96 of The Companies (Consolidation) Act 1908 order that the time for filing with the Registrar of Joint Stock Companies the said several Instruments particulars whereof are set out in the Schedule hereto be extended until the

(*c*) *Ehrmann Bros.*, [1906] 2 Ch. 697; *Cardiff Workman's Cottage*, [1906] 2 Ch. 627.

18th May 1909 and that an Office Copy of this Order be filed with the said Registrar of Joint Stock Companies.

And This Order is without prejudice to the rights of parties acquired prior to the time when the said several Instruments shall be actually Registered.

THE SCHEDULE BEFORE REFERRED TO.

Date of Instrument.	Particulars.
1901, July 19.	Conveyance made between the Y. B. Company, Limited, of the 1st Part, M. J. W. of the 2nd Part, Moors' and Robson's Breweries, Limited, of the 3rd Part, and H. M. and E. R. of the 4th Part.
1901, August 19.	Conveyance between R. M. of the 1st Part, Moors' and Robson's Breweries, Limited, of the 2nd Part, and H. M. and E. R. of the 3rd Part.

[*Re Moor's and Robson's Breweries, Ltd.*, 00167 of 1909. NEVILLE, J., April 27, 1909.]

FORM OF ORDER EXTENDING THE TIME FOR REGISTERING DEBENTURES WHERE SOME OF THE DEBENTURES OF A SERIES HAVE BEEN DULY REGISTERED OR DO NOT REQUIRE REGISTRATION.

FORMAL PARTS.

The Court being satisfied that the omission to register the several debentures of the appellant Company set forth in the schedule to this order within the time required by the Companies Act, 1900, was accidental doth pursuant to the 15th Section of the said Act order that the time for registration of the said debentures be extended until the day of 19 inclusive. Provided always that this order is to be without prejudice to any right (other than the rights in respect of debentures of the said series) which may have been or may be acquired against the holders of the said debentures set forth in the schedule to this order prior to the time when the last-mentioned debentures shall be actually registered, and it is hereby declared that except so far if at all as may be necessary for giving effect to the proviso aforesaid such proviso shall not interfere with the rights of equality among themselves attached to all the debentures of the said series but so that in the event of the debentures set forth in the said schedule being avoided as against parties having any such rights as are preserved by the said proviso none of the holders of the debentures of the said series other than the holders of the debentures set forth in the said schedule shall by reason of such avoidance be required to accept any less share of the assets comprised in his security than he would have taken if there had been no such avoidance.

THE SCHEDULE BEFORE REFERRED TO.

[Here set out particulars of the debentures.]

[*Re I. C. Johnson & Co., Ltd.*, Court of Appeal, May 5, 1902; [1902] 2 Ch. 101, at p. 111.]

Although the whole of the Companies Act, 1907, is repealed by the Companies (Consolidation) Act, 1908, and there is no provision in the latter Act corresponding with section 12 of the former Act, still the Interpretation Act, 1889 (*f*) seems to keep alive the provisions of the section, and the Registrar of Joint Stock Companies would no doubt still register under such provisions, if requested to do so. Under that section it was the duty of every company within three months after the 1st day of July, 1908, to send to the Registrar for registration a statement of the total amount outstanding at that date of the debts of the company secured by mortgages or charges created before that date, which, under the provisions of the Act, would have required registration had they been created on or after the first day of July, 1908, except those already required to be registered under section 14 of the Companies Act, 1900, and the Registrar was bound on payment of the prescribed fee (*g*) to enter those particulars on the register of mortgages and charges.

The neglect of the company to comply with the provisions of this subsection does not prejudice the rights under any such mortgage or charge of any person in whose favour the mortgage or charge was made ; but if the company fail to comply with the requirements of this section, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, will on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues (*h*).

FORM FOR REGISTRATION UNDER SECTION 12 OF THE COMPANIES ACT, 1907 (*hh*).

Certificate No. Form No. 54.

THE COMPANIES ACT, 1907.

○ A 5*s*. registration stamp must be impressed here.

Statement pursuant to Section 12 of the Companies Act 1907 (7 Edw. VII. c. 50) by the Limited.

NOTE.—The person signing must be duly authorized to do so, and must append his official designation or position.

Presented for filing by

This statement must be rendered on or before the 30th September 1908. The penalty for default on the company and its officials and others is £50 for each day during which the default continues.

Statement pursuant to Section 12 of the Companies Act 1907 by the Company Limited of the total amount outstanding on the 1st July 1908 of the debts of the company secured by mortgages or charges created before the 1st of July 1908 which under the provisions of that Act would have required registration had they been created after the said date ; except those already required to be registered under Section 14 of the Companies Act 1900 (*i*).

(*f*) Interpretation Act, 1889, s. 38, and see too Companies (Consolidation) Act, 1908, s. 286 (2).

(*g*) 5*s*. : Order of Board of Trade as to fees of June 30, 1908.

(*h*) Companies Act, 1907, s. 12.

(*hh*) Form 54 prescribed by Order of the Board of Trade of June 30, 1908.

(*i*) S. 12 of the Companies Act,

Description of Mortgage or Charge.	Date of Creation of Mortgage or Charge.	Amount.

Limited companies (including companies registered in Scotland) must in addition keep a register of mortgages, and enter therein all mortgages and charges specifically affecting the property of the company, giving in each case: (1) a short description of the property mortgaged or charged; (2) the amount of the mortgage or charge: and (3) except in the case of securities to bearer, the names of the mortgagees or persons entitled thereto (*j*). This section requires registration of the property charged, and not of the instrument creating the charge, and therefore it would seem necessary to register a mortgage by deposit of title deeds (*k*), and it would seem also a floating security (*l*) but not a charge not created by the company, as where it buys an equity of redemption (*m*). It has been said that transfers of debentures need not be registered (*n*), but this view does not seem to accord with the words of the Act. The register may be kept in an informal book, *e.g.* on the last pages of the register of transfers and the Act will be complied with if the, entries substantially agree with the facts (*o*). Any director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of the section is liable to a fine not exceeding £50 (*p*).

The copies of instruments creating any mortgage or charge requiring registration under the Act with the Registrar of Joint Stock Companies, and the register of mortgages kept in pursuance of section 100 must be open at all reasonable times to the inspection of

1907, only requires "the amount" to be stated; and it is thought that the other statements in the form (the official one) here given may be omitted.

(*j*) Companies (Consolidation) Act, 1908, s. 100 (1).

(*k*) *Smith's Case* (1879), 11 C. D. 579.

(*l*) This seems to have been the nature of the security in *Wright* v. *Horton* (1887), 12 A. C. 371; *General South American Co.* (1876), 2 C. D. 337; *Dublin Drapery Co.* (1884), 13 L. R. Ir. 274; but see the remarks of PHILLIMORE, J., in *Clark* v. *Balm Hill Co.*, [1908] 2 K. B. 667, at p. 671.

(*m*) *Whitehouse's Claim* (1886), 53 L. T. 699.

(*n*) *Dublin Drapery Co.* (1884), 13 L. R. Ir. 274. This was a case of bearer debentures, the Act of 1862, which was then in force, did not contain the present exception in their favour.

(*o*) *Underbank Mills Cotton, etc., Co.* (1886), 31 C. D. 226.

(*p*) Companies (Consolidation) Act, 1908, s. 100 (2). See *Globe New Patent Iron and Steel Co.* (1878), 48 L. J. (CH.) 295, as to who will be liable under this sub-section.

any creditor or member of the company without fee, and the register of mortgages must also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection as the company may prescribe.

If inspection of such copies or of the register is refused, any officer of the company refusing inspection, and every director and manager of the company authorizing or knowingly and wilfully permitting the refusal, will be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues; and, in addition to the above penalty as respects companies registered in England or Ireland, any Judge of the High Court sitting in chambers, or the Judge of the Court exercising the Stanneries Jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the copies or register (*q*).

This right of inspection carries with it the right to take copies (*r*), and the fact that the person asking for inspection has some ulterior motive hostile to the company would appear not to affect such rights (*s*). Further, the right to inspect extends not merely to a person entitled but also to his agent (*t*); on a winding-up the right of inspection ceases (*u*). Non-registration under section 43 of the Companies Act, 1862, which section 100 of the present Act reproduces with the modification next noticed, did not affect the security of the mortgagee, even when he was a director or manager, except perhaps in cases where the fact of such non-registration has induced some other person to lend money or otherwise act, in a way which he would not have done, if the section had been complied with (*x*). The present section differs from that contained in the Act of 1862, in that persons other than creditors or members can inspect the register; but, though Lord Halsbury, in *Wright* v. *Horton* (*y*), laid some stress on the fact that a person proposing to lend money could only inspect the register if he happened already to be a creditor or member, it is not thought that this alteration makes any difference, for the principle at the bottom of the cases seems to be that the Courts cannot attach an additional penalty to the penalty imposed in express words by the Act (*z*).

(*q*) Companies (Consolidation) Act, 1908, s. 101.

(*r*) *Nelson* v. *Anglo-American, etc., Co.*, [1897] 1 Ch. 130.

(*s*) *Davies* v. *Gas Light and Coke Co.*, [1909] 1 Ch. 248. This was a case under a different Act, but seems applicable.

(*t*) *Credit Co.* (1879), 11 C. D. 256; see also *Bevan* v. *Webb*, [1901] 2 Ch. 59.

(*u*) *Somerset* v. *Land Securities* [1897], W. N. 29; *Kent Coalfields Syndicate*, [1898] 1 Q. B. 754.

(*x*) *Wright* v. *Horton* (1887), 12 A. C. 371; *Globe New Patent Iron and Steel Co.* (1878), 48 L. J. (CH.) 295.

(*y*) (1887) 12 A. C. 371.

(*z*) *Wright* v. *Horton* (1887), 12 A. C. 371; *Globe New Patent Iron and Steel Co.* (1878), 48 L. J. (CH.,

DEBENTURE-HOLDERS' ACTIONS.

The writ in a debenture-holder's action should be headed "In the Matter of the Company, Limited." The plaintiff, where he is not the sole debenture-holder or the sole debenture-holder of his issue, should be a person against whom the company has no right of set-off, and whose debentures are otherwise unimpeachable (*a*): and he should sue on behalf of himself and all other debenture-holders of the company of the same class as himself, or, if he holds debentures of more than one class of the same classes (*b*), in such cases the trustees of any covering deed for further securing the debentures should be made parties (*c*). It is also necessary to have as parties in these actions a representative of any subsequent debenture-holders or the trustees of the trust deeds (if any) for securing the same and other persons having subsequent incumbrances (*d*); but, except where foreclosure is sought (*e*), and perhaps in cases where an order for sale cannot be made under O. 51, r. 1B, R. S. C., owing to the plaintiff being the only holder of debentures of a particular issue (*f*), it would appear to be unnecessary for a representation order under O. 16, r. 32 (*b*) to be obtained (*g*). An order for foreclosure will not be made on the application of a debenture-holder in the absence of any other debenture-holder of the same class (*h*). Any debenture-holder of the same class as the plaintiff who objects to the course taken by the plaintiff may apply to be added as a defendant. Such application may be made by motion or summons

295; *Borough of Hackney Newspaper Co.* (1876), 3 C. D. 669; *International Pulp and Paper Co.* (1877), 6 C. D. 556; *Smith's Case* (1879), 11 C. D. 579.

(*a*) *Huggons* v. *Tweed* (1879), 10 C. D. 359; *Burt* v. *British Nation Life Assurance* (1859), 4 De G. & J. 158; and see *Rogers* v. *British and Colonial Colliery* (1899), 68 L. J. (Q. B.) 14, a case where a holder of debentures was precluded from suing until he has demanded his money and there has been failure to pay.

(*b*) Daniel's Chancery Practice, 7th Edition, 1174.

(*c*) *Mortgage Insurance* v. *Canadian Agricultural*, [1901] 2 Ch. 377; and see *Griffith* v. *Pound* (1890), 45 C. D. 553, and O. 16, r. 8, R. S. C.

(*d*) *Re Wilcox*, [1903] W. N. 64; and see *Parbola, Ltd.*, [1909] 2 Ch. 437, as to joining a person who has obtained a judgment and a receiver by way of equitable execution after an order *nisi* for foreclosure has been obtained. Directions were given by the Chancery Judges on the 12th May, 1906, that all incumbrancers subsequent to the plaintiff's debentures should be made parties, and not merely served with notice of judgment under O. 16, r. 40, R. S. C. Annual Practice, 1912, p. 259.

(*e*) *Wallace* v. *Evershed*, [1899] 1 Ch. 891.

(*f*) *Parkinson* v. *Wainwright* (1895), 2 Manson, 420.

(*g*) *Cadogan* v. *Hans Place Estate, Ltd.*, [1906] W. N. 112; cp. *Fairfield Shipbuilding Co.* v. *London and East Coast, etc., Co.* (1895), W. N. 64; and see *Griffith* v. *Pound* (1890), 45 C. D. 553, which was decided before O. 16, r. 32 (*b*) was made. Representative parties cannot consent, though they can submit to judgment: *Rees* v. *Richmond* (1890), 62 L. T. 427.

(*h*) *Elias* v. *Continental Oxygen*, [1897] 1 Ch. 511. In *De Beers Consolidated Mines* v. *British South Africa Co.*, [1912] A. C. 52, Lord ATKINSON said that a debenture-holder had no right similar to that of foreclosure. The remark was not necessary for his decision.

in chambers, and is usually granted as a matter of course (*i*). A plaintiff in a debenture-holder's action is *dominus litis*, and can discontinue the action even after judgment if he has no notice of any other debenture-holder who wishes to take the benefit of the judgment (*k*). Where two or more debenture-holders start actions simultaneously, the general rule is to stay the action or actions except the first, and to give the conduct to the person who first issued his writ (*l*).

Before an action can be commenced against a company which is being wound up compulsorily or subject to supervision, a summons for leave to commence the action must be taken out (*m*), and, on such leave being obtained, the order of the Lord Chancellor of 29th November, 1895, provides that the matter shall be assigned to the winding-up Judge.

Where an order has been made in the High Court for the winding-up of a company, any action or proceeding by a mortgagee or debenture-holder for the purpose of realizing his security or by any other person for the purpose of enforcing a claim against the company's assets or property which is pending in the High Court or before any Judge thereof is, without further order, transferred to the Judge who exercises the winding-up jurisdiction (*n*). Here again leave to proceed with the action must be obtained (*m*).

This rule applies to supervision cases as well as to compulsory

(*i*) *Fraser* v. *Cooper Hall* (1882), 21 C. D. 718; *Watson* v. *Cave* (1881), 17 C. D. 19.

(*k*) *Alpha Co.*, [1903] 1 Ch. 203 (and see also this case as to the jurisdiction of the Court to prevent a second action being commenced); cp. *Bowen* v. *Brecon Railway* (1867), 3 Eq. 541 as to the position of a debenture-holder obtaining a personal judgment after the appointment of a receiver in a debenture-holder's action; and *Hope* v. *Croydon Tramways* (1887), 34 C. D. 730, as to making a personal order, and appointing a receiver over property not subject to the charge.

(*l*) The actions are usually consolidated, see *Re Swire* (1882), 21 C. D. 647. The plaintiff in the first action will not get the conduct if his action is defective: *Re Macrae* (1884), 25 C. D. 16; or, if his debt is doubtful: *Re Ross*, [1907] 1 Ch. 482. Where a receiver has been appointed in a subsequent action, that action will be continued and the others stayed, but the plaintiff in the first action will usually be given the conduct of the consolidated actions. Where the different actions have been assigned to different judges they will be brought before the Judge who is dealing with the action which is to proceed; any action which was not originally assigned to that Judge being transferred to him by an order of the Lord Chancellor, see O. 49, R. S. C. A Judge of the High Court can restrain a person from proceeding with an action in the Palatine Court; *Connolly Brothers*, [1911] 1 Ch. 731.

(*m*) Companies (Consolidation) Act, 1908, s. 142. For forms of such orders, see pp. 561 *et seq.* Leave will almost always be given in these cases: *David Lloyd & Co.* (1877), 6 C. D. 339; and *supra*, p. 473, and *infra*, p. 569.

(*n*) Companies (Winding-up) Rules, 1909, r. 42 (1); see also *ibid.*, r. 43 as to the power of the Judge doing the winding-up work in the High Court to order transfers from inferior Courts, and *ibid.*, r. 44 as to the powers of County Court Judges to order transfers, and O. 49 r. 5, R. S. C.

cases (*o*), and in supervision cases it occasionally happens that the master does not know of the order and the liquidator does not know of the rule, with the result that the action goes on as if there had been no order. When the mistake is found out in such cases application should be made for the purpose of retrospectively ratifying the proceedings since the order and also in some cases for the purpose of enabling the matter to proceed before the master (*p*).

The rule also applies to actions commenced in the Manchester or Liverpool District Registry (*q*). It is thought that it does not apply to actions by the company to set aside debentures (*r*); it is doubtful whether matters of this sort can be raised by a summons in the winding-up, but probably they can where the liquidator is enforcing a right the company had not got (*e.g.* under the fraudulent preference provisions), or is availing himself of a special remedy given by the Act in a winding-up (*e.g.* misfeasance proceedings) (*rr*). Possibly an action will be more often necessary where the mortgage is a legal mortgage.

In the case of applications in Chambers in matters so transferred where the practice in winding-up is different from the practice of the Chancery Division, Rule 42 (1) of the Companies (Winding-up) Rules, 1909, provides that the practice in winding-up prevails.

Where any action brought by or against a company against which a winding-up order has been made is transferred to the judge of the High Court with winding-up jurisdiction the Registrar may under the general or special directions of such judge hear determine and deal with any application matter or proceeding which if the action had not been transferred would have been determined in chambers. These provisions apply to the proceedings on any action in which by the Rules of the Supreme Court or otherwise the chamber proceedings are directed to be dealt with by the Registrar (*s*).

The Rules of the Supreme Court provide that—

"Upon a winding-up order being made against a company proceedings in any action against such company at the instance or on behalf of debenture-holders pending before the judges to whom for the time being company business is assigned shall be dealt with by the Registrar in Companies (Winding-up)" (*t*).

Not infrequently where there are special reasons for an early

(*o*) See *post*, p. 1268.

(*p*) Such an order was made in *Grand Maison d'Automobiles, Ltd.*, 00175, of 1911. See Summons and Order, *post*, pp. 563 and 564.

(*q*) *English McKenna Process, Ltd.*, *Bowering* v. *The Co.*, 1911, E. 1238. In this case the district registrar on request sent the file to London after the order. A subsequent application made to Mr. Justice EADY, in chambers to transfer the action to Liverpool was dismissed on the ground that the action had come to London properly under the rule, and that in the circumstances it was not convenient to transfer it.

(*r*) It is obviously desirable to raise such matters by summons in the winding-up, if possible, as this will prevent security for costs being ordered. Such an application was made by misfeasance summons in *J. H. Selkirk & Co.*, 00353 of 1906, PARKER, J., January 29, 1907. After some demur on this point a writ was issued, and Mr. Registrar HOOD took the view that it was not necessary to make an order transferring the action to the winding-up Judge.

(*rr*) See *Kent* v. *La Communauté des Sœurs de Charité*, [1903] A. C. 220.

(*s*) Companies (Winding-up) Rules, 1909, r. 42 (2). The Registrar makes his order, and does not adjourn the matter to the Judge without so doing; a dissatisfied party can then move to vary the Order Practice Note W. N. (1905), p. 128.

(*t*) O. 49, r. 5A, R. S. C.

sale of the property comprised in and subject to the charge created by debentures, a sale is asked for either on or before judgment (*tt*). This can be done under O. 51, r. 1 (*b*), R. S. C., which runs as follows: "In debenture-holders' actions where the debenture-holders are entitled to a charge by virtue of the debentures or of a trust-deed or otherwise and the plaintiff is suing on behalf of himself and other debenture-holders (*u*), and where the Judge in person is of opinion that there must eventually be a sale, he may in his discretion direct a sale before judgment and also after judgment before all the persons interested are ascertained whether served or not." In a case where such an order is asked for the Court will not in the absence of a subsequent incumbrancer make an order giving liberty to sell, but will order that the property be sold with the approbation of the Judge and the proceeds brought into court, so as to enable absent debenture-holders to be served with notice of the application in chambers for approval of a conditional contract (*x*). It would also seem to be usual in such cases for the statement of claim which shows the reason for immediate sale to be verified by affidavit (*y*). Where a sale is ordered with the consent of prior incumbrancers, informal notice with a view to obtaining such consent may be given (*yy*). It would seem to be usual to insert a declaration of charge in the minutes in a debenture-holder's action (*z*); but the practice on this point varies very much.

Form of writ in a debenture-holder's action—

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

MR. JUSTICE

In the Matter of the X.Y. Company Limited.

Between A.B. (on behalf of himself and all other holders of debentures of the Defendant Company)

Plaintiff

and

The X.Y. Company Limited,
and C.D. and E.F.,

Defendants.

(Formal Parts.)

The plaintiff claims:—

(1) A declaration that the plaintiff and all the other holders of mortgage debentures of the defendant company of the same issue

(*tt*) For form of order for sale, *post*, pp. 564 and 565.

(*u*) This does not apparently apply to cases where there is a sole debenture-holder, probably, however, the order can be made under s. 25 of the Conveyancing and Law of Property Act, 1881, if all persons interested are parties: *Parkinson* v. *Wainwright* (1895), 2 Manson 420.

(*x*) *Crigglestone Coal Co.*, [1906] 2 Ch. 523.

(*y*) *Day and Night Advertising Co.* (1900), 48 W. R. 362.

(*yy*) Chancery Judges' Directions, May 12, 1909, Annual Practice, 1912, p. 259.

(*z*) Annual Practice, 1912, p. 425, Yearly Practice, 1912, p. 720: *Wolverhampton District Brewery*, [1899] W. N. 220; *Levison* and *Steiner*, [1900] W. N. 152; but cf. *Marwick* v. *Thurlow*, [1895] 1 Ch. 777; see also *Kitson Empire Electric Lighting Co.*, [1910] W. N. 154, and *post*, p. 604.

as the plaintiff's debentures are entitled to a charge upon all the undertaking and assets of the Company whatsoever and wheresoever including its uncalled capital for the time being (*a*) for securing the principal moneys and interest in the said debentures mentioned.

(2) An order that the trusts of an indenture dated the day of 19 and made between the Company of the one part and the said C.D. and E.F. of the other part for further securing the said mortgage debentures be performed and carried into effect.

(3) An account of what is due to the plaintiff and other holders of mortgage debentures issued by the defendant Company.

(4) An inquiry of what the property comprised in or charged by the said indenture consists and in whom the same is vested.

(5) An inquiry of what the property charged by the said debentures and not comprised in the said indenture consists and in whom the same is vested.

(6) Such further and other accounts and inquiries as may be requisite in the premises.

(7) Foreclosure or sale.

(8) A receiver and manager.

The plaintiff's claim is on behalf of himself and all other holders of mortgage debentures of the defendant Company and the defendants C.D. and E.F. are sued as trustees of the said indenture of the day of 19 (*b*).

Where a writ is issued in a debenture stock holder's action it will be in substantially the same form, except that foreclosure will usually not be asked for (*c*).

SUMMONS FOR LEAVE TO COMMENCE PROCEEDINGS IN DEBENTURE-HOLDER'S ACTION, NOTWITHSTANDING COMPULSORY WINDING-UP.

IN THE HIGH COURT OF JUSTICE,

Companies (Winding-up). No. 00140 of 1910.

MR. JUSTICE NEVILLE.

In the matter of the Companies (Consolidation) Act, 1908,

and

In the matter of the Mid-Oxfordshire Gas Light and Coke Company Limited.

Let all parties concerned attend at the Office of the Registrar, Companies (Winding-up) at the Bankruptcy Buildings, Carey Street, London,

(*a*) The description of the property will follow that in the debenture.

(*b*) Where there is a covering deed the trustees should be parties.

(*c*) *Schweitzer* v. *Mayhew* (1862), 31 B. 37; *Sampson* v. *Pattison* (1842), 1 Hare 533; *Jenkin* v. *Row* (1851), 5 De G. & Sm. 111; see also Palmer, 10th Edition, vol. iii. p. 443 (see, however, the form of debenture stock trust deed given *supra*, pp. 499, *et seq.*, and also p. 479.

W.C. on Friday the 4th day of November, 1910, at 12 o'clock noon on the hearing of an application of W.H.B. of in the County of Gentleman a Debenture-holder of the said Company for £600 for an order that notwithstanding the order of this Court dated the 28th day of June 1910 to compulsorily Wind up the said Company the Applicant may be at liberty to commence an action in the Chancery Division of this Honourable Court against the said Company and the present Trustee of the Trust Deed hereinafter mentioned to enforce his Debentures and to have the Trusts of the Trust Deed dated 21st May 1906 carried into execution and that the Costs of this Application may be Costs in the said Action.

Dated the 2nd day of November 1910.

This Summons was taken out by of No. London, Solicitors for the Applicant.

To R.W.T. E.C. the Liquidator of the above-named Company and to Messrs. of W. C. his Solicitors.

NOTE.—If you do not attend either in person or by your Solicitor at the time and place above-mentioned such order will be made and proceedings taken as the Judge may think just and expedient.

(5/-)

ORDER ENDORSED ON ABOVE SUMMONS.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).

MR. REGISTRAR HOOD,

Friday 4th November 1910.

Appeared for the Applicant for the Liquidator.

Read Order to Wind up dated 28th June 1910
Order appointing Liquidator dated 30th September 1910.

Notwithstanding the above-mentioned Order to Wind up liberty to the Applicant to commence an Action against the Mid-Oxfordshire Gas Light and Coke Company Limited as asked—such Action to be assigned to the Judges exercising Jurisdiction in Companies (Winding-up).

H. J. Hood,
Registrar.

SUMMONS FOR LEAVE TO CONTINUE DEBENTURE-HOLDER'S ACTION, NOTWITHSTANDING ORDER FOR COMPULSORY WINDING-UP.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up). No. 00140 of 1910.

MR. JUSTICE SWINFEN EADY.

In the matter of the Companies (Consolidation) Act, 1908,
and
In the matter of the Mid-Oxfordshire Gas Light and Coke Company Limited.

Let the Defendants in the under-mentioned Actions attend at the

Chambers of the Registrar, Companies (Winding-up) Bankruptcy Buildings, Carey Street, London, on Friday the 15th day of July, 1910, at 11.30 o'clock in the forenoon on the hearing of an application of the plaintiff for an Order that the three Debenture-holders' Actions the titles of which are hereunder given be continued notwithstanding the Compulsory Order for Winding-up dated the 28th day of June 1910.

Beirnstein v. *The Mid-Oxfordshire Gas Light and Coke Company Limited and Others* . . 1910, M. No. 1147.
Same v. *Same and Others* . . . . 1910, M. No. 1148.
Same v. *Same and Another* . . . . 1910, M. No. 1157.

Dated the 12th day of July 1910.

This Summons was taken out by of 1 E.C.

Solicitor for the Applicant.

To the Defendants and to the Official Receiver.

NOTE.—If you do not attend either in person or by your Solicitor at the time and place above-mentioned such order will be made and proceedings taken as the Judge (or Registrar) may think just and expedient.

ORDER ENDORSED ON ABOVE SUMMONS.

(5/-)

IN THE HIGH COURT OF JUSTICE,
Companies Winding-up.

MR. REGISTRAR HOOD,

Friday 15th July 1910.

Appeared for the Applicant the Official Receiver and provisional Liquidator in person.

Read Order to Winding-up dated 28th June 1910.

Order appointing Receiver in within-mentioned actions dated 11th May 1910.

Leave as asked by the within Summons.

H. J. Hood,
Registrar.

SUMMONS FOR LEAVE TO PROCEED WITH DEBENTURE-HOLDER'S ACTION WHERE PROCEEDINGS HAVE BEEN WRONGLY CARRIED ON IN THE CHANCERY DIVISION AFTER A SUPERVISION ORDER.

IN THE HIGH COURT OF JUSTICE, No. 00175 of 1911.
Companies Winding-up.

MR. JUSTICE NEVILLE,

In the matter of the Companies (Consolidation) Act, 1908.
and
In the matter of Grand Maison D'Automobiles Limited.

Let G.E.T. of Street W. the Liquidator of the above-named Company attend at the Office of the Registrar at the Bankruptcy Buildings, Carey Street, London, on Friday the 17th day of November 1911 at 11.30 o'clock in the forenoon, on the hearing of an Application of C.L.J., of Road, London, N., Widow, the Plaintiff in the hereinafter mentioned suit, for an Order that leave be given to

continue the suit notwithstanding the Order of the 27th June 1911 continuing the voluntary winding-up under supervision.

IN THE HIGH COURT OF JUSTICE, 1911 G. No. 772.
Chancery Division.
MR. JUSTICE WARRINGTON.

In the matter of Grande Maison D'Automobiles Limited.
Between CAROLINE LOUISA JONES (Widow) on behalf of herself and all other holders of First Mortgage Debentures in the Defendant Company
Plaintiff,
and
Grande Maison D'Automobiles Limited.
Defendant.

as from the 27th day of June 1911.

Dated the 9th day of November 1911.

THIS SUMMONS was taken out by of London, W.C., Solicitor for the Applicant.

To G.E.T. the Liquidator of the above-named Company, and to Messrs. his Solicitors.

NOTE.—If you do not attend either in person or by your Solicitor at the time and place above-mentioned, such order will be made and proceedings taken as the Judge (or Registrar) may think just and expedient.

ORDER ENDORSED ON ABOVE SUMMONS.

(Stamp 5*s.*) 17—11—11.
IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. REGISTRAR HOOD.

Friday 17th November 1911.
Appeared for the Applicant. for the Respondent.
Read Supervision Order dated 7th July 1911.
Judgment in the within-named action dated 5th May 1911.
Liberty as asked by the within Summons.

H. J. Hood,
Registrar.

ORDER FOR SALE ON DEBENTURE-HOLDER'S ACTION.

(*Title.*)

THE application by Summons dated the 20th January 1911 of the Defendants the P.A. Company Limited (parties having the conduct of these proceedings pursuant to Order dated 8th March 1909) which upon hearing Counsel for the Applicants and for the Defendants J.C.S. and L.B.S. and the Solicitors for the remaining Defendants in Chambers was adjourned to be heard in Court coming on the 7th March 1911 and this day to be heard accordingly and upon hearing Counsel for the Applicants and for the said Defendants F.A.B., R.B., J.H.T. and J.C.S.

and L.B.S. and upon reading the Order to wind up the Defendant Company dated 14th October 1909 intituled in the Liquidation proceedings No. 00215 of 1909 the Judgment dated the 12th February 1909 the Order appointing Receiver dated 16th March 1909 the Certificates of the Registrar Companies (Winding-up) dated 3rd June 1910 the Order of the Court of Appeal dated 4th November 1910 the Affidavit of D.W.S. filed the 24th January 1911 the Affidavit of L.B.S. filed the 1st February 1911 the Defendant Company's Deed of Settlement dated 28th May 1852 the Charter and Supplemental Charter dated respectively 28th January 1853 and 22nd December 1855 and the Crystal Palace Company's Acts of 1853, 1854, 1856, 1869, 1875, 1877, 1887, 1895, 1898, 1900, 1906 and 1908.

THIS COURT DOTH ORDER that the undertaking and property of the Defendant Company be sold with the approbation of the Judge.

AND IT IS ORDERED that the money to arise by such sale be paid into Court to the credit of this action "*The Crystal Palace Company Fox* v. *The Company and Others* 1909 C. No. 324."

And the Costs of the Applicants the P.A. Company Limited and of the Defendants the said F.A.B., R.B. and J.H.T. of this application are to be their costs in the said Action. And the said defendants J. C. S. and L.B.S. by their Counsel desiring to appeal from this Order IT IS ORDERED that they be at liberty to appeal therefrom if so advised. [*Re The Crystal Palace Co. Fox* v. *The Company* 1909, C. 324. Swinfen Eady, J., March 8th 1911.]

RECEIVERS APPOINTED BY THE COURT (*cc*).

A debenture-holder may at any time issue his writ and apply for the appointment of a receiver; but, except perhaps in cases where the principal moneys secured by the debenture are immediately payable, the Court has a discretion in the matter even in cases where the company appears and consents (*d*). The effect of making an appointment is to cause a floating security to crystallize, and become a fixed security. The Court will exercise its discretion in favour of making the appointment not only when the principal moneys secured are immediately payable, but also where there is interest in arrear (*e*), or where the security is in jeopardy (*f*). On a winding-up debenture-

(*cc*) For orders appointing receivers and managers, see *post*, pp. 580, *et seq.*

(*d*) *London Pressed Hinge Co.*, [1905] 1 Ch. 576; *Carshalton Park Estate*, [1908] 2 Ch. 62.

(*e*) *Bissill* v. *Bradford Tramways*, [1891] W. N. 51. In *Thorn* v. *Nine Reefs* (1892), 67 L. T. 93, the Court would not appoint a receiver, though there was interest in arrear, because there was a trust deed.

(*f*) *London Pressed Hinge Co.*, [1905] 1 Ch. 576 (in this case a creditor had issued a writ and signed judgment and was in a position to issue execution); *McMahon* v. *North Kent Iron Works Co.*, [1891] 2 Ch. 105 (a petition for winding-up the company had been presented and was standing over with a view to resolutions for voluntary winding-up and other creditors were commencing or threatening proceedings); *Edwards* v. *Standard Rolling Stock Syndicate*, [1893] 1 Ch. 574 (execution actually levied and other proceedings threatened); *Victoria Steam Boats Co.*, [1897] 1 Ch. 158 (a petition for winding-up was pending); see also *Wildy* v. *Mid-Hants Railway* (1868), 16 W. R. 409; *Legg* v. *Mathieson* (1860), 2 Giff. 71.

holders are entitled to realize their security immediately (*g*), and it follows that in such cases a receiver will be almost invariably appointed. Even in cases where the mortgagee has already taken possession, the Court will appoint a receiver (*h*). When the action is commenced by writ, a receiver is appointed on motion (*i*), and it is preferable to proceed in the same way when the action is commenced by originating summons; but in such cases there is jurisdiction to make the order on summons (*k*). Where the action is commenced by writ it is very usual to obtain leave to serve notice of motion with the writ (*l*), or in cases where for any reason it is not desirable to give two clear days' notice as prescribed by the rules (*m*), leave to serve short notice of motion with the writ, such application is made in open Court and *ex parte*: the Court sometimes gives leave to serve notice of motion with an originating summons (*n*). In very urgent cases the Court will appoint a receiver *ex parte* (*o*), and an order for a receiver has even been made before the writ was issued (*p*), but it will usually grant an injunction in lieu of a receiver on such an application, if that will meet the purpose.

Any person who obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, must, within seven days from the date of the order or of the appointment under the powers contained in the instrument, give notice of the fact to the Registrar of Joint Stock Companies, and such Registrar

(*g*) *Wallace* v. *Automatic Machine Co.*, [1894] 2 Ch. 547.

(*h*) *County of Gloucester Bank* v. *Rudry Merthyr Steam, etc., Co.*, [1895] 1 Ch. 629.

(*i*) Daniell's Chancery Practice, vol. ii. 7th Edition, p. 1431. These remarks only apply to the Chancery Division.

(*k*) *Re Francke* (1888), 57 L. J. (CH.) 43; *Gee* v. *Bell* (1887), 35 C. D. 160; *Barr* v. *Harding* (1888), 36 W. R. 216; *Weston* v. *Levy*, [1887] W. N. 76.

(*l*) O. 52, r. 9, R. S. C.

(*m*) O. 52, r. 5, R. S. C.

(*n*) Such an order was made in *Sneed, etc., Co.* v. *Cumberland* (1887), 31 Sol. J. 659; but CHITTY, J., stated he made it for what it was worth; see also *Robson* v. *Horner*, [1893] W. N. 100.

(*o*) *Minter* v. *Kent Sussex, etc., Land Society* (1895), 72 L. T. 186; *Evans* v. *Lloyd* (1887), W. N. 171. The order will usually be made until the next motion day only, and the receiver may be directed only to receive certain sums (Daniell's Chancery Practice, vol. ii. 7th Edition, p. 1431. Notice of motion should then be served for that day, and, where necessary, leave to serve it will be granted at the same time as the order is made, an undertaking as to damages is sometimes required in these cases: *Taylor* v. *Eckersley* (1876), 2 C. D. 302. A very exceptional case is required for such an order: *Connolly Bros.*, [1911] 1 Ch. 731, 742.

(*p*) *H.'s Estate* (1876), 1 C. D. 376, where the order was made on the plaintiff's undertaking that the receiver should give the ordinary security within ten days, and to accept any notice of an application to discharge the order and to inform the defendant of the latter undertaking. See also *Re Wells* (1890), 45 C. D. 569, at p. 572.

must on payment of the prescribed fee (*q*) enter the fact on the register of mortgages and charges.

Any person who makes default in complying with these requirements will on conviction be liable to a fine not exceeding five pounds for every day during which the default continues (*r*).

The form of notice in these cases prescribed by the order of the Board of Trade of 29th March, 1909, is as below set out—

Certificate No. Form No. 53.

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

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Notice pursuant to section 94 as to the appointment of a Receiver or Manager.

The Company Limited.

NOTES.—This Notice must be filed within seven days of the order or of the appointment under the instrument.

The penalty for default is a fine not exceeding £5 for every day during which the default continues.

Presented for filing by

To the Registrar of Joint Stock Companies

of

I,

Hereby give notice that :—

* (1) I have obtained an Order of the † dated for the appointment of Mr. of as Receiver *or* Manager of the property of this Company.

* (2) On the day of I appointed Mr. of as Receiver *or* Manager of the property of this Company under the powers contained in an instrument dated ‡

Signature,

Date,

* Of these two paragraphs strike out that which does not apply.

† Insert name of Court making the order.

‡ Describe fully the instrument under which appointment is made.

Where the security includes a charge on the business of a company the Court may on the same or a similar application appoint some person, usually the receiver (*s*), to manage such business (*t*), except

(*q*) The prescribed fee is 5*s*. See order as to fees of 29th March, 1909.

(*r*) Companies (Consolidation) Act, 1908, s. 94. In Scotland, prosecutions must be at the instance of the Lord Advocate, or a procurator fiscal, as the Lord Advocate directs; *ibid.*, s. 276. As to notices and accounts to be given and filed in the case of a receiver appointed under a power in a deed : see *supra*, pp. 474, *et seq.*

(*s*) *Collins* v. *Barker*, [1893] 1 Ch. 578, at p. 585.

(*t*) *Campbell* v. *Lloyd's, Barnett's, and Bosanquets Bank*, [1891] 1 Ch. 135 n.; *Makins* v. *Percy Ibbotson*, [1891] 1 Ch. 133; *Peek* v. *Trinsmaran Iron Co.* (1876), 2 C. D. 115; *Victoria Steamboats*, [1897] 1 Ch.

in cases where such business is an undertaking which has been acquired under statutory powers for public purposes, which will be defeated or seriously affected by a judicial sale (*u*): in such cases the Court can only appoint a receiver. Where a manager is appointed in a debenture-holder's action the appointment is usually made with a view to the security being enforced by sale (*x*), but the Court will, it would seem, also appoint a manager with a view to protecting a business which is in jeopardy (*y*). The Court will usually only appoint a manager for a limited time (*z*). If, as is now the practice, an order made on an interlocutory application for the appointment of a receiver and manager, does not limit the period during which the person appointed is to act as receiver, but does, as is also the practice, limit the period during which he is to act as manager, then the judgment in the action should extend the period during which such person is to act as manager and should not "continue the receiver and manager" (*a*). Orders extending the time during which a receiver is to act as manager must be drawn up, passed and entered.

Once a case for a receiver or a receiver and manager is made out, the first question that arises is who is to be appointed receiver or receiver and manager. The Companies (Consolidation) Act, 1908 (*b*), provides that where an application is made to the Court to appoint a receiver on behalf of the debenture-holders or other creditors of a

158; *Edwards* v. *Standard Rolling Stock Syndicate*, [1893] 1 Ch. 574; *Boyle* v. *Bettws Llantwitt* (1876), 45 L. J. (CH.) 748. The goodwill of the business need not be charged in express words: *Leas Hotel Co.*, [1902] 1 Ch. 332.

(*u*) *Marshall* v. *South Staffordshire Tramways*, [1895] 2 Ch. 35; *Gardner* v. *London Chatham and Dover Railway* (1867), 2 Ch. 201; *Blaker* v. *Herts and Essex Waterworks*, [1891] 1 Ch. 133. The exception does not, however, apply to a company which is only incorporated for the purpose of enabling it to raise money, and has no statutory powers, privileges, or duties: *Crystal Palace Co.* (1911), 104 L. T. 898.

(*x*) *Whitley* v. *Challis*, [1892] 2 Ch. 64.

(*y*) *Victoria Steamboats*, [1897] 1 Ch. 158; *Leney* v. *Callingham*, [1908] 1 K. B. 79; but cp. *Newdigate Colliery*, [1912] 1 Ch. 468, at p. 472.

(*z*) *Securities and Properties* v. *Brighton Alhambra* (1893), 62 L. J. (CH.) 566; *Day* v. *Sykes* (1886), 55 L. T. 763. The appointment is usually for three months, and is sometimes coupled with a special intimation, *e.g.* that he is to do nothing more than carry on the business in its ordinary course so far as to protect the assets: Daniell's Chancery Practice, 7th Edition, vol. ii. p. 1458, citing an unreported case, *Melson* v. *Isle of Wight Brewery* (1899), before KEKEWICH, J., February 7, 1899.

(*a*) *Davies* v. *Vale of Evesham Preserves* (1896), 73 L. T. 150. If a receiver is appointed until judgment or further order, and not generally, he will have to give further security if he is continued after judgment, unless, as is now usual in the case of a manager (see form of recognizance and bond, *post*, pp. 585, *et seq.*), the security covers an extension of the appointment: *Brinsley* v. *Lynton and Lynmouth, etc., Co.*, [1895] W. N. 53.

(*b*) S. 162.

company which is being wound up by the Court in England, the official receiver may be so appointed. It is, however, not very usual to appoint the official receiver receiver and manager (*c*). The rule of the Court is that where there is no reason to the contrary, it will generally appoint the liquidator of the company to be receiver and manager, because the duties of a receiver and manager and of a liquidator are practically identical, and the fact that one person performs them is likely to save expense (*d*). But the Court will not allow the rights of mortgagees to be prejudiced by the liquidation, and consequently, except under very special circumstances, it will give debenture-holders leave to proceed with their action notwithstanding a compulsory winding-up order (*e*) or an order for winding-up subject to supervision, and will decline to discharge a receiver and manager appointed at the suit of debenture-holders (*f*), or where good reason to the contrary is shown to change him for the liquidator of the company (*g*). Such reason exists where there are assets which can most conveniently be got in and realized by a business man and the official receiver is liquidator. It also exists in cases where it is clear that there will be no surplus for the general creditors after satisfying the debenture-holders (*h*). On the other hand, where there is a large amount of uncalled capital to be got in, that in itself will be a reason for appointing the liquidator receiver (*i*). It should be added that the Court cannot remove a receiver appointed by debenture-holders under a power, except, of course, where he is behaving improperly, such a receiver must on a winding-up order being made apply to the Court for leave to take or continue possession and there are many things which he cannot do after winding-up which a receiver and manager appointed by the Court (*k*) could do; but he is almost always given leave to go into possession (*l*). Where

(*c*) *British Linen Co.* v. *South American and Mexican Co.*, [1894] 1 Ch. 108.

(*d*) *Perry* v. *Oriental Hotels Co.* (1878), 5 Ch. 420; *Campbell* v. *Compagnie Generale de Bellegarde* (1876), 2 C. D. 181; *Tottenham* v. *Swansea Zinc Ore* (1884), 32 W. R. 716; *Bartlett* v. *Northumberland Avenue Hotel* (1885), 53 L. T. 611 (where the winding-up was voluntary).

(*e*) *David Lloyd & Co.* (1877), 6 C. D. 339; *Baker* v. *Lamport Mid Somerset Benefit Building Society* (1912), 56 Sol. J., 224.

(*f*) *Strong* v. *Carlyle Press*, [1893] 1 Ch. 268.

(*g*) *British Linen Co.* v. *South American and Mexican Co.*, [1894] 1 Ch. 108.

(*h*) *British Linen Co.* v. *South American and Mexican Co.*, [1894] 1 Ch. 108.

(*i*) *Re Joshua Stubbs, Ltd.*, [1891] 1 Ch. 475. A debenture-holder is entitled to the special protection afforded by a receiver being appointed even in cases where the liquidator is the proper person to get in the assets, and so, in such cases the liquidator will be appointed receiver: *Wilmott* v. *London Celluloid* (1885), 52 L. T. 642.

(*k*) But see *supra*, pp. 472, *et seq.*, where this is discussed.

(*l*) *Henry Pound and Hutchins* (1889), 42 C. D. 402.

there is no special reason to appoint any particular person, the Court will usually, in the absence of opposition on the point, appoint the applicant's nominee if he is named in the notice of motion, and in such cases he will usually be named in the order making the appointment, which will save the expense and delay of a reference to chambers to ascertain who the receiver is to be; but if there is opposition to the applicant's nominee and the parties cannot agree as to the receiver to be appointed, the matter will be referred to chambers (*m*). The Court can appoint any person whom it pleases, but will require to be satisfied that the person to be appointed is a proper person, and it is slow to appoint a party to the action (*n*), and will not appoint the solicitor to the applicant (*o*). Joint receivers are very rarely appointed. The evidence required for the appointment of a receiver will consist of an affidavit showing that the applicant is entitled to the debentures in respect of which he is suing, exhibiting one of such debentures and putting forward the facts on which he relies as entitling him to a receiver, *viz.*, the facts which make the principal moneys secured immediately payable, or which show that the security is in jeopardy. There must also be an affidavit as to the fitness of the proposed receiver.

The order appointing a receiver usually requires him to give security, though he is often authorized to act on the plaintiff's undertaking to be responsible for his receipts and liabilities (*p*). In these cases a summons to proceed is taken out, and on the return the Registrar or master fixes the security. The security is given and the Registrar or master thereupon gives a certificate that security is given (*pp*). Such certificate fixes the date for the accounts to be brought in and directs what is to be done with the balances, if this has not been done by the order. In cases where the order appointing a receiver is not to be drawn up till security is given (*q*), the order states that security has been given, and fixes the times for the receiver's accounts and gives directions as to his balances. In these cases if the matter is in the Chancery Division, the Registrar of the Court sends the matter to the master for security to be given, and, when this is done, the master returns it to the Registrar, who draws up the order—there is no summons to proceed in these cases. In

(*m*) *Samuel Allsopp and Sons* (1911), *Times* Newspaper, June 17, 1911.

(*n*) Cp. *Budgett* v. *Improved Patent Forced Draught, etc., Ltd.*, [1901] W. N. 23, where FARWELL, J., appointed the plaintiff in a debenture-holder's action receiver and manager subject to an affidavit that all the other debenture-holders consented being produced to the Registrar. The plaintiff in this case was also a director of the mortgagor company.

(*o*) *Re Lloyd* (1879), 12 C. D. 447.

(*p*) *Re Debenture-Holders' Actions*, [1900] W. N. 58. Not infrequently such an order provides that the receiver is not to act after twenty-one days unless he has given security.

(*pp*) For form, see *post*, pp. 591 and 592.

(*q*) See O. 50, r. 17, R. S. C.

Companies (Winding-up) the Registrar performs both functions. Where an order that a proper person be appointed receiver is made the summons to proceed asks also that a person named in such summons may be appointed receiver. On the return an order is made appointing such person or some other receiver and giving directions as to accounts and balances. Where a named person is appointed without giving security and to act without remuneration (a very rare case except where the official receiver is appointed) the order itself gives directions as to accounts and balances. Except where a Guarantee Society is accepted as security or where the amount for which security is to be given does not exceed £500, the security usually required is the recognizance of the receiver with two sureties for an amount which in a debenture-holder's action is usually fixed at the amount he is likely to receive. Affidavit evidence on this point will be required and also subject as below mentioned as to the solvency of the sureties. Where a guarantee society is accepted, and the security does not exceed £2000, the bond of the receiver and the society is usually accepted, in other cases the receiver must in addition enter into a recognizance (*r*). Foreign societies may in a proper case be accepted (*s*), and Scotch societies which have submitted by their bond to the jurisdiction of the English Courts will be accepted (*t*). Where the amount for which security is to be given does not exceed £500, security may be given by an undertaking in Form 21 (*a*) of Appendix L to the Rules of the Supreme Court. Such undertaking must be signed by the receiver and his sureties, or, in the case of a guarantee or other company, sealed with the seal of such company or otherwise duly executed, and must be filed in the Central Office, or, where the proceedings are pending in a district registry, in such registry, and kept as of record until it has been duly vacated (*u*).

The following practice rules have been made by the masters with regard to these undertakings :—

" Where security (not exceeding £500) is given by an undertaking such

(*r*) Annual Practice, 1912, vol. i. p. 827. Formerly recognizances were enforced by *scire facias*, as to which see Daniell's Chancery Practice, 7th Ed. vol. ii. p. 1448 ; but this is now practically obsolete, and the practice is now whether security has been given by bond or recognizance for the sureties to submit to the Court in the action as fully as if proceedings to enforce their bond or recognizance had been taken : *Re Graham*, [1895] 1 Ch. 66 ; *British Power Traction and Lighting Co.*, [1910] 2 Ch. 40. For form of recognizance and bond, see *post*, pp. 585, *et seq.*

(*s*) *Aldrich* v. *British Griffon Chilled Iron, etc., Co.*, [1904] 2 K. B. 850 ; and *Goldfields of Venezuela* unreported, but referred to, [1904] 2 K. B. 852, 853.

(*t*) Annual Practice, 1912, vol. i. p. 827.

(*u*) O. 50, r. 16 (*a*). R. S. C. It will be seen that by the undertaking the sureties undertake to submit to the jurisdiction of the Court in the action. For form of this undertaking, see *post*, pp. 590 and 591.

"undertaking if given by any guarantee or other company whose bond "is usually accepted shall be taken, if sealed with the seal of such company "or otherwise duly executed without the usual evidence of solvency: "but if given by persons they must make an affidavit of solvency. The "undertaking if not sealed need not be stamped, but if sealed must be "stamped (with a 10*s.* stamp as a deed).

"That the senior Master be requested to give directions to the Central "Office to send to the Chancery Masters the official notification of the filing "of any such undertaking in the Chancery Division.

"That a certificate of the security being completed signed by the "Master with a 2*s.* 6*d.* stamp be endorsed on the duplicate of the Order "directing the security in the following terms: 'I certify that the security "'mentioned in this Order has been completed by the filing this "'day of 19 of an undertaking dated the day of "'19 of the said and as his securities for not "'exceeding £ Master.'"

Where an order is made appointing a person receiver of personalty on his giving security, the receiver is not entitled to demand payment, until he has given security (*x*), but it is otherwise with regard to real estate (*y*).

In the cases of companies registered in England or Ireland a receiver must, if the debentures in respect of which he is appointed are secured by a floating charge (*z*), apply the first assets which come to his hands in payment of certain preferential debts which have priority to any claim for principal or interest in respect of the debentures by virtue of sections 107 and 209 of the Companies (Consolidation) Act, 1908 (*zz*). These preferential debts are:—

1. All parochial or other local rates due from the company at the date mentioned in the Act (*a*) and having become due and payable within twelve months next before that date and all assessed taxes (*b*), land tax property or income

(*x*) *Ridout* v. *Fowler*, [1904] 1 Ch. 658, 662, affirmed, [1904] 2 Ch. 93; *Edwards* v. *Edwards* (1876), 2 C. D. 291.

(*y*) *Ex parte Evans* (1880), 13 C. D. 252.

(*z*) These provisions also apply to persons taking possession on behalf of such debenture-holders.

(*zz*) S. 110 of the National Insurance Act, 1911, does not give contributions payable by a company under that Act priority over debenture-holders: Cp. *Richards* v. *Kidderminster*, [1896] 2 Ch. 212.

(*a*) The date mentioned in the Act is: (*a*) where the company is not in winding-up at the date of the appointment of the receiver (or of possession being taken), the date of such appointment or of possession being taken; (*b*) if the company is in compulsory liquidation at the date of such appointment (or of possession being taken) and there has been no previous voluntary liquidation the date of the winding-up order; (*c*) in other cases the date of the commencement of the winding-up.

(*b*) The order appointing a receiver and manager does not direct him to take possession, and where he has not taken possession, there will be no change of occupation within the meaning of the Poor Rate Assessment and Collection Act, 1869, and consequently leave to distrain for the whole of the poor rate for the half-year in which the order was made will be given against the receiver: *Marriage*

tax assessed on the company up to the 5th April next before that date and not exceeding in the whole one year's assessment.

2. All wages or salary of any clerk or servant (*c*) in respect of services rendered to the company during four months next before the said date not exceeding £50.
3. All wages of any workman or labourer not exceeding £25, whether payable for time or for piece-work in respect of services rendered to the company during two months next before the date mentioned in the Act, and where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring he will have priority in respect of the whole of such sum or part thereof as the Court decides to be due under the contract proportionate to the time of service up to the date mentioned in the Act.
4. In cases where the company is not being wound up voluntarily for the purposes of reconstruction or of amalgamation with another company all amounts (not exceeding in any individual case £100) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before the date mentioned in the Act, but subject to the provisions of section 5 of Workmen's Compensation Act (*d*). The order appointing a receiver contains directions as to these payments, and any sums paid by a receiver under these provisions will be allowed when he passes his account (*e*), and they must be recouped, so far as possible, out of the assets of the company available for payment of general creditors (*f*). These

Neave & Co., [1896] 2 Ch. 663; *Re Crosbie* (1910), 74 J. P. 25. It is otherwise in the case of a receiver appointed under a power, who takes possession: *Richards* v. *Kidderminster*, [1896] 2 Ch. 212; and see *Paterson* v. *Gas Light and Coke Co.*, [1896] 2 Ch. 476; and *Husey* v. *London Electric Co.*, [1902] 1 Ch. 411. Where the receiver has sold, the overseers will not be entitled to any part of the proceeds for rates accrued during his occupation: *British Fullers' Earth Co.* (1901), 17 T. L. R. 232.

(*c*) A managing director is not a clerk or servant: *Mannesmann Tube*, [1901] 2 Ch. 93. Probably a secretary who has regular hours of attendance is: *Cairney* v. *Back*, [1906] 2 K. B. 746; and see *post*, pp. 1212, *et seq.*, as to these provisions.

(*d*) See also the special provisions as to companies within the Stannaries provisions of the Companies (Consolidation) Act, 1908, *ibid.*, ss. 239, 240, and 247.

(*e*) See *Re Debenture-Holders Actions*, [1900] W. N. 58.

(*f*) Companies (Consolidation) Act, 1908, s. 107 (3). This only applies to payments which have accrued due before the winding-up: *Mannesmann Tube Co.*, [1901] 2 Ch. 93, where a receiver was first appointed and then a winding-up took place, and poor rates and

debts rank equally *inter se*, and where the assets are insufficient, abate in equal proportions (*g*).

It is the duty of the receiver and manager of the company to get in the assets, over which he is appointed receiver, and to carry on the business comprised in such assets with a view to a sale. In the case of contracts entered into by the company before his appointment, the receiver and manager is in no way liable for them (*h*), but he will not, at all events where there is a possibility of a surplus, be allowed to do anything prejudicial to the goodwill, and so he will usually not be allowed to disregard ordinary trade contracts (*hh*); but there are many exceptions to this rule (*hhh*); a receiver and manager who wishes to enforce such contracts must get the leave of the Court to sue in the company's name (*i*), unless, indeed, he has a personal right of action vested in himself as in the case of a bill of exchange payable to bearer or indorsed to him (*k*), or a chose in action which has been assigned to him (*l*), in which cases he may sue in his own name, his right of action being in all cases subject to any right of set-off or equity which the other party to the contract may have against the company.

The leave should, as in all cases where leave is obtained for a receiver to take any steps, be obtained on summons usually in the action (*m*), to be taken out by the person having the conduct of the action (*n*). Other parties to the action may apply and persons who are not parties may also apply in the action, and, indeed, this is the right course for them to take where the matter arises out of the exercise by the receiver of the duties of his office (*o*). The Court will, however, in a proper case give leave to commence or prosecute an action against a receiver (*p*). Where a receiver commences or prosecutes an action in the name of the company, he will not be personally liable for costs, except in the rare cases where he is made a party (*q*). Where proceedings are threatened against a receiver or the assets in his hands, the Court may require the claim to be

district rates due at the commencement of the winding-up (not the order appointing a receiver) had to be recouped by the company; but water rate payable by meter in advance was apportioned and only the rate for water used before the winding-up was allowed. See on this case, Buckley, 9th Ed., p. 240.

(*g*) Companies (Consolidation) Act, 1908, s. 207 (2) (*a*).

(*h*) *Moss Steamship Co.* v. *Whinney* (1911), 105 L. T. 305, 512; [1910] 2 K. B. 813.

(*hh*) *Newdigate Colliery*, [1912] 1 Ch. 468.

(*hhh*) Cp. *Thames Ironworks Shipbuilding and Engineering Co.* (1912), 28 T. L. R. 273, a case where, if the contract was to be carried out, it would have been necessary to borrow, and the only persons who would be benefited were prior mortgagees.

(*i*) *Forster* v. *Nixon's Navigation* 1906), 23 T. L. R. 138.

(*k*) *Re Sacker* (1889), 22 Q. B. D. 179; *Ex parte Harris* (1876), 2 C. D. 423. It is not the practice for a receiver to be given the conduct of an action, it is given to one of the parties, usually the plaintiff: *Re Hopkins* (1882), 19 C. D. 61.

(*l*) *Re Macoun*, [1904] 2 K. B. 700.

(*m*) In some cases it will be necessary to get leave in the winding-up. See *post*, p. 575, as to uncalled capital.

(*n*) *Parker* v. *Dunn* (1845), 8 Beav. 497; *Ex parte Cooper* (1877), 6 C. D. 255.

(*o*) *Maidstone Palace of Varieties*, [1909] 2 Ch. 283. The dicta in *Brocklebank* v. *East London* (1879), 12 C. D. 839, on this point seem to be wrong; see also *Aston* v. *Heron* (1834), 2 Myl. and K. 390.

(*p*) *Lane* v. *Capsey*, [1891] 3 Ch. 411.

(*q*) *Griffiths Cycle Corporation, Ltd.* (1902), 85 L. T. 675, 776.

made (*r*) in the action, and restrain proceedings being taken in another Court. In the case of uncalled capital in a winding-up, a receiver will either have to get leave in the winding-up to use the liquidator's name to get the calls in or he will have to get an order directing the liquidator to do so, on receiving a proper indemnity—the latter course being preferable (*s*). It would seem that where the former course has been taken the liquidator would, unless the indemnity covers all possible claims, be entitled to attend the taxation of the costs incurred (*t*).

The receiver is entitled to moneys recovered in misfeasance proceedings and calls in a winding-up, subject to paying the costs of getting in such funds, in priority to costs directed to be paid out of the assets (*u*).

A receiver is entitled to all books and documents relating to the title of the property comprised in the debentures, and where the Court considers it convenient it will order the trustees of a covering deed for securing the debentures, to deposit such deed and the other title deeds relating to the property comprised in the security with the receiver. In such case the receiver will usually have to allow the trustees access to the deed (*v*). It has, however, been held that a receiver and manager cannot hold books relating to the business of the company against the liquidator (*x*), and the Court cannot order securities deposited with the Registrar of the Land Registry under the Mortgage Debenture Acts, 1865 and 1870, to be delivered up to either a receiver or a liquidator (*y*). Where an order appointing a receiver is not conditional on security being given, the Court will require the parties to the action to give up possession to the receiver of all property comprised in the order (*z*). As between

(*r*) *Maidstone Palace of Varieties*, [1909] 2 Ch. 283. The order was made on an application in the debenture-holder's action.

(*s*) *Fowler* v. *Broad's Patent Night Light*, [1893] 1 Ch. 724; *Harrison* v. *St. Etienne*, [1893] W. N. 108; *Phœnix Bessemer Co.* (1875), 44 L. J. (CH.) 683; cp. also *Re Born*, [1900] 2 Ch. 433; and *Westminster Syndicate* (1908), 99 L. T. 924, where NEVILLE, J., approved the practice of allowing in proper cases a receiver, appointed in a debenture-holder's action, to use the name of the liquidator to get in calls on indemnity being given to him; but declined to extend the practice by authorizing a person nominated for that purpose by the mortgagee to do so. For order in *Harrison* v. *St. Etienne Brewery*, *supra*, see p. 600.

(*t*) *Re Dillon* (1903), 88 L. T. 127.

(*u*) *Anglo-Austrian Printing, etc., Union*, [1895] 2 Ch. 891.

(*v*) *Re Ind, Coope & Co.* (1909), 26 T. L. R. 11.

(*x*) *Engel* v. *South Metropolitan, etc., Co.*, [1892] 1 Ch. 442.

(*y*) *Somerset* v. *Land Securities Co.*, [1894] 3 Ch. 464.

(*z*) *Maudsley, Sons and Field*, [1900] 1 Ch. 602; *Derwent Rolling Mills* (1905), 21 T. L. R. 81, 701. See also *Queensland Mercantile, etc., Co.*, [1892] 1 Ch. 219, where creditors had by proceedings in Scotland, got in calls adversely to the receiver from shareholders in Scotland, and the English Court would not interfere with the rights so acquired; the Court will, however, make orders on the opposing party

the parties to the action such an order may make the receiver a landlord within 8 Anne c. 18, and so entitle him to arrears of rent due at the time of an execution (*a*). The Court will treat parties who refuse to give up possession as guilty of contempt, and will grant a receiver a writ of possession or a writ of assistance, and will order tenants to attorn (*aa*) : it will, moreover, not allow his possession once taken to be disturbed without leave, but where the property in question is abroad, even where it is a debt and not immovable property, there the effect of the order of the Court is simply to make it a contempt of Court for a party to the action to interfere with the receiver ; but the Court does not attempt to put the receiver in possession. It is for him to take the necessary steps (*b*). The Court will in a proper case even on an interlocutory application, restrain a person whether a party to the action or not from interfering with its receiver (*c*), and it will also on an interlocutory application order any person to deliver up possession (*d*). Anything calculated to damage property under the management of the Court by a receiver and manager, whether it involves a breach of contract or not, will amount to interference (*c*). A receiver may (where he has given security or is entitled to act before doing so) demand payment of debts due to the company (*e*), but a debtor of the company may before he had notice of the appointment of a receiver of a debt comprised in a floating charge, pay the same to the company or an assignee of the company (*f*). A person who has acted as solicitor for the company may retain moneys in his hands against costs incurred before but not after the appointment of a receiver (*g*). A receiver will as against a prior mortgagee, be entitled to rents he has got in before the intervention of such mortgagee (*h*). Usually, if not in all cases, the appointment of a receiver and manager in a debenture-holder's action operates as a notice of dismissal to the employees of the company (*i*) ; this may give them a right of action,

for the purpose of enabling the receiver to take possession : see *Huinac Copper Mines*, [1910] W. N. 218, where a company was ordered to revoke a power of attorney given to its agent, and to execute one in favour of the receiver, on the plaintiff's indemnifying the company against the acts of such receiver.

(*a*) *Cox* v. *Harper*, [1910] 1 Ch. 480. A receiver will be entitled to arrears of rent from specifically mortgaged property : *Ind, Coope & Co.*, [1911] 2 Ch. 223.

(*aa*) For form, see *post*, p. 598.

(*b*) See note (*z*), p. 575.

(*c*) *Dixon* v. *Dixon*, [1904] 1 Ch. 161.

(*d*) *Ind, Coope & Co.* v. *Mee* [1895], W. N. 8. For form of order, see *post*, pp. 598 and 599.

(*e*) *Ridout* v. *Fowler*, [1904] 1 Ch. 658 ; [1904] 2 Ch. 93.

(*f*) *Arauco Co.* (1898), 79 L. T. 336.

(*g*) *British Tea Table Co.* (1909), 101 L. T. 707.

(*h*) *Land Securities Co.* (1895), 13 Reports, 48.

(*i*) *Reid* v. *Explosives Co.* (1887), 19 Q. B. D. 264. See *Welstead* v. *Hadley* (1905), 21 T. L. R. 165 ; but cp. the remarks of LINDLEY, L.J., in *Marriage, Neave & Co.*, 1[896] 2 Ch. 663, at p. 672.

but it would appear that such right of action would be only against the company, and not against the receiver or his fund. A receiver appointed of a sublease cannot be sued for the rent of the head lease (*k*). It would seem, however, that a receiver of a lease is liable for the rent, at all events where he has received rent from sub-lessees (*l*). A receiver and manager appointed by the Court is *primâ facie* personally liable on all contracts he makes (*m*). It seems, however, that where a party privy to the action advances money for the preservation of the property and such advances are to have priority to the debentures, they will *primâ facie* not have priority to the receiver's right to indemnity. An order authorizing such a borrowing should state whether the charge is to be free from or subject to the receiver's lien (*n*). If a receiver borrows money on the security of the assets and does not pledge his own credit, the borrower will rank after the plaintiff's costs of action and the receiver's remuneration (*o*). The Court has power in a debenture-holder's action to authorize a receiver to borrow money as a first charge on the property subject to the debentures and ranking in priority to them (*p*); but debenture-holders will not be bound if a receiver and manager appointed by the Court gives security for a debt of the company without obtaining the leave of the Court (*q*). As it is the duty of a receiver and manager to carry on the business of the company and enter into proper contracts, he is *primâ facie* authorized to borrow and to be indemnified out of the assets of the company, and such borrowing, if entered into *bonâ fide* and in the ordinary course of business will *primâ facie* be treated as proper (*r*); but where a receiver has obtained leave to borrow a certain sum for general purposes, and has borrowed a sum in excess of the sum authorized, it will be on him to show that it was proper to borrow such excess (*s*).

(*k*) *Hand* v. *Blow*, [1901] 2 Ch. 721; *Justice* v. *James* (1899), 15 T. L. R. 181; *Hay* v. *Swedish and Norwegian Railway* (1892), 8 T. L. R. 775.

(*l*) *Balfe* v. *Blake* (1850), 1 Ir. Ch. Rep. 365; *Jacobs* v. *van Boolen* (1889), 34 Sol. J. 97.

(*m*) *Burt, Boulton and Hayward* v. *Bull*, [1895] 1 Q. B. 276; *de Grelle Houdret* v. *Bull* (1894), 10 Reports 97; cp. *Plumpton* v. *Burkinshaw*, [1908] 2 K. B. 572.

(*n*) *Strapp* v. *Bull, Sons & Co.*, [1895] 2 Ch. 1; *Glasdir Copper Mines, Ltd.*, [1906] 1 Ch. 365; see also *Lathom* v. *Greenwich Ferry* (1895), 72 L. T. 790. For form of order, see *post*, p. 599.

(*o*) *A. Boynton, Ltd.*, [1910] 1 Ch. 519. If a receiver covenants to repay money borrowed and adds a proviso limiting his liability, such proviso must be so framed as merely to limit and not to destroy the covenant: *Watling* v. *Lewis*, [1911] 1 Ch. 414; *Williams* v. *Hathaway* (1877), 6 C. D. 544.

(*p*) *Greenwood* v. *Algesiras (Gibraltar) Railway Co.*, [1894] 2 Ch. 205; cp. *Securities, Properties, etc., Co.* v. *Brighton Alhambra* (1893), 62 L. J. (CH.) 566; *Ex parte Grissell* (1876), 3 C. D. 411.

(*q*) *Whinney* v. *Moss Steamship Co.*, [1910] 2 K. B. 813. Affirmed 105 L. T. 305.

(*r*) *Re Izard* (1883), 23 C. D. 75.

(*s*) *British Power Traction and Motor Co., Ltd.*, [1906] 1 Ch. 497; and S. C., [1907] 1 Ch. 528. The receiver was allowed for moneys borrowed for bodies to cars sold both before and after his appoint-

Persons who have lent money to a receiver cannot claim any higher rights than he can claim, and so where a receiver would be entitled to an indemnity but for the fact that he is in default, creditors cannot claim such indemnity either against the estate or the receiver's sureties until the default has been made good (*t*).

Orders authorizing a receiver to sell chattels forming part of the property comprised in the debentures are also frequently made. Where a receiver is appointed with a direction that he shall pass accounts the Court or a Judge fixes a day upon which he must (annually or at longer or shorter periods) leave and pass such accounts and also the days upon which he must pay the balances appearing due on the accounts so left or such part thereof as shall be certified as proper to be paid by him. If any receiver neglects to leave and pass his accounts and pay the balances thereof at the time so fixed, the Judge before whom such receiver is to account may when his subsequent accounts are produced to be examined and passed, disallow the salary claimed by the receiver and order him to pay interest at 5 per cent. per annum on the balances which he has neglected to pay in during the time that the same shall appear to have been in his hands (*u*).

Receiver's accounts are to be in the Form No. 14 in Appendix L to the Rules of the Supreme Court. They have to be left at the chambers of the Judge to whom the matter is assigned (*x*) with an affidavit verifying the same in the Form No. 22 in Appendix L to the Rules of the Supreme Court and thereupon an appointment must be obtained by the person having the conduct of the action for the purpose of passing the account (*y*). The Master or Registrar decides what persons other than the one having the conduct of the action may attend the taking of the account. Usually only the person interested in any surplus there may be will be allowed to attend.

Where the order appointing a receiver is silent on the subject he will be entitled to a reasonable remuneration (*z*). The amount of such salary or remuneration is not usually fixed till after the receiver has passed his first account; it may be either a gross sum or a

ment and for rent, as he might reasonably have expected to recoup himself for these out of the sales of cars; but he was not allowed for moneys borrowed for cars to be shown at a show as this was speculative, or for a £1500 overdraft at the Bank, though the moneys were properly applied, as he ought to have obtained leave.

(*t*) *Re British Power Traction and Lighting Co.*, [1910] 2 Ch. 475.

(*u*) O. 50, r. 18, R. S. C.

(*x*) Or the Registrar where the matter is before the winding-up Court. With the first account must be left a copy of the order appointing the receiver. Such copy must be certified to be a true copy by the solicitor to the party having the conduct of the action.

(*y*) O. 50, rr. 19 and 20, R. S. C. For form of affidavit, *post*, pp. 592 and 593.

(*z*) O. 50, r. 16, R. S. C.

percentage of the amounts he has received, but there is no settled scale of remuneration, at all events, in the case of a receiver and manager, and the scale allowed to a liquidator in a compulsory winding-up is no guide (*a*). A receiver and manager, whether appointed with or without remuneration, may be allowed special remuneration for services not rendered in his character of receiver and manager, even where such services have not been sanctioned before they were rendered (*b*). A receiver is entitled to be fully indemnified out of the fund for all costs incurred by him in relation to such fund, but he is not entitled to indemnity for costs in defending an action brought against himself personally which can in no way benefit the estate (*c*) ; but it is otherwise if the proceedings are proceedings in the action in which he is appointed, and are with reference to the accounts brought in by him (*d*). A receiver will be entitled to such indemnity even after he has passed his final account and been discharged, and may apply at any time before the fund is distributed (*e*). The costs and remuneration of receivers and managers are occasionally settled by the Taxing-Master, but usually they are dealt with by the master (*f*). If any person wishes to charge a receiver with having received more than appears by his account, then he must give notice of his intention to the receiver, stating so far as he is able the amount sought to be charged and the particulars thereof in a short and succinct manner (*g*).

A receiver cannot purchase the property over which he is appointed receiver without the sanction of the Court (*h*).

If a receiver fails to leave any account or affidavit or to pass such account or to make any payment or otherwise, the receiver or the parties or any of them may be required to attend at chambers to show cause why such account or affidavit has not been left or such account passed or such payment made or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at chambers or by adjournment into Court, including the

(*a*) Annual Practice, 1912, vol. i. p. 828 ; Yearly Practice, 1912, p. 713 ; notes to O. 50, r. 16 ; *Prior* v. *Bagster* (1888), 57 L. T. 760. In this case 3 per cent. on the gross takings was fixed, but the percentage will vary to 5 or even occasionally 10 per cent. : Daniell's Chancery Practice, 7th Ed. p. 1441.

(*b*) *Harris* v. *Sleep*, [1897] 2 Ch. 80.

(*c*) *Re Dunn*, [1904] 1 Ch. 648 ; *Walters* v. *Woodbridge* (1878), 7 C. D. 504.

(*d*) *Courand* v. *Hanmer* (1846), 9 Beav. 3 ; cp. *Hosegood* v. *Pedler* (1897), 66 L. J. (Q. B.) 18.

(*e*) *Levy* v. *Davis*, [1900] W. N. 174.

(*f*) See *Silkstone and Haigh Moor Coal Co.* v. *Edey*, [1901] 2 Ch. 652. The point in this case seems now to be met by O. 65, r. 27 (17) (*b*), R. S. C.

(*g*) O. 33, r. 5, R. S. C.

(*h*) *Nugent* v. *Nugent*, [1908] 1 Ch. 546, following *Alven* v. *Bond* (1841), Fl. & K. 196, 213 ; *Boddington* v. *Langford* (1845), 15 Ir. Ch. Rep. 558 n. ; but on a sale of a business the Court will not require the receiver not to solicit orders from or do business with the customers of the business : *Re Irish* (1889), 40 C. D. 49

discharge of any receiver and the appointment of another and payment of costs (*i*). In such case a four-day order may be made against the receiver, and if he fails to comply with this it will be followed by sequestration or by an order on motion for commitment or attachment (*k*).

A certificate of a master stating the result of a receiver's account must be taken from time to time (*l*).

A receiver is discharged on motion or summons or on the order for further consideration (*m*).

NOTICE OF MOTION FOR APPOINTMENT OF RECEIVER AND MANAGER.

(*Title.*)

Take notice that this honourable court will be moved before his Lordship Mr. Justice on day the day of 19 at 10.30 o'clock in the forenoon or so soon thereafter as counsel can be heard by Counsel on behalf of the above-named Plaintiff for an order that of in the county of or some other fit and proper person may be appointed Receiver of all the undertaking and assets whatsoever and wheresoever of the above-named Company including its uncalled capital for the time being and Manager of the business of the said Company. And also take notice that special leave to serve you with this [or short] notice of motion with the writ for the day aforesaid has this day been given by his Lordship Mr. Justice (*n*).

Dated etc.

FORM OF ORDER APPOINTING RECEIVER AND MANAGER.

(*Title as in Writ.*)

Upon motion this day made unto this Court by Counsel for the plaintiffs and upon hearing Counsel for the defendants and upon reading the writ issued the day of 1901 an affidavit of the Plaintiff and an affidavit of C.D. (as to fitness) of the proposed receiver both filed this day and the exhibits in the first mentioned affidavit referred to and the Plaintiff by his Counsel undertaking to be answerable for what A.B. as the Receiver and Manager hereinafter appointed shall receive or become liable to pay (*o*) until he shall give security as hereinafter directed. This Court doth appoint C.D. of in the county of

(*i*) O. 50, r. 21, R. S. C.

(*k*) Daniell's Chancery Practice, 7th Ed. p. 1448.

(*l*) O. 50, r. 22, R. S. C. For forms of such certificates, see *post*, pp. 593, *et seq.*

(*m*) Cp. O. 60, r. 4, R. S. C., and O. 61, r. 8, A, as to vacating recognizances and bonds. The latter rule provides that they shall no longer be enrolled, but shall be filed and kept as of record until vacated by order. Such order is usually obtained on summons.

(*n*) Where it is requisite to serve notice of motion with the writ (*i.e.*, before appearance), as is usually the case, or to give less than two clear days' notice of motion, leave must be obtained, see *supra*, p. 566, and the notice of motion should state that it has been obtained.

(*o*) *Re Debenture-Holders' Actions*, [1900] W. N. 58.

Receiver and Manager the property assets and undertaking of the Defendant Company comprised in and charged by or subject to the trusts of two indentures dated respectively and both made between and and it is ordered that the said A.B. be at liberty to act at once but he is not to act as Manager after the last motion day of these sittings without the leave of the Judge and it is ordered that the said A.B. do within twenty-one days or such further time as the Judge shall direct give security according to the course of the Court to the satisfaction of the Judge.

AND it is ordered that the said A.B. do forthwith out of any assets coming to his hands pay the debts of the Company which have priority over the claims of the holders of the debenture stock secured by the said indentures under the Preferential Payments in Bankruptcy Amendment Act 1897 (*p*) and that he be allowed such payments in his accounts.

[AND it is ordered that the said be at liberty to raise and borrow any money required for the conduct of the Company's business not exceeding £ and at a rate of interest not exceeding 5 per cent. per annum on the security of the Company's assets in priority to the security of the said debenture stock holders (*q*).]

AND it is ordered that the said A.B. do pass his accounts and pay the balances which shall be certified to be due from him as the Judge shall direct. [*Re Yorkshire Woolcombers' Association, Houldsworth* v. *The Company*—1902—Y—No. 806. SWINFEN EADY, J., November 25th, 1902.]

ORDER APPOINTING RECEIVER WITH LIBERTY TO ACT BEFORE GIVING SECURITY ON PLAINTIFF'S UNDERTAKING APPOINTMENT OF RECEIVER TO LAPSE AFTER A NAMED DATE UNLESS SECURITY GIVEN (*r*).

(*Title.*)

Upon motion this day made unto this Court by Counsel for the Plaintiff and upon hearing counsel for the Defendants and upon reading the writ issued the 10th day of November 1911 an affidavit of the Plaintiff filed this day and the exhibits therein referred and an affidavit of W.A.S. also filed this day (of fitness) and the Plaintiff by his Counsel undertaking to be answerable for what J.E.A. as Receiver as hereinafter appointed shall receive or become liable to pay until he shall have given security as hereinafter directed.

THIS Court doth hereby appoint J.E.A. of in the County of Receiver on behalf of the Plaintiff and all other Debenture-Holders

(*p*) Now replaced by s. 107 of the Companies (Consolidation) Act, 1908. As to this part of the order see *Re Debenture-Holders' Actions*, [1900] W. N. 58.

(*q*) A power to borrow is, as in this case, sometimes inserted; but it should state whether the borrowing is to be subject to or free from the receiver's right to indemnity: *Glasdir Copper Mines, Ltd.*, [1906] 1 Ch. 365. For such an order see *The Crystal Palace Co., Fox* v. *The Company*, [1909] C. 324, set out below, p. 599.

(*r*) For a similar form, see *post*, pp. 606 and 607.

of the Defendant Company of all the assets undertaking and property of the Defendant Company (except uncalled capital) comprised in or subject to the security created by the Indenture in the said writ mentioned and the Debentures issued by the Defendant Company.

AND IT IS ORDERED that the said J.E.A. do on or before the 1st December 1911 give security as such Receiver pursuant to Order 50, rule 16.

AND IT IS ORDERED that the said Receiver do forthwith out of the assets coming to his hands pay the debts of the Defendant Company which have priority over the Debenture-holders under the Companies (Consolidation) Act 1908 and be allowed all such payments on passing his Accounts. And it is ordered that such receiver do pass his accounts and pay his balances as the Judge shall direct. But in case the said J.E.A. shall not have given security as aforesaid by the time aforesaid his appointment as such receiver is to lapse. [*Re The Phillips River Gold and Copper Co., Ltd., Potter* v. *The Company*—1911—P—No. 2339. SWINFEN EADY, J., November 10th, 1911.]

ORDER APPOINTING RECEIVER AND MANAGER—GIVING LEAVE TO BORROW AND DIRECTIONS AS TO HIS PASSING HIS ACCOUNTS ETC.—RECEIVER AND MANAGER TO ACT AT ONCE UPON PLAINTIFF'S UNDERTAKING UNTIL HE HAS GIVEN SECURITY.

(*Title.*)

UPON MOTION on the 5th 12th and 16th May 1911 and this day made unto this Court by Counsel on behalf of the above-named Plaintiff and upon hearing Counsel for the above-named Defendants and upon reading the writ of summons issued in this action and dated the 1st May 1911 the affidavit of the Plaintiff filed 2nd May 1911 the affidavit of A.M.D. and the affidavit of C.B.S. both filed 5th May 1911 the joint affidavit of the Plaintiff and G.L.W. filed 10th May 1911 the two affidavits of W.H.C. the affidavit of T.E.P. the affidavit of the said A.M.D. and the affidavit of the said C.B.S. all filed 16th May 1911 the affidavits of G.W.Y. and the joint affidavit of the Plaintiff and G.L.W. both filed 18th May 1911 the affidavit of the said W.H.C. filed 20th May 1911 and the affidavit of S.J.R.S. filed this day (as to fitness) and the exhibits in the said affidavits or some of them respectively referred to and the order to wind-up the Defendant Company dated the 9th May 1911 made "In the matter of The Companies (Consolidation) Act 1908. And in the matter of The Express Motor Cab Company Limited (00148 of 1911)"—

And the Plaintiff by his Counsel undertaking to be answerable for what L. M. the receiver and manager hereinafter appointed shall receive or become liable to pay as such receiver and manager until he shall have given security as hereinafter directed—

THIS COURT DOTH APPOINT the said L.M. of in the city of London chartered accountant receiver on behalf of the Plaintiff and all

other (if any) the holders of the first mortgage debentures issued by the Defendant Company the said Express Motor Cab Company Limited of all its undertaking including the goodwill of its business and all its property and assets whatsoever and wheresoever present and future including its uncalled capital for the time being comprised in or subject to the security created by the said first mortgage debentures and to manage the business and undertaking of the Defendant Company the said Express Motor Cab Company Limited with liberty to the said L.M. to act at once but the said L.M. is not to act as such manager after the 16th October 1911 without the leave of the Judge.

AND IT IS ORDERED that the said L.M. do forthwith give security as such receiver and manager pursuant to Order L. Rule 16 of Rules of the Supreme Court.

AND IT IS ORDERED that the said L.M. as such receiver do forthwith out of any assets coming to his hands pay the debts of the Defendant Company the said Express Motor Cab Company Limited which have priority over the claims of the debenture-holders under section 209 of The Companies (Consolidation) Act 1908 and be allowed such payments (if any) on passing his accounts as such receiver and manager.

AND IT IS ORDERED that the said L.M. do on the 19th November and the 19th May in each year leave and pass in the Chambers of the Registrar Companies (Winding-up) his accounts as such receiver and manager the first of such accounts to be left on the 19th November 1911.

AND IT IS ORDERED that the said L.M. do within fourteen days after the date of the certificate of the result of every such account or at such other time as shall be directed by such certificate pay the balance which shall be thereby certified to be due from him (or such part thereof as shall be certified to be proper to be paid) into Court as directed in the Lodgment Schedule hereto.

AND IT IS ORDERED that the said L.M. be at liberty for the purpose of carrying on the business of the Defendant Company the said Express Motor Cab Company Limited to borrow a sum not exceeding Five hundred pounds at a rate of interest not exceeding Six pounds per centum per annum upon the security of the undertaking property and assets of the Defendant Company the said Express Motor Cab Company Limited such sum or sums when borrowed together with the interest thereon to rank in priority to the said first mortgage debentures.

(See over.)

LODGMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE,
Chancery Division. 26th May, 1911.

Re The Express Motor Cab Company, Limited, Swanston v. *The Express Motor Cab Company, Limited, and Another*, 1911, E. 435.

LEDGER CREDIT.—As above.

Particulars of Funds to be lodged to the account of the Paymaster-General.	Person to make the lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Balances from time to time certified to be due on passing accounts of receiver and manager	L. M. (the receiver and manager)						

[*Re The Express Motor Cab Co., Swanston* v. *The Company*, 1911—E—435. NEVILLE, J., May 26th, 1911.]

ORDER APPOINTING OFFICIAL RECEIVER RECEIVER FOR DEBENTURE-HOLDERS WITH LIBERTY TO APPOINT AN AGENT.

(*Title.*)

UPON MOTION this day made unto this Court by Counsel for the Plaintiff and upon hearing Counsel for the Defendants and upon reading the writ of summons dated the 15th July 1896 and the affidavit of R.B.S. filed this day and the exhibit therein referred to—

THIS COURT DOTH APPOINT George Stapylton Barnes the Senior Official Receiver in Companies Winding-up the Liquidator of the Defendant Company Chaffey Brothers Limited receiver to receive on behalf of debenture-holders any assets in this country or to be remitted to this country charged in favour of the debenture-holders or their trustees.

AND IT IS ORDERED that such receiver be at liberty to appoint an agent in or to proceed to Australia on behalf of the English debenture-holders and make inquiries and act on their behalf but such agent is not to be at liberty to receive any money in Australia without the leave of the Court and without first giving security to the satisfaction of the Court and any power of attorney to be given to such agent is to be settled in Chambers and this order is to be without prejudice to any application to extend the power of the receiver appointed by this order.

AND IT IS ORDERED that such receiver be at liberty to act at once and without security.

AND IT IS ORDERED that the said George Stapylton Barnes do on the 1st January 1897 and the 1st July 1897 and the same days in each succeeding year leave in the Chambers of the Registrar Companies (Winding-up) his accounts as such receiver and do within fourteen days after the date of the certificate of the allowance of every such account pay the balance which shall be certified to be due from him or such part thereof as shall be certified to be payable into Court as directed in the Lodgment Schedule hereto.

AND IT IS ORDERED that the costs of this motion are to be costs in the action.

LODGMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE,
Chancery Division. 12th August, 1896.

Re Chaffey Brothers, Limited.

LEDGER CREDIT.—*Henry* v. *Chaffey Brothers, Limited, and Others*, 1896, C. 2329.

Particulars of funds to be lodged.	Person to make lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Balance to be from time to time certified on passing accounts as receiver or so much thereof as shall be certified to be payable. Invest and accumulate in New Consols funds to be lodged.	George Stapylton Barnes *of* 33, *Carey Street, W.C.* (receiver).						

[*Re Chaffey Brothers., Ltd., Henry* v. *The Company*, 1896—C—2329. VAUGHAN WILLIAMS, J., August 12th, 1896.]

RECEIVER AND MANAGER'S RECOGNIZANCE.

A. H. G. of Street in the City of Chartered Accountant before our Sovereign Lord the KING in His High Court of Justice personally appearing doth acknowledge himself to owe to James Rigg Brougham the Senior Registrar in Bankruptcy of the High Court of Justice and Henry John Hood the Registrar Companies (Winding-up) of the High Court of Justice the sum of Ten Thousand Pounds of

lawful money of the United Kingdom of Great Britain and Ireland to be paid to the said James Rigg Brougham and Henry John Hood or one of them or the executors or administrators of them or one of them and unless he do pay the same he the said A.H.G. doth grant for himself his heirs executors and administrators that the said sum of Ten Thousand Pounds shall be levied recovered and received of and from him and of and from all and singular his manors messuages lands tenements and hereditaments goods and chattels wheresoever the same shall or may be found.

WITNESS Our said SOVEREIGN LORD, EDWARD THE SEVENTH, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, KING, DEFENDER OF THE FAITH, and so forth, at the Royal Courts of Justice the 12th day of February One thousand nine hundred and eight.

Here give Title of Action and distinctive mark.

Recite so much of Order as may be necessary.

WHEREAS by an Order of the High Court of Justice Chancery Division, made by Mr. Justice Parker in an Action of which the short title is *Wright and Butler Limited, Hughes* v. *Wright and Butler Limited* 1907 W. No. 3622 and dated the 13th day of December 1907 A.H.G. of Street in the City of Chartered Accountant was appointed Receiver and Manager on behalf of the Plaintiff and the other holders of 388 First Mortgage Debentures of the Defendant Company of the Undertaking and property of the Defendant Company (except uncalled capital) comprised in or subject to the Mortgage or Charge to secure such Mortgage Debentures created thereby and by an Indenture dated the 23rd day of October 1905 and made between the Defendant Company of the one part and the Defendants C.B. and E.P.W. of the other part but the said A.H.G. was not to act as Manager beyond 13th March 1908 without the leave of the Judge and IT WAS ORDERED that he should forthwith give security to be approved by the Judge.

[*Re Wright and Butler, Ltd., Hughes* v. *Wright and Butler, Ltd.*, 1907 —W—3622: "I have approved and allowed this recognizance this 12th day of February, 1908. Registrar Companies (Winding-up)."]

AND WHEREAS the Court hath approved of the above-written recognizance with the under-written condition as a proper security to be entered into by the said A.H.G. (together with the bond dated 12th day of February 1908 entered into by him together with the Employers Liability Assurance Corporation Limited as his surety) pursuant to the said Order and the Rules of the Supreme Court in that behalf and as well in respect of the period for which the said A.H.G. has been appointed such Receiver and *Manager* as aforesaid as also in respect of any extended or further period during which he may be continued or appointed such Receiver and *Manager* either under the said Order or under any further Order in the said Action and in testimony of such approbation the Registrar Companies (Winding-up) hath signed an allowance in the margin hereof.

NOW THE CONDITIONS of the above-written recognizance are such that if the said A.H.G. do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the Undertaking and property of the said Company and in respect of the said business including as well all and every the sum and sums so received in respect of the period for which the said A.H.G. has been appointed such Receiver and Manager

as aforesaid as also all and every the sum and sums so received in respect of any appointment for any extended or further period during which he may be appointed such Receiver and Manager either under the said Order or under any further Order in the said Action at such periods as the said Court shall appoint and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed, or shall hereafter direct, then the above recognizance shall be void and of none effect otherwise the same is to be and remain in full force and virtue.

TAKEN AND ACKNOWLEDGED by the above-named A.H.G. at in the County of this 12th day of February 1908.
Before me,
G.F.C.
A Commissioner of Oaths.

RECEIVER AND MANAGER'S BOND.

KNOW ALL MEN BY THESE PRESENTS that I A.H.G. of in the City of Chartered Accountant and We the THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, whose office is situate at Hamilton House, Victoria Embankment, in the City of London (hereinafter called the Corporation) are jointly and severally held and firmly bound unto James Rigg Brougham the Senior Registrar in Bankruptcy of the High Court of Justice and Henry John Hood Registrar Companies Winding-up of the High Court of Justice in the sum of ten thousand pounds of lawful money of the United Kingdom of Great Britain and Ireland, to be paid unto the said James Rigg Brougham and Henry John Hood or one of them, or the executors or administrators of them, or one of them, for which payment well and truly to be made, I, the said A.H.G. for myself my heirs, executors, and administrators, and every of them, and We, the Corporation, for ourselves and our successors, de bind and oblige ourselves for the whole firmly by these presents. Signed, sealed, and delivered by the said A.H.G. and sealed with the Seal of the said Corporation, and signed by two of the Directors thereof. Dated the 12th day of February in the Year of our Lord One thousand nine hundred and eight.

[*Re Wright and Butler, Ltd., Hughes* v. *Wright and Butler, Ltd.*, 1907—W—3622: "I have approved and allowed this bond this 21st day of February, 1908. Registrar Companies (Winding-up)."]

WHEREAS, by an Order of the High Court of Justice Chancery Division, made by Mr. Justice Parker in an Action of which the short title is *Re Wright and Butler Limited, Hughes* v. *Wright and Butler Limited*, 1907 W. No. 3622 and dated the 13th day of December 1907, A.H.G. of Street in the City of Chartered Accountant was appointed Receiver and Manager on behalf of the Petitioners and the other holders of 388 First

Mortgage Debentures of the Defendant Company of the Undertaking and property of the Defendant Company (except uncalled capital) comprised in or subject to the Mortgage or charge to secure such Mortgage Debentures created thereby and by an Indenture dated the 23rd day of October 1905 and made between the Defendant Company of the one part and the Defendants C.B. and E.P.W. of the other part but the said A.H.G. was not to act as Manager beyond the 13th March 1908 without the leave of the Judge and it was Ordered that he should forthwith give security to be approved by the Judge. AND WHEREAS, the Court hath approved of the Corporation, as Surety for the said A.H.G. in the sum of ten thousand pounds, and has also approved of the above Bond with the underwritten Conditions, together with a Recognizance entered into by the said A.H.G. in the sum of ten thousand pounds and bearing date the 12th day of February 1908 as a proper security to be entered into by the said A.H.G. and the said Corporation pursuant to the said Order and the Rules and Orders of the Supreme Court in that behalf, as well in respect of the period for which the said A.H.G. has been appointed such Receiver and Manager as aforesaid, as also in respect of any extended or further period, during which such Receiver and Manager may be continued or appointed such Receiver and Manager either under the said Order or under any further Order in the said Action, and in testimony of such approval the Registrar Companies (Winding-up) hath signed an allowance in the margin hereof and of the said Recognizance respectively. NOW THE CONDITIONS of the above-written Bond or Obligation are such that if the above bounden A.H.G. his executors or administrators, or some or one of them, do and shall duly account for what the said A.H.G. has received and shall receive or shall become or be held liable to pay or account for as such Receiver and Manager as aforesaid, including as well all and every the sum and sums so received in respect of the period for which the said A.H.G. has been appointed such Receiver and Manager as aforesaid as also all and every the sum and sums so received in respect of any appointment for any extended or further period during which the said A.H.G. may be continued or appointed such Receiver and Manager either under the said Order or under any further Order in the said Action at such period and in such manners as the Court or a Judge shall appoint and do and shall pay the same as such Court or Judge hath directed or shall hereafter direct, and shall give immediate notice to the Court if the said Corporation shall become insolvent or go into liquidation, then the above-written Bond or Obligation shall be void, otherwise the same shall, subject to the provisions hereinafter contained, be and remain in full force and virtue.

PROVIDED ALWAYS, that if the said A.H.G. shall not for every successive term of twelve calendar months, to be computed from the 13th day of December 1907 within fifteen days after the 1st day of November in each and every year, pay or cause to be paid at the office of the Corporation, the annual premium or sum of fifty pounds sterling then the Corporation shall at any time after such default in payment be at liberty to apply by Summons at Chambers to be relieved from all further liability

as such Sureties as aforesaid, and such Summons having been served upon such persons as the Court shall direct, and being finally heard, all further liability of the said Corporation as such Sureties as aforesaid shall, from and after the final hearing of such Summons, or from and after such other time as the Judge shall direct, cease and determine, save and except in respect of any loss or damage occasioned by any act or default of the said A.H.G. in relation to his duties as such Receiver and Manager as aforesaid previously to such cesser and determination of liability. PROVIDED ALWAYS that a Certificate or Certificates under the hand of the Registrar Companies Winding-up of the amount which the said A.H.G. as such Receiver and Manager as aforesaid is liable to pay and has not paid, shall be sufficient and conclusive evidence against the said A.H.G. his heirs, executors, and administrators, and against the Corporation and also as between the Corporation and the said James Rigg Brougham and Henry John Hood of the truth of the contents of the said Certificate or Certificates, and that this Bond has become forfeited thereby to the amount of the sum stated in such Certificate or Certificates, and shall form a valid and binding charge and claim not only against the said A.H.G. his heirs, executors, and administrators, but also against the Corporation and the funds and property thereof, without its being necessary for the said James Rigg Brougham and Henry John Hood or either of them, or their executors or administrators, first to take legal or other proceedings against the said A.H.G. his heirs, executors or administrators, for the recovery thereof, and without any further or other proof being given either by or on the part of the said James Rigg Brougham and Henry John Hood or either of them or either of their executors or administrators, in any action, suit or proceeding, to enforce this Bond against the Corporation or against the said A.H.G. his heirs, executors or administrators or by or on the part of the said Corporation in any action or proceeding against the said A.H.G. his heirs executors or administrators of the amount of such damage or loss, or that the same has been sustained incurred or occasioned by and through the act or default of the said A.H.G. while in office.

PROVIDED ALWAYS and it is further agreed between the said A.H.G. and the Corporation, that the said A.G.H. shall and will on being discharged from his Office or ceasing to act as such Receiver and Manager as aforesaid, forthwith give notice thereof in writing, and also furnish to the Corporation, free of charge, an office copy of the Order of the Court or Judge discharging him from his Office as such Receiver and Manager as aforesaid. And further that he the said A.H.G. his heirs, executors, or administrators, shall and will from time to time and at all times save, defend, and keep harmless the said Corporation and their successors, and the property and funds of the said Corporation, from and against all loss and damage, costs and expenses, which the said Corporation or the funds or property thereof, shall or may or otherwise might at any time sustain or be put unto, for or by reason or in consequence of the said Corporation having entered into the above-written Bond for and at the request of the said A.H.G.

IN WITNESS whereof the said A. H. G. has hereunto set his hand and seal, and the said Corporation have hereunto caused their Common Seal

to be affixed, and the said two Directors thereof have set their hands the day and year first above-written.

Signed, sealed and delivered by the said A.H.G. in the presence of H.P. Clerk to Messrs. W. & C. } A.H.G.

The Seal of THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, was hereunto affixed in the presence of

A.T.H.H. Victoria Embankment E.C. Clerk to the said Corporation.

Signed for and on behalf of the EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED.

H.C.
P.M. } Directors.

W.E.G. Secretary.

RECEIVER'S SECURITY BY UNDERTAKING UNDER O. 50. R. 16*a*, R. S. C.

IN THE HIGH COURT OF JUSTICE,

Chancery Division.

MR. JUSTICE .

In the Matter of the A.B. Co. Ltd.

Jones v. *A.B. Co. Ltd.*

I X.Y. of in the county of the receiver (and manager) appointed by order dated (*or* proposed to be appointed) in this action hereby undertake with the Court to duly account for all moneys and property received by me as such receiver (*or* manager) or for which I may be held liable and to pay the balances from time to time found due from me and to deliver any property received by me as such receiver (*or* manager) at such times and in such manner in all respects as the Court or a Judge shall direct.

And we C.D. and E.F. hereby jointly and severally (*in the case of a guarantee or other company strike out "jointly and severally"*) undertake with the Court to be answerable for any default by the said X.Y. as such receiver or manager and upon any such default to pay to any person or persons or otherwise as the Court or a judge shall direct any sum or sums not exceeding in the whole £ that may from time to time be certified by a Master of the Supreme Court (or the Registrar Companies (Winding-up) to be due from the said receiver and we submit to the jurisdiction of the Court in this action to determine any claim made under this undertaking (*y*).

Dated this day of 19 .

[*Signatures of the Receiver and his surety or sureties. In the case of the surety being a guarantee or other Company the seal of the Company must be affixed* (*z*).]

CERTIFICATE OF RECEIVER HAVING GIVEN SECURITY.

(*Title.*)

I hereby certify that in pursuance of the order in this action dated the 26th day of May 1911, L.M. of London Wall Buildings in the City of London Chartered Accountant, the person who is by the said order appointed Receiver as in the said order mentioned and also to manage the business undertaking of the Defendant Company, and who was by the said order directed forthwith to give security has given security pursuant to the said order and the Rules of the Supreme Court in that behalf. Such security consists of a Recognizance in the sum of £7000 entered into by the said L. M. and dated the 10th day of June 1911 and the joint and several Bond in the sum of £7000 entered into the said L. M. together with the Trustees Executors and Securities Insurance Corporation Limited and dated the 10th day of June 1911.

The said Recognizance and Bond have been approved by the Court and each of them is identified by my Signature in the margin thereof. and they have been duly filed in the Central Office.

And the said L. M. as such receiver as aforesaid is to deliver his accounts and pay any balances found due from him as directed by the said Order of the 26th day of May 1911 (*a*).

(*y*) This is Form 21 (*a*), Appendix L., R. S. C. As to when such undertakings may be accepted, see O. 50, r. 16 (*a*), *supra*, pp. 571 and 572.

(*z*) The words in italics are appended to Form 21 (*a*), Appendix L., R. S. C.; but as to the seal of the company being affixed, see the Masters' rules, as to these undertakings, *supra*, pp. 571 and 572.

(*a*) In this case there had been a previous order on these points, where this is not the case this paragraph will be omitted and the following paragraph (or a similar one) will be substituted: "And I certify that the said Court has appointed the day of 19 and the day of 19 , and the same days in each succeeding year until further direction, to be the days on which the said L.M. is to cause his half-yearly accounts to be delivered into the Chambers of the Judge [or Registrar Companies (Winding-up).] and is to pay the balance from time to time certified to be due on passing such accounts or so much thereof as shall be certified to be payable as the Court shall direct."

The evidence adduced consists of the affidavit of L. M. filed the first day of June 1911, the affidavit of G. T. filed the 15th day of June 1911, and the exhibits thereto, and the Receipt of the Central Office dated the 20th day of June 1911.

Dated this 28th day of June 1911. [*Re The Express Motor Cab Co., Ltd., Swanston* v. *The Company and Another*, 1911—E—435. Mr. Registrar HOOD, June 28th, 1911.]

AFFIDAVIT OF RECEIVER VERIFYING ACCOUNT.

I E.C. of in the City of Chartered Accountant the Receiver and lately the Manager in this Action make oath and say as follows :—

1. The Account now produced and shewn to me marked "I" and purporting to be my ninth Account as Receiver of the Receipts and payments in respect of the undertaking of the Defendant Company from the 25th day of June 1911 to the 29th day of September 1911 both days inclusive contains a true account of all and every sum of money received by me or by any other person or persons by my order or to my knowledge or belief for my use or account in respect of the rents and profits of the freehold and leasehold hereditaments and all other the property and assets both present and future of the Defendant Company and its undertaking exclusive of uncalled capital comprised in or subject to the charge created by the Trust Deed dated the 1st August 1899 in the endorsement of the Writ of Summons dated the 20th April 1909 and in the Orders herein dated respectively the 9th June and 28th July 1909 mentioned from the said 25th June 1911 to the 29th September 1911 both days inclusive.

2. The several sums of money mentioned in the said Account hereby verified to have been paid and allowed have been actually and truly so paid and allowed for the several purposes in the said Account mentioned. [All the payments included therein for Advertisements were in my judgment proper and necessary for the maintenance of the goodwill of the Defendant Company's business.]

3. All the payments for salaries and wages included in my said ninth Account have to the best of my knowledge information and belief been duly made and are proper payments for the work done and necessary for the proper management of the Defendant Company's business. The payments made for wages in London and Croydon during the period covered by my said ninth Account are shewn respectively in the two wages books marked respectively E.C.1 (*b*) and E.C.2 exhibited to my former Affidavit sworn herein on the 16th and filed on the 17th March 1910. The book marked E.C.3 exhibited to such Affidavit is the London salaries book and the payments made by me in respect of salaries during the said period in London are shewn in such book.

4. As stated in my said Affidavit the book marked E.C.5 exhibited thereto is the London petty cash book and to the best of my knowledge information and belief all the items included in the said book during the period covered by my said ninth Account have been paid for the purposes therein stated and are necessary and proper payments to have been made.

(*b*) This is not usually included in such an affidavit.

5. The said account marked "I" is just and true in all and every the items and particulars therein contained according to the best of my knowledge and belief.

6. The Guarantee Society my surety named in the Bond dated the 21st July 1909 is still carrying on business and no petition is pending for its winding-up. Sworn at etc.

CERTIFICATE OF PASSING OF RECEIVER'S FIRST ACCOUNT.

(*Title.*)

I hereby certify, that in pursuance of the order made in this action dated the 12th day of May 1911 and the Certificate dated the 16th day of June 1911 F.J.L. of in the City of London Chartered Accountant the person appointed Receiver on behalf of the Plaintiffs and all other holders of First Mortgage Debentures of the Defendant Company of all the property of the Defendant Company except uncalled capital comprised in or subject to the security created by the said Debentures and to manage the business of the Defendant Company but the said F.J.L. was not to act as such manager after the 12th June 1911 but such appointment has been extended to 12 Aug. 1911 has left in the Chambers of the Registrar Companies (Winding-up) his 1st account as such Receiver and Manager of his receipts and payments and allowances in respect and out of the said property *and in respect of the management of the said business*, from *the time of his appointment* the 12th day of May 1911 to the 31st day of July 1911, both days inclusive, and such account has been passed and allowed. The said receipts amount altogether to the sum of £913 18*s.* 3*d.* and the said payments and allowances amount to the sum of £774 12*s.* 4*d.* and there is due *from* the said Receiver, on the balance of his said 1st account, the sum of One hundred and thirty-nine pounds five shillings and elevenpence which sum of £139 5*s.* 11*d.* is to be retained by the said F.J.L. and accounted for by him on the passing of his next account.

The particulars of the above receipts and payments *except as hereinafter mentioned* appear in the account marked "A" verified by the affidavit of the said Receiver filed the 24th day of August 1911 and which account is to be filed with this Certificate.

In addition to the disbursements appearing in such account the said Receiver has paid or retained and been allowed the sum of £24 14*s.* 0*d.* for the ascertained costs of giving security and passing the said account.

I have adjourned the question of the remuneration of the said Receiver for the period covered by the said account to be dealt with on the passing of his next account.

The further Evidence produced consists of the order appointing Receiver dated 12th May 1911 the order dated 26th May 1911 and the order dated 12th July 1911 the Certificate of Receiver having given security dated 16th June 1911 the affidavit of F.J.L. filed the 24th August 1911 and the exhibits thereto.

Dated the 2nd day of November 1911. [*Re The Cadogan Laundry Co. Ltd. Armstrong* v. *The Company* 1911—C—1284. Mr. Registrar Hood November 2nd 1911.]

CERTIFICATE OF PASSING OF RECEIVER'S SECOND AND THIRD ACCOUNTS.

(*Title.*)

I hereby certify, that in the pursuance of the Judgment made in this action dated the 27th day of April 1909 and the Certificate dated the 17th day of June 1909. E.K.H. of in the City of Chartered Accountant the person appointed Receiver but subject to the right of prior incumbrancers on behalf of the Plaintiff and other holders of the Mortgage Debentures of the undertaking and property of the Defendant Company comprised in or subject to the Charges created by the said First Mortgage Debentures except uncalled capital and to manage the business of the Defendant Company has left in the Chambers of the Registrar Companies (Winding-up) his 2nd and 3rd accounts as such Receiver and Manager of his receipts and payments and allowances in respect and out of the said undertaking and property and in respect of the management of the said business, from the 27th day of October 1909 to the 26th day of October 1910, both days inclusive, and such accounts the particulars of which are set forth in the summary hereto have been passed and allowed. The said receipts amount altogether to the sum of £7835 4*s.* 7*d.* and the said payments and allowances, *including* £174 19*s.* 5*d.* *due to the said Receiver on his* 1*st account,* amount to the sum of £4676 16*s.* and there is due *from* the said Receiver, on the balance of his said 2nd and 3rd accounts the sum of Three thousand one hundred and fifty-eight pounds eight shillings and sevenpence of which sum of £3158 8*s.* 7*d.* £2700 part thereof is to be paid by the said E.K.H. into Court to the credit of this Action as directed in the Lodgment Schedule hereto on or before the 21st day of December 1910 and the balance thereof the sum of £458 8*s.* 7*d.* is to be retained by the said E.K.H. and accounted for by him on the passing of his next account.

The particulars of the above receipts and payments *except as hereinafter mentioned* appear in the accounts marked "B" and "C" respectively and respectively verified by the affidavits of the said Receiver filed respectively the 20th day of September 1910 and the 24th day of November 1910 and which accounts are to be filed with this Certificate.

I have adjourned the question of remuneration of the said Receiver for the period covered by the said respective accounts to be dealt with on the passing of his next account.

Except that of the items of disbursement in the said accounts I have disallowed that numbered 494 for £10 in the account marked "B" and I have deducted from the item numbered 758 in the said account marked "B" the sum of 15*s.* and in addition to the disbursements appearing in such accounts the said Receiver has paid or retained and been allowed the sum of £27 16*s.* 6*d.* as to the account marked "B" and the sum of £19 12*s.* 2*d.* as to the account marked "C" making altogether the total sum of £47 8*s.* 8*d.* for the ascertained Costs of the said Receiver and of the parties attending of passing the said respective accounts.

The further evidence produced consists of the two several affidavits of E.K.H. filed respectively the 20th September and the 24th November

1910. The 3 orders dated respectively the 14th December 1909, the 30th March 1910 and the 26th July 1910.

The Certificate of Passing 1st account dated 28th February 1910, and the Certificate of Lodgment dated 17th August 1910.

SUMMARY OF ACCOUNTS.

ACCOUNT MARKED "B."

	£ s. d.	£ s. d.	£ s. d.
Receipts . . .	11,900 8 7		
Less . . .	5,554 15 0		
			6345 13 7
Payments . . .	9,705 7 9		
Less . . .	5,729 14 5		
		3975 13 4	
Balance due to Receiver on 1st account		174 19 5	
		4150 12 9	
Disallow Item 494 .	10 0 0		
,, ,, 758 (part)	0 15 0		
		10 15 0	
		4139 17 9	
Costs of passing account:			
Receivers . .	17 6 6		
Parties appearing .	10 10 0		
		27 16 6	
			4167 14 3
		Balance due from Receiver	2177 19 4

ACCOUNT MARKED "C."

		£ s. d.	£ s. d.
Receipts		1489 11 0	
Balance due from Receiver on previous account		2177 19 4	
			3667 10 4
Payments		489 9 7	
Cost of passing account		19 12 2	
			509 1 9
Receivers	13 6 6		
Parties appearing . .	6 5 8		
		Balance due from Receiver	£3158 8 7

Dated the 13th day of December, 1910.

Registrar Companies (Winding-up)

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

Title of Cause or Matter: *Re Hughes and Kimber, Limited, Howard* v. *Hughes and Kimber, Limited,* 1909—H—1204.

Ledger Credit as above.

LODGMENT SCHEDULE.

Particulars of Money to be lodged to the Account of the Paymaster-General.	Person to make the Lodgment.	Amount.		
		£	s.	d.
Part of Balance due from Receiver on his 2nd and 3rd Accounts.	E.K.H. (the Receiver.)	2700	0	0
		2700	0	0

Total amount in words } Two thousand seven hundred pounds.

Dated this 13th day of December, 1910.

Registrar Companies (Winding-up).

[*Re Hughes and Kimber, Ltd., Howard* v. *The Company,* 1909—H—1204. Mr. Registrar HOOD, December 13th, 1910.]

CERTIFICATE OF PASSING OF RECEIVER'S SECOND AND FINAL ACCOUNT.

(*Title.*)

I hereby certify, that in pursuance of the Judgment made in this action dated the 21st day of February 1908 and the Certificate dated the 12th day of May 1908 G.R.F. of in the City of Chartered Accountant the person appointed Receiver on behalf of the Plaintiffs and the other holders of an issue of 5 per cent. Debentures of the Defendant Company of the undertaking and all the property present and future of the Defendant Company except its uncalled capital for the time being issued by the Defendant Company to the Plaintiff and the other Debenture-holders and to manage the same but the said G.R.F. was not to act as Manager beyond the 21st May 1908 without the leave of the Judge has left in the Chambers of the Registrar Companies (Winding-up) his 2nd and final account as such Receiver and Manager of his receipts and payments and allowances in respect and out of the said undertaking and property from the 21st day of August 1908 to the 5th day of April 1911 both days inclusive, and such account has been passed and allowed. The said receipts amount altogether to the sum of £2207 9*s.* 4*d.* and the said payments and allowances amount to the sum of £267 9*s.* 3*d.*, and there is due

from the said Receiver, on the balance of his said 2nd and final account, the sum of £1940 0*s.* 1*d.* which sum of £1940 0*s.* 1*d.* is to be paid by the said G.R.F. into Court to the credit of this action as directed by the Order in this action dated 10th February 1911 on or before the 19th day of April 1911.

The particulars of the above receipts and payments *except as hereinafter mentioned* appear in the accounts marked B and C verified by the 2 several affidavits of the said Receiver filed respectively the 1st day of November 1910 and the 7th of April 1911 and which account is to be filed with this Certificate.

Except that of the items of disbursements in the said account I have disallowed that numbered 3 amounting to £21 6*s.* 0*d.* and in addition to the disbursements appearing in such account the said Receiver has paid or retained and been allowed the sum of £200 for his remuneration down to the close of the Receivership and a further sum of £11 18*s.* 2*d.* for his ascertained costs of passing the said account.

The further Evidence produced consists of the Certificate of passing Securities 1st a/c dated 6th April 1909 the 2 several affidavits of G.R.F. filed respectively the 1st November 1910 and the 7th April 1911 the Certificate of Lodgment into Court of balance due from Receiver on his 1st account dated 13th May 1909, and the Order dated 10th February 1911.

Dated the 10th day of April 1911.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

Title of Cause or Matter: *Re The Anglo-Argentine Shipping Company, Limited, Hall* v. *The Company*, 1908—A—266.

Ledger Credit as above.

LODGMENT SCHEDULE.

Receiver's Balance to be lodged pursuant to Order dated the 10th day of February, 1911.

Particulars of Money to be lodged to Account of the Paymaster-General.	Person to make the Lodgment.	Amount. £	*s.*	*d.*
Balance due from Receiver on his 2nd and final Account.	G.R.F. (Receiver).	1940	0	1
		1940	0	1

Total amount in words } One thousand nine hundred and forty pounds and one penny.

Registrar Companies (Winding-up).

[*Re The Anglo-Argentine Shipping Co., Ltd., Hall* v. *The Company*. 1908—A—266. Mr. Registrar HOOD, April 10th, 1911.]

ORDER ON TENANTS TO ATTORN TO RECEIVER.

Upon Motion this day made unto this Court by Counsel for the Plaintiffs. And upon hearing Counsel for the Defendant Company and for E.A.P. and L. de R. the Respondents to this Motion. And upon reading the Order dated 11th January 1910 (appointing Receiver) the two several Affirmations of C.S.G. filed respectively the 7th and the 11th April 1911 the Affidavit of C.C. filed the 8th April 1911 the Affidavit of W.U.P. filed the 11th April 1911 and the Affidavit E.A.P. and L. de R. filed 10th April 1911 and the several Exhibits in the said Affirmations and Affidavits or some of them respectively referred to. And the Respondents the said E.A.P. and L. de R. by their Counsel undertaking to forthwith pay the Head rent due in respect of the premises of the Defendant Company situate at in the County of London on the 25th March last to R. and C. Limited and the proportion of Rent (if so ordered) from the said 25th March until the date of this Order to C.C. the Receiver in this Action.

IT IS ORDERED that the Respondents the said E.A.P. and L. de R. do attorn and become Tenants to the said C.C. the Receiver appointed in this Action in respect of the said premises situate at aforesaid together with all the Furniture Fittings and appurtenances upon the said premises all the rent of £ per week from the date of this Order.

AND IT IS ORDERED that the Respondents the said E.A.P. and L. de R. be at liberty to apply as they may be advised.

And the Plaintiffs and the Defendants are to be at liberty to apply as to Costs and otherwise generally as they may be advised. [*Re Blanchards Ltd. Hodson* v. *The Company*, 1910—B—No. 4. Mr. Justice SWINFEN EADY, April 11th 1911.]

ORDER TO DELIVER UP POSSESSION OF THE COMPANY'S BUSINESS AND PREMISES TO RECEIVER AND MANAGER.

(*Title.*)

Upon the application of the Plaintiffs by Summons dated the 27th day of June 1911. And upon hearing Counsel for the Plaintiffs and for E.A.P. and L. de R. the Respondents to the said Summons. And upon hearing the Solicitors for the Defendant Company and upon reading the Order of Attornment dated 11th April 1911 an Affidavit of C.C. filed the 28th June 1911 and the Exhibits therein referred to and the Joint Affidavit of E.A.P. and L. de R. filed the 5th July 1911.

IT IS ORDERED that the said E.A.P. and L. de R. do deliver up possession of the Restaurant and premises situate at in the County of London. Together with all the Furniture Fittings and Appointments upon the said premises to the said C.C. the Receiver appointed in this Action at 12 o'clock Noon on the 15th July 1911.

AND IT IS ORDERED that the said E.A.P. and L. de R. do forthwith pay to the Receiver the said C.C. the sum of £ (being as to £ part thereof for Arrears of Rent due under the said Order of 11th April 1911 and as to £ the balance thereof the proportion of the

Head rent due in respect of the said premises from 25th March 1911 to the 11th April 1911), and do also pay the Electric Light and Gas Accounts for Current supplied up to 12 o'clock on the said 15th July 1911.

AND IT IS ORDERED that the said Receiver C.C. be at liberty to carry on the business of the Defendant Company up to the 31st July 1911 and to use the moneys in his hands (about £) to meet the current expenses of the said Business and if necessary in order to avoid the supply being cut off to be at liberty to pay the said Electric light and Gas Accounts.

AND IT IS ORDERED that the said C.C. as such Receiver do take over any consumable Stores upon the said premises belonging to the said E.A.P. and L. de R. at Invoice prices and that the amount due in respect of such Stores be set off against the amount of £ due from the said E.A.P. and T. de R. as aforesaid. [*Re Blanchards Ltd. Hodson* v. *The Company*, 1910—B—No. 4. Mr. Registrar HOOD, July 14th, 1911.]

ORDER GIVING RECEIVER LIBERTY TO BORROW AND TO MAKE CERTAIN PAYMENTS OUT OF THE MONEYS BORROWED.

(*Title.*)

Upon the application of the Plaintiff by Summons dated 18th February 1909. And upon hearing Counsel for the Applicants and for the Defendants. B.B.T. and The P.A.C. and the Solicitors for the Defendant Company and for the Defendants F. and S. and S. And upon reading the Judgment dated 12th February 1909 and an Affidavit of W.C.J. filed 20th February 1909 and Exhibits therein referred to and the Crystal Palace Company's Acts 1877, 1881, 1887, 1895.

IT IS ORDERED that W.C.J. the Receiver of the Defendant Company's undertaking and property and Manager of the Defendant Company's business be at liberty :—

(*a*) To borrow or raise at interest at a rate not exceeding 5 per cent. per annum upon the Security of the Undertaking and property if the Defendant Company or some part thereof and in priority to the Debenture Stocks of the Defendant Company a sum not exceeding the sum of £ for discharging such liabilities present and future of The Crystal Palace Company as are necessary to be paid forthwith in order to carry on as a going concern the business of the Defendant Company.

(*b*) To pay The South Suburban Gas Company the arrears for Gas supplied to the Defendant Company amounting to £ out of the said £ to be raised as before mentioned.

(*c*) To pay to The Metropolitan Water Board out of the said sum of £ to be raised the arrears for Water Rate amounting to £ .

But the Charge in respect of the said sum of £12,000 shall be subject to the Costs and Expenses of the said Receiver including his remuneration and the Costs of this Motion. And the Costs of this application are to be Costs in the Action. [*Re The Crystal Palace Co. Fox* v. *The Company*, 1909—C—324. JOYCE, J., March 1st, 1909.]

ORDER GIVING RECEIVER IN DEBENTURE-HOLDER'S ACTION LEAVE TO TAKE PROCEEDINGS IN LIQUIDATOR'S NAME FOR GETTING IN CALL (*d*).

IN THE HIGH COURT OF JUSTICE,
Chancery Division. 1893 H. No. 450.
Companies (Winding-up).
MR. JUSTICE VAUGHAN WILLIAMS.

Monday the 12th day of June 1893.

Between Cartmell Harrison (on behalf of himself and all other Holders of Debentures of the Defendants The St. Etienne Brewery Company Limited,
Plaintiff,
and
The St. Etienne Brewery Company Limited Defendants.
and
0036 of 1893.
In the matter of The Companies Acts 1862 to 1890.
and
In the Matter of The St. Etienne Brewery Company Limited.

The application of the Plaintiff in the above Action by Summons dated the 12th of May 1893 which upon hearing Counsel for the Applicant and the Solicitors for E.H.C. the Liquidator of the above-named Company in Chambers was adjourned to be heard in Court and coming on this day to be heard accordingly. And upon hearing Counsel for the Applicant and for the said E.H.C. the Liquidator of the above-named Company. And upon reading the Order in the above Action appointing Receiver dated the 3rd day of February 1893 the Affidavit of the Plaintiff filed the 12th May 1893 the Affidavit of E.H.C. filed the 18th May 1893 the Order to continue the Voluntary Winding-up of the said Company subject to the supervision of the Court dated the 20th February 1893.

IT IS ORDERED that upon the Liquidator of the above-named Company being properly indemnified (such Indemnity to be settled in the Chambers of the Registrar in Companies Winding-up in case the parties differ) against all Costs charges and expenses which the said liquidator has already incurred in the winding-up (such costs charges and expenses being limited to the Costs of and occasioned by making the call hereinafter mentioned) or may be put to or may become liable to pay in respect of such Indemnity or Actions or other proceedings as are hereinafter referred to W.B.P. the Receiver in the above Action be at liberty in the name of the Liquidator or the Company to get in and bring such Actions or take such other proceedings as may be necessary for getting in the Calls and any other moneys due and remaining unpaid in respect of Shares held by the Contributories respectively of the said Company.

AND IT IS ORDERED that the Books of the said Company shall remain in the Custody of the said Liquidator and that the Receiver shall have liberty to inspect the same at all reasonable times.

AND IT IS ORDERED that the Costs of all parties of this Application be Costs in the Winding-up.

(*d*) At the date of this order debenture-holders' actions were not headed "In the Matter of the Company"—this was introduced by the order of the Lord Chancellor of November 29, 1895.

The next step in the action, except where the company consents to judgment on the application for a receiver, after an application for the appointment of a receiver and after an appearance has been entered, is to take out a summons for directions under Order 30 R. S. C. If the parties agree and the company appears before the master and agrees to appear at the hearing by counsel and to consent an order may be made on such summons that the evidence may be taken by affidavit, and in such case, but not otherwise (*e*), the order on the summons for directions may order the action to be set down for hearing on minutes without pleadings as a short cause (in which case the ordinary ten days' notice of trial under Order 36, r. 14, R. S. C. is necessary), or, and this is the better course, an order may be made on such summons that the action be set down on motion for judgment without pleadings to be heard on minutes as a short cause, in which case two clear days' notice is required (*f*). Some of the judges, however, require a statement of claim to be delivered even in cases where the company appears before the master and agrees to appear by counsel at the hearing and to consent (*g*). If the parties do not agree to affidavit evidence the order on the summons for directions must direct delivery of a statement of claim in the ordinary way. No summons for directions can be taken out against a person who has not put in an appearance, and in such a case the right course is to file a statement of claim and affidavit of service under Order 13, r. 12, R. S. C., and then, after the expiration of ten days (*cp.* Order 27, r. 11, R. S. C.) a notice of motion may be filed and the motion set down. A statement of claim cannot be dispensed with in these cases (*h*).

STATEMENT OF CLAIM IN DEBENTURE-HOLDER'S ACTION.

(*Title same as Writ.*)

1. THE Defendant Company (hereinafter called the Company) was incorporated under the Companies Acts 1862 to 1900 on or about the 19th

(*e*) *Gutta Percha Corporation*, [1899] W. N. 251; *Kitson Empire Electric Lighting Co.*, [1910] W. N. 154.

(*f*) O. 40, r. 1, R. S. C. *Re Pringle* (1903), 89 L. T. 743. Where the action is to come on without pleadings on notice of motion, copies of the affidavits to be used should be left with the papers for the Judge. *Church Stretton Mineral Water Co.* (1904), 52 W. R. 375. Even where the usual order in a debenture-holder's action is taken minutes must be left with the Judge: *Automatic Machines, Ltd.*, [1902] W. N. 236. For forms of judgment, *post*, pp. 604, *et seq.*

(*g*) *Dupont, Ltd.*, [1906] W. N. 14; *Cadogan and Hans Place Estate*, *ibid.*, 112. In the latter case there was an affidavit. Pleadings are required in the Chambers of EADY and NEVILLE, JJ., but they are of course not necessary where judgment is taken by consent on the hearing of an application to appoint a receiver.

(*h*) *Re Norman*, [1900] W. N. 159.

January 1904 with a capital of £20,000 divided into 20,000 shares of £1 each.

2. THE objects of the Company as set forth in its memorandum of Association are :—

"(1) To carry on the business of livery stable keepers in all its "branches.

"(2) To acquire and take over the business of a livery stable keeper "heretofore carried on by A.B. at Oxford and with a view thereto "to enter either with or without modification into an agreement "which has already been prepared and which is expressed to be "made between the said A.B. of the one part and the Company "of the other part and which has for the purpose of identification "been signed by C.D. a solicitor of the Supreme Court.

"(3) To borrow or raise money and to issue bonds debentures debenture "stock mortgages or other instruments either to bearer or otherwise "and either conferring no charge or conferring a fixed charge or a "floating charge or both upon all or any part of the assets and "undertaking of the company including its uncalled capital and "so that any such debentures or debenture stock or any deed "securing the same may contain a condition making the deben-"tures or debenture stock irredeemable or redeemable only on the "happening of any contingency however remote or on the expira-"tion of a period however long"

and certain other objects.

3. BY article 90 of the Company's articles of association it is provided that the amount for the time being remaining undischarged of the moneys borrowed or raised by the directors for the purposes of the Company shall not exceed the amount for the time being of the issued capital of the company without the sanction of the company in general meeting.

4. THE Company duly obtained a certificate that it was entitled to commence business and by a resolution passed on the 25th May 1904 at a duly convened meeting of the directors of the Company it was resolved to issue at par a series of 20 debentures of £100 each bearing interest at the rate of 6 per cent. per annum. At the same meeting the form of such debentures was approved.

5. ALL the debentures authorized by the said resolution have been issued and the prescribed particulars relating to the mortgage or charge thereby created has been filed with the Registrar of Joint Stock Companies. The plaintiff is the registered holder of 10 of such debentures.

6. THE said debentures are all in the same form and so far as material contain the following clauses in the following words that is to say :—

"(1) THE Company Limited (hereinafter called the Company) "hereby covenants to pay to of in the County "of or other the registered holder hereof the sum of £100 "on the 24th day of June 1918 or on such earlier day as the "principal hereby secured shall be payable in accordance with "the conditions endorsed hereon.

"(2) THE Company hereby covenants to pay to the registered holder "hereof interest on the said sum of £100 until repayment thereof "at the rate of 6 per cent. per annum by equal half-yearly pay-"ments on the 25th day of December and the 24th day of June

"in every year the first of such payments to be made on the "25th December 1904.

"(3) THE Company hereby charges with the payments aforesaid by "way of floating security its undertaking and all its assets what-"soever and wheresoever including its uncalled capital for the "time being.

"(4) THIS debenture is issued subject to and with the benefit of the "conditions endorsed hereon."

7. THE conditions endorsed on each of the said debentures contained amongst other provisions the following provisions in the following words.

"(1) THIS debenture is one of an issue of 20 debentures each for "securing a sum of £100. All the said debentures are in the "same form and rank *pari passu* in point of charge.

"(8) THE principal moneys will become payable. (*a*) If the company "makes default for a period of two months in payment of any "interest hereby secured."

8. THE Company failed to pay the interest due and payable in respect of the said debentures on the 25th December 1907 and such interest was at the date of the issue of the writ in this action (*i*) and is still unpaid.

9. BY an order made in this action and dated the 16th March 1908 Mr. of in the County of London chartered accountant was appointed receiver and manager of the undertaking and all the assets whatsoever and wheresoever of the defendant company comprised in and charged by the said debentures but it was by the said order provided that he should not act as manager after the 16th day of June 1908 without the leave of the judge. Since the said order the said has been and he is now carrying on the business of the company.

10. THE Company has issued a series of 20 second debentures for £100 each and the defendant X. Y. is the holder of 10 of such debentures.

11. THE plaintiff claims on behalf of himself and all other holders of mortgage debentures of the company of the same issue as his debentures.

(1) A declaration that the plaintiff and all other the holders of mortgage debentures of the defendant Company of the same issue as the plaintiff's debentures are entitled to a charge upon the undertaking and all the assets of the defendant company whatsoever and wheresoever including its uncalled capital for the time being for the repayment of the principal and interest in the debentures mentioned.

(2) An account of what is due to the plaintiff and the other holders of mortgage debentures of the defendant Company of the same issue as the plaintiff's debentures.

(3) All usual accounts and inquiries.

(4) Foreclosure or sale.

(5) That the period during which the receiver and manager appointed in this action is to act as manager be extended for such further period as this Court may think fit.

(*i*) It is usual to state the date of the issue of the writ on the statement of claim immediately before the title of the action.

FORM OF JUDGMENT IN DEBENTURE-HOLDER'S ACTION WHERE NO TRUST DEED (*k*).

(*Title same as in the Writ.*)

DECLARE that the plaintiff and all other the holders of mortgage debentures of the defendant company of the same issue as the plaintiff's debentures are entitled to a charge upon [here follow the description of the property in the debenture which is produced to the Registrar] for securing the repayment of the principal moneys and interest in the debentures mentioned. Let the following accounts and inquiries be taken and made.

(1) An account of what is due to the plaintiffs C. D. and the other holders of mortgage debentures issued by the defendant company under and by virtue of such debentures [if more than one series has been issued add "distinguishing the holders of the first mortgage debentures and the second mortgage debentures in the statement of claim referred to"].

(2) An inquiry of what the property comprised in or charged by the said mortgage debentures consists and in whom the same is vested.

(3) An inquiry what other incumbrances affect the property comprised in or charged by the said debentures or any and what parts thereof [and in whom the same are vested] (*l*).

[(4) An account of what is due to such other incumbrancers respectively (*l*).]

[(5) An inquiry what are the priorities of such other incumbrances and the said debentures respectively and what property other than that comprised in the said debentures is comprised in such other incumbrances (*l*).]

Adjourn further consideration in chambers.

Liberty to apply (*m*).

(*k*) This is the common form of judgment settled in *Wolverhampton District Brewery*, [1899] W. N. 229, and followed *Levison and Steiner*, [1900] W. N. 152, as varied by the note as to *Debenture-Holders' Actions*, [1900] W. N. 58. A declaration of charge is usually included in the judgment: *Parkinson* v. *Wainwright* (1895), 64 L. J. (CH.) 793; *Brinsley* v. *Lynton* (1895), 2 Mans. 244. In *Marwick* v. *Thurlow*, [1895] 1 Ch. 776, V. WILLIAMS, J., required the assent of the official receiver; but the practice on this point varies very much from time to time even in the same Chambers. In *Kitson Empire Electric Lighting Co.*, [1910] W. N. 154, PARKER, J., declined to declare a charge in the absence of evidence, and see *supra*, p. 560.

(*l*) The words inserted in these brackets are omitted if when the order is made the parties do not know of any incumbrance. They will have to be added if any incumbrance is discovered on the inquiry: *Addressograph, Ltd.*, [1909] W. N. 261.

(*m*) *In re Ehrmann Bros.*, [1904] W. N. 48, where an order had been obtained extending the time for registering some of the debentures, KEKEWICH, J., directed the following additional inquiries: 1. An inquiry at what dates respectively the debentures directed to be registered by the order of July 24, 1903, were in fact registered; 2. An inquiry whether any and which of the unsecured creditors

FORM OF JUDGMENT IN DEBENTURE-HOLDER'S ACTION WHERE THERE IS A TRUST DEED WITH A DECLARATION OF CHARGE, [DEBENTURES BEING HELD BY WAY OF COLLATERAL SECURITY].

(*Title.*)

Upon motion for judgment this day made unto this Court by Counsel on behalf of the plaintiffs and upon hearing Counsel for the defendants and upon reading the Writ of Summons issued in this action on the 5th day of August 1909 and the statement of claim.

This Court doth declare that the trusts of the Indenture of the 28th August 1907 in the Statement of Claim mentioned ought to be performed and carried into execution and doth adjudge the same accordingly and doth declare that the plaintiffs E.D.V. and A.F.S. are entitled to a charge upon the undertaking and property of the defendant company to the extent of the principal moneys and interest mentioned in the debentures held by them by way of security for the moneys lent and owing by the defendant Company to the plaintiffs the Capital and Counties Bank Ltd. Let the following accounts and inquiries be taken and made.

(1) An account of what is due to the plaintiffs E.D.V. and A.F.S. and the other holders of mortgage debentures issued by the defendant Company and entitled to the benefit of the said Indenture under and by virtue of such debentures and Indenture.

(2) An inquiry of what the property comprised in the said Indenture consists and on whom the same is vested.

(3) An inquiry of what the property charged by the said debentures and not comprised in the said Indenture consists and in whom the same is vested.

(4) An account of the trust estate and effects comprised in the said Indenture come to the hands of the defendants A.B. and C.D. or any or either of them or any persons or person by the order or for the use of them or either of them.

(5) An inquiry what other incumbrances affect the property respectively comprised in or charged by the said Indenture and debentures or any part thereof.

(6) An account of what is due to such other incumbrancers.

(7) An inquiry what are the priorities of such other incumbrances and the said debentures respectively and what property other than that comprised in the said debentures is comprised in such other incumbrances.

Adjourn further consideration in chambers and any of the parties are to be at liberty to apply. [*Re Marsh Son and Gibbs, Ltd.*, 1909—M—2008. SWINFEN EADY, J., November 23rd, 1909.]

of the defendant Company at the respective dates of registration aforesaid still remain unsatisfied; but these inquiries would seem unnecessary having regard to the decision of the Court of Appeal in that action, [1906] 2 Ch. 697.

JUDGMENT IN DEBENTURE-HOLDER'S ACTION WHERE THERE IS A TRUST, DEED, DEFENDANT COMPANY NOT DELIVERING A DEFENCE.

(*Title.*)

Upon motion for judgment in default of the defendant Company delivering a defence this day made unto this Court by Counsel for the plaintiffs and upon hearing Counsel for the defendants A.T.H. and C.A. and upon reading the pleadings delivered in this action and the Statement of Claim with the certificate of the plaintiffs' solicitors endorsed thereon showing that the defendant Company have not delivered any defence, and an affidavit of R.W.G.S. filed the 16th December 1909 of service of notice of this motion on the defendant Company.

This Court doth declare that the trusts of the Indenture dated the 29th November 1904 in the Statement of Claim mentioned ought to be performed and carried into execution and doth order and adjudge the same accordingly.

And it is ordered that the following accounts and inquiries be taken and made that is to say :—

(1) An account of what is due to the plaintiffs and the other holders of debentures entitled to the benefit of the said Indenture of the 29th November 1904 under and by virtue of their respective debentures.

(2) An inquiry of what the property comprised in or charged by the said Indenture consists.

(3) An inquiry of the Trust estate and effects comprised in or charged by the said Indenture come to the hands of the defendants A.T.H. and C.A. or any person or persons by the order or for the use of the said defendants.

(4) An inquiry what other incumbrances affect the property comprised in or charged by the said Indenture or any and what part or parts thereof.

(5) An account of what if anything is due to the defendants A.T.H. and C.A. as trustees of the said Indenture of the 29th November 1904.

And the further consideration of this action is adjourned to be heard at chambers.

And any of the parties are to be at liberty to apply as there may be occasion. [*Re Addresograph, Ltd.*, *Backhouse* v. *The Company*, 1909—A—111. SWINFEN EADY, J., December 11th, 1909.]

JUDGMENT BY CONSENT ON AN APPLICATION FOR THE APPOINTMENT OF A RECEIVER AND MANAGER.

Upon Motion this day made unto this Court by Counsel for the Plaintiff and upon hearing Counsel for the Defendants and upon reading the Writ of Summons issued on the 30th September 1911 an Affidavit of the Plaintiff filed the 3rd October 1911 and the exhibits therein referred to and an Affidavit of W.H. filed the 4th October 1911 of fitness of the Receiver and Manager hereinafter appointed.

And the Plaintiff and Defendant by their Counsel agreeing to treat the said Motion as a Motion for Judgment and consenting to this Order.

This Court doth order that the following Account and inquiries be taken and made that is to say :—

1. An Account of what is due to the Plaintiff and the holder of the two First Mortgage Debentures respectively issued by the Defendant Company under and by virtue of such Debentures.

2. An Inquiry of what the property comprised in and charged by the said Debentures consists and in whom the same is vested.

3. An Inquiry what other incumbrances affect the property comprised in or charged by the said Debentures or any and what parts thereof.

And the Plaintiff by her Counsel undertaking to be answerable for what S.R. the Receiver and Manager hereinafter appointed shall receive or become liable to pay until he shall have given security as hereinafter directed. This Court doth hereby appoint the said S.R. of . Receiver on behalf of the Plaintiff and all other holders of the said Mortgage Debentures of the undertaking of the Defendant Company and all its property and assets whatsoever and wheresoever both present and future (except uncalled capital) and to manage the business of the Defendant Company. But the said S. R. is not to act as Receiver and Manager after the 25th October 1911 unless he shall have given security as hereinafter directed nor as Manager in case he shall have given security after the 4th January 1912 without the leave of the Judge. And it is ordered that the said S.R. do on or before the 25th October 1911 give security as such Receiver and Manager to the satisfaction of the Judge and do pass his Accounts and pay his balances as the Judge shall direct. And it is ordered that the said S.R. do forthwith out of any assets coming to his hands pay the debts (if any) of the Defendant Company which have priority over the claims of the Debenture-holders under the Companies (Consolidation) Act 1908 and that he be allowed all such payments on passing his accounts and the further consideration of this action is adjourned and either of the parties are to be at liberty to apply. [*Re Burnards, Ltd.*, *Yeo* v. *The Company*, 1911—B—3200. LUSH, J. (for EVE, J.), October 4th, 1911.]

FORM OF JUDGMENT FOR FORECLOSURE (*q*).

(*Title and formal Parts.*)

THIS Court doth declare that the plaintiff as the holder of nine mortgage debentures each dated the 23rd November 1891 and forming an issue of £4500 First Mortgage debentures of the defendant Company is entitled to a charge on all the property funds assets or effects of the defendant Company including its uncalled capital as the same existed on the 8th November 1893 (the date of the resolution to wind up the defendant Company) subject to any charges on specific parts thereof created previously to that date and then subsisting for securing the repayment of the principal

(*q*) An order for foreclosure may be made on originating summons: *Oldrey* v. *Union Works* (1895), 72 L. T. 627; *Sadler* v. *Worley*, [1894] 2 Ch. 170; but it should be made in Court: *Halifax and Huddersfield Union, etc., Co.*, [1895] W. N. 63. The remarks of Lord ATKINSON, at all events, in *De Beers Consolidated Mines* v. *British South Africa Co.*, [1912] A. C. 52, seem to suggest that foreclosure will never be available to debenture-holders if their security only gives a floating charge.

moneys and interest on the said mortgage debentures and it is ordered that the following account and inquiry be taken and made viz.: 1. An account of what is due for principal and interest to the plaintiff as the holder of all the said mortgage debentures on the security thereof and for his costs of this action to be taxed by the Taxing Master. 2. An inquiry what property assets or effects of the defendant Company are comprised in the said mortgage debentures and the charge or security thereby created and in whom the same are now vested and it is ordered that upon the defendants or any of them paying to the plaintiff (*r*) what shall be certified to be due to him as aforesaid within six months of the master's certificate at such time and place as shall be thereby appointed the plaintiff do deliver up (upon oath if required) the said debentures and all deeds and writings in his custody or power relating thereto to the defendants or such of them as shall redeem the mortgaged hereditaments and premises or as he or they shall direct and in case the defendants or any of them shall so redeem the plaintiff the defendant or defendants so redeeming is or are to be at liberty to apply to this Court as he or they may be advised; and on such application it is not to be incumbent on the defendant or defendants so applying to give the plaintiff notice thereof; and this judgment is without prejudice to any question which may arise as to the rights or interests of the defendants as between themselves in or to the said property (*s*). But in default of the defendants or some or one of them paying to the plaintiff what shall be certified to be due to him as aforesaid by the time aforesaid this Court doth declare that the plaintiff will be entitled to the hereditaments and premises comprised in the said debentures free and clear of and from all right title interest and equity of redemption of in and to the said premises and to have an absolute conveyance. And it is ordered that in such case the defendant Company and the liquidators thereof for the time being do all such acts and execute all such conveyances and deeds as may be necessary for vesting in the plaintiff the said mortgaged property, such conveyances to be settled by the Judge in case the parties differ. And any of the parties are to be at liberty to apply to this Court generally as they may be advised. [*Sadler* v. *Worley*, 1893—S—4421, [1894] 2 Ch. 170.]

Judgments or orders directing accounts or inquiries to be taken or made must be brought into the Judge's chambers by the party entitled to prosecute the same within ten days after they have been passed and entered, and, in default, any other party to the cause or matter is at liberty to bring in the same, and such party will have

(*r*) *Cumming* v. *In Metcalfe's London Hydro* (1895), 13 Reports 501, the Court required the following additional direction to be inserted: "Let the defendants be at liberty at any time before foreclosure to apply to the Judge in Chambers for payment and transfer to the plaintiff on account of the moneys due to him of any money or securities in Court to the credit of this action or in the receiver's hands."

(*s*) In this case, *Sadler* v. *Worley*, [1894] 2 Ch. 170, KEKEWICH, J., said it was not necessary to expressly reserve liberty to apply for a sale before the time limited by the Master's certificate.

the prosecution of the judgment or order unless the Judge otherwise directs (*t*).

On a copy of the judgment or order being left a summons must be issued to proceed with the accounts or inquiries. The summons will be served on all parties, and filed in default against parties who have not entered an appearance. Upon the return of the summons the Master or Registrar, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, gives directions as to :—

(1) The manner in which each of the accounts and inquiries is to be prosecuted ;
(2) The evidence to be produced in support thereof, and by whom the inquiries are to be answered.
(3) The parties who are to attend on the several accounts and inquiries ; and
(4) The time within which each proceeding is to be taken.

The summons to proceed stands adjourned for these directions to be carried out, and the matter will be adjourned from time to time as may be necessary. All such directions may afterwards be varied by addition thereto or otherwise, as may be found necessary (*u*). Ultimately the Registrar or Master makes his certificate without any further summons (*uu*).

If upon the hearing of the summons to proceed it appears to the Master or Registrar by reason of absence or for any other sufficient cause the service of notice of the judgment or order upon any party cannot be made or ought to be dispensed with the Master or Registrar may, if he shall think fit wholly dispense with such service or may at his discretion order any substituted service or notice by advertisement or otherwise in lieu of such service (*x*), and the Judge in person may direct that any person on whom service has been dispensed with shall be bound as if served (*y*).

In May, 1896, the Judges of the Chancery Division gave the following direction : " In ordinary cases the judgment in a debenture-holder's action should not be served on the debenture-holders, but they should have notice given to them by circular or letter or advertisement if the case so requires full discretion being reserved to serve the notice formally if so required " (*yy*). The practice in ordinary actions is to send by post a copy of the circular. This, however, does not make the recipient a party (*z*), it is usual to allow debenture-holders who have received such a notice, and desire to do so, to enter an appearance, and in some chambers they are allowed to attend

(*t*) O. 55, r. 32, R. S. C.
(*u*) O. 55, r. 33, R. S. C. For form of summons to proceed, *post*, pp. 610, and 611. The evidence will consist of affidavits on the points to which the accounts and nquiries are directed.
(*uu*) For form of such certificate, *post*, pp. 613 *et seq*.
(*x*) O. 55, r. 35, R. S. C.
(*y*) O. 55, r. 35 (*a*), R. S. C.
(*yy*) For form of such notice, *post*, pp. 611 and 612.
(*z*) *Elias* v. *Continental Oxygen Co.*, [1897] 1 Ch. 511.

proceedings at their own risk as to costs, in others they are not allowed to do so (*a*).

This notice is not the notice of judgment referred to in O. 16, r. 40, R. S. C., and does not require personal service or endorsement under O. 16, r. 43, R. S. C. (*b*).

It is the usual practice to serve notice on debenture-holders, even where trustees for them are before the Court (*c*). The Judges of the Chancery Division have also directed that " all incumbrancers (other than debenture-holders) subsequent in order of priority to the plaintiffs' debentures should be made parties, and not served with notice of judgment under O. 16, r. 40 ; and where a sale is directed with the consent of prior incumbrancers (as in the case of a creditor's action for sales of real estate) informal notice with a view to obtaining such consent may be given (*d*). Proceedings may be stopped where the necessary parties have not been served with notice of the judgment or order (*e*). In the case of bearer debentures advertisements are invariably directed, and they are occasionally ordered in other cases (*ee*). O. 55, r. 44, R. S. C. provides, for excluding persons who have not come in in answer to advertisements, but the practice is not to exclude such persons—but to carry over the sums due to them (*eee*).

FORM OF SUMMONS TO PROCEED (*f*).

(*Title same as Writ.*)

LET all parties concerned attend at the Chambers of the Judge Room No. Royal Courts of Justice Strand in the County of London [or of the Registrar Companies (Winding-up) Bankruptcy Buildings, Carey Street London] on day the day of 19 at o'clock in the noon on the hearing of an application on the part of the above-

(*a*) Annual Practice, 1912, vol. i. p. 259, and cp. Yearly Practice, 1912, p. 820. See *Re Schwabacher*, [1907] 1 Ch. 718, as to the discretion of the Court as to allowing persons who are not parties to attend.

(*b*) Annual Practice, 1912, vol. i. p. 259 ; Yearly Practice, 1912, p. 820.

(*c*) The statement to the contrary in Daniell's Chancery Practice, 7th Ed. vol. ii. p. 1175, does not represent the present practice.

(*d*) Annual Practice, 1912, vol. i., p. 259. Notes to O. 16, r. 40, R. S. C.

(*e*) O. 55, r. 36, R. S. C. All parties may attend at their own expense and on paying any costs caused by such attendance, but a party may apply by summons to attend at the expense of the estate : O. 55, r. 42, R. S. C. ; and see *ibid.*, r. 40 as to the power of the Master or Registrar to classify interests ; and *ibid.*, r. 41 as to his power to order parties to be represented by separate solicitors. Parties attending where they are not interested, or where according to the practice of the Court they ought not to attend, are not allowed costs unless there is an express direction : O. 65, r. 27 (23), R. S. C. ; see also *Sharp* v. *Lush* (1879), 10 C. D. 468 ; *Day* v. *Batty* (1883), 21 C. D. 830.

(*ee*) For forms of advertisement and claims thereunder, see *post*, pp. 612 and 613.

(*eee*) In *Ford* v. *Northwich Salt Co.*, 1891—F—No. 1295, June 3rd, 1893, ROMER, J., declined to exclude such persons, although an advertisement stating they would be excluded had been previously directed, and this has been followed ever since : see also *Elkins* v. *Capital Guarantee* (1900), 16 T. L. R. 423, and C. P. *Saragossa, etc., Railway* v. *Collingham*, [1904] A. C. 159, reversing *Collingham* v. *Sloper*, [1901] 1 Ch. 769.

(*f*) This summons must be served on all parties to the action : see Daniell's Chancery Practice, 7th Ed. vol. i. p. 815.

named Plaintiff [or as may be] to proceed on the order or judgment in this action dated the day of 19

Dated

This summons was taken out by Messrs. of Solicitors for the Plaintiff [or as may be].

To

NOTICE OF JUDGMENT TO BE SERVED ON DEBENTURE-HOLDERS (*g*).

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

19 A. No.

MR. JUSTICE

In the matter of the A. Company Limited.
Between C. D. on behalf of himself and all other holders of mortgage debentures of the defendant company Plaintiff and the A. Company Limited Defendant.

TAKE NOTICE that a judgment dated the day of 19 has been pronounced in this action (which has been instituted to ascertain who are the holders of the Company's debentures to realize the property charged thereby and to divide the proceeds amongst the parties entitled) and by such judgment the inquiries and accounts necessary for these purposes are directed.

THE material parts of the judgment are set forth in the schedule.

A list of the debenture-holders with the particulars of the debentures held or believed to be held by them respectively has been left in the Judge's Chambers [or in the chambers of the Registrar Companies (Winding-up)] and your name is included therein as the holder of debentures Numbered for £ each. From the said list it appears that £ interest is due in respect of your debentures.

If you are such holder it will be necessary in order that you may participate in the benefit of the judgment that your debentures should be produced before the Master (*h*) [or before the Registrar Companies (Winding-up)] in the Chambers of the Judge [or of the Registrar Companies (Winding-up)] day the day of 19 at o'clock in the noon is the day appointed for this purpose when you must attend either personally or by your solicitor or agent at the Chambers of the Honourable Mr. Justice Room No. in the Royal Courts of Justice Strand London [or at the Chambers of the Registrar Companies (Winding-up) Bankruptcy Buildings Carey Street London] and produce your debentures.

If you are no longer the holder of the debentures or any of them you are requested at once to let me know the names and addresses of the person or persons to whom you have transferred such as are no longer held by you.

(*g*) This is the ordinary form: see Annual Practice, 1912, vol. ii. p. 187, Appendix L, Form 9A. Yearly Practice 1912, p. 2105, Form 32.

(*h*) Occasionally debentures have been produced before the receiver, if there is one: Daniell's Chancery Forms, 5th Ed. 783, note (*h*): but the almost invariable practice is for them to be produced in chambers.

If you desire it you can forward the debentures by post or otherwise to me for production, I will return them by post in due course.

Dated the day of 19 .

To

X.Y.
Plaintiff's Solicitor.

THE SCHEDULE.

An account of what is due to the plaintiffs and other mortgage debentures issued by the defendant company under and by virtue of such debentures.

FORM OF ADVERTISEMENT.

PURSUANT to a judgment dated day of 19 made in an action IN THE MATTER OF the A. Company Limited Between C.D. on behalf of himself and ALL other the holders of an issue of £50,000 6 per cent. Bearer Debentures of the A. Company Limited Plaintiffs and E.F. and G.H. and the A. Company Limited Defendants 19 A. No. which action has been instituted to ascertain who are the holders of the company's debentures to realize the property charged thereby and to divide the proceeds among the parties entitled and by such judgment the inquiries and accounts necessary for the purpose were directed and in particular the following account was directed to be taken that is to say:—

An account of what is due to the plaintiff and the other holders of the above-mentioned debentures entitled to the benefit of an indenture dated the day of 19 and made between the Defendant company of the one part and the said E.F. and G.H. of the other part under and by virtue of such debentures and the said indenture.

Notice is hereby given that all persons claiming under the said account to be the holders of the said 6 per cent. Bearer Debentures issued by the defendant Company are required on or before the day of 19 to send in their claims in writing giving their names and addresses particulars of their claims (including the amounts due for principal and interest in respect thereof) the numbers of the debentures of the said issue held by them and the names and addresses of their solicitors if any to Mr. X.Y. of in the city of London (a member of the firm of X.Y. and Co. the solicitors for the plaintiffs), and if so required by notice in writing such debenture-holders are to come in and prove their claims at such place and time as shall be specified in such notice.

In order that any debenture-holder may participate in the benefit of the said judgment, he must produce his debentures with any coupons for interest which is due but not paid before the Master [or the Registrar Companies (Winding-up)] and the day of 19 , at o'clock in the noon is appointed for this purpose, and every debenture-holder must then attend either personally or by his solicitor or agent at the Chambers of the Hon. Mr. Justice Room No. Royal Courts of Justice Strand London [or at the Chambers of the said Registrar at Bankruptcy Buildings, Carey Street, London] and produce his debentures with any such coupons as aforesaid.

Dated this day of 19 .

Solicitor for the Plaintiff.

CLAIM IN ANSWER TO THE ABOVE ADVERTISEMENT.

No. Street.
London.
19 .

Mr. X.Y.
No. Street.
London.

Sir,

The A. Company Limited, C.D. v. E.F. and Others (19 A. No.).

With reference to the advertisement for claims in the above action which appeared in the *Times* of the inst I the undersigned of the above address claim to be the holder of 10 debentures (Numbered 21 to 30 both inclusive) which are entitled to the benefit of the indenture dated the day of 19 and referred to in such advertisement. I have been the holder of such debentures since the day of 19 and the principal sum of £1000 together with interest from the day of 19 the last date when interest was paid to me is due to me in respect of such debentures. My Solicitors are Messrs. of in the City of London.

Yours faithfully,
R. S.

CERTIFICATE IN DEBENTURE-HOLDER'S ACTION.

(*Title.*)

I hereby certify that the result of the inquiries and accounts which have been made and taken in pursuance of the Order in this action dated the 12th January, 1903, is as follows :—

The plaintiff and the defendants have attended by their respective solicitors.

1 and 2. THE defendant The Cambrian Coke Company, Ltd., created and issued a First Debenture for £7000 dated the 1st of July 1897 to the defendant The L. and P. B., Ltd., or other the registered holder or holders for the time being of the said debenture and the same is still outstanding and there is now due in respect thereof to the said defendant the L. and P. B., Ltd., the sum of £4000 for principal together with interest thereon at the rate of £5 per cent. per annum from the 29th of September 1902.

THE said defendant The Cambrian Coke Company, Ltd., also created and issued a debenture charge dated the 11th of August 1902 whereby the said defendant The Cambrian Coke Company, Ltd., covenanted with the plaintiffs L.G.M. and G.H.J.D. and each of them in consideration

of their joining as guarantors for the repayment of a loan of £2000 to the said defendant The L. and P.B., Ltd., that the said defendant The Cambrian Coke Company, Ltd., would on demand of the said plaintiffs L.G.M. and G.H.J.D. or either of them pay to them or him all moneys which they or he should pay to the said defendant The L. and P.B., Ltd., in pursuance of the said guarantee together with interest thereon at £5 per cent. per annum from the date of the respective payments. Under the said Guarantee the plaintiffs L.G.M. and G.H.J.D. have paid to the said defendant the L. and P.B., Ltd., the sum of £550 and such sum together with interest at the rate of £5 per cent. per annum from the 24th September 1902 is now due and owing to the said plaintiffs.

THE said First Debenture dated 1st of July 1897 has priority over the said debenture charge dated 11th of August 1902.

THE said defendant The Cambrian Coke Company, Ltd., also created and issued a First Mortgage Debenture for £6000 dated 12th July 1895 in favour of F.W.N. and F.J.H. both of   but such debenture was subsequent to its issue namely on the 16th of July 1897 paid off and discharged.

NO debentures or charges except as aforesaid have been issued by the defendant The Cambrian Coke Co., Ltd.

3. THE property and assets of the defendant The Cambrian Coke Company, Ltd., comprised in and charged by the said First Debenture of 1st July 1897 and the debenture charge of 11th August, 1902, now consists of the particulars set forth in the Schedule hereto except the debentures and shares particularized in item No. 5 of such schedule is not included in the charge created by the said First Debenture of the 1st July 1897.

THE evidence adduced consists of the 3 several affidavits of the plaintiff G.H.J.D. respectively filed 7th July and 19th November 1903, and 17th May 1904, the affidavit of A.W.G. filed 17th December 1903, the joint affidavit of G.H.J.D., F.W.N. and F.J.H. filed 13th June, 1904, and the exhibits in the said affidavits referred to the said First Debenture of the 1st July 1897 and the debenture charge of the 11th August 1902 the three Orders dated respectively 1st October 1902 and 12th January 1903 the two Certificates of Lodgment in Court dated respectively 6th March and 27th April 1903 and the Certificate of the Fund.

Dated 17th June 1904.

THE SCHEDULE.

1. £   *s.* *d.* cash and £   money on deposit to the credit of this action being the proceeds of sale of certain waggons and paid into Court pursuant to the two Orders both dated the 12th January 1903.

2. THE leasehold interest in land and premises at   in the County of Glamorgan on part of which the business of the Company was carried on. The said land and premises are held under two Indentures of Lease as follows: One for a term of   years from the
          at an annual rent of £   and made between the
of the one part and the

Company, Ltd., of the other part and now vested in the defendant the Cambrian Coke Company, Ltd., and the other for a term of years from the at an annual rent of £ and made between the of the one part and L.G.M. of the other part the value of such leasehold interest is estimated at £ . Part of the said leasehold land together with the Patent Fuel works erected thereon was by an Indenture dated the 11th July 1896 underleased to the Company, Ltd., for a term of years from the 20th day of December 1888 (less the last three days thereof) at the annual rent of £ . The said Company, Ltd., is now in Liquidation.

3. Machinery and plant used at the works of the defendant The Cambrian Coke Company, Ltd., and forming part of same, locomotive engine and travelling crane of the estimated value of £ .

4. Outstanding book debts estimated as good £1109 0*s.* 7*d.* and doubtful £134 11*s.* 11*d.*

5. 85 Debentures of £ each part of an issue of £ in the said of of the estimated value of £100 and 200 shares of £10 each in the last-named Company estimated to be of no value. (Note.—These debentures and shares are not included in the charge created by the said First Debenture dated 1st July 1897.)

6. in shares in the estimated to be of no value.

7. Balance from time to time to be certified to be due from the Receiver appointed in this action by the Order of 1st October, 1902. [*Re The Cambrian Coke Co., Ltd., Mouchel and Another* v. *The Company and others*, 1902 C, No. 2985, Mr. Registrar Hood, June 17, 1904.]

Where the action is proceeding before the Registrar Companies (Winding-up), the certificate with the accounts, if any, to be filed therewith must be filed in the chambers of the Registrar; and where the action is proceeding in the Chancery Division, the certificate and accounts, if any, must be transmitted to the central office to be filed. The certificate will from the time when it is filed be binding on all the parties to the proceedings, and on all other persons whose rights are ascertained by it, unless it is discharged or varied upon application by summons to be made before the expiration of eight clear days from the filing of the certificate (*l*). Any debenture-holder or other person whose rights are ascertained by the certificate may move to discharge or vary the certificate. The certificate may set out the amount of uncalled capital due from each member of the company, though no call can be made in the action, and though the fact of such statement being made may put a debenture-holder who

(*l*) O. 55, r. 70, R. S. C. And for the power of the Judge to vary a certificate in special circumstances at any time on application by motion or summons, see O. 55, r. 71, R. S. C.

is also a shareholder in a worse position than other shareholders (*m*). Any party may, before the proceedings before the master are concluded, take the opinion of the Judge upon any matter arising in the course of the proceedings without any fresh summons for the purpose (*n*); but some of the Judges will not allow this course to be taken (*o*).

Sometimes a separate certificate will be made by the master with a view to enabling an *interim* distribution to be made. In such cases an application is made by summons for the requisite order; a separate certificate will be in the same form as a general certificate (*oo*). The further consideration will come on in chambers (*p*), and summons for such further consideration must be taken out. Such summons where the action has been commenced by writ must be served two clear days before the return thereof, unless the Court otherwise orders (*q*). Where the action has been commenced by originating summons it may, after the expiration of eight days and within fourteen days from the filing of the Master's or Registrar's certificate, be brought on for further consideration by a summons to be taken out by the party having the conduct of the matter, and after the expiration of such fourteen days, by a summons to be taken out by any other party. Such summons will be in the following form: "That this matter the further consideration whereof was adjourned by the order of the day of 19 may be further considered," and must be served six clear days before the return. This rule does not apply to any matter the further consideration whereof has at the original or any subsequent hearing been adjourned into Court (*r*). The order in which costs are paid if the fund is deficient is as follows (*s*): (1) The plaintiff's costs of the realization of the property (*t*) including the costs of an abortive attempt to sell; (2) The balance due to a receiver and manager including his remuneration. In the

(*m*) *Madeley* v. *Ross Sleeman & Co.*, [1897] 1 Ch. 505.

(*n*) O. 55, r. 69, R. S. C. This rule would seem to be applicable where a simple question of principle arises, and it is desired to have the opinion of the Judge to guide the master. In other cases the question should be raised on a motion or summons to vary the Master's certificate.

(*o*) Cp. Practice Note, [1904] W. N. 128.

(*oo*) For such orders, *post*, pp. 620 and 621.

(*p*) O. 55, r. 2 (16), R. S. C. For forms of orders on further consideration, *post*, pp. 622 *et seq.*

(*q*) O. 54, r. 4 E., R. S. C. Annual Practice, 1912, p. 941. Yearly Practice, 1912, p. 816.

(*r*) O. 55, r. 72, R. S. C.

(*s*) *Batten* v. *Wedgwood Coal and Iron Co.* (1884), 28 C. D. 317.

(*t*) As to costs of realization where the liquidator has realized, see *Ex parte Grissell* (1875), 3 C. D. 411; *Marine Mansions Co.* (1867), 4 Eq. 601; *Ormerod Grierson*, [1890] W. N. 217. These cases show that such costs will rank in priority to the debenture-holders; and see also *Staffordshire Gas and Coke Co.*, [1893] 3 Ch. 523; *Professional Life Assurance Co.* (1867), 3 Ch. 167, if contrary to this view would not be followed now—it was discussed in *Perry* v. *Oriental Hotels* (1871), 12 Eq. 126. With regard to the costs of preservation as opposed to

case of a bankrupt receiver and manager, if there are any debts properly incurred by him in carrying on the business, the Court will see that such debts are paid directly to the creditors of the business, and such payments will have the same priority as if the receiver had not become bankrupt (*u*); (3) the costs, charges, and expenses of the trustees of any trust deed for securing the debentures, these costs should, it would seem, in all cases be taxed as between solicitor and client (*x*), and even where the trustees appear by the same solicitor as the company which is not entitled to any costs (owing to there being no surplus), they will get a full set of costs (*y*), though such costs will not include any separate costs of the company. The trustees' costs include all costs, charges and expenses properly incurred by the trustees; (4) the costs of the plaintiff to the action, or, if the original plaintiff for any reason cease to act and another be substituted for him, the costs of both plaintiffs *pari passu*. A second debenture-holder who brings an action to realize property (*z*) which is insufficient to pay the first debenture-holders, will be entitled to any costs incurred in proceedings for the benefit of the first debenture-holders, and not for the benefit of his own security only—such costs ranking, of course, in front of the first debentures (*a*), as against the mortgagor company or a subsequent incumbrancer the plaintiff is never entitled to more than party and party costs; but where the fund is not sufficient to pay the debentures of the class held by the plaintiff in full, then the plaintiff will be entitled to solicitor and client costs, as his class of debenture-holders are the only persons interested in the fund (*b*). Further, even where the

realization by the liquidator, *Perry* v. *Oriental Hotels Co.* (1871), 12 Eq. 126 must now be taken to be overruled so far as it gives these priority over the debenture-holders: cp. *Lathom* v. *Greenwich Ferry* (1895), 72 L. T. 790. The case of a receiver borrowing for preservation purposes is different, for then the charge is the creature of the action: *New Zealand Midland Railway*, [1901] W. N. 105; cp. also *Anglo-Austrian Printing Co.*, [1895] 2 Ch. 891. The summons and order in *Re Callender's Paper Co., Lyon* v. *The Company*, 1906 C. No. 1881 (set out below, pp. 634 *et seq.*), should also be consulted as to what are costs of realization.

(*u*) *London United Breweries, Ltd.*, [1907] 1 Ch. 511.

(*x*) This was the order in *Queen's Hotel Cardiff*, [1900] 1 Ch. 792 [1898, Q. 44], and it seems right in principle.

(*y*) *Mortgage Insurance Co.* v. *Canadian Agriculture*, [1901] 2 Ch. 377.

(*z*) In *Callender's Paper Co., Lyon* v. *The Company*, [1906] C. 1881, a summons was taken out after the order on further consideration to determine what were costs of realization: see summons and order below, pp. 634 *et seq.*

(*a*) *Carrick* v. *Wigan Tramways*, [1893] W. N. 98; *Batten* v. *Dartmouth Harbour's Commissioners* (1890), 45 C. D. 612. See order in *Cambrian Coke Co.*, 1902 C. No. 2985, *post* p. 621 and pp. 625 *et seq.*

(*b*) *New Zealand Midland Railway*, [1901] 2 Ch. 357.

class of debenture-holders to which the plaintiff belongs can be paid in full, the Court will make a charging order under the Solicitors Act, 1870, in favour of the solicitor of the plaintiff for the difference between party and party and solicitor and client costs, if it be shown that the plaintiff is not in a position to pay such difference, and that the case is otherwise a proper one for a charging order. Such charging order will not extend to any fund to which the debenture-holders of such class are not entitled nor to any surplus available for payment of subsequent incumbrancers or the company (*c*); the Court will not, however, make such an order where the plaintiff is in a position to pay the costs (*d*). The defendant company and all subsequent incumbrancers can only get their costs out of any surplus there may be after satisfying all claims of persons having priority (*e*). If the plaintiff has been ordered to pay the costs of any application such costs will be set off against the costs he is entitled to (*f*), but this would appear to be a matter for the Taxing-Master (*g*).

Where the security is believed to be insufficient to pay both principal and interest, it is not usual to proceed with the interest account, but payments will be made generally on account. It is probably better to insert words to this effect in the order, but the mere fact that payments have been made on account of principal, will not amount to a final appropriation of the moneys to principal, so as to preclude claims to interest on the amounts paid, if the security ultimately proves sufficient, in cases where, as is usual, the instrument creating the security directs that interest shall be paid in priority to principal out of the proceeds of realization (*h*). In the converse case where payments have been made on account of interest, but there has been no final appropriation, the Court will, if the security prove deficient, treat such payments as payments on account of principal, and disallow any claims of the Revenue authorities to income-tax thereon (*i*). Mortgagees are not entitled to the benefit of the doctrine of fraudulent preference (*k*). The position of debenture-holders against whom the company has cross demands, would appear to be as follows: the demand by and the demand against the company, putting aside the case where the company's claim is for calls (*l*), can usually be set off

(*c*) *Re W. C. Horne and Sons, Ltd.*, [1906] 1 Ch. 271. See order, *post*, pp. 622 *et seq.*

(*d*) *Harrison* v. *Cornwall Minerals* (1884), 32 W. R. 748.

(*e*) *Clayton Engineering Co.* (1904), 90 L. T. 283.

(*f*) *Batten* v. *Wedgwood Coal and Iron Co.* (1884), 28 C. D. 317.

(*g*) *Re Crawshay* (1890), 45 C. D. 318.

(*h*) *Calgary and Medicine Hat Land Co.*, [1908] 2 Ch. 652.

(*i*) *Smith* v. *Law Guarantee and Trust Society*, [1904] 2 Ch. 569.

(*k*) *Wilmott* v. *London Celluloid* (1886), 34 C. D. 147.

(*l*) Usually in the case of limited companies there can be no set-off in these cases. The matter is dealt with under winding-up, *infra*, pp. 1159 *et seq.*

against one another (*m*), where both claims existed at the date of the winding-up (*n*), and since section 10 of the Judicature Act, 1875 (now replaced by section 207 of the Companies (Consolidation) Act, 1908), came into force, the rule applies even where the cross claim is for unliquidated damages (*o*).

There are, however, exceptions to this rule, *e.g.* where the debt due from the debenture-holder arises from misfeasance proceedings (*p*), or cannot possibly result in a money demand (*q*).

If at the date of the winding-up there is no right of set-off or mutual credit, then the debenture-holder will not be entitled to receive anything from the fund, unless he has made good his debt to it (*r*). If such debt is presently payable at the date of the distribution of the fund (*s*) the mere fact that the amount of the debt has not then been ascertained will not entitle him to participate in the fund (*t*). The administration of the fund in such a case would appear to be worked out as follows: treat the debt due from the debenture-holder as having been paid so as to ascertain the total amount divisible among the debenture-holders, then ascertain what sum the debtor is entitled to as his dividend in respect of his debentures out of such total amount. If he is entitled to a larger amount than his debt he will get the difference, otherwise he will get nothing (*u*). The position of an assignee, if the debenture is not a negotiable instrument and does not contain any condition protecting him, is that he takes the debenture subject to any cross demand which arises out of and is inseparably connected with the issue of the debenture (*x*), and also subject to any debt whether presently payable (*y*) or not (*z*) which the company had against the holder of the debenture at the time of the winding-up (*a*), or at the time of the

(*m*) *Ex parte James* (1869), 8 Eq. 225; *Anderson's Case* (1866), 3 Eq. 337.

(*n*) *Ex parte Theys* (1884), 25 C. D. 587.

(*o*) *Mersey Steel and Iron Co.* v. *Naylor* (1882), 9 Q. B. D. 648; (1884) 9 A. C. 434.

(*p*) *Ex parte Pelly* (1882), 21 C. D. 492; *Leeds and Hanley Theatre of Varieties*, [1904] 2 Ch. 45.

(*q*) *Eberles Hotel, etc., Co.* v. *Jonas* (1887), 18 Q. B. D. 459.

(*r*) *Leeds and Hanley Theatre of Varieties*, [1904] 2 Ch. 45.

(*s*) *Re Abrahams*, [1908] 2 Ch. 69.

(*t*) *Rhodesia Goldfields*, [1910] 1 Ch. 239.

(*u*) *Leeds and Hanley Theatre of Varieties*, [1904] 2 Ch. 45.

(*x*) *Government of Newfoundland* v. *Newfoundland Railway* (1888), 13 A. C. 199.

(*y*) *Wilson* v. *Gabriel* (1863), 4 B. & S. 243.

(*z*) *Christie* v. *Taunton Delmard*, [1893] 2 Ch. 175. See also *Goy & Co.*, [1900] 2 Ch. 149; *Brown, Gregory & Co.*, [1904] 1 Ch. 627; [1904] 2 Ch. 448; *Palmer's Decoration Co.*, [1904] 2 Ch. 743.

(*a*) *Ex parte Theys* (1884), 25 C. D. 587: see also *Ex parte Mackenzie* (1869), 7 Eq. 244, where the assignment being subsequent to the winding-up the assignee took subject to all calls whether actually made or not.

assignment if that was previous to the winding-up (*b*), but not to liabilities which subsequently ripened into debts (*c*).

INTERIM ORDER FOR DISTRIBUTION.

(*Title same as Writ.*)

Upon the application by summons dated etc. of the plaintiff for the further consideration of this action adjourned by the judgment dated the 10th June 1904 and upon hearing the Solicitors for the applicant and the defendants for the S.M. Co. Limited debenture-holders and upon reading the said judgment the Master's Certificate dated 6th April 1905 and the affidavit of J.D.P. and the exhibits therein referred to and the affidavit of S.V. and W.C.H. and the exhibits therein referred to being a certificate of the death of S.A.A. and probate of the will of the said S.A.A. granted on the day of to the said S.V. and W.C.H. and the certificate of the fund. It is ordered that the funds in Court be dealt with as directed in the schedule hereto the payments thereby directed being a dividend of 15 shillings in the £ on account of the principal sums secured by the debentures of the defendant Company (*d*).

PAYMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE, Chancery Division.

Date of Order, June 2nd, 1905.

Title of Cause or Matter: *Re W. C. Horne and Sons, Limited, Horne* v. *Said Company.*

Ledger Credit as above.

Funds in Court £6000 0*s*. 0*d*. Money on deposit £10 0*s*. 0*d*. Cash.

Particulars of Payments, Transfers, or other Operations to be carried out by the Paymaster.	Payees, Transferees, or Titles of Separate Accounts.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Out of money on deposit cash and any interest—Pay	S.V. and W.C.H. as executors of S.S.A.	787	10	0			
[Here followed other names and amounts.]							

[*Re W. C. Horne and Sons, Ltd., Horne* v. *The Company*, 1904—W—1853, June 2nd, 1905.]

(*b*) *Christie* v. *Taunton Delmard*, [1893] 2 Ch. 175.

(*c*) *Watson* v. *Mid Wales Railway* (1867), L. R. 2 C. P. 593.

(*d*) It is perhaps unnecessary to reserve liberty to apply in cases of this sort: *cp. Fritz* v. *Hobson* (1880), 14 C. D. 542, 561; *Penrice* v. *Williams* (1883), 23 C. D. 353. As a fact, two further orders were made in the action, in which the above order was made; for one of them see form on pp. 622 and 623.

INTERIM ORDER FOR DISTRIBUTION WITH ORDER FOR TAXATION, PLAINTIFFS BEING SECOND DEBENTURE-HOLDERS NOT ENTITLED TO FUND.

(*Title.*)

THE APPLICATION (by summons dated the 23rd May 1905) of the plaintiffs which upon hearing the solicitors for the applicants and for the defendants in chambers was adjourned to be heard in Court coming on this day to be heard accordingly and upon hearing Counsel for the applicants and for the defendants the said L. and P.B. Limited and upon reading the order dated the 1st October 1902 the order of 12th January 1903 the certificate of the Registrar Companies (Winding-up) dated 17th of June 1904 the affidavit of A.W.G. filed the 2nd June 1905 the affidavit of G.H.J.D. filed 15th of June 1905 and the two several affidavits of I.V. filed respectively 29th September 1902 and the 15th June 1905 and the exhibits in the said affidavits respectively referred to and the certificate of the fund—

And the Court being of opinion that the proceedings in this action have been for the benefit of the persons interested in the funds in Court to the credit of this action by effecting a sale of part of the assets of the defendant Company and by managing the business of the defendant Company and by protecting its assets in the meantime and by ascertaining and determining the rights and priorities of the parties entitled to the proceeds of such sale and by effecting a distribution thereof accordingly—

THIS COURT DOTH ORDER that the costs of the plaintiffs of this action other than such (if any) as have been incurred by them in support of their own security only be taxed down to and including this order.

AND IT IS ORDERED that the funds in Court to the credit of this action be dealt with as directed in the Payment Schedule hereto the payment of the residue of such fund to the defendants The L. and P.B. Limited being on account of the Four thousand pounds principal and interest due thereon to the said defendant Bank referred to in the said certificate dated 17th June 1904.

PAYMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE,
Chancery Division. 4th July, 1905.

Re Cambrian Coke Company, Limited, Mouchel and Another v. *The L. and P. B., Limited, and The Cambrian Coke Company, Limited.* 1902. C. 2985.

Ledger Credit as above.

Funds in Court £1711 18*s.* 2*d.* Money on deposit.

Particulars of Payments, Transfers, or other Operations ordered.	Payees and Transferees or Separate Accounts.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Out of cash money on deposit and any interest—							
Pay costs to be taxed under this order .							
Pay residue . .	The L. and P. B., Limited.						

Re Cambrian Coke Co., Ltd., 1902—C—2985. Mr. Registrar Hood, July 4th, 1905.

ORDER ON FURTHER CONSIDERATION WHERE THE ESTATE IS SOLVENT, WITH DISCHARGE OF RECEIVER AND CHARGE TO PLAINTIFF'S SOLICITOR.

(*Title same as Writ.*)

The application by summons dated the 7th June 1905 of F.H.H. of gentleman a solicitor of the Supreme Court *inter alia* that it might be declared that the applicant as solicitor for the plaintiff and other holders of the mortgage debentures of the defendant Company is entitled to a charge upon the sum of £6000 in Court as being property recovered by or preserved for the plaintiff and the other holders of the said debentures for the amount of the taxed costs charges and expenses of the applicant of and in reference to this action and the application of the plaintiff by summons dated the 24th November 1905 for an order in the terms of the minutes annexed to such summons and upon hearing the solicitors for the applicant and the defendant Company in chambers was adjourned to be heard in Court and upon reading the order dated the 29th May 1905 the order on further consideration dated the 2nd June 1905 an order dated the 11th October 1905 the Master's certificates dated respectively the 6th April the 9th May and the 27th November 1905 the four affidavits of the said F.H.H. filed respectively the 18th June the 23rd June the 30th November and the 2nd December 1905 an affidavit of J.D.P. and P.S.E. filed the 4th February 1906 and the certificate of the fund.

This Court doth order that J.D.P. the receiver and manager appointed by the judgment dated the 10th June 1904 be discharged as from the 7th December 1905 and it is ordered that he do pass his final account as such receiver and do within fourteen days after the Master's certificate of the allowance of such account pay the balance if any which shall be certified due from him into Court as directed in the Lodgment and Payment Schedule hereto. And it is ordered that thereupon the recognizance and bond both dated the 11th July 1905 and entered into by the said J.D.P. and the London Guarantee and Accident Company Limited as his sureties be vacated. And it is ordered that it be referred to the taxing master to tax the costs of the plaintiff of this action as between party and party and also as between solicitor and client and to certify the difference and to tax as between solicitor and client the costs charges and expenses of the said F.H.H. as such solicitor of and in reference to this action and of recovering and preserving the assets of the defendant Company not included in the said costs of the plaintiff and including in the costs of the said F.H.H. his costs of and incident to his said application by summons dated the 7th June 1905 and in such taxation the taxing master is to debit the said F.H.H. with all sums of money (if any) by him received of or on account of the plaintiff or the receiver in respect of the said costs charges and expenses and to certify the balance of the said costs of the said F.H.H. and it is also referred to the taxing master to tax as between solicitor and client the costs of the plaintiff and

of the defendants of the said application of the said F.H.H. in chambers and occasioned by the adjournment thereof into Court and also the costs of the said liquidator of this action as from the 23rd June 1905. And it appearing from the said affidavit of J.D.P. and P.S.E. filed the 4th February 1906 that the portion of the funds in Court attributable to a final dividend of 5*s.* in the £ upon the principal amount of the debentures and the arrears of interest thereon together with further interest to the 25th day of March 1906 is the sum of £2083 7*s.* 7*d.* This Court doth declare that the said F.H.H. is entitled to a charge upon the said sum of £2083 7*s.* 7*d.* for the amount of the difference between the plaintiff's said costs as between party and party and solicitor and client hereinbefore directed to be certified and is also entitled to a charge upon the residue of the funds in Court and to be lodged as hereinbefore directed for his costs to be taxed under this order. And it is ordered that the funds to be lodged and the funds in Court be dealt with as directed in the said schedule. And any of the parties are to be at liberty to apply.

LODGMENT AND PAYMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE,
Chancery Division. Date of Order 15th February 1906.

Title of Cause or Matter. *Re W. C. Horne and Sons, Ltd., Horne* v. *Said Company*, 1904. W. 1853.

Ledger Credit as above.

Particulars of Funds to be lodged to the Account of the Paymaster-General.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Balance, if any, to be certified on passing his final account.	J.D.P. the receiver.						

(See over.)

II.—PAYMENT.

Funds to be dealt with { £7306 9*s.* 5*d.* Money on deposit in Court, Funds to be lodged as above.

Particulars of Payments, Transfers, or other Operations to be carried out by the Paymaster.	Payees Transferees or Titles of Separate Accounts.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Out of money on deposit cash and any interest and funds to be lodged as above.							
Pay balance, if any, to be certified due to the receiver.	J.D.P. the receiver.						
Pay costs to be taxed under this order other than the difference to be certified between plaintiff's costs of action as between party and party and solicitor and client.							
Out of £2083 7*s.* 7*d.* pay amount to be certified difference between the costs of the plaintiff as between party and party and solicitor and client to be taxed under this order.	F.H.H.						
Pay residue of said sum of £2083 7*s.* 7*d.* to the several persons mentioned in the second column rateably in proportion to the several sums set opposite their respective names in the Master's Certificate, 9th May, 1905—this column being the total amounts due in respect of principal and interest on their debentures (less tax) to 25th March, 1906.							
£364 11*s.* 8*d.*	S.V. of etc. and W.C.H. of etc.						
£86 16*s.* 7*d.*	A.J.H. etc.						
[Here follow amounts	and names of other debe	nture	-h	ol	ders.]		
Pay Income Tax		30	14	0			
Pay residue of funds.	J.D.P. the liquidator of the said Company.						

Re W. C. Horne and Sons, Ltd., Horne v. *The Company*, 1904–*W*–No. 1853. FARWELL, J., February 15th, 1906; [1906] 1 Ch. 271.

ORDER ON FURTHER CONSIDERATION WHERE ESTATE INSOLVENT WITH DISCHARGE OF RECEIVER, THE PLAINTIFFS, SECOND DEBENTURE-HOLDERS NOT ENTITLED TO THE FUND, BEING GIVEN THEIR COSTS.

(*Title.*)

UPON THE APPLICATION (by summons dated the 15th day of January 1908) of the Plaintiffs for the further consideration of this action and upon hearing the solicitors for the Applicants and for the Defendants T.L. and P.B. Limited and no one appearing for the Defendants The Cambrian Coke Company Limited although they have been duly served with the said summons as by the affidavit of A.R. filed 30th January 1908 appears and upon reading the order dated the 1st October 1902 the order dated the 12th January 1903 the order dated 4th July 1905 the orders of 10th August and 23rd November 1906 the two certificates of the Registrar Companies (Winding-up) respectively dated 11th December 1902 and the 17th June 1904 and the affidavit of the Plaintiff G.H.J.D. filed the 24th January 1908 and the certificate of the fund—

IT IS ORDERED that the sale by the receiver G.H.J.D. in this action of the locomotive engine forming part of the assets of the Defendants The Cambrian Coke Company Limited to Messieurs D.D.S.H. and Company for the sum of Two hundred pounds be confirmed.

And it appearing that all the assets of the Defendant The Cambrian Coke Company Limited comprised in the debentures issued by the said Company have been realized so far as the same are capable of realization—

IT IS ORDERED that the said G.H.J.D. the receiver appointed in this action by the said order of the 1st October 1902 be discharged and that he do pass his final account and pay the balance which shall be certified to be due from him into Court as directed in the Lodgment Schedule hereto.

AND thereupon IT IS ORDERED that the bond dated the 19th day of November 1902 entered into by the said G.H.J.D. together with The Law Guarantee and Trust Society Limited as his sureties be vacated.

AND IT IS ORDERED that the costs of the Plaintiffs of this action other than such (if any) as have been incurred by them in support of their own security only from the foot of the taxation directed by the said order of the 4th July 1905 and also the costs of the Defendants T.L. and P.B. Limited of this action together with any costs charges and expenses properly incurred by them as mortgagees be taxed.

AND IT IS ORDERED that the funds in Court to the credit of this action be dealt with as directed in the Payment Schedule hereto the payment of the residue of such fund being further on account of the Four thousand pounds principal and interest due thereon to the said Defendant T. L. and P.B. Limited referred to in the said Registrar's certificate dated 17th June 1904.

(See over.)

LODGMENT AND PAYMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE,
Chancery Division. January 31st, 1908.
Re The Cambrian Coke Company Limited, Mouchel v. *Company*, 1902, C. 2985.

Ledger Credit as above.

I.—LODGMENT.

Particulars of Funds to be lodged to the Account of the Paymaster-General.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Balance certified to be due on his final account.	G.H.J.D. (receiver)						

Registrar Companies (Winding-up).

II.—PAYMENT.

Funds in Court { £501 13*s.* 3*d.* Money on deposit.
£9 3*s.* 8*d.* Cash.
Funds to be lodged under this Order.

Particulars of Payments, Transfers, or other Operations, to be carried out by the Paymaster.	Payees and Transferees, or Titles of Separate Accounts.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Out of money on deposit cash and funds to be lodged— Pay costs of Plaintiffs and Defendants T.L. and P. B. Limited to be taxed under this order							
Pay residue	The Defendants T. L. and P.B Limited.						

Registrar Companies (Winding-up).

[*Re Cambrian Coal and Coke Co., Mouchel* v. *The Company*, 1902, C 2985, Mr. Registrar HOOD, January 31st, 1908.]

ORDER ON FURTHER CONSIDERATION FOR PAYMENT OF DIVIDEND OF SIXPENCE IN THE POUND AND INTEREST IN DEBENTURE-HOLDER'S ACTION—DEBENTURES BEING PAYABLE TO BEARER AND SECURED BY A TRUST DEED.

(*Title.*)

UPON THE APPLICATION of the Plaintiff (by summons dated 20th July 1911) for the further consideration of this action and upon hearing the solicitors for the Applicant and for the Defendants and for G. and Company The U.B. of A. Limited and The M.T. Limited parties served with notice of the judgment in this action and attending the proceedings and upon reading the judgment in this action dated 26th June 1900 the orders dated 1st August 1900 26th October 1900 31st May 1905 4th December 1907 2nd November 1909 and 3rd May 1910 the Registrar's certificate dated 11th April 1911 the two affidavits of S.H.B. filed 21st day of July 1911 and 31 July 1911 respectively and the certificate of the fund—

And it appearing by the said affidavits of S.H.B. that of the one thousand four hundred and ninety-six debentures and provisional scrip certificates referred to in the first and second parts of the schedule to the said Registrar's certificate dated 11th April 1911 one thousand three hundred and seventy-two debentures and scrip certificates (comprising all the debentures and scrip certificates mentioned in the first part of the said schedule except the debentures specified therein under the serial numbers 176 and 177 and comprising also the debentures specified under the serial number 4A in part II. of the said schedule which one thousand three hundred and seventy-two debentures and scrip certificates are hereinafter referred to as the "debentures produced in England") were produced to the Registrar Companies (Winding-up) and one hundred and twenty-four debentures (comprising all the debentures referred to in Part II. of the said Schedule except the debentures therein specified under the serial number 4A and comprising also the debentures specified in the first part of the said schedule under the serial numbers 176 and 177 which one hundred and twenty-four debentures are hereinafter referred to as the "debentures produced in Australia") were produced to the Defendants W.R. and G.A.K. in Melbourne and that the sum of Three thousand four hundred and thirty pounds will be required to pay a dividend of Six pence in the pound on the principal sums certified to be due on the debentures produced in England and that the sum of Five hundred and seventy-five pounds will be required to pay a like dividend on the two hundred and thirty debentures of One hundred pounds each specified in the third part of the said schedule—

And it appearing that all interest up to the 1st July 1895 has been paid on the principal sums certified to be due in respect of all the debentures produced in England except the forty debentures for One hundred pounds each specified in part II. of the schedule to the said certificate under the serial number 4A but that interest has not been paid up to the 1st July 1895 on the last-mentioned debentures or on the debentures produced in Australia except the twenty-six debentures specified in the first part of the said schedule under serial numbers 176 and 177 and the

ten debentures specified in the second part of the said schedule under the serial number 2A—

IT IS ORDERED that the interest at the rate of Five pounds per centum per annum owing on the said forty debentures and on the debentures produced in Australia other than the said twenty-six and ten debentures be paid to the 1st July 1895.

AND IT IS ORDERED that a first dividend computed at the rate of Six pence in the pound upon the principal moneys certified to be due in respect of all the said debentures mentioned in the schedule to the said certificate dated 11th April 1911 be paid generally on account of the amounts due in respect of such debentures.

And for the purpose of the payment of the said interest on the said forty debentures and of the said dividend on the debentures produced in England and on the debentures not yet produced—

IT IS ORDERED that Harold de Vaux Brougham the receiver appointed in this action by the said order dated the 4th day of December 1907 do lodge in Court as directed by the lodgment part of the Lodgment and Payment Schedule II. hereto the sum of Five hundred pounds admitted to be in his hands as such receiver transmitted to him from Melbourne by the Defendants W.R. and G.A.K.

AND IT IS ORDERED that the funds in Court be dealt with as directed by the Payment Schedule I. hereto.

AND IT IS ORDERED that such funds and the funds to be lodged as aforesaid be dealt with as directed by the payment part of the Lodgment and Payment Schedule II. hereto.

And for the purpose of paying such interest and dividend as aforesaid on the debentures produced in Australia—

IT IS ORDERED that the Defendants W.R. and G.A.K. out of the moneys in their hands as trustees of the indenture dated the 23rd day of September 1891 in the statement of claim mentioned do pay:—

(1) To the holders of the fifty debentures produced in Australia specified in the second part of the schedule to the said certificate under the serial number 1A (on production of such debentures indorsed with a memorandum that the interest hereinafter mentioned has been paid) interest at the rate of Five pounds per centum per annum from the 1st January 1892 to the 1st July 1895 on the principal sum certified to be due in respect of such fifty debentures and to the holders of the thirty-eight debentures produced in Australia specified in the second part of the Schedule to the said certificate under the serial number 3A (on production of such debentures indorsed with a memorandum that the interest hereinafter mentioned has been paid) interest at the rate of Five pounds per centum per annum from the 1st January 1894 to the 1st July 1895 on the principal sum certified to be due in respect of such thirty-eight debentures.

And (2) to the holders of the debentures produced in Australia (on production of such debentures indorsed with a memorandum that the dividend hereinafter mentioned and all interest on the principal moneys due thereon to the 1st July 1895 have been respectively paid) a dividend computed at the rate of Sixpence

in the pound on the principal sums certified to be due on such debentures respectively generally on account thereof.

AND IT IS ORDERED that the costs of the Plaintiff and of the Defendants W.R. and G.A.K. of this action from the foot of the last taxation be taxed as between solicitor and client and that the costs of the Defendants Chaffey Brothers Limited of the application dated 7th April 1910 and the said order of 3rd May 1910 made thereon and of this application be taxed and paid as directed in the Payment Schedule I. hereto.

And the subsequent further consideration of this action is adjourned to be heard in Chambers.

And any of the parties are to be at liberty to apply as they may be advised.

PAYMENT SCHEDULE I.

IN THE HIGH COURT OF JUSTICE,

Chancery Division.

31st July 1911.

Re Chaffey Brothers Limited, Henry v. *Chaffey Brothers Limited and others* (1896), C. 2329.

Ledger Credit as above.

Funds in Court { 4215*l.* 19*s.* 8*d.* Money on deposit.
975*l.* 11*s.* 5*d.* Consols.

Particulars of Payments, Transfers, or other Operations, to be carried out by the Paymaster.	Payees and Transferees or Titles of Separate Accounts.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Sell Consols . . .					947	5	10
Out of proceeds money on deposit cash and any interest— Pay (upon production of certificate of P.C.C.F. or H.H.J. members of the firm of Messieurs F. and J. solicitors that the forty debentures numbers 351 to 390 certified by the Registrar's certificate to be held by T. Limited have been endorsed with a memorandum that all interest up to the 1st July 1895 has been paid on the principal moneys due thereon) interest (less income tax) at 5 per centum per annum from 18th November 1892 to 1st July 1895 on 4000*l.* 0*s.* 0*d.*	T. Limited.	492	15	3			

PAYMENT SCHEDULE I.—*continued.*

Particulars of Payments, Transfers, or other Operations, to be carried out by the Paymaster.	Payees and Transferees or Titles of Separate Accounts.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Pay income tax so deducted from interest .	Commissioners of Inland Revenue	30	10	6			
Carry over . . .	"Re Chaffey Brothers Limited, Henry *v.* Chaffey Brothers Limited 1896. C. 2329 'First dividend of 6*d.* in the pound on debentures produced in England and on debentures not yet produced.'"	3505	0	0			
Pay costs to be taxed under this Order.							

LODGMENT AND PAYMENT SCHEDULE II.

31st July 1911.

Re Chaffey Brothers Limited, Henry v. *Chaffey Brothers Limited* (1896), C. 2329.

Ledger Credit as above. "First Dividend of 6*d.* in the Pound on Debentures produced in England and on Debentures not yet produced."

I.—LODGMENT.

Particulars of Funds to be lodged to the Account of the Paymaster-General.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Cash	Harold de Vaux Brougham (receiver).	500	0	0			

Registrar Companies (Winding-up).

LODGMENT AND PAYMENT SCHEDULE II.—*continued.*

II.—PAYMENT.

Funds to be dealt with { Funds to be lodged as above.
Funds to be carried over under Payment Schedule I.

Particulars of Payments, Transfers, or other Operations to be carried out by the Paymaster.	Payees and Transferees, or Titles of Separate Accounts.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Pay (upon the production of certificates of P.C.C.F. or H.H.J. members of the firm of Messieurs F. and J. solicitors that the respective debentures or provisional scrip certificates certified by the Registrar's certificate to be held by the under-mentioned persons have been endorsed with a memorandum that all interest on the principal moneys due thereon has been paid up to the 1st July 1895 and that a dividend of 6*d.* in the pound generally on account has been paid) to the holders of debentures or provisional scrip certificates produced in England as under :—							
	(1 and 4A.) T Limited	200	0	0			
	(2.) N.N.S.	7	10	0			
	(3.) W.M.P. and A.J.J. A.H.J. both of		0	0			
	(5.) S.M.L. widow H.M. L.B. H.M.L. executors of will of G.L. deceased.	12	10	0			
	(6.) G.J.H. C.H. H.E.R. E.E.W. executors of the will of F.H.W. deceased.	7	10	0			
	(7.) E.C.N. E.C. W.W. executors of the will of W.G.N. deceased.	12	10	0			
	(8.) C.H.H.	25	0	0			
	(9.) E.D.	7	10	0			

LODGMENT AND PAYMENT SCHEDULE II.—*continued.*

II.—PAYMENT.—*continued.*

Particulars of Payments, Transfers, or other Operations to be carried out by the Paymaster.	Payees and Transferees, or Titles of Separate Accounts.	Amounts.					
		Money.			Securities.		
		£	s.	s.	£	s.	d.
	(10.) A.M.B. widow.	50	0	0			
	(11.) M.K.H. executrix of will of S. deceased.	7	10	0			
	(13.) E.S. widow T.M.S. and G.L.S. spinster all of	5	0	0			
	(14.) G.H.W.	25	0	0			
	[Here followed (*a*) the names of other payees; (*b*) the amounts payable to them.]						

[*Re Chaffey Brothers* 1896 C. 2320. Mr. Registrar HOOD July 31st 1911.]

NOTICE TO DEBENTURE-HOLDERS IN THE ABOVE ACTION.

No. ____________ 1896.—C.—2329.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.
MR. JUSTICE NEVILLE.

Precise title of Matter or Suit in Pay Office Books } *Re* CHAFFEY BROTHERS, LIMITED. HENRY *v.* CHAFFEY BROTHERS LIMITED—1896—C.—2329.

Ledger Credit as above. FIRST DIVIDEND OF 6*d.* IN THE £ ON DEBENTURES PRODUCED IN ENGLAND AND ON DEBENTURES NOT YET PRODUCED.

To ______________________________

of ______________________________

____

The sum of £ payable to you generally on account and as a First Dividend of 6*d.* in the £ upon £ the amount of your Debentures in Chaffey Brothers, Limited, under an Order in this matter, and

action dated the 31st July, 1911, may be obtained at the office of the Paymaster of the Supreme Court, Royal Courts of Justice, London, upon presentation (*a*) of this Notice with the "Certificate" at foot signed by us.

To enable us to give the Certificate you must return to us this Notice, together with all your Debentures, Nos. to inclusive.

When we return the Notice to you with our Certificate, we will return to you by post at your risk, your Debentures.

If, instead of personally attending at the office of the Paymaster you prefer to have a cheque for the amount posted to you or to your Bankers in the United Kingdom, you must also fill in and sign the subjoined form of "Request," which we will lodge with the Paymaster.

Dated this 18th day of September, 1911.

F. & J.,
Street, E.C.,
Solicitors for the Plaintiff.

CERTIFICATE.

WE CERTIFY that the respective Debentures certified by the Registrar's Certificate to be held by the above-named person have been indorsed with a Memorandum that all interest on the principal moneys due thereon has been paid up to the 1st July, 1895, and that a dividend of 6*d*. in the £ generally on account has been paid.

Signature————————

Date————————

REQUEST.

TO THE ASSISTANT PAYMASTER GENERAL,
ROYAL COURTS OF JUSTICE, LONDON, W.C.

(*b*) Insert "me" or name of a joint payee.

(*c*) If remittance to a bank (in the United Kingdom) is desired, insert name and address of bank.

I/We request you to remit by post to (*b*) ————————
(*or*) (*c*) to ———————— Bank
at ————————
(whose receipt shall be your full and sufficient discharge), a direction for payment of £ payable as herein notified, such direction to be crossed to my/our account at ———————— Bank

Signature (*d*) ————————
Full postal address (*e*) ————————
Date ———————— 19 .

NOTE.—(*a*) If personal application is made, the Payee must be identified by a Solicitor who has signed the Pay Office Books.

(*d*) If payable to several persons jointly, all must sign, unless they are executors, when only one need sign. If payable to a firm, the request must be signed by a partner, who should describe himself as such, thus—"A.B., a partner in the firm of B.C. & Co." If payable to a corporate body, the request must be sealed and signed by the Secretary or other proper officer.

(See over.)

(*e*) A remittance to a Debenture holder direct can only be sent by post to him at his own postal address as given in the request, and not to the care of other persons.

CERTIFICATE OF TAXATION.

HIGH COURT OF JUSTICE,

Chancery Division.

Title of Action: *Re* CHAFFEY BROTHERS LIMITED HENRY v. CHAFFEY BROTHERS LIMITED AND OTHERS—1896.—C—2329

Ledger Credit as above.

IN PURSUANCE of an Order dated 31st July 1911. I have been attended by the Solicitors for the Plaintiff for the Defendants W.R. and G.A.K. and for the Defendants Chaffey Brothers Limited and I certify that I have taxed the Costs specified in the Schedule subjoined hereto, directed to be taxed by the said Order, at the sums respectively stated in the said Schedule; which sums, with the fees of taxation specified amount to the total sum of Six hundred and twenty-nine pounds three shillings and nine pence.

Dated this 24th day of November 1911.

Registrar, Companies (Winding-up).

SCHEDULE.

Costs of	Payable to		Amount of Taxed Costs and Fees.
	Name.	Address.	£ s. d
Plaintiff.	F. and J.		
Fees of Taxation.			
Defendants, W.R. and G.A.K.	S.B.S. and W.		
Defendants, Chaffey Brothers, Limited.	S.T. and C.		

SUMMONS TO DETERMINE WHETHER CERTAIN COSTS ARE TO BE INCLUDED IN THE COSTS DIRECTED TO BE TAXED BY AN ORDER ON FURTHER CONSIDERATION.

IN THE HIGH COURT OF JUSTICE,

Chancery Division. 1906 C. No. 1881.

MR. JUSTICE NEVILLE,

In the matter of Callender's Paper Manufacturing Company Limited,

and

In the matter of the Trusts of a Debenture Trust Deed dated the 24th day of October 1904 and made between the said Company of the one part and A.L. and W.J.B. of the other part.

Between Abraham Lyon and William John Bolt Plaintiffs,
and
Callender's Paper Manufacturing Company Limited T.N.B. Limited E.F. and E. Company Limited H.I.S. R.M.N. and J.F.S. Defendants.

Let all parties concerned attend at the Chambers of the Registrar, Companies (Winding-up) Bankruptcy Buildings, Carey Street, London, on Tuesday the 6th day of December 1910, at 11.30 o'clock in the forenoon on the hearing of an application on the part of the plaintiffs.

1. That in the Costs of the Applicant of realization directed to be taxed by the Order on further consideration dated 20th July 1909 may be included the Applicant's charges under the following heads together with the Costs of this Application.

(*a*) Abortive negotiations with proposing purchasers other than C. and M.

(*b*) Proposed misfeasance proceedings.

(*c*) Payment into Court of proceeds of Sale.

(*d*) Landlords Summons for re-entry and consequent thereon.

(*e*) Negotiations with C. and M.

(*f*) Originating Summons to confirm Contract for Sale and consequent thereon.

(*g*) Order to vary Contract.

(*h*) Order for resale and consequent thereon.

(*i*) Proceedings against defaulting purchasers.

Dated the 1st day of December 1910.

This Summons was taken out by S. and N. of Solicitors for the Applicants.

To the Defendants and Receiver and to Mr. C. of , Messrs. T. and L. of , Messrs. W. & W. and Co., of , Messrs. S. & N. and Messrs. M. & Co., of , their respective Solicitors.

NOTE.—If you do not attend either in person or by your Solicitor at the time and place above-mentioned such order will be made and proceedings taken as the Judge (or Registrar) may think just and expedient.

ORDER ON ABOVE SUMMONS.

IN THE HIGH COURT OF JUSTICE,
Chancery Division. 1906 C. No. 1881.
MR. JUSTICE NEVILLE (*at Chambers*).

Wednesday the 18th day of January 1911.

In the Matter of Callender's Paper Manufacturing Company Limited,
and
In the Matter of the Trusts of a Debenture Trust Deed dated the 24th day of October 1904 and made between the said Company of the one part and A.L. and W.J.B. of the other part.

Between Abraham Lyon and William John Bolt
Plaintiffs,
and
Callender's Paper Manufacturing Co. Limited
T.N.B. Limited E.F. and E. Company Limited
H.I.S. and R.M.N. and J.F.S. Defendants.

Upon the application of the Plaintiffs by Summons dated the 1st day of December 1910. And upon hearing Counsel for the Applicant and the Solicitors for the Defendants E.F. and E. Company Limited and for J.H.P. the Receiver and Manager named in the Order on Further Consideration in this Action dated 20th July 1909. And upon reading the said order.

And the Judge being of opinion that the costs of realization and of the abortive Sale in the said Order mentioned do not include any of the Costs of any step or proceeding in this Action and do not include Costs in respect of the following matters (that is to say) :—

(*a*) Abortive negotiations with proposing Purchasers other than C. and M.

(*b*) Proposed misfeasance proceedings.

(*c*) Payment into Court of proceeds of Sale.

(*d*) Landlord's Summons for Re-entry and consequent thereon.

(*f*) Originating Summons to confirm Contract for Sale and consequent thereon.

(*g*) Order to vary Contract dated 18th December 1906 and the Summons upon which the said Order was made.

(*h*) Order for Resale dated 19th July 1907 the Order of the 1st November 1907 the Summons upon which the last-mentioned Order was made and the Costs consequent upon all of the same respectively.

(*i*) Proceedings against defaulting Purchasers.

And the Judge being of opinion that the Plaintiffs Costs of such of the negotiations with C. and M. referred to in Item (*e*) of the said Summons of 1st December 1910 as were properly incurred ought to be included in the Plaintiffs Costs of the abortive sale in the said Order on Further Consideration dated 20th July 1909 mentioned DOTH ORDER accordingly.

AND IT IS ORDERED that the Costs of the Defendants E.F. and E. Co. Limited and of J.H.P. the said Receiver and Manager of this application be paid by the Plaintiffs A.L. and W.J.B. to the said Defendants E.F. and E. Co. Limited and the said J.H.P. the Receiver and Manager such Costs to be taxed.

CHAPTER VIII.

PETITIONS.

REDUCTION OF CAPITAL.

SUBJECT to confirmation by the Court a company limited by shares, if so authorized by its articles (*a*), may by special resolution reduce its share capital (*aa*) in any way, and in particular and without prejudice to the foregoing power may—

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

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

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

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly (*b*).

In cases where the articles of association do not contain any power to reduce capital, three meetings will be necessary : there must first be a special resolution to alter the articles, and at the second meeting after such resolution has been passed and confirmed, the reduction must be passed as an extraordinary resolution, such extraordinary resolution being subsequently confirmed as a special resolution (*c*). An application is

(*a*) A power in the memorandum is useless : *Dexine Patent Packing and Rubber Co.* (1903), 88 L. T. 791.

(*aa*) Stock may be reduced under these powers : *Household Property and Investment Co.*, [1912] W.N. 110.

(*b*) Companies (Consolidation) Act, 1908, s. 46. These provisions apply also to companies limited by guarantee and having a share capital, if registered on or after January 1, 1901 : *ibid.*, s. 56.

(*c*) Cp. *West India and Pacific Steamship Co.* (1868), 9 Ch. 11 n. ; *Patent Invert Sugar* (1885), 31 C. D. 166 ; and *Oregon Mortgage Co.*, [1910] S. C. 964, which establish that the special resolution for altering the articles and the special resolution for reduction cannot be passed concurrently ; and *John Crossley and Sons* (1892), W. N. 55, which shows that the first part of the resolution for reduction may be passed at the meeting for confirming

then made by petition to the Court (*d*) for an order confirming the reduction (*e*).

From the confirmation by a company of a resolution for reducing share capital or, where the reduction does not involve either the diminution of any liability in respect of any unpaid share capital or the payment to any shareholder of any paid-up share capital, from the presentation of the petition for confirming the reduction the company must add to its name until such date as the Court may fix, the words "and reduced" as the last words of its name (*f*), and those words will, until the date so fixed, be deemed to be part of the name of the company (*g*). Apparently a company which abandons a scheme for reduction, which it has started, will have to get leave to discontinue the use of the words "and reduced" (*h*).

In cases where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced" (*i*).

Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case, if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company would be admissible in proof against the company will be

the alteration of the articles; see also *Union Plate Glass Co.* (1889), 42 C. D. 513, for a case where this course was adopted.

(*d*) The Court means the Court having jurisdiction to wind up the company: Companies (Consolidation) Act, 1908, s. 285. As a matter of fact, the petition may be presented either to any Judge of the Chancery Division (such Judge being ascertained by ballot in the ordinary way) or to the Judge having jurisdiction to wind up the company. This was the case before the Act came into force: *Islington and General Electric Supply* (1892), W. N. 81; and *Ocean Queen Steamship*, [1893] 2 Ch. 666, and is so still: see General Order as to Reduction of Capital of 1909: *Essex and Suffolk Equitable Insurance*, [1909] W. N. 102. For cases where there is a county court which has jurisdiction to wind up the company: *Rugeley Gas Co.* (1899) W. N. 127; *Portsmouth and District Vacuum Cleaner Co.*, [1908] W. N. 203, and *infra*, p. 695, note (*l*). No rules have been made in either of the Palatine Courts under the Act, and the rules and practice of the High Court are consequently applicable. In the County Courts O. 41 A of the County Court Rules set out in the appendix to this book pp. 1507 and 1508 applies. In the High Court the affidavit in support is required when the petition is presented, but further affidavits may be made afterwards.

(*e*) Companies (Consolidation) Act, 1908, s. 47.

(*f*) In *John T. Clark & Co.*, [1911] S. C. 243, the omission of these words without leave was held to deprive the Court of its jurisdiction to sanction a reduction.

(*g*) Companies (Consolidation) Act, 1908, s. 48.

(*h*) *Mordey, Carney & Co.* (1885), 53 L. T. 736; see also *Kirkstall Brewery* (1877), 5 C. D. 535.

(*i*) Companies (Consolidation) Act, 1908, s. 48. See *post*, pp. 669 and 670 and p. 674, as to the cases where the Court will allow the words "and reduced" to be dispensed with.

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

A creditor whose existence is known of and who simply lies by and does nothing, will even when his identity is unknown not be considered to have consented to the reduction (*m*).

Once the Court is satisfied that this section has been complied with and that the resolutions have been duly passed, it would seem that the Court should sanction the reduction unless it considers that it ought to refuse its sanction out of regard to the interests of those members of the public who may be induced to take shares in the company, or because it does not consider that the reduction is fair and equitable as between the different classes of shareholders (*n*).

Generally speaking, in ascertaining how a loss should be borne between different classes of shareholders, the Court acts upon the principle that a reduction is a sort of anticipation to a limited extent of what would take place in a winding-up (*o*). Thus, *primâ facie*, if there are preference and ordinary shares, and the preference shares are entitled to priority as regards dividends but not as regards capital, the amount written off the shares of the company should be borne rateably by all the shares (*p*), even though the company had no power to reduce its capital when the preference shares were issued (*q*) ; but if the preference shares have priority as regards capital, the other shares must in the first instance bear any loss (*r*) ;

(*k*) Companies (Consolidation) Act, 1908, s. 49. As to settling the list of creditors and the other proceedings required by this section, see *post*, pp. 652, *et seq*. Under these provisions a lessor is entitled to have a sum appropriated to answer future rent : *Telegraph Construction Co.* (1870), 10 Eq. 384. In *Palace Billiard Rooms*, [1912] S.C. 5, a landlord was held entitled to have a sum equivalent to the full amount of his future rent set aside.

(*l*) Companies (Consolidation) Act, 1908, s. 50.

(*m*) *Patent Ventilating Granary Co.* (1879), 12 C. D. 254 ; *Bull Hotel Co.* (1882), 27 Sol. J. 434, in which *Credit Foncier of England* (1871), 11 Eq. 356 was not followed ; and see also Palmer, vol. i. 10th Ed. 1196. It may be noticed that under the general orders in force at the date of these decisions creditors were required to consent in writing ; this is no longer so : General Order as to Reduction of Capital, 1909, rr. 16 and 17, and it may be that in some cases it will be competent for a certificate to find that a creditor, whose identity is unknown, has consented to a scheme.

(*n*) *Poole* v. *National Bank of China*, [1907] A. C. 229 ; *British and American Trustee and Finance Corporation* v. *Couper*, [1894] A. C. 399.

(*o*) *Credit Assurance and Guarantee Corporation*, [1902] 2 Ch. 178, at p. 181 ; but see S. C. on appeal, [1902] 2 Ch. 601.

(*p*) *Bannatyne* v. *Direct Spanish Telegraph Co.* (1886), 34 C. D. 287 ; *Direct Spanish Telegraph Co.* (1885), 34 C. D. 307.

(*q*) *Barrow Haematite Steel Co.* (1888), 39 C. D. 582.

(*r*) *Floating Dock Company of St. Thomas*, [1895] 1 Ch. 691.

Again, in the case of deferred shares whose only right on a winding-up is to have a certain proportion of the assets after the other shares have had their capital returned, the deferred shares must primarily bear the loss (*s*). If the losses on a winding-up are to be borne by shareholders in proportion to the amounts paid up at the commencement of the winding-up on their shares, the loss should *primâ facie* not be borne by fully and partly paid-up shares equally (*t*).

At one time there was a doubt as to whether the Court could reduce some of the shares of a company without reducing others (*u*). This doubt has now been completely dissipated (*x*), and the Court can even reduce some of a particular class of shares without reducing other shares of the same class (*y*).

Another doubt, which has likewise been dissipated (*z*), was as to whether the Court could sanction an alteration which altered the voting rights of the different shareholders (*a*).

The Court will in a proper case, and where it is not inequitable, sanction a reduction of capital which involves an alteration of the rights of the shareholders *inter se*, and the fact that the company's articles contain a power for the different classes of shareholders to sanction alterations in the rights of such classes (*b*) will, where the power has been exercised, have considerable weight with the Court (*c*). The Court can allow a company to purchase some of its shares, even when the shares are all of the same class (*d*).

(*s*) *London and New York Investment Corporation*, [1895] 2 Ch. 860.

(*t*) *Credit Assurance and Guarantee Corporation*, [1902] 2 Ch. 178. This case was reversed on appeal, [1902] 2 Ch. 601, but without affecting, it is thought, the general principle that this is the *prima facie* rule.

(*u*) In *Union Plate Glass* (1889), 42 C. D. 513, KAY, J., held it could not. In *Barrow Hœmatite Steel Co.* (1888), 39 C. D. 582; *Quebrada Railway Land and Copper* (1889), 40 C. D. 363; *American Pastoral Co.* (1890), 2 Meg. 80; and *Gatling Gun* (1890), 43 C. D. 628, NORTH, J., held it could; and KEKEWICH, J., took the same view as NORTH, J., in *Agricultural Hotel Co.*, [1891] 1 Ch. 396. In *Quebrada Railway Land and Copper* (1889), 40 C. D. 363, NORTH, J., required a circular calling the attention of the shareholders to the fact that rights were being altered.

(*x*) *Floating Dock Company of St. Thomas*, [1895] 1 Ch. 691.

(*y*) *Pinkney and Sons Steamship*, [1892] 3 Ch. 125; *Newbery-Vautin (Patents)*, [1892] 3 Ch. 127 n.; *Thomas De La Rue & Co.*, [1911] 2 Ch. 361.

(*z*) *James Colmer*, [1897] 1 Ch. 524.

(*a*) *Pinkney and Sons Steamship*, [1892] 3 Ch. 125; *Continental Union Gas* (1891), 7 T. L. R. 476.

(*b*) It may be doubted whether a company can take such a power so as to bind existing shareholders, see, however, *National Dwellings Society* (1898), 78 L. T. 144.

(*c*) *Credit and Assurance Guarantee Corporation*, [1902] 2 Ch. 601; *Samuel Allsopp and Sons* (1903), 19 T. L. R. 637; 51 W. R. 644; *Balmenach Glenlivet Distillery* v. *Croall* (1906), 8 Fra. 1135; *Welsbach Incandescent Gas Light Co.*, [1904] 1 Ch. 87.

(*d*) *British and American Trustee and Finance Corporation* v. *Couper*, [1894] A. C. 399.

With regard to other schemes which the Court has sanctioned or can sanction, it has sanctioned a scheme by which moneys not immediately required were returned to the shareholders on the footing that they could be called up again (*e*), it has sanctioned a scheme by which shares which had been illegally purchased have been cancelled (*f*) and a scheme by which vendors' shares were, with the consent of the vendors, cancelled (*g*); and also one by which preference shares which had been issued on the footing that they were to be paid off out of accumulated profits were so paid off (*h*). In a case where there were both deferred and ordinary shares, the deferred shares ranking *pari passu* with the ordinary shares as regards dividend, it sanctioned a complicated scheme by which in consideration of certain deferred shares being surrendered, the rest were subdivided and raised to the rank of ordinary shares (*i*), and it has also sanctioned a scheme by which arrears of preferential dividend were cancelled, and the right to future dividend altered (*k*), in both these last two cases the company had powers of modifying the rights of different classes of shares. In another case a company which had originally power neither to modify rights nor to subdivide its shares or reduce its capital, took powers to do all these things, and the Court sanctioned a scheme, which had been approved by all classes of shareholders, by which some ordinary shares which had been surrendered to the society were cancelled, and the preference shares were reduced and subdivided, and the other ordinary shares were reduced and consolidated, and the arrears of preference dividend were cancelled, and the whole of the preference and ordinary shares were consolidated into one class (*l*). In another case the Court has sanctioned a scheme by which a company formed under 7 & 8 Vict. c. 110, but subsequently registered under the Companies Acts as a limited company, cancelled certain shares which the company had purchased before such registration, and also extinguished the liability in respect of uncalled capital which could only be called up for the purposes of a winding-up (*m*). In another case a company had a capital of £100,000 shares divided into 100,000 shares of £1 each, and such capital was reduced to £70,000, consisting of 40,000 fully

(*e*) *Fore Street Warehouse* (1888), 59 L. T. 214; *Watson, Walker and Quickfall* (1898), W. N. 69.

(*f*) *York Glass Co.* (1889), 60 L. T. 744; *West End Café* (1894), 21 Rettie, 381; *Banknock Co.* (1897), 24 Rettie, 476.

(*g*) *Vivian & Co.* (1886), 54 L. T. 384; 55 L. J. (CH.) 436. The Court directed the vendor to be added as a petitioner.

(*h*) *Dicido Pier Co.*, [1891] 2 Ch. 357. In this case it was held that it was not necessary for a list of creditors to be settled.

(*i*) *Hyderabad Deccan Co.* (1896), 75 L. T. 23.

(*k*) *Oban and Aultmore Glenlivet* (1903), 5 Fra. 1140.

(*l*) *National Dwellings Society* (1898), 78 L. T. 144.

(*m*) *Midland Railway Carriage and Wagon Co.* (1907), 23 T. L. R. 661.

paid shares of £1 each, and 60,000 shares of 10*s.* each on which varying amounts had been paid (*n*). Where a vendor has sold certain property to the company, the Court can sanction a scheme by which the company returns the property, and the vendor returns shares issued to him (*o*) and also where the property a person has sold proves less valuable than was anticipated, a scheme by which he surrenders shares without receiving any consideration for them (*p*). In one case (*q*) Buckley, J., held that the Court could not sanction a scheme by which shares were to be surrendered, if capital had not been lost and was represented by available assets, unless the company had capital in excess of its wants, and was returning such capital to its shareholders; but this case has, it is conceived, been overruled by *Poole* v. *National Bank of China* (*r*). Since this case it is conceived that there is no reason why a company which has issued shares at a discount should not cancel capital to the amount of such discount, and write down such shares so as to make the holders only liable to the extent that they would have been if the company could have validly issued shares at a discount (*s*). The Court can sanction a scheme by which capital is returned as being in excess of the wants of the company, even though the company proposes immediately afterwards to borrow such moneys from the shareholders (*t*), and a scheme under which preference shareholders (*u*) are to receive debentures in lieu of their shares; but the Court declined to sanction a scheme by which certain fully paid shares with valuable rights were

(*n*) *Phœbe Gold Co.*, [1900] W. N. 182.

(*o*) *Denver Hotel Co.*, [1893] 1 Ch. 495, and the remarks on this case in *British and American Trustee and Finance Corporation* v. *Couper*, [1894] A. C. 399.

(*p*) *Gatling Gun* (1890), 43 C. D. 628.

(*q*) *Anglo-French Exploration*, [1902] 2 Ch. 845. This case seemed to proceed on the footing that the three cases for reduction of capital expressly mentioned in the Act of 1877 (and now in s. 46 (1) of the Companies (Consolidation) Act, 1908), were the only cases in which a company could reduce its capital. This view was disapproved in *Poole* v. *National Bank of China*, [1907] A. C. 229, and also, it is thought, in *British and American Trustee and Finance Corporation*, [1894] A. C. 399, and is now, apart from these decisions, quite untenable in view of the very clear words of s. 46 (1). See also *Louisiana and Southern States Real Estate and Mortgage Co.*, [1909] 2 Ch. 552; *Thomas de la Rue & Co.*, [1911] 2 Ch. 361.

(*r*) [1902] A. C. 229, and see pp. 238 and 239 of the report.

(*s*) See *Eastern and Australian Steamship* (1893), 68 L. T. 321. CHITTY, J., made such an order in *Plaskynaston Tube Co.* (1883), 23 C. D. 542, which case, however, seems to proceed on the erroneous reasoning that a company could issue shares at a discount. In *New Chile Gold Mining Co.* (1888), 38 C. D. 475, NORTH, J., declined to make such an order where there was no evidence of loss. This case, it is thought, is now overruled.

(*t*) *Nixon's Navigation Co.*, [1897] 1 Ch. 872; *Lamson Store Service Co.*, [1897] 1 Ch. 875 n.

(*u*) *Thomas de la Rue & Co.*, [1911] 2 Ch. 361.

given up on the terms of an arrangement by which the holders were to receive ordinary shares of far greater nominal value (*x*). Swinfen Eady, J., there, after pointing out that the case did not come within either of the three cases expressly mentioned in the Act of 1877, pointed out that the scheme involved a large number of shares being issued, without the company in its corporate capacity receiving any consideration ; but the company could clearly have paid for these shares at par, as was done in *British and American Trustee and Finance Corporation* v. *Couper* (*y*), although in that case, as in every case of a purchase by the company of its own shares, there was no consideration moving to the company in its corporate capacity, and it was not suggested in *Couper's Case* (*z*), and seems contrary to the reasoning alike in that case and in *Poole* v. *National Bank of China* (*a*) to say that a company could not pay for shares on a scheme for reduction, whatever sum is their full value ; it is submitted that the scheme now under consideration, or something very like it, could be carried into effect. Where the certificate for the shares is under seal and refers to the memorandum and articles, money repayable on a reduction constitutes a specialty debt, and the Statute of Limitations will not bar the right to them until the expiration of twenty years (*b*).

In one case (*c*) the Scotch Court declined to alter the capital of a company from £50,000 divided into 50,000 £1 shares with 12*s.* 6*d.* paid up to £50,000 divided into 31,250 fully paid £1 shares and 18,750 £1 unpaid shares, which were to be surrendered to the company on the ground that there was no reduction. There was, it is true, no reduction in the nominal capital of the company ; but is that always necessary (*d*) ? And there certainly was a reduction of liability on some of the shares in respect of uncalled capital. In the case now under consideration the scheme apparently would not, as such scheme often would, work unfairly. Another case where the Scotch Court doubted if it would have had jurisdiction, though it did not decide the point, was a scheme by which the company proposed to cancel all its preference and ordinary stock, the preference having priority both as to dividend and capital secured by the memorandum, and to issue instead ordinary stock to the extent of 95 and 90 per cent. of the previous holdings of the preference and ordinary stockholders respectively (*e*). Here again, the difficulty seems more apparent than real, but such schemes and a good many others can now, it is thought, be

(*x*) *Development Company of West Africa*, [1902] 1 Ch. 547.

(*y*) [1894] A. C. 399.

(*z*) *Ibid.*, 399.

(*a*) [1907] A. C. 229.

(*b*) *Artisans' Land and Mortgage Corporation*, [1904] 1 Ch. 796.

(*c*) *Walker Steam Trawl Co.*, [1908] S. C. 123.

(*d*) In *Anglo-French Exploration*, [1902] 2 Ch. 845, BUCKLEY, J., assumes it is: but see the cases cited, *supra*, p. 641, note (*e*).

(*e*) *City Property Investment Co.* v. *Thorburn* (1896), 23 Rettie, 400.

carried out in substance by complying with the provisions not only of the reduction sections, but also of section 45 (reorganization of capital), or section 120 (compromise with creditors and members) or both (*f*). An arrangement by which a company surrenders part of its assets, with the object of improving the rest, does not amount to a reduction of capital (*g*).

The Court has sanctioned a scheme by which the issued, but not the unissued shares were reduced (*h*), and one by which every holder of five £1 shares got two £1 shares, and every holder of less than five shares and of shares beyond a multiple of 5, got an 8*s*. share for each such share (*i*).

The question of how far, if at all, it is necessary to prove a loss on reduction of capital, is one that has considerably exercised the Courts. The practice until recently was to require evidence of this in all cases except, of course, cases where capital was being returned, as being in excess of the wants of a company, such evidence being required to protect creditors, and not to enable a majority of the shareholders to bind a minority (*k*). This practice has now been held by the House of Lords to be entirely erroneous, the position apparently being that either creditors are concerned or they are not; if they are, then the proceedings directed by section 49 of the Act must be taken, and section 50 prevents the Court making any order unless satisfied of their consent or that their debts and claims have been discharged or have determined or have been secured; if on the other hand they are not entitled to object it is not the business of the Court to protect them (*l*). At the same time it is usual on a summons for directions in cases not under section 49 (1) to make an order allowing creditors who desire to object to attend the hearing (*m*); in such a case it is thought that it would be open to a creditor to say that by reason of the absence of any loss of capital or otherwise, the case is one in which the proceedings mentioned in section 49 ought to have been directed (*n*), and if he is successful it would seem that the petition should be ordered to stand over till the creditors are ascertained (*o*).

(*f*) See also *post*, p. 697.

(*g*) *Thomson* v. *Trustees, Executors and Securities Insurance Corporation*, [1895] 2 Ch. 454.

(*h*) *Pinkney and Sons Steamship Co.*, [1892] 3 Ch. 125.

(*i*) *Newbery-Vautin (Patents) Gold Extraction*, [1892] 3 Ch. 127 n.

(*k*) *Per* BUCKLEY, J., *Anglo-French Exploration Co.*, [1902] 2 Ch. 845, at pp. 851, 852.

(*l*) *Poole* v. *National Bank of China*, [1907] A. C. 229. See also *Dicido Pier Co.*, [1891] 2 Ch. 354.

(*m*) *Tambracherry Estates Co.* (1885), 29 C. D. 683.

(*n*) *Ibid.* 29 C. D. 683.

(*o*) Such orders were made in *Union Finance Co.* (1887), W. N. 253; *Eastern and Australian Steamship* (1893), 68 L. T. 321.

Where the reason for reduction is that capital is lost or unrepresented by available assets, it may be desirable to have evidence of such loss, or of the fact that the capital is not represented by available assets, so as to show that the scheme will work fairly as between the shareholders; but, apart from this, it will not be necessary to prove loss of capital (*p*), though it is desirable to do so as difficulties are sometimes raised if it is not done.

Where evidence of loss is necessary such evidence should be clear and not based on purely speculative evidence (*q*), and though no doubt money spent on goodwill or on preliminary expenses can usually not be said to be lost, at the same time it is thought that such moneys can usually be written off (*r*).

In ascertaining whether capital has or has not been lost a company need certainly not throw on to reserve funds more than their due proportion of any loss there may have been (*s*), and probably sums standing to the credit of reserve funds (*t*) or profit and loss (*u*) need not be taken into account at all. The Court will usually not sanction a reduction in the case of a company which is on the eve of winding-up (*x*), though it will with a view to a scheme of arrangement, do so even in a winding-up (*y*).

Where shares are subdivided, or preferential, or other rights altered by a resolution, which is contingent on the sanction of the Court being obtained to a reduction of capital, the subdivision or alteration of rights will fall to the ground, if such sanction is withheld (*z*).

FORM OF PETITION.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

MR. JUSTICE

In the Matter of the Company Limited and Reduced,
and
In the Matter of the Companies (Consolidation) Act 1908.

(*p*) *Louisiana and Southern States Real Estate and Mortgage Co.*, [1909] 2 Ch. 552.

(*q*) *Barrow Hæmatite Steel Co.*, [1900] 2 Ch. 846; [1901] 2 Ch. 746. Some of the remarks in this case were not altogether approved in *Poole* v. *National Bank of China*, [1907] A. C. 229.

(*r*) *Abstainers and General Insurance Co.*, [1891] 2 Ch. 124, would probably not be followed now.

(*s*) *Hoare & Co.*, [1904] 2 Ch. 208.

(*t*) *Rowland and Marwood* (1907), 51 S. J. 131.

(*u*) *George Morton, Ltd.* (1900), 2 Fra. 1032.

(*x*) *Wallasey Brick and Land Co.* (1894), 63 L. J. (CH.) 415.

(*y*) *Cooper, Cooper and Johnson* (1902), 51 W. R. 314.

(*z*) *Australian Estates and Mortgage Co.*, [1910] 1 Ch. 414.

TO HIS MAJESTY'S HIGH COURT OF JUSTICE.

The humble petition of the above-named Company (hereinafter called the Company) showeth as follows :—

1. The Company was registered on the day of 1895 under the Companies Acts 1862 to 1893 as a Company Limited by shares.

2. The registered office of the Company is situated at in the County of London.

3. The objects for which the Company was formed are as follows [Here set out the main objects for which the Company was formed] and other objects set forth in the memorandum of association thereof.

4. The nominal capital of the Company is £100,000 divided into 50,000 preference shares of £1 each numbered 1 to 50,000 both inclusive in the capital of the Company and 50,000 ordinary shares of £1 each numbered 50,001 to 100,000 in the capital of the Company. All the said preference shares and all the said ordinary shares have been issued and all such shares are fully paid up except the ordinary shares numbered 90,001 to 100,000 in the capital of the Company, upon which the sum of 10 shillings per share has been paid. All the said shares have to the extent that they are paid up been paid for in cash except the shares numbered to both inclusive such last-mentioned shares were issued pursuant to a contract in writing dated the day of 18 and duly filed with the Registrar of Joint Stock Companies (*a*).

5. It is provided by the Articles of Association of the said Company that the holders of the said preference shares shall be entitled after setting aside such moneys as may be thought fit to a reserve fund to a cumulative preferential dividend at the rate of 5 per cent. per annum on the amounts paid up on their shares and on a winding-up to have the amounts paid up on their shares returned to them before any return is made in respect of any other share of the Company but such shares do not confer any vote at any general meeting of the Company or any further other right to participate in the dividends or assets of the Company.

6. It is further provided by the said articles that subject to the said rights of the preference shareholders all dividends shall be divided among the holders of ordinary shares in proportion to the amount paid up on their shares and that on a winding-up any surplus assets remaining after paying the debts and liabilities of the Company and the costs of liquidation and repaying to the shareholders of the Company the amounts paid on their shares shall be divided among the ordinary shareholders and that any such surplus assets or any losses to be borne by the ordinary shareholders shall be divided among or borne by such ordinary shareholders in proportion to the amounts paid by them or which ought to have been paid by them at the commencement of the winding-up in respect of the

(*a*) This sentence is required where the company was formed before 1901, and not otherwise. Under s. 25 of the Act of 1867, shares were not fully paid up unless there was such a contract. The effect of the Act of 1900, where there is no such contract, is doubtful: see *supra*, p. 266. Even in recent cases the Court has, on a reduction of capital, required such a contract to be filed under the Act of 1898: see *T. Burberry and Sons*, 00275, of 1907, NEVILLE, J., January 14, 1908; *Henry Addison & Co.*, 00338, of 1910, NEVILLE, J., November 22, 1910.

ordinary shares held by them and that each ordinary shareholder shall have one vote for every share held by him.

7. The said articles also contain the following clauses [set out in full (1) the article giving power to reduce capital and (2) the article relating to class resolutions].

8. The Company have suffered losses by reason of [or state any other reason for reduction.]

9. The financial position of the Company on the day of 19 was as follows :—

The capital paid up was . .	£
The reserve fund was . . .	£
The undivided profits were . .	£
	£
The assets of the Company amounted to	£
Less liabilities	£
Showing a loss of capital of . .	£

10. It is proposed to write off such loss as follows :—

By appropriating

Part of the undivided profits . .	£
Part of the reserve fund . .	£
By writing off from each preference share 5*s*.	£
By writing off from each ordinary share 10*s*.	£

(or as may be.)

11. By special resolutions of the Company duly passed and confirmed at extraordinary general meetings held on the day of 19 and on the day of 19 it was resolved as follows :—

1. "That the capital of the Company be reduced from £100,000 divided into 50,000 preference shares of £1 each and 50,000 ordinary shares of £1 each to £62,500 divided into 50,000 preference shares of 15*s*. each and 50,000 ordinary shares of 10*s*. each and that such reduction be effected by writing off 5*s*. per share part of the sum of £1 per share which has been paid on each of the preference shares of £1 each and the sum of 10*s*. per share part of the sum of £1 per share which has been paid on each of the ordinary shares of £1 each numbered 50,001 to 90,000 in the capital of the Company and the whole of the sum of 10*s*. per shares which has been paid on each of the ordinary shares of £1 each numbered 90,001 to 100,000 in the capital of the Company—and by reducing each of the said 50,000 preference shares of £1 each to a share of 15*s*. and each of the said ordinary shares of £1 each to a share of 10*s*.
2. "That in the event of the said reduction being confirmed by the Court whether with or without modification Article 60 of the Company's Articles of Association whereby it is provided that each shareholder shall have one vote for every ordinary share held by him be altered by the omission of the word 'ordinary' therefrom."

12. By a resolution of the holders of preference shares duly passed and

confirmed at separate meetings of the holders of such shares held pursuant to Article of the Company's Articles of Association on the day of 19 and the day of 19 it was resolved as follows:—

1. "That this separate meeting of the holders of preference shares of the Company hereby consents on behalf of all the holders of shares of such class to the scheme for the reduction of capital (and to the alteration of the Company's Articles of Association) resolutions for which have this day been passed at an extraordinary general meeting of the Company.

2. "That upon the said reduction of capital being confirmed by the Court and upon the Articles of Association of the Company being altered in manner aforesaid the rights of the holders of preference shares of the Company be modified accordingly."

13. On the same days a resolution in the same terms substituting the word "ordinary" for the word "preference" was duly passed and confirmed at separate meetings of the holders of ordinary shares held pursuant to the said article.

14. The reduction proposed to be effected by the said special resolution does not involve either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital.

15. The form of minute proposed to be registered is as follows:—

"The capital of the Company Limited and Reduced is henceforth £62,500 divided into 50,000 preference shares of 15*s.* each and 50,000 ordinary shares of 10*s.* each instead of £100,000 divided into 50,000 preference shares and 50,000 ordinary shares of £1 each. At the time of the registration of this minute all the said 50,000 preference shares have been issued such shares are numbered 1 to 50,000 both inclusive and are and are to be deemed to be fully paid and 40,000 ordinary shares numbered 50,001 to 90,000 both inclusive have been issued and are and are to be deemed to be fully paid and the remaining 10,000 ordinary shares numbered 90,001 to 100,000 both inclusive have been issued but nothing has been or is to be deemed to be paid up thereon."

YOUR PETITIONER THEREFORE HUMBLY PRAYS AS FOLLOWS:—

1. That the reduction of capital sought to be effected by the special resolution above set out may be confirmed and that the minute above set out may be approved by this Court.

2. That this Court may dispense altogether with the addition to the name of the Company of the words "and reduced" or may fix a date at which the addition of the words "and reduced" to the name of the Company may be discontinued.

3. That all proper directions may be given for the purposes aforesaid.

NOTE.—It is not proposed to serve this petition on any one.

In cases where the reduction involves either a diminution of liability in respect of unpaid share capital or the payment of any shareholder of any paid-up share capital, the title will be in the same form as in the above petition and with the necessary modifications to meet the particular case so will clauses 1, 2, 3, 4, 7, 11, and 15, and,

where appropriate, clauses 5, 6, 12, and 13, and in cases where suitable, a clause similar to clause 9. For clause 8 will be substituted a clause in the form given below in the skeleton form of petition, and in proper cases clause 10 will be replaced by a clause like the one given below.

SKELETON FORM OF PETITION

In cases where reduction involves either a diminution of liability in respect of unpaid share capital or the payment of any shareholder of paid-up share capital.

1. Date of incorporation.
2. Place of registered office.
3. Objects of Company.
4. Capital and shares into which it is divided.

[5 and 6. Where necessary rights of different classes of shares.]

7. Article authorizing reduction [and where necessary article as to class resolutions].

8. Resolutions for reduction [and where necessary class resolutions approving same].

9. The capital of the Company is in excess of its wants (in proper cases state any facts that lead to this conclusion) or the rights conferred by the said preference shares are very inconvenient as is shown by the following facts [set out facts].

or

it will be for the benefit of the Company to return to each shareholder the sum of £ paid up on each share held by him and to borrow a sum of £

or

(as may be)

[10. In a proper case state the financial position of the Company.]

[11. In a proper case show how the reduction is to be effected as *e.g.* it is proposed to find the sum of £ for making the payments aforesaid out of the moneys now standing to the credit of the Company at its bank—such sum of £ will be charged to the companys reserve fund which consists entirely of accumulated profits (*b*).]

Prayer of Petition the same as in the petition before set out except that paragraph 2 of the prayer will except in very exceptional cases be :—

"That this Court will fix a date at which the addition to the name of the Company of the words 'and reduced' may be discontinued."

(*b*) There would appear to be no objection to paying more than the par value of any capital to be written off, at all events where the excess is paid out of profits. To such a case *The Development Co. of Central and West Africa*, [1902] 1 Ch. 547, would not apply, even if it is good law, as to which see *supra*, pp. 642 and 643.

AFFIDAVIT IN SUPPORT OF PETITION.

(*Title same as Petition.*)

I A.B. of in the county of make oath and say as follows :—

1. I am Chairman of the Board of Directors [or managing director or as may be] of the above-named Company (hereinafter called the company) and have been a director of the Company since the day of 19.

2. THE Company was formed on under the Companies Acts 1862 to and has its registered office at The certificate of incorporation of the Company is now produced and shown to me and marked A.B. (1).

3. A copy of the Memorandum and Articles of Association of the Company is now produced and shown to me and marked A.B. (2). Such memorandum and articles have never been altered.

4. The register of members of the company is now produced and shown to me and marked A.B. (3). Except as hereinafter mentioned all the shares of the Company have to the extent that they are paid up been paid up in cash (*c*). Of the capital of the said Company shares of £ each have been issued and there has been paid in respect of of such shares being the shares numbered to both inclusive, the sum of per share and in respect of the remainder of such shares being the shares numbered to both inclusive, the sum of per share. The shares numbered to both inclusive were allotted as fully paid up for a consideration other than cash and with respect to such shares the Company has filed with the Registrar of Joint Stock Companies a contract in writing relating to such shares as required by section 25 of the Companies Act 1867 (*c*).

5. [SET out the facts that make a reduction desirable—if necessary setting out the latest balance sheets, valuations, etc.]

6. BY a special resolution duly passed and confirmed at extraordinary general meetings of the Company held on the day of 19 and the day of 19 it was resolved.

[Here set out resolutions.]

The minute book of the Company relating to such extraordinary general meetings is now produced and shown to me and marked A.B. (4) (*d*). I was chairman of such meetings and the minutes relating to the same contained on pp. to of such minute-book are correct and the signature at the foot of each of such minutes is mine. [If necessary prove meetings of classes.] Sworn at etc. (*e*).

AFFIDAVIT PROVING SERVICE OF NOTICES (*f*).

(*Title same as Summons.*)

We A.B. of in the county of Secretary of the above-named company and C.D. of in the county of clerk to the said A.B. jointly and severally make oath and say as follows :—

And first I the said A.B. for myself say :—

(*c*) This statement is unnecessary where the company was registered after 1900: see *supra*, p. 646, note (*a*).

(*d*) The minute book must be exhibited : *Re Omnium Investment Co.*, [1895] 2 Ch. 127. In *Mains Manufacturing Co.* (1884), W. N. 171, it was held that an affidavit verifying the petition in general terms was sufficient; but see *Pilson, Joel and General Electric Light Co.* (1886), W. N. 203, as to proving loss, and the case first cited in this note as to evidence generally.

(*e*) In addition it is often wise to have affidavits of experts to prove loss of capital, etc.

(*f*) Proof of service of these

1. I have been Secretary of the above-named company for the last 5 years.

2. I directed the said C.D. to serve notices on each of the members of the company for the meetings of the company for passing and confirming the special resolution mentioned in the petition herein. Such meetings were respectively held on the day of 19 and on the day of 19 . A copy of the notice for the said first meeting is now shown to me and marked A.B. (1) and a copy of the notice for the said second meeting is now shown to me and marked A.B. (2).

3. The register of members of the above-named company is now shown to me and marked A.B. (3). I personally supervise the entries made in such register and I say that such register has been brought up to date, and on the day of 19 , and the day of contained the name of every member of the company.

4. I checked the envelopes containing the said notices with the said C. D. and I say that such envelopes were properly stamped and addressed to the members of the company respectively according to their respective names and addresses appearing in the said register.

And I say the said C.D. for myself say :—

5. I served the said notices on each member of the company mentioned in the said register of members of the Company in manner hereinafter appearing.

6. I put the said notices into envelopes addressed to such members respectively according to their respective names and addresses appearing in the said register and I assisted the said A.B. in checking the said names and addresses with the names and addresses contained in such register.

7. I served the said notices for the said meeting of the day of 19 by putting the envelopes containing the same prepaid into the post-office at before the hour of o'clock in the noon on the day of 19 and I served the said notices for the said meeting of the day of 19 by putting the envelopes containing the same prepaid into the post-office at before the hour of o'clock in the noon on the day of 19 . Sworn at etc.

The Rules of the Supreme Court for the time being in force and the general practice of that Court, including the course of procedure and practice in chambers, apply as regards all proceedings in relation to the confirmation of any reduction of capital by the Court so far as is practicable except if and so far as the Act or the General Order as to reduction of capital of 1909 otherwise provide. In particular, if and when the Court is for the time being a Judge of the Chancery Division, the provisions of O. 5, r. 9 (A), R. S. C. (providing that where chambers are attached to two Judges each shall have full jurisdiction over every cause or matter assigned to either of them according to arrangements made between themselves) applies to such proceedings as being business assigned within the meaning of the rule (*ff*).

notices is necessary: *Ashton and Mitchell*, Times Newspaper, May 11, 1908, p. 3. This was not formerly the case: *Omnium Investment Co.*, [1895] 2 Ch. 127; *Leicester Mortgage Co.* (1894), W. N. 108, 116.

(*ff*) Order as to Reduction of Capital, 1909, r. 4

The petition and all notices, affidavits, and other proceedings under the petition must be intituled in the matter of the company and in the matter of the Companies (Consolidation) Act, 1908 (*g*).

When the petition has been presented, an application must in every case be made *ex parte* by summons in chambers to the judge (which means any Judge of the High Court having for the time being jurisdiction to confirm the reduction of capital of companies and includes any Registrar Master, or other officer exercising the powers of any such Judge (*h*) for directions as to the proceedings to be taken preliminary to the hearing of such petition or otherwise with reference thereto (*i*).

Upon the hearing of the summons, or upon any adjourned hearing or hearings thereof, or any subsequent application, the Judge may make such order or orders and give such directions as he may think fit as to all proceedings to be taken on and with reference to the petition, and more particularly with respect to the following matters.

(*a*) The publication of notice of the presentation of the petition.

(*b*) In cases within section 49 (1) of the Act (*i.e.* where the proposed reduction involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in other cases if the Court so directs) the proceedings to be taken for settling the list of creditors entitled to object to the proposed reduction: fixing the date with reference to which the list of such creditors is to be made out, pursuant to that section; and generally fixing a time for and giving directions as to all other necessary or proper steps in the matter of the petition whether expressly mentioned in any of the Rules of the Order or not.

In cases within section 49 (1) of the Act, the first insertion in a newspaper of the notice of presentation of the petition and fixing the date with reference to which the list of creditors is to be made out, will be directed to be made at such time before the date so fixed as the Judge shall think fit, not being, unless for special reasons shown to the satisfaction of the Judge, less than one calendar month before the date so fixed, and in such cases the first order upon the summons for directions may be in the Form No. 1 (*ii*) in the schedule to the rules, with such variations as the circumstances of the case may require (*k*).

(*g*) General Order as to Reduction of Capital of 1909, r. 5. The name of the company should come first: *Woolley Coal Co.* (1891), W. N. 19.

(*h*) General Order as to Reduction of Capital of 1909, r. 3

(*i*) *Ibid.*, r. 6.

(*ii*) See *post*, p. 654, for this form.

(*k*) General Order as to Reduction of Capital, 1909, r. 6. The Court occasionally requires the list of creditors to be brought up to the date of the hearing by an affidavit showing that all creditors since the date to which the list was brought have been paid or have consented: *Safety Oil Co.* (1892), W. N. 133;

After the issue of the summons for directions the practice varies according to whether the case is or is not one within section 49 (1) of the Companies (Consolidation) Act, 1908. To consider first cases within the section. The section provides that where the proposed reduction of share capital involves either (*a*) diminution of liability in respect of unpaid share capital, or (*b*) the payment to any shareholder of any paid up share capital, and in any other case, if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

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

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

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

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

In cases where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court cannot dispense with a list of creditors being settled (*m*).

In such cases the procedure is as indicated by the following notes and forms, and the form of order will according to circumstances be either in the following form which is Form 1 in the schedule to the order as to reduction of capital 1909, or in some similar form.

Watson, Walker and Quickfall (1898), W. N. 69.

(*kk*) In *Palace Billiard Rooms*, [1912] S C. 5, the Scotch Court held that a landlord's claim for future rent was not contingent, and that, subject to a rebate owing to the rent not being presently payable, the full amount must be set aside.

(*l*) Companies (Consolidation) Act, 1908, s. 49. Such inquiries are extremely rare now.

(*m*) *Lamson Store Service Co., Ltd.*, [1895] 2 Ch. 726.

FORM OF ORDER ON SUMMONS IN CASES WITHIN SECTION 49 (1) OF THE ACT (*n*).

(*Title same as Petition.*)

Upon the application of the petitioner by summons dated and upon hearing the solicitor for the petitioner and upon reading the petition on the day of preferred unto the Court it is ordered that an inquiry be made what are the debts claims and liabilities of or affecting the said company on the day of 19 and that notice of the presentation of the said petition be inserted in the [newspapers] on the day of (*o*) and the day of and that a list of the persons who are creditors of the said company on the said day of and an office copy of the affidavit verifying the same be left at the chambers, of the Judge [or in the case of a petition to the Judge in Companies Winding-up with the Registrar] on or before the day of 19 .

ADVERTISEMENT OF PRESENTATION OF PETITION (*p*).

In the Matter of the Company Limited and Reduced and in the Matter of the Companies (Consolidation) Act 1908. Notice is hereby given that a petition for confirming a resolution reducing the capital of the above Company from £ to £ was on the day of presented to the High Court of Justice and is now pending ; and that the list of creditors of the Company is to be made out as for the day of 19 .

A. B. & Co. of
Solicitors for the above-named Company.

AFFIDAVIT VERIFYING LIST OF CREDITORS (*q*).

(*Title the same as the Title to the Petition.*)

I of in the county of make oath and say as follows :—

1. The paper writing now produced and shewn to me and marked with the letter A. contains a list of creditors of and of persons having claims upon the said Company on the day of 19 the date fixed by the order in this matter dated together with their respective addresses and the nature and amount of their respective debts or claims

(*n*) See Form 1 in the Schedule to the General Order as to Reduction of Capital of 1909.

(*o*) Except where special reasons are made out to the satisfaction of the Judge, this must be at least one month before the date fixed as the date with reference to which the list of creditors is made out. Order as to Reduction of Capital, 1909, r. 6 (3).

(*p*) "Notice of the presentation "of the petition shall be published "at such times, and in such news- "papers as the Judge shall direct, "and may be in the Form No. 2 in "the Schedule hereto, with such "variations as the circumstances "of the case may require."— General Order as to Reduction of Capital, 1909, r. 7. This form is Form No. 2.

(*q*) "In cases within section 49 "(1) of the Act the company shall, "within such time as the Judge

and such list is to the best of my knowledge information and belief a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not at the date aforesaid any debt claim or liability which if such date were the commencement of the winding-up of the said company would be admissible in proof against the said Company [other than and except the debts set forth in the said list.] I am enabled to make this statement from facts within my knowledge as the of the said company and from information derived upon investigation of the affairs and the books, documents and papers of the said Company (*r*). Sworn etc.

In cases where there are no debts an affidavit is filed containing the statements set out in the second paragraph above, omitting the words in brackets.

THE EXHIBIT A. (*s*) REFERRED TO IN THE ABOVE AFFIDAVIT.

A.

In the Matter of the Company Limited and Reduced and in the Matter of the Companies (Consolidation) Act 1908.

The list of creditors marked A. was produced and shown to and is the same list of creditors as is referred to in his affidavit sworn before me this

X.Y.

"shall direct, file in the Central "Office of the High Court of "Justice, or if the petition is "pending before a Judge to whom "the jurisdiction to wind up "companies is assigned in the "office of the Registrar Companies "(Winding-up) as the case may be, "an affidavit made by some officer "or officers of the company competent to make the same, verifying "a list containing so far as possible "the names and addresses of the "creditors of the company as "defined by that section at the "date fixed as mentioned in rule 6 "(2) (*b*) of this Order, and the "amounts due to them respectively, "or in the case of any debt payable "on a contingency or not ascertained or any claim admissible to "proof in a winding-up of the "company the value, so far as can "be justly estimated of such debt "or claim, and leave the said list "and an office copy of such affidavit "at the chambers of the Judge."— Order as to Reduction of Capital of 1909, r. 8.

"The person making such affidavit shall state therein his belief "that such list is correct, and that "there was not at the date so fixed "as aforesaid any debt or claim "which, if that date were the "commencement of the winding-"up of the company would be "admissible in proof against the "company, except the debts and "claims set forth in such list, and "shall state his means of knowledge "of the matters deposed to in such "affidavit. Such affidavit may be "in the Form No. 3 in the Schedule "hereto, with such variations as the "circumstances of the case may "require."—*Ibid.*, r. 9.

(*r*) Order as to Reduction of Capital 1909, Form 3. The Court occasionally requires evidence that the state of affairs has not altered between the date fixed for settling the list of creditors and the hearing of the petition: *Safety Oil Co.* (1892), W. N. 132; *Watson, Walker and Quickfall* (1898), W. N. 69 See *supra*, p. 652 note (*k*).

(*s*) Copies of this list containing

Names, Addresses and Descriptions of the Creditors.	Nature of Debt or Claim.	Amount of or estimated value of Debt or Claim.

NOTICE TO CREDITORS.

The company must within seven days after the filing of such affidavit, or such further or other time as the Judge may allow, send to each creditor whose name is entered in the list a notice stating the amount of the proposed reduction of capital, and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor is entered in the said list, and the time (such time to be fixed by the Judge) within which, if he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his solicitor (if any) to the solicitor of the company; and such notice must be sent through the post in a prepaid letter addressed to each creditor at his last known address or place of abode, and may be in the form or to the effect of the Form No. 4 set forth in the schedule to the Order as to Reduction of Capital of 1909, with such variations as the circumstances of the case may require (*t*). This is obviously inapplicable where there are no creditors. In such case the advertisement secondly set out below is used instead of the one in the rules which is the first advertisement set out below.

In the Matter of the Company Limited and Reduced, and in the Matter of the Companies (Consolidation) Act, 1908.

To Mr.

You are requested to take notice that a petition has been presented to the High Court of Justice by the above Company for reducing its capital to £ and that on the list of persons admitted by the company to have been on the day of creditors of the company your name is entered as a creditor [here state the amount of the debt or nature of the claim].

the names and addresses of creditors and the total amount due to them (including the value of any debts or claims estimated as above-mentioned), but omitting the amounts due to them respectively (or as the Judge shall think fit), complete copies of such list must be kept at the registered office of the company and at the offices of their solicitors and London agents (if any). Any person desirous of inspecting the same may at any time during the ordinary hours of business inspect and take extracts from the same on payment of the sum of 1*s*.—Order as to Reduction of Capital, 1909, r. 10.

(*t*) Order as to Reduction of Capital of 1909, r. 11 and Form 4. Usually three weeks will be allowed after the filing of the affidavit for the giving of the notices.

If you claim to have been on the last mentioned day a creditor to a larger amount than is mentioned above you must on or before the day of 19 send in the particulars of your claim and the name and address of your solicitor (if any) to the undersigned at .

In default of your so doing the above entry in the list of creditors will in all the proceedings under the above application to reduce the capital of the Company be treated as correct.

Dated this day of 19 .

A.B.
Solicitor for the said Company.

Notice of the list of creditors must after the filing of the affidavit under rule 8 of the Order as to Reduction of Capital, 1909, be published at such times, and in such newspapers as the Judge shall direct. Every such notice must state the amount of the proposed reduction of capital, and the places where the list of creditors may be inspected, and the time within which creditors of the company who are not entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the solicitor of the company ; and such notice may be in the Form No. 5 set forth in the schedule to the order with such variations as the circumstances of the case may require (*u*).

FORM OF ADVERTISEMENT.

In the Matter of the Company Limited and Reduced
and
In the Matter of the Companies (Consolidation) Act, 1908.

Notice is hereby given that a petition has been presented to the High Court of Justice for confirming a resolution of the above Company for reducing its capital from £ to £ . A list of the persons admitted to have been creditors of the company on the day of 19 may be inspected at the Offices of the Company at or at the office of (*x*) at any time during usual business hours on payment of the charge of one shilling. Any person who claims to have been on the last mentioned day and still to be a creditor of the company and who is not entered on the said list and claims to be so entered must on or before the day of 19 send in his name and address, and the particulars of his claim and the name and address of his solicitor if any to the undersigned at or in default thereof he will be precluded from objecting to the proposed reduction of capital [and further take notice that the notice required by rule 11, of the Rules of the Supreme Court under the above Act to be served on the creditors of the above-named Company is to be deemed to be duly

(*u*) Order as to Reduction of Capital, 1909, r. 12. For form see next form.

(*x*) See Order as to Reduction of Capital, 1909, r. 10, *supra*, p. 655, note (*s*).

served on the creditors named in the schedule hereto whose addresses are not known to the company by the insertion of this advertisement (*y*)].

Dated this day of 19

A.B.

Solicitor for the Company.

ADVERTISEMENT WHERE THERE ARE NO DEBTS.

No. 00 of 19

In the High Court of Justice Chancery Division Mr. Justice Neville. In the Matter of the A.B. Company Ltd. and in the Matter of the Companies (Consolidation) Act 1908. Notice is hereby given that a petition has been presented to His Majesty's High Court of Justice for confirming a resolution of the above-named Company for reducing its capital from £120,755 to £60,377 10*s*. By an affidavit of John Jones the secretary of the above-named Company filed in this matter on the 23rd November 1909 it appears that to the best of his knowledge and belief there was not on the 20th November 1909 the day fixed by the Order in this matter dated the 15th October 1909 any debt claim or liability which if such date were the commencement of the winding-up of the company would be admissible to proof against the said Company. Any person who claims to have been on the said 20th November 1909 and still to be a creditor of the said Company must on or before the 11th December 1909 send his name and address and also the particulars of his claim and the name and address of his solicitor if any to X.Y. a member of the firm of X.Y. and Co. at the address mentioned below or in default thereof he will be precluded from objecting to the proposed reduction of capital.

X.Y. and Co.,

16 Street E.C.,

Solicitors for the petitioner.

The company must within such time as the Judge directs, file in the Central Office of the High Court of Justice, or in the office of the Registrar Companies (Winding-up), as the case may be, an affidavit made by the person to whom the particulars of debts or claims are, by such notices as are mentioned in rules 11 and 12 of the Order as to reduction of capital of 1909, required to be sent in, stating the result of such notices respectively, and verifying a list containing the names and addresses of the persons (if any) who shall have sent in the particulars of their debts or claims in pursuance of

(*y*) The words in brackets are not in the form in the schedule, and will only be used in special cases, where there is a difficulty in giving notice to any creditor or class of creditors: see *General Bank for Promotion of Agricultural and Public Works* (1869), 17 W. R. 304; 38 L. J. (CH.) 168. They were also recently used in *The British Land Co., Ltd. and Reduced*, 1911, B. No. 084. The schedule simply contained the names of the creditors whose addresses were not known. No doubt the rules (including the one as to sending the notices through the post) are only directory: see *Lamson Store Service Co.*, [1895] 2 Ch. 726.

such notices respectively, and the amounts of such debts or claims, and some competent officer or officers of the company must join in such affidavit, and must in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit may be in the Form No. 6 in the Schedule to the Order as to the reduction of capital, 1909 with such variations as the circumstances of the case may require; and such list and an office copy of such affidavit must, within such time as the Judge shall direct, be left at the chambers of the Judge (z). Where there are no debts an affidavit to that effect must be filed.

FORM OF AFFIDAVIT.

(*Title same as Petition.*)

We C.D. of Secretary to the above-named Company and E.F. of Solicitor to the above-named Company and A.B. of Managing Director of the above-named Company severally make oath and say as follows :—

First I, the said C.D. for myself say—

1. I did on the day of 19 in manner hereinafter mentioned serve a true copy of the notice now produced and shown to me and marked B upon each of the respective persons whose names, addresses and descriptions appear on the first column of the list of creditors marked A referred to in the affidavit of filed herein on the day of 19 .

2. I served the said respective copies of the said notice by putting such copies respectively duly addressed to such persons respectively according to their respective names and addresses appearing in the said list (being the last known addresses or places of abode of such persons respectively) and with the proper postage stamps affixed thereto as prepaid letters into the post-office receiving house No. in Street, in the county of between the hours of o'clock and o'clock in the noon of the said day of 19 .

And I the said E.F. for myself say as follows :—

3. A true copy of the notice now produced and shown to me and marked C has appeared in the of the day of 19 , the of the day of 19 etc. (*a*).

4. I have in the paper writing now produced and shown to me and marked D set forth a list of all claims the particulars of which have been sent to me pursuant to the Notice B now produced and shown to me by persons claiming to be creditors of the said Company for larger amounts than are stated in the list of creditors marked A referred to in the affidavit of filed on the day of 19 .

(z) Order as to Reduction of Capital, 1909, r. 13.

(*a*) The names of the newspapers in which the advertisements have appeared must be filled into the blanks.

5. I have in the paper writing now produced and shown to me and marked E set forth a list of all claims the particulars of which have been sent to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the said company on the day of 19 not appearing on the said list of creditors marked A. and who claimed to be entered thereon.

And we the said C.D. and A.B. for ourselves say as follows :—

6. We have in the first part of the said paper writing marked D (now produced and shown to us) and also in the first part of the said paper writing marked E (also produced and shown to us) respectively set forth such of the said debts and claims as are admitted by the said Company to be due wholly or in part and how much is admitted to be due in respect of such of the same debts and claims respectively as are not wholly admitted.

7. We have in the second part of each of the said paper writings marked D. and E. set forth such of the said debts and claims as are wholly disputed by the Company.

8. In the said exhibits D and E are distinguished such of the debts the full amounts whereof are proposed to be appropriated in such manner as the Judge shall direct.

Sworn at

The exhibit D referred to in the last-mentioned affidavit:

D.

In the matter etc. List of debts and claims of which the particulars have been sent in to by persons claiming to be creditors of the said Company for larger amounts than are stated in list of creditors made out by the company. This paper writing marked D was produced and shown to C.D. E.F. and A.B. respectively and is the same as is referred to in their affidavit sworn before me this day of 19 .

X.Y. etc.

FIRST PART.

Debts and claims wholly or partly admitted by the Company.

Names, Addresses and Descriptions of Creditors.	Particulars of Debt or Claim.	Amount claimed.	Amount admitted by the Company to be owing to the Creditor.	Debts proposed to be appropriated in full although disputed.

SECOND PART.

Debts and claims wholly disputed by the Company.

Names, Addresses and Descriptions of Claimants.	Particulars of Claim.	Amount claimed.	Debts proposed to be appropriated in full although disputed.

Exhibit E referred to in last affidavit:

E.

In the matter etc. List of Debts and claims of which the particulars have been sent in to Mr. by persons claiming to be creditors of the company and to be entered on the list of creditors made out by the Company. This paper writing marked E, etc.

FIRST PART.

[Same as in exhibit D.]

SECOND PART.

[Same as in exhibit D.]

NOTE.—The names are to be inserted àlphàbetically,

If any debt or claim, the particulars of which are so sent in, is not admitted by the company at its full amount, then, and in every such case, unless the company is willing to appropriate in such manner as the Judge directs the full amount of such debt or claim, the company must, if the Judge think fit so to direct, send to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the company, by a day to be therein named, being not less than four clear days after such notice, and being the time appointed by the Judge for adjudicating upon such debts and claims, and such notice must be sent in the manner mentioned in Rule 11 of the order as to reduction of capital, 1909, and may be in the Form No. 7 in the schedule to such order, with such variations as the circumstances of the case may require (*b*).

Such creditors as come in to prove their debts or claims in pursuance of any such notice will be allowed their costs of proof against the company, and be answerable for costs, in the same manner as in the case of persons coming in to prove debts under an administration judgment (*c*).

FORM OF NOTICE.

In the Matter of the Company Limited and Reduced

and

In the Matter of the Companies (Consolidation) Act 1908.

To Mr.

You are hereby required to come in and prove the debt claimed by you against the above Company by filing your affidavit and giving notice thereof to Mr. the solicitor of the Company on or before the day of next; and you are to attend by your solicitor at the chambers of Mr. Justice Room No. Royal Courts of Justice Strand in the County of London (or at the chambers of the Registrar at) on the day of 19 at o'clock in the noon being the time appointed for hearing and

(*b*) Order as to Reduction of Capital, 1909, r. 14.

(*c*) *Ibid.*, r. 15.

adjudicating upon the claim and produce any securities or documents relating to your claim.

In default of your complying with the above directions you will [be precluded from objecting to the proposed reduction of the capital of the Company] or [in all proceedings relative to the proposed reduction of the capital of the Company be treated as a creditor for such amount only as is set against your name in the list of creditors].

Dated 19 .

A.B.
Solicitor for the said Company.

The result of the settlement of the list of creditors must be stated in a certificate by the master in the case of an application to the Chancery Division or by the Registrar in the case of an application to the Judge in Companies Winding-up, and such certificate must state what debts or claims (if any) have been disallowed, and must distinguish the debts or claims the full amount of which the company are willing to appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 49 (3) of the Act, and the Order as to Reduction of Capital, and the debts or claims (if any) the full amount of which is not admitted by the company, nor such as the company are willing to appropriate and the amount of which has not been fixed by inquiry and adjudication as aforesaid; and must show which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been secured in manner provided by section 49 (3) of the Act, and the persons to or by whom the same are due or claimed; but it is not necessary to show in such certificate the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid (*d*).

The consent of any creditor, whether in respect of a debt due or presently due or a debt payable on a contingency or not ascertained or a claim admissible to proof in a winding-up of the company, may be evidenced in any manner which the Judge may think reasonably sufficient having regard both to the amount of his debt or claim and all the circumstances of the case (*e*).

(*d*) Order as to Reduction of Capital, 1909, r. 16.

(*e*) *Ibid.*, r. 17. It will be noticed that it is no longer requisite that the consent shall be in writing. It may be that the effect of this will be that creditors who simply do nothing will be taken to consent. They were held to do so in *Credit Foncier, etc., of England* (1871), 11 Eq. 356; but this case was not followed in *Patent Ventilating Granary Co.* (1879), 12 C. D. 254; or in *Bull Hotel Co.* (1883), 27 Sol. J. 434; and see also Palmer's Company Precedents, 10th Ed., vol. i. p. 1196.

CERTIFICATE OF REGISTRAR WHERE NO DEBTS CLAIMS OR LIABILITIES.

(*Title.*)

I HEREBY CERTIFY that the result of the inquiry which has been made in pursuance of the Order in this matter, dated the 15th of October, 1909, and the General Order of Court in that behalf is as follows :—

THE Petitioner (the above-named Company) has attended by its Solicitors.

THERE were no debts, claims or liabilities of or affecting the above-named Company on the 20th of November 1909 other than the Office expenses of the Company in London current on such date.

PURSUANT to the said Order of the 15th of October 1909, notice of the presentation of the Petition preferred unto this Court on the 6th October 1909, for obtaining the sanction of the Court to the reduction of the Company's Capital, and that the list of Creditors of the said Company was to be made out as for the 20th of November 1909 has been inserted in the *London Gazette* and in the *Times* newspaper, both of the 19th of October 1909.

* N.B.— Compare with Order and affidavit in answer to inquiry.

AN Office Copy of the Affidavit of F.R. filed the 23rd of November 1909, stating that there was not on the 20th of November 1909 any debt * claim or liability which if such date were the commencement of the Winding-up of the said Company, would be admissible in proof against the said Company, was left in my chambers on the 23rd of November 1909.

NOTICE requiring any person claiming to be a Creditor of the said Company on the 20th of November 1909, to send on or before the 11th of December 1909 his name and address and the particulars of his claim and the name and address of his Solicitors (if any) to C.E.B. a member of the firm of B. C. and B. (the Solicitors of the said Company) or in default thereof he would be precluded from objecting to the proposed reduction of Capital has been inserted in the *London Gazette*, and *The Times* newspaper, both dated the 30th of November 1909.

THE evidence produced in answer to the said inquiry consists of—

The Affidavit of F.R. filed the 23rd of November 1909, the Affidavit of C.E.B. filed the 14th of December 1909, the two *London Gazettes* respectively dated 19th of October, and the 30th of November 1909 and *The Times* newspaper dated respectively the 19th October and the 30th November 1909. [*Re The Calgary and Edmonton Land Co., Ltd. and Reduced,* 00348 of 1909. Mr. Registrar HOOD, December 16th, 1909.]

CERTIFICATE OF MASTER OR REGISTRAR (*f*) WHERE ALL THE CREDITORS HAVE EITHER BEEN PAID OFF OR HAVE CONSENTED TO THE REDUCTION.

(*Title same as the Petition.*)

I hereby certify that the result of the inquiry which has been made pursuant to the Order on this matter dated the 30th July 1909 and the General Order of the Court in that behalf is as follows :—

(*f*) The notices mentioned in the certificate will, of course, have to correspond with those actually given.

The Petitioner the above-named Company has attended by its solicitors.

A list of the debts claims and liabilities of or which affected the above-mentioned company on the 20th September 1909 is set forth in the Schedule hereto—

The said Company has since paid off and discharged such of the said debts claims and liabilities as are set out in the 1st Part of the said Schedule.

All the creditors of the said Company named in the second part of the said schedule have consented in writing to the proposed reduction of the capital of the said Company. The sum of £ is the total amount due from the said company to the creditors so consenting. Pursuant to the said order of the 30th July 1909 notice of the presentation of the Petition preferred unto this Court on the 26th July 1909 for obtaining the sanction of the Court to the reduction of the Company's capital and that the list of creditors of the said Company was to be made out for the 20th September 1909 has been inserted in the *London Gazette* and in the following newspapers viz. the *Times* newspaper of the 13th August 1909 and the *Egyptian Gazette* of the 16th August 1909.

And a list of the persons who were creditors of the said Company on the said 20th September 1909 together with an office copy of the affidavit verifying the same was left in my chambers on the 5th October 1909. Notice of the List of Creditors of the said Company and requiring any person claiming to be a creditor of the said Company on the 20th September 1909 and still to be a creditor of the said Company and who was not entered on the said list and claiming to be so entered to send on or before the 30th November 1909 his name and address and the particulars of his claim and the name and address of his solicitor (if any) to Messrs. F.H. and E. (the solicitors of the said Company) or in default thereof he would be precluded from objecting to the proposed reduction of capital has been inserted in the *London Gazette* of the 26th October 1909 and in the following newspapers viz. the *Times* newspaper of the 26th October 1909 and the *Egyptian Gazette* of the 29th October 1909.

Notice was sent on the 22nd October 1909 to such of the persons who are named in the said list (who are the same persons as are named in the Schedule hereto) that they had been entered on the said list as being creditors of the said Company on the said 20th September 1909 for the sums the amounts of which are set opposite their respective names in the said list and that if they claimed to be creditors for larger amounts than were stated in the said list to be due they were required on or before the 30th November 1909 to send particulars and the names and addresses of their solicitors to the said Messrs. F.H. & E. or in default thereof the entries in the said list would in all the proceedings under the application to reduce the capital of the said Company be treated as correct.

The evidence produced in answer to the said inquiry consists of—

The said Order of 30th July 1909.

The three affidavits of A.C. filed respectively the 4th October 1909 the 24th July 1910 and the 3rd March 1910.

The joint affidavit etc. and the several exhibits in such affidavits

respectively referred to and *The London Gazette* and the *Times* and *Egyptian Gazette* newspapers hereinbefore referred to.

Dated this 4th day of March 1910.

Registrar Companies (Winding-up).

THE SCHEDULE BEFORE REFERRED TO.

Debts claims and liabilities of or which affected the Company on the 20th September 1909.

PART I.

Those which have been paid off and discharged.

No. on List.	Names of Creditors.	Addresses and Descriptions.	Nature of Debt or Claim.	Amount of Debt or Claim.
				£ *s.* *d.*
1	X.Y. . .		Unclaimed interest on payment made in full in advance of calls.	
2	M.N. . .		Interest on loan of £ to .	

PART II.

Creditors consenting in writing to proposed reduction of capital.

[*United Egyptian Lands Limited and Reduced*, No. 00291 of 1909. Mr. Registrar Hood, March 4th, 1909.]

CERTIFICATE OF REGISTRAR WHERE SOME CREDITORS ARE PAID OFF, SOME CONSENT TO THE REDUCTION, AND THE COMPANY IS WILLING TO SET APART AND APPROPRIATE THE FULL AMOUNT OF THE REMAINING DEBTS, CLAIMS, AND LIABILITIES.

(*Title.*)

I HEREBY CERTIFY that the result of the Enquiry which has been made in pursuance of the Order in this matter, dated the 15th of January 1909, and the General Order of the Court in that behalf is as follows :—

The petitioner (the above-named Company) has attended by its Solicitors.

A List of the Debts * Claims and Liabilities of or which affected the above-named Company on the 31st of March 1909, is set forth in the Schedule hereto.

The said Company has since paid off and discharged such of the said debts † claims and liabilities as are set forth in the first part of the said Schedule,

* N.B.—Compare wording of enquiry with affidavit in answer.

† N.B.—Compare wording of enquiry with affidavit in answer.

All the Creditors of the said Company named in the second part of the said Schedule have consented in writing to the proposed reduction of the Capital of the said Company. The sum of £ is the total amount due from the said Company to the Creditors so consenting.

The said Company is willing to set apart and appropriate the full amount of the debts * claims and liabilities set forth in the third part of the said Schedule. Such debts claims and liabilities amount altogether to £ .

* N.B.—Compare wording of enquiry with affidavit in answer.

Pursuant to the said Order of the 15th of January 1909, notice of the presentation of the Petition preferred unto this Court on the 5th January 1909, for obtaining the sanction of the Court to the reduction of the Company's Capital, and that the list of Creditors of the said Company was to be made out as for the 31st March 1909 has been inserted in the *London Gazette* of the 26th January 1909, and in the following newspapers, viz.: *The Times* of the 26th January 1909 and the Rand *Daily Mail* (Transvaal) of the 18th February 1909.

And a List of the persons who were Creditors of the said Company on the said 31st March 1909 (being the persons named in the exhibits "A.1." to the affidavit of F.C.B. filed 30th April 1909 and in the exhibit "A.2" to the affidavit of W.H. filed 3rd May 1909) together with Office Copies of the said Affidavits verifying the same was left in my chambers on the said 3rd May 1909.

Notice of the List of Creditors of the said Company and requiring any person claiming to be a Creditor of the said Company on the said 31st March 1909, and who was not entered on the said List and claiming to be so entered to send on or before the 10th of June 1909 his name and address and the particulars of his claim to F.C. a member of the firm of Messrs. A.C. & Co. (the Solicitors of the said Company) and as to the creditors residing in the South African Transvaal to W.R.E. of Johannesburg South Africa (an Accountant of the said Company) or in default thereof he would be precluded from objecting to the proposed reduction of Capital has been inserted in the *London Gazette* of the 25th of May 1909 and in the following newspapers, viz.: *The Times* of the 25th May 1909 and the Rand *Daily Mail* (Transvaal) of the 29th May 1909.

Notice was sent on the 25th and 27th May 1909 respectively to such of the persons who are named in the said List (who are the same persons as are named in the Schedule hereto) that they had been entered on the said List as being Creditors of the said Company on the said 31st March 1909 for the sums the amounts of which are set opposite their respective names in the said List and that if they claimed to be Creditors for larger amounts than were stated in the said List to be due they were required on or before the 10th June 1909 to send particulars and the names and addresses of their Solicitors to the said F.C. and the said W.R.E. respectively or in default thereof the entries in the said List would in all the proceedings under the application to reduce the Capital of the said Company be treated as correct.

The evidence produced in answer to the said inquiry consists of the said Affidavit of F.C.B. filed 30th April 1909 the said Affidavit of W.H. filed 3rd May, 1909 the Affidavit of W.R.E. filed 5th October 1909 the Affidavit of the said F.C.B., J.E.W. and F.C. filed 14th October 1909

and the further affidavit of the said F.C.B. filed 28th October 1909 and the several exhibits—the said affidavits respectively referred to and the *London Gazettes* and the several newspapers hereinbefore referred to.

Dated the 27th October 1909.

Registrar Companies (Winding-up).

THE SCHEDULE HERETO.

PART I.

Debts claims and liabilities of or which affected the Company on the 31st day of March 1909 and which have since been paid off and discharged.

No. in List.	Names of Creditors.	Addresses and Descriptions.	Nature of Debt or Claim.	Amount of Debt or Claim.
				£ s. d.
103	A.Y.A.		Div. IV., May 16th, 1907.	
161	,,		Div. V., May 16th, 1908.	
106	A.A.		Div. IV., May 16th, 1907.	
175	E.E.M.		Div. V., May 16th, 1908.	

PART II.

CREDITORS who have consented to the proposed reduction of Capital.

No. in List.	Names of Creditors.	Address.	Nature of Debt or Claim.	Amount of Debt or Claim.
				£ s. d.
230	A.B.		Wages	
231	X.Y.		Retained from wages as security for the due fulfilment of contract of service.	
232	T.D.		,,	
233	T.H.		,,	

PART III.

DEBTS claims and liabilities of the Company in respect of which the Company is willing to set apart and appropriate the full amount.

No. in List.	Names of Creditors.	Addresses and Descriptions.	Nature of Debt or Claim.	Amount of Debt or Claim.
				£ s. d.
2	L.R.		Div. I. June 1st 1904.	
3	C.V.		,,	
4	H.M.M.H. ..		,,	
5	J.L.H. ..		,,	

[*British South African Explosives Co., Ltd. and Reduced,* 005 of 1909. Mr. Registrar HOOD, October 29th, 1909.]

In any case within section 49 (1) of the Act, the petition must not be heard until the expiration of at least eight clear days from the filing of such certificate as is mentioned in Rule 16 of the Order (*g*).

Before the hearing of the petition notices stating the day on which the same is appointed to be heard must be published at such times and in such newspapers as the Judge directs. Such notices may be in Form No. 8 in the schedule to the order, with such variations as the circumstances of the case may require (*h*).

FORM OF ADVERTISEMENT OF PETITION WHERE THERE HAS BEEN AN INQUIRY AS TO DEBTS.

In the Matter of the Company, Limited, and reduced, and in the Matter of the Companies (Consolidation) Act, 1908.

Notice is hereby given that a petition presented to the High Court of Justice on the day of for confirming a resolution reducing the Capital of the above-named Company from £ to £ is directed to be heard before Mr. Justice on the day of , 19 .

C.D. of
Solicitors for the Company.

NOTICE BY CREDITOR OF THE COMPANY OF INTENTION TO APPEAR AND OPPOSE PETITION.

(*Title same as Petition.*)

Take notice that a creditor of the above-named Company settled on the list of creditors made and settled in the above matter (*i*) and whose debt or claim has not been discharged or determined, or secured

(*g*) Order as to Reduction of Capital, 1909, r. 18.

(*h*) *Ibid.*, r. 19.

(*i*) The proper course for a person whose debt or claim has been wholly disallowed would seem to

in manner provided by section 49 (3) of the Companies (Consolidation) Act 1908 and who has not consented to the proposed reduction of capital intends to appear on the hearing of the petition for the reduction of the capital of the above-named Company advertised to be heard on the day of 19 and to oppose such petition (*l*).

When a member wishes to oppose a scheme for reduction on the ground that it will operate unfairly, he should attend at the hearing of and oppose the petition, and not take steps to restrain the company from proceeding with the resolutions (*m*).

Even in cases which do not involve either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, it is necessary to take out a summons for directions. The order on such summons is usually in the form on page 671, except that the last paragraph of such order is not usually inserted; the Court may, however, in a proper case dispense with advertisements. Thus it has done so on evidence that the company had never carried on business and had never issued a prospectus (*n*), or that it has only a few small creditors (*o*). Applications to the Court to dispense with the words "and reduced" between the presentation and hearing of the petition in cases where there is no return of capital and no reduction of liability in respect of unpaid capital should be made on application in chambers (*p*) on affidavit

be to take out a summons to vary the certificate of the Registrar or Master. Such summons would in some cases be adjourned to come on with the petition, as was done in *Re Credit Foncier, etc., of England* (1871), 11 Eq. 356; see also *Telegraph Construction Co.* (1870), 10 Eq. 384.

(*l*) Any creditor settled on the list of creditors whose debt or claim has not before the hearing of the petition been discharged or determined or been secured in manner provided by s. 49 (3) of the Act, and who has not before the hearing consented to the proposed reduction may, after giving two clear days' notice to the solicitor of the company of his intention so to do, appear at the hearing of the petition and oppose the application: General Order as to Reduction of Capital, 1909, r. 20; as to costs, *ibid.*, r. 21, and see also *post*, p. 676. It would seem members are entitled to appear in all cases: cp. *Barrow Hæmatite Co.* (1888), 39 C. D. 582, at p. 589. It is usual in cases where no list of creditors is settled for the order on the summons to authorise creditors, who would not seem to be in the same position as members as regards opposing, and members to attend: see also *Securities Insurance Co.*, [1894] 2 Ch. 410, and *Tambracherry Estates Co.* (1885), 29 C. D. 683.

(*m*) Cp. *Bannatyne* v. *Direct Spanish Telegraph Co.* (1886), 34 C. D. 287.

(*n*) *West African Telegraph Co.* (1886), 55 L. J. (CH.) 436; but see *Municipal Trusts Corporation* (1886), 55 L. T. 632; see also *British Land and Mortgage Co. of America* (1885), 53 L. T. 753; *West Cumberland Iron and Steel Co.* (1888), 58 L. T. 152.

(*o*) *E. C. Powder Co.* (1887), 56 L. J. (CH.) 783.

(*p*) *Maxim Weston Electric Co.* (1888), 59 L. T. 722; *Pelsall Coal and Iron Co.* (1890), W. N. 222; *Solway Steamship* (1889), 61 L. T. 659. It is stated in Buckley, 9th

evidence (*q*). Nowadays it would seem that they are but rarely acceded to, but the fact that the company carries on business to a large extent abroad was at one time considered to be a reason for dispensing with such words (*r*); but it would appear that this can no longer be considered to be the case (*s*). Sometimes the Registrar requires only a limited use of the words "and reduced" (*t*).

AFFIDAVIT IN SUPPORT OF SUMMONS WHERE IT IS DESIRED TO DISPENSE WITH THE USE OF THE WORDS "AND REDUCED" (IN ADDITION TO AFFIDAVIT VERIFYING PETITION).

(*Title same as Petition.*)

I of in the County of make oath and say as follows:—

1. I am the Managing Director (or as may be) of the above-named Company (hereinafter called the Company).

2. There are no creditors of the company other than (set out names) and notice of the proposed reduction has been given to all of them and the Company's business is likely to be injured by the use of the words "and Reduced" [state reasons].

The Company's business is entirely carried on in town in the county of and all the creditors of the Company are likely to be reached if the fact of the presentation of the petition and the date fixed for hearing the same is properly advertised [state reasons why the Company's business is likely to be injured by the use of the words "and reduced"] or

The Company's business is entirely carried on in the following foreign countries:— and all its creditors are likely to be reached by advertisements in the principal newspapers of such countries. If a list of creditors is settled or if the words "and reduced" are added to the name of the Company, it will be thought

Ed. 142, that if it is desired to dispense with these words in the title to the petition, application should be made before the presentation of the petition.

(*q*) In past years orders were made in *River Plate Fresh Meat Co.* (1885), 52 L. T. 39; *Langdale Chemical Manure Co.* (1878), 26 W. R. 434; *London and County Plate Glass Co.* (1885), 53 L. T. 486; *Pelsall Coal and Iron Co.* (1890), W. N. 222; *British Land and Mortgage Co. of America* (1885), 53 L. T. 753; *New Quebrada Railway Land and Copper Co.* (1888), W. N. 233. But the Court declined to make such an order in *Solway Steamship* (1889), 61 L. T. 659, and in *Municipal Trusts Corporation* (1886), 55 L. T. 632.

(*r*) Cp. *Sumatra Tobacco* (1898), W. N. 80.

(*s*) *Monmouthshire Steel Co.*, [1906] W. N. 128; *Lindner & Co.*, [1911] W. N. 66, where the company was only required to continue the use of the words for about a fortnight, instead of the usual month, after the order; but see *Australian Estates and Mortgage Co.*, [1910] 1 Ch. 414, in which case the use of these words was throughout dispensed with.

(*t*) See Order *J. C. and T. Field, Ltd. and Reduced* 00141 of 1911, *post*, p. 671.

that the Company is in financial difficulties, and the credit of the Company is likely to be injured

or

as may be.

3. The proposed reduction does not involve the diminution of any liability in respect of unpaid capital or the payment of any shareholder of any paid-up capital.

4. I am able to depose to the above facts from information obtained in the exercise of my duties as managing director (or as may be) and from an inspection of the books of the company. Sworn at etc.

ORDER ON SUMMONS DISPENSING WITH A LIST OF CREDITORS, ETC., AND REQUIRING A LIMITED USE OF THE WORDS "AND REDUCED" UNTIL THE HEARING.

(*Title.*)

UPON the application by Summons dated the 17th day of May 1911 of the above-named J.C. & J. Field Limited and Reduced the Petitioner named in the Petition presented unto this Court in the above matters on the 17th day of May 1911 and upon hearing Counsel for the Applicant and upon reading the said Petition and the joint and several Affidavits of H.S.S., G.M.B. & C.E. filed the 18th day of May 1911 and the several Exhibits therein referred to and the Court being of opinion that the proposed reduction of the Capital of the said Company does not involve either the diminution of any liability in respect of unpaid up Capital or the payment to any Shareholder of any paid up Capital.

IT IS ORDERED that the List of Creditors of the said Company and the Office Copy Affidavit verifying such list mentioned or referred to in the Rules of Procedure of this Court of the 3rd May 1909 under the above-mentioned Act and thereby directed to be left in the Chambers of the Judge be dispensed with (*u*).

AND IT IS ORDERED that the said Petition be placed in the paper for hearing before his Lordship Mr. Justice Neville on Tuesday the 30th day of May 1911 when any creditor or shareholder who desires to object may attend and be heard.

AND IT IS ORDERED that notice of the presentation of the said Petition and of the said day fixed for the hearing thereof be inserted in the *London Gazette* of the 23rd day of May 1911 and in *The Times* Newspaper of the 24th day of May 1911.

AND IT IS ORDERED that the addition of the words "and Reduced" to the title of the said Company be dispensed with except on bill heads, invoices, correspondence and other documents and articles of office stationery generally used or executed by the said Company until the hearing of the said Petition. [*J. C. and J. Field, Ltd. and Reduced,* 00141 of 1911. Mr. Registrar HOOD, May 23rd, 1911.]

(*u*) The general order applies to this class of reduction except in so far as it is dispensed with.

FORM OF ADVERTISEMENT WHERE ENQUIRY AS TO DEBTS DISPENSED WITH.

IN THE HIGH COURT OF JUSTICE,

Chancery Division.

MR. JUSTICE

In the Matter of the Company Limited [and Reduced (*x*)]

and

In the Matter of the Companies (Consolidation) Act, 1908.

Notice is hereby given that a petition was on the day of 19 presented to His Majesty's High Court of Justice for the confirmation of the reduction of the capital of the above-named Company from £ to £ and Notice is hereby further given that the said petition is directed to be heard before the Honourable Mr. Justice on the day of 19 and any person interested in the said Company whether as a creditor or otherwise desirous of opposing the making of an order for a confirmation of the said reduction of capital should appear at the time of hearing by himself or his counsel for the purpose and a copy of the said petition will be furnished to any such person requiring the same by the undersigned on payment of the regulated charge for the same.

A.B. of

Solicitors for the said Company.

If the Court is satisfied that the necessary preliminaries have been gone through and complied with, it may make an order confirming the reduction on such terms and conditions as it thinks fit (*y*). It may no doubt slightly modify the resolution in so doing, but it cannot substantially alter them (*z*). In one case it directed that the order should be without prejudice to the rights of shareholders whose shares had been forfeited, and who were alleged to be insolvent (*a*), and, in another case (*b*), where certain shareholders were to receive perpetual debenture stock in place of their shares, it directed that such debenture stock should not be irredeemable but redeemable at the end of forty years.

The Registrar of Joint Stock Companies on production to him of an order of Court confirming the reduction of the share capital of a company and delivery to him of a copy of the order and of a minute (approved by the Court) showing with respect to the share capital of the company as altered by the order the amount of the share capital the number of shares into which it is to be divided and the

(*x*) If the Order dispenses with these words, they can be omitted from the advertisement.

(*y*) Companies (Consolidation) Act, 1908, s. 50. Where the necessary preliminaries have not been complied with, the Court will sometimes, instead of simply dismissing the petition, order it to stand over until they have been complied with. See, for instance, *Pavilion Newcastle - upon - Tyne*, [1911] W.N. 235, and also *infra*, p. 730.

(*z*) See, for instance, *Anglo-French Exploration Co.*, [1902] 2 Ch. 845.

(*a*) *Great Western Steamship Co.* (1887), 56 L. J. (CH.) 3.

(*b*) *Thomas de la Rue & Co.*, [1911] 2 Ch. 361.

amount of each share and the amount (if any) at the date of the registration deemed to be paid up on each share must register the order and minute (c). The minute must state the amount paid up on "each" share, and where different amounts are paid up on different shares, it will be necessary to show by referring to the numbers of the shares, what is paid up on each (d). This latter provision is obviously not applicable to stock which must be fully paid and has no numbers.

It is usual, though probably not absolutely necessary (e) for the Court to require the minute to state not only what the capital is after reduction, but what it was before reduction (f).

On the registration and not before the resolution reducing share capital as confirmed by the order so registered will take effect (g).

Notice of the registration must be published in such manner as the Court directs (h). The Court cannot dispense with this notice (i), but it is only necessary to advertise the fact of registration and the minute need not be set out (k). The order generally is for such advertisements to be inserted in the same newspapers as those in which the hearing of the petition was advertised.

The Registrar of Joint Stock Companies must certify under his hand the registration of the order and minute and his certificate will be conclusive evidence that all the requirements of the Act with respect to reduction of capital have been complied with and that the share capital is such as is stated in the minute (l). So the reduction will be valid once the order and the certificate of the Registrar has been obtained, even in cases where the Articles of Association contain no power to reduce (m), or where the special resolution has not been properly passed (n).

The minute when registered will be deemed to be substituted for the corresponding part of the memorandum, and will be as valid and alterable as if it had originally been contained therein ; and must be

(c) Companies (Consolidation) Act, 1908, s. 51 (1).

(d) *Oceana Development Co.*, [1912] W. N. 138; *Solway Steamship Co.* (1889), 61 L. T. 659; for the form of minute where capital is returned *Lees Brook Spinning Co.*, [1906] 2 Ch. 394; *Anglo-Italian Bank*, [1906] W. N. 202; *General Industrials Development Syndicate*, [1907] W. N. 23, all of which disapprove of *Calgary and Edmonton Land Co.*, [1906] 1 Ch. 141, and *Chelmsford Land Co.*, [1904] W. N. 106. For form of minute where calls are in arrear: *American Pastoral Co.* (1890), 2 Meg. 62 L. T. 625, and for other forms of minutes, *post*, pp. 686 *et seq.*, and see also the petitions and orders herein set out.

(e) *Solway Steamship Co.* (1889), 61 L. T. 659.

(f) *Barrow Hæmatite Co.*, [1888] 39 C. D. 582; *West Cumberland Iron and Steel Co.* (1888), 58 L. T. 152; *Britannia Mills, Huddersfield* (1888), W. N. 103.

(g) Companies (Consolidation) Act, 1908, s. 51 (2).

(h) *Ibid.*, s. 51 (3).

(i) *London Steamboat Co.* (1883), 31 W. R. 781.

(k) *Oceana Development Co.*, [1912] W. N. 138. For the older practice, see *Canada North Western Land Co.* (1885), W. N. 61.

(l) Companies (Consolidation) Act, 1908, s. 51 (4).

(m) *Walker and Smith* (1903), 72 L. J. (CH.) 572.

(n) *Ladies' Dress Association* v. *Pulbrook*, [1900] 2 Q. B. 376.

embodied in every copy of the memorandum issued after its registration.

If a company makes default in complying with the requirements of this section it will be liable to a fine not exceeding £1 for every copy in respect of which default is made, and every director or manager of the company who knowingly and wilfully authorizes or permits the default will be liable to a like penalty (*o*).

In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction (*p*).

Another point the Court deals with on the order is the question of how long the company is to retain the words "and reduced" as part of its name (*q*), the usual order in such cases is to require them to be retained for a period of one month. In one case Wright, J., stated it was his practice to dispense with them altogether in the case of companies whose business was abroad (*r*), as they were liable to lead to mistakes, and Neville, J., in the case of a company carrying on business in Australia dispensed with them, on the ground that they were likely to be misunderstood in Australia (*s*). In one case (*t*), where there had been a slip in convening the meetings, Parker, J., ordered the petition to stand over for fresh meetings to be held, and dispensed with the words "and reduced" in the meantime.

In *Lawrence and Bullen* (*u*) the Court to avoid copyright difficulties dispensed with the use of the words "and reduced" on the company entering into certain undertakings. The Court will sometimes sanction a limited use of the words "and reduced" (*x*), but some of the Judges take the view they have no power to do this.

The Court will also in such cases, if the case be within section 49 (1), give directions for the purpose of securing creditors who are entitled to object and have not been paid off or consented, and whose debts have not determined or been discharged. In such cases it is not

(*o*) Companies (Consolidation) Act, 1908, s. 52.

(*p*) *Ibid.*, s. 55. The Court occasionally avails itself of this power. EADY, J., required it in *Truman, Hanbury, Buxton & Co.*, [1910] 2 Ch. 498, where dividends had very recently been paid, and there was a very large reduction which was thrown entirely on one class of the shares, such class of shares being all in a few hands, and it was also required in *Barclay, Perkins & Co.*, *Times* Newspaper, May 24, 1911. For form of such advertisement, *post*, pp. 685 and 686.

(*q*) See General Order as to Reduction of Capital, 1909, r. 23.

(*r*) *Sumatra Tobacco Co.* (1898), W. N. 80; but see *Monmouthshire Steel Co.*, [1906] W. N. 128, and *supra*, pp. 669 and 670.

(*s*) *Australian Estates and Mortgage Co.*, [1910] 1 Ch. 414.

(*t*) *Pavilion, Newcastle-upon-Tyne*, [1911] W. N. 235.

(*u*) [1901] W. N. 158.

(*x*) See Order in *Cowling Spinning Co., Ltd. and Reduced*, 00230 of 1911, *infra*, pp. 676 *et seq.*

unusual for payment into Court to be directed with liberty to the company or any such creditor to apply for payment out (y); but sometimes the Court is satisfied by a sum being paid to a separate account at a bank, or even by a sum being appropriated in the books of the company (z).

Members of the company past or present will not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid or (as the case may be) the reduced amount if any which is to be deemed to have been paid on the share and the amount of the share as fixed by the minute; but if any creditor entitled in respect of any debt or claim to object to the reduction of share capital, is by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim not entered on the list of creditors and after the reduction the company is unable within the meaning of the provisions of the Act with respect to winding-up by the Court, to pay the amount of his debt or claim, then

(1) Every person who was a member of the company at the date of the registration of the order for reduction and minute, will be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and

(2) If the company is wound up, the Court, on the application of any such creditor, and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding-up.

Nothing in this section affects the rights of the contributories among themselves (a).

If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresnts the nature or the amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as is above mentioned, every such director, manager or officer will be guilty of a misdemeanour.

(y) For form of Order see *Sharp Stewart & Co.* (1867), 5 Eq. 155; and the Order in *Colorado Mortgage and Investment Co.*, 00146 of 1910, *post*, pp. 682 *et seq.*; and see General Order as to Reduction of Capital, 1909, r. 22. The application for payment out will be by summons.

(z) In some cases the Court only requires an undertaking. Where this is not so the Order will not go till the Registrar is satisfied by proper evidence that the Judge's requirements have been complied with.

(a) Companies (Consolidation) Act, 1908, s. 53.

With regard to costs in cases under section 49 of the Act where a creditor who appears at the hearing under Rule 20 of the General Order as to Reduction of Capital of 1909, is a creditor the full amount of whose debt or claim is not admitted by the company, and the validity of such debt or claim has not been inquired into and adjudicated upon under section 49 (3) of the Act, the costs of and occasioned by his appearance will be dealt with as to the Court may seem just, but in all other cases a creditor appearing under Rule 20 will be entitled to the costs of such appearance, unless the Court is of opinion that in the circumstances of the particular case his costs ought not to be allowed (*b*).

The general practice in cases not coming under rules 20 and 21, is to give creditors and members their costs where their appearance at the hearing has assisted the Court, or where there is a question of doubt or difficulty (*c*). It would seem proper for appeals in matters of reduction of capital to be placed in the interlocutory list (*d*).

With regard to fees the provisions of the General Order as to reduction of capital of 1909 are as follows :—

"*Solicitors' fees.*—Solicitors shall be entitled to charge and be allowed "for duties performed under the Act in relation to matters dealt with by "this Order the same fees as they have heretofore been entitled to charge "and be allowed for the like duties performed under the Companies Acts, "1862 to 1907, unless the Court or Judge shall otherwise specially direct.

"*Court fees.*—The same fees of Court shall be paid in relation to pro-"ceedings dealt with by this Order as have heretofore been paid in relation "to like proceedings dealt with by the General Orders of the 21st day of "March, 1868, and the 2nd day of March 1869, and such fees shall be "collected by stamps in the like manner as the same have heretofore been "collected or in such other manner as may from time to time be directed by "the Lords Commissioners of His Majesty's Treasury in pursuance of the "powers vested in them by the Public Officers' Fees Act, 1879 (*e*)."

ORDER SANCTIONING REDUCTION, RESERVING THE RIGHT TO RECOVER ARREARS OF CALLS, AND REQUIRING A LIMITED USE OF THE WORDS "AND REDUCED."

(*Title.*)

UPON the Petition of the above-named Cowling Spinning Company Limited and Reduced on the 21st June 1911, preferred unto this Court and upon hearing Counsel for the Petitioner on the 11th July 1911,

(*b*) General Order as to Reduction of Capital, 1909, r. 21.

(*c*) See *Thomas de la Rue*, [1911] 2 Ch. 361.

(*d*) *Samuel Allsop and Sons*, [1903] W. N. 132 ; *Naval, Military, and Civil Service Co-operative Society*, [1903] W. N. 120. And as to who may appeal from an order confirming a reduction of capital, see *Securities Insurance Co.*, [1894] 2 Ch. 410.

(*e*) General Order as to Reduction of Capital, 1909, rr. 24 and 25.

and upon reading the said Petition the Order dated the 30th June 1911, dispensing with the list of Creditors the Affidavit of R.S. and the Affidavit of J.B. both filed the 27th June 1911, and the further Affidavit of the said R.S. filed this day and the several Exhibits in the said Affidavits or some of them respectively referred to the *London Gazette* dated the 30th June 1911 and *The Times* Newspaper dated the 1st July 1911, and each containing a notice of the presentation of the said Petition and that the same was appointed to be heard on the 11th July 1911.

THIS COURT DOTH ORDER that the *cancellation* and reduction of the capital of the above-named Company resolved on and effected by the special resolution passed and confirmed at two Extraordinary General Meetings of the Petitioners the said Cowling Spinning Company Limited and Reduced held respectively on the 29th May 1911 and the 15th June 1911 and which resolution was in the words and figures following that is to say—

"THAT the Capital of the Company be reduced from £150,000 divided "into 10,000 Preference Shares of £5 each, and 20,000 Ordinary Shares "of £5 each, to £126,644 divided into 10,000 Preference Shares of £5 each, "16,644 Ordinary Shares (to be called 'Ordinary A Shares') of £4 each, "and 3,356 Ordinary Shares (to be called 'Ordinary B Shares') of £3 "each, and that such reduction be effected by cancelling paid up capital "which has been lost or is unrepresented by available assets to the extent "of £1 per share on each of the 16,644 Ordinary Shares which have been "issued and are now outstanding, and to the extent of £2 per share on each "of the 3,356 Ordinary Shares which have been issued but have been "subsequently forfeited and not re-issued, and by reducing the nominal "amount of all the said 16,644 Ordinary A Shares in the Company's "Capital from £5 to £4 per Share, and the nominal amount of all the said "3,356 Ordinary B. Shares in the Company's Capital from £5 to £3 per "share, but so that the reduction to be effected shall be without pre- "judice to the right of the Company to sue for and recover all arrears of "calls now outstanding and due in respect of the said Preference and "Ordinary Shares or any of them."

be and the same is hereby confirmed in accordance with the provisions of the above mentioned Act.

AND the Court doth hereby approve the form of the Minute set forth in the Schedule hereto.

AND IT IS ORDERED that this Order be produced to the Registrar of Companies and that an Office Copy thereof be delivered to him together with a Minute in the words or to the effect set forth in the said Schedule.

AND IT IS ORDERED that Notice of the Registration by the Registrar of Companies of this Order and of the said Minute be published as follows that is to say once each in the *London Gazette* and in *The Times* Newspaper within 10 days after such Registration.

AND IT IS ORDERED that the addition of the words "and Reduced" to the title of the said Company be continued for one month from the 11th July 1911 on all invoices, bill heads, correspondence, documents and stationery generally used by the above-named Company but otherwise it be dispensed with.

AND THIS ORDER is without prejudice to the Company's right to sue for and recover all arrears of calls now outstanding and due in respect of any of the shares hereinbefore mentioned.

THE SCHEDULE BEFORE REFERRED TO.

Minute approved by the Court.

THE Capital of the Cowling Spinning Company Limited and Reduced henceforth is £126,644 divided into 10,000 Preference Shares of £5 each, 16,644 Ordinary " A " Shares of £4 each and 3356 Ordinary " B " Shares of £3 each instead of the former capital of £150,000 divided into 10,000 Preference Shares of £5 each and 20,000 Ordinary Shares of £5 each.

AT the time of the registration of this Minute the following shares have been issued that is to say :—

(*a*) 769 of the said Preference Shares which have been and are to be deemed paid up as follows namely :—

No. and Denoting Nos. of Preference Shares.	*Amounts paid up.* £	*s.*	*d.*
241 (being Numbers 10, 11, 17 to 91 inclusive, 102 to 136 inclusive, 162 to 176 inclusive, 183 to 207 inclusive, 213 to 257 inclusive, 266 to 269 inclusive, 357 to 361 inclusive, 377 to 411 inclusive)	5	0	0
5 (being Nos. 272 to 276 inclusive) . . .	4	0	0
6 (being Nos. 12 to 16 inclusive and 182) . .	3	0	0
100 (being Nos. 440 to 539 inclusive) . . .	2	0	0

[Here followed other blocks of shares their distinctive numbers and the amounts paid up on them.]

AT the time of the registration of this Minute there are certain arrears of calls upon certain of the said Preference Shares and Ordinary Shares of which the following are the particulars. :—

No. of Shares	*Amount of Call in Arrear.*
Preference Shares.	
255 Shares (being Nos. 277 to 326 inculsive, 352 to 356 inclusive, 540 to 739 inclusive) . .	0 5 0 per share
Ordinary " A " Shares.	
3395 Shares being Nos. 51 to 55 inclusive, 76 to 79 inclusive, 284 to 514 inclusive, 530 to 549 inclusive, 795 to 799 inclusive, 899 to 918 inclusive, 1559 to 1758 inclusive, 455 Shares (being Nos. 4490 to 4509 inclusive, 5381 to 5430 inclusive, 5658 to 5677 inclusive, 5698 to 5702 inclusive, 10,962 to 11,011 inclusive [here followed other numbers]	0 10 0 per share
500 Shares being Nos. 1 to 42 inclusive, 80 to 83 inclusive, 4363 to 4462 inclusive, 4488, 4489, 4781 to 4795 inclusive [here followed other numbers].	0 15 0 per share
1 Share No. 2332	1 0 0 per share
65 Shares being No. 10,012 to 10,031 inclusive, 10,432 to 10,441 inclusive, [here followed other numbers].	1 5 0 per share

THE right to recover the said arrears is expressly reserved by the Order of the High Court of Justice Chancery Division made in the Matter of the above-named Company and dated 22nd July 1911.

AT the time of the registration of this Minute the residue of the said Preference Shares namely 9231 are unissued and the said 3356 Ordinary "B" Shares have been forfeited and have not been reissued. [*Re Cowling Spinning Co., Ltd. and Reduced,* 00230 of 1911. NEVILLE, J., July 22nd, 1911.]

FORM OF ORDER ON PETITION WHERE THE REDUCTION PROPOSED DOES NOT INVOLVE THE DIMINUTION OF ANY LIABILITY IN RESPECT OF UNPAID CAPITAL OR THE PAYMENT TO ANY SHAREHOLDER OF ANY PAID-UP CAPITAL, AND A LIST OF CREDITORS HAS BEEN DISPENSED WITH.

(*Title same as Petition.*)

Upon the petition of the Company Limited and Reduced on the day of 19 preferred unto this Court and upon hearing counsel for the petitioners and upon reading the said petition an order dated the affidavit of filed and the following newspapers each containing an advertisement that the petition was appointed to be heard on 4th February 1905 namely the *London Gazette* dated 22nd November 1904 and *The Times* newspaper of the 24th November 1904 this Court doth order that the special resolution passed on the 19 and confirmed on the 19 and which was in the words and figures following (set out resolution) be confirmed in conformity with the provisions of the Companies Act 1867 and the Companies Act 1877 and it is ordered that the words "and reduced" continue to form part of the name of the Company for one month from the date of this order and the Court doth approve of the minute set forth in the schedule hereto and it is ordered that this order be produced to the Registrar of Joint Stock Companies and that an office copy of this order be delivered to him together with a minute in the words or to the effect of the minute in the schedule hereto and it is ordered that notice of the registration of this order and of the said minute be published once in (here set out the newspapers in which publication is required) within three weeks after registration. [*National Bank of China, Ltd.*, 1904, No. 0150. FARWELL, J., March 3rd, 1905.]

THE SCHEDULE HEREINBEFORE REFERRED TO.

[Set out minute.]

FORM OF ORDER WHERE REDUCTION INVOLVES RETURN OF PAID-UP CAPITAL.

(*Title.*)

Upon the petition of the above-named United Egyptian Lands Ltd. and Reduced on the 19 preferred unto this Court and upon hearing Counsel for the petitioner and upon reading the said Petition the order dated the 19 directing an inquiry as to the debts claims and liabilities

of or affecting the above-named Company on the 19 the affidavit of filed the 19 the affidavit etc. and the exhibits in the said affidavits or some of them respectively referred to the Certificate of the Registrar Companies (Winding-up) dated the 19 in answer to the inquiry directed by the said order of 19 the *London Gazette* and *The Times* and the *Egyptian Gazette* newspapers all dated the 19 and each containing a notice of the presentation of the said petition and that the same was appointed to be heard on the 19 . This Court doth order that the cancellation and reduction of the capital of the above-named Company resolved on and effected by the special resolution passed and confirmed at two extraordinary general meetings of the petitioner the said United Egyptian Lands Limited and Reduced held respectively on the 19 and the 19 and which resolution was in the words and figures following that is to say [here set out resolution] be and the same is hereby confirmed in accordance with the provisions of the above-mentioned Act and the Court doth hereby approve of the form of the minute set forth in the schedule hereto. And it is ordered that this order be produced to the Registrar of Companies and that an office copy thereof be delivered to him together with a minute in the words or to the effect set forth in the said schedule. And it is ordered that notice of the Registration by the Registrar of Companies of this order and of the said minute be published as follows that is to say once each in the *London Gazette* and in *The Times* and the *Egyptian Gazette* newspapers within 10 days after such registration. And it is ordered that the addition of the words "and reduced" to the title of the said Company be continued for one month from the date of this order.

THE SCHEDULE ABOVE REFERRED TO.

Minute approved by the Court.

[Here the minute is set out.]

[*United Egyptian Lands, Ltd. and Reduced,* 00291 of 1909, April 27th, 1910. SWINFEN EADY, J.]

ORDER SANCTIONING CANCELLATION AND REDUCTION OF CAPITAL UNDER AN AGREEMENT BY WHICH THE COMPANY WERE TO PURCHASE THEIR LATE MANAGER'S SHARES.

(*Title.*)

UPON the Petition of the above-named North American Land and Timber Company Limited and Reduced on the 2nd March 1911 preferred unto this Court and upon hearing Counsel for the Petitioner and upon reading the said Petition the Order dated the 17th March 1911, the affirmation of W.S.B. & M. filed the 8th March 1911, the affirmation of J.W.C. and the affidavit of F.A.B. filed the 9th March 1911 the affidavit of H.G.C. filed the 23rd March, 1911, and the exhibits in the said affirmations and affidavits or some of them respectively referred to the Certificate dated and filed the 12th May 1911 of the result of the inquiry directed

by the said order dated the 17th March, 1911 the *London Gazette* dated the 16th May 1911 and *The Times* newspaper dated the 15th May 1911 and each containing a notice of the presentation of the said petition and that the same was appointed to be heard on the 23rd May 1911.

THIS COURT DOTH ORDER that the *cancellation* and reduction of the capital of the above-named Company resolved on and effected by the special resolution passed and confirmed at two Extraordinary General Meetings of the Petitioner the said American Land and Timber Company Limited and Reduced held respectively on the 8th February 1911 and the 24th February 1911 and which resolution was in the words and figures following that is to say —

"(1) That having regard to the provisions of the Agreement dated "the 7th day of January 1911 and made between the Company of the one "part and J.B.W. of Lawrence in the State of Kansas in the United "States of America of the other part the Capital of the Company be "reduced from £350,000 divided into 350,000 shares of £1 each of which "126,000 shares have been issued and are fully paid up and 224,000 "shares are unissued to £314,419 divided into 314,419 shares of £1 each "and that such reduction be effected by cancelling the 35,581 fully paid "up shares now held by the said J.B.W. namely :—

INCLUSIVE.		INCLUSIVE.		INCLUSIVE.		INCLUSIVE.	
From	To	From	To	From	To	From	To
80193	81592	12727	12747	23220	23289	45270	45619
96874	97923	69735	69755	47377	47397	109327	109536
97924	101766	4712	4739	103601	104300	71177	71225
29940	30639	26335	26544	63638	63987	35848	36057"

[Here followed other numbers.]

be and the same is hereby confirmed in accordance with the provisions of the above-mentioned Act.

AND THE COURT doth hereby approve of the Minute set forth in the Schedule hereto.

AND IT IS ORDERED that this Order be produced to the Registrar of Companies and that an Office Copy thereof be delivered to him together with a Minute in the words or to the effect set forth in the said Schedule.

AND IT IS ORDERED that Notice of the Registration by the Registrar of Companies of this Order and of the said Minute be published as follows that is to say once each in the *London Gazette* and in *The Times* newspaper within 10 days after such Registration.

AND IT IS ORDERED that the addition of the words "and Reduced" to the title of the said Company be continued for one month from the date of this Order.

THE SCHEDULE BEFORE REFERRED TO.

Minute approved by the Court.

THE capital of the North American Land and Timber Company Limited and Reduced is henceforth £314,419 divided into 314,419 shares of £1 each instead of the former capital of £350,000 divided into 350,000 shares of £1

each. At the time of the registration of this Minute 90,419 shares are issued and are deemed to be fully paid up being the shares numbered respectively:—

Inclusive.		Inclusive.		Inclusive.		Inclusive.	
From	To	From	To	From	To	From	To
708	847	28890	29939	56001	57379	86010	86604
1538	2541	30640	30989	58080	61019	86640	87962
2892	4501	30997	35126	61160	63259	87984	94857
4754	5411	35162	35336	63330	63546	94928	95382

[Here followed other numbers.]

The residue of the said 314,419 shares viz.: 224,000 being the shares numbered 126,001 to 350,000 are unissued and nothing is to be deemed to be paid up thereon. [*North American Land and Timber Co., Ltd. and Reduced*, 0086 of 1911. NEVILLE, J., May 23rd, 1911.]

ORDER SANCTIONING A SCHEME OF ARRANGEMENT AND REDUCTION BY CANCELLING PREFERENCE SHARES AND GIVING THEIR HOLDERS DEBENTURES INSTEAD, A SUM HAVING BEEN SET ASIDE TO MEET CLAIMS WHICH ARE UNSATISFIED.

UPON THE PETITION of the above-named Colorado Mortgage and Investment Company Limited and Reduced on the 15th June 1910 preferred unto this Court and upon hearing Counsel for the Petitioner on the 8th November 1910 and upon reading the said petition the order dated the 4th May 1910 whereby the above-named Company was ordered to convene separate meetings of (1) the holders of Preferred Shares of the said Company and (2) the holders of Ordinary Shares of the said Company for the purpose of considering and if thought fit approving with or without modification a scheme of arrangement proposed to be made between the said holders of Preferred and Ordinary Shares of the Company and the said Company (a copy of which scheme was the exhibit A.W. 2 to the affidavit of A.W. filed the 2nd May 1910 referred to in the said order) the order dated the 28th June 1910 (directing an inquiry as to creditors) the *London Gazette* and *The Times* newspapers both dated the 13th of May 1910 and each containing an advertisement of the notice convening the said meetings directed to be held by the said order dated the 4th May 1910 the *London Gazette* and *The Times* newspapers both dated the 28th October 1910 and each containing a notice that the said petition was appointed to be heard on the 8th November 1910 the affidavit of I.C. filed the 7th July 1910 and the exhibits therein referred to and the certificate dated the 17th October 1910 of the Registrar Companies (Winding-up) of the result of the inquiry directed to be made by the said order of the 28th June 1910—

And the above-named Company having lodged in the Bank of England to the credit of the Supreme Court Suspense Account pursuant to Rule 31 of the Supreme Court Funds Rules 1905 the sum of £3622 to answer the claims referred to in Part II. of the Registrar's said certificate and any costs which may be awarded in respect thereof as appears by the Bank of England receipt dated this day

THIS COURT DOTH HEREBY SANCTION the scheme of arrangement as set forth in the seventh paragraph of the said petition and in the First Schedule hereto and DOTH DECLARE the same to be binding on the said holders of Preferred and Ordinary Shares respectively of the said Company and also on the said Company.

AND THIS COURT DOTH ORDER that the cancellation and reduction of the capital of the above-named Company resolved on and effected by the special resolutions passed and confirmed at two extraordinary general meetings of the Petitioner the said Colorado Mortgage and Investment Company Limited and Reduced held respectively on the 30th May 1910 and the 14th June 1910 and which resolution was in the words and figures following that is to say—

"That the capital of the Company be reduced from £300,000 (divided "into 30,000 Preferred Shares and 30,000 Ordinary Shares of £5 each "respectively) to £150,000 divided into 30,000 Ordinary Shares of £5 "each and that such reduction be effected by cancelling all the said 30,000 "Preferred Shares of which 25,140 only have been issued and are fully "paid up;"

be and the same is hereby confirmed in accordance with the provisions of the above-mentioned Act.

AND THE COURT DOTH HEREBY APPROVE the form of the minute set forth in the Second Schedule hereto.

AND IT IS ORDERED that this order be produced to the Registrar of Companies and that an office copy thereof be delivered to him together with a minute in the words or to the effect set forth in the said Second Schedule hereto.

AND IT IS ORDERED that notice of the registration by the Registrar of Companies of this order so far as it applies to the cancellation and reduction of the capital of the above-named Company and of the said minute be published as follows that is to say once each in the *London Gazette* and in *The Times* newspaper within ten days after such registration.

AND IT IS ORDERED that the addition of the words "and Reduced" to the title of the said Company be continued for two months from the date of this order.

AND IT IS ORDERED that the funds lodged in the Bank of England to the credit of the Supreme Court Suspense Account be transferred and lodged in Court as directed in the Lodgment Schedule hereto.

And the said Company is to be at liberty to apply for payment out to it of the funds hereinbefore directed to be lodged on the due production of evidence that the alleged claims of the creditors hereinbefore referred to have been secured by money paid into the Supreme Court of the State of Colorado in the United States of America for that purpose and generally with reference to the said moneys.

THE FIRST SCHEDULE BEFORE REFERRED TO.

Scheme of arrangement as sanctioned by the Court.

1. The capital of the Company shall be reduced by cancelling all the 30,000 Preferred Shares of £5 each of which 25,140 only have been issued and are fully paid up.

2. All arrears of dividends (whether declared or not) on the said Preferred Shares shall be cancelled.

3. Debenture Stock to the amount of £125,700 shall be created by the Company and issued to the holders of the said Preferred Shares in proportion to the nominal amounts of the Preferred Shares held by them respectively.

4. The said Debenture Stock shall bear interest at the rate of 4 per centum per annum as from the 11th November 1909 and be repayable on the 11th November 1919 but redeemable at the option of the Company at any time by purchase or by tender not over par and by drawings at par.

5. The Company shall not pay any dividend on any of its shares until the said Debenture Stock shall have been paid off.

6. The Company may assent to any modification of this scheme or to any conditions which the Court may think fit to approve or impose.

THE SECOND SCHEDULE BEFORE REFERRED TO.

Minute approved by the Court

"The capital of The Colorado Mortgage and Investment Company "Limited and Reduced henceforth is £150,000 divided into 30,000 Ordinary "Shares of £5 each reduced from the original capital of £300,000 "divided into 30,000 Ordinary and 30,000 Preferred Shares of £5 each "respectively. At the time of the registration of this minute the sum "of £5 has been and is to be deemed to be paid up on each of the said "30,000 Ordinary Shares."

Registrar Companies (Winding-up).

LODGMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

November 1910.

Re The Colorado Mortgage and Investment Company Limited and Reduced.
Ledger Credit as above: "Security to answer Claims of M.G.S. and W.B.G.S. and Costs relating thereto."

Particulars of Funds to be lodged to the Account of the Paymaster-General.	Person to make the Lodgment.	Amounts. Money.			Securities.		
		£	s.	d.	£	s.	d.
Cash . . .	The Colorado Mortgage and Investment Company Limited and Reduced.	3622	0	0			

[*Re Colorado Mortgage and Investment Co., Ltd. and Reduced*, 00146 of 1910. NEVILLE, J., Nov. 14th, 1910.]

FORM OF ADVERTISEMENT OF REGISTRATION OF ORDER AND MINUTE.

IN THE HIGH COURT OF JUSTICE,

Chancery Division.

MR. JUSTICE

In the Matter of The Company Limited and Reduced

and

In the Matter of the Companies (Consolidation) Act 1908.

Notice is hereby given that the order dated the 12th day of December 1911 confirming the reduction of the capital of the above-named Company from £500,000 to £50,000 and the Minute approved by the Court showing with respect to the capital of the company as altered the several particulars required by the above-mentioned Act was registered by the Registrar of Joint Stock Companies.

The said Minute is in the words and figures following namely [here set out minute].

Dated the day of 19 .

A.B. (*f*) and Co.
Solicitors to the above-named Company.

(THE SAME, GIVING REASONS FOR REDUCTION.)

In the Matter of the Companies (Consolidation) Act 1908

and

In the Matter of Truman Hanbury Buxton and Co. Limited and Reduced.

Notice is hereby given that the Order of the High Court of Justice (Chancery Division) dated the 26th day of July 1910 confirming the reduction of the capital of the above-named Company from £2,215,000 to £1,425,250 and the Minute (approved by the Court) showing with respect to the capital of the Company as altered the several particulars required by the above-mentioned Act were registered by the Registrar of Joint Stock Companies on the 5th day of August 1910.

And notice is hereby also given pursuant to the said Order and to Section 55 of the above-mentioned Act that the reason for the reduction of the Capital of the Company is the loss of upwards of £1,000,000 of the capital value of the assets of the Company by reason of the depreciation in value of freehold and leasehold licensed properties of the Company and of licensed properties upon the security of which moneys of the Company have been advanced and that such depreciation has been caused by the imposition of increased taxation culminating in the increased duties payable under the provisions of the Finance (1909–10) Act 1910 (*k*).

And notice is hereby also given that the said Minute is in the words and figures following:—

"The Capital of Truman Hanbury Buxton and Company Limited "and Reduced is henceforth £1,425,250 divided into 12,150 Ordinary "shares of £35 each and 100,000 Preference Shares of £10 each instead "of the former capital of £2,215,000 divided into 12,150 Ordinary Shares

(*f*) In *Barclay, Perkins & Co.*, Times newspaper, May 24, 1911, NEVILLE, J., ordered a similar advertisement, but directed that the words "culminating in the increased duties payable under the provisions of the Finance (1909–10) Act, 1910," should be omitted.

"of £100 each and 100,000 Preference Shares of £10 each. At the time "of the registration of this Minute the whole of the said Ordinary Shares "numbered 1 to 12,150 inclusive and 50,000 of the said Preference Shares 'numbered 1 to 50,000 inclusive have been issued. The sum of £30 has "been paid and is to be deemed to be paid up on each of the said Ordinary "Shares and the sum of £10 has been and is to be deemed to be paid up "on each of the said issued 50,000 Preference Shares. The remaining "50,000 Preference Shares have not been issued and nothing has been "or is to be deemed paid up thereon."

Dated A.B. of etc.

VARIOUS FORMS OF RESOLUTIONS AND MINUTES.

Where one class of shareholders is to be paid off and their shares cancelled and some shares of the other class are not fully paid.

RESOLUTION.

"That the Capital of the Company be reduced from £20,300 divided into 300 founders' shares of £1 each and 20,000 ordinary shares of £1 each to £20,000 divided into 20,000 ordinary shares of £1 and that such reduction be effected by returning to the holders of the 300 founders' shares the whole amount paid or credited as paid on such shares and by cancelling such shares."

MINUTE.

The capital of the Company Limited and Reduced is henceforth £20,000 divided into 20,000 ordinary shares of £1 each instead of the original capital of £20,300 divided into 20,000 ordinary shares of £1 each and 300 deferred shares of £1 each at the time of the registration of this minute 18,000 only of the said ordinary shares Nos. 1 to 18,000 both inclusive have been issued of the said issued ordinary shares 14,000 shares Nos. 1 to 5000 both inclusive and 9001 to 18,000 both inclusive have been and are to be deemed fully paid up and the remaining 4000 thereof Nos. 5001 to 9000 both inclusive have been and are to be deemed paid up to the extent of 15*s.* per share and nothing is to be deemed paid up on the unissued ordinary shares Nos. 18,001 to 20,000 both inclusive (*g*).

RESOLUTION.

Where some shareholders of each of several classes are to be paid off and their shares cancelled and some shares of the company are unissued.

That the capital of the Company be reduced from £10,000 divided into 5000 preference shares of £1 each and 5000 ordinary shares of £1 each to £1000 divided into 500 preference shares of £1 each and 500 ordinary shares of £1 each and that such reduction be effected by returning to the holders of the 4500 preference shares numbered 1 to 4500 both inclusive and of the 4500 ordinary shares numbered 5001 to 9500 both

(*g*) The minute should always state with regard to unissued shares that nothing has been or is deemed to be paid up thereon. It should also state with regard to forfeited shares which have been extinguished that such shares have been so forfeited and extinguished.

inclusive, the whole amount paid or credited as paid on such shares and by cancelling such shares.

MINUTE.

The capital of the Company Limited and Reduced is henceforth £1000 divided into 500 preference shares of £1 each numbered 4501 to 5000 both inclusive and 500 ordinary shares of £1 each numbered 9501 to 10,000 both inclusive instead of its original capital of £10,000 divided into 5000 ordinary shares of £1 each and 5000 preference shares of £1 each. At the time of the registration of this minute all the said preference shares and 250 of the said ordinary shares Nos. 9501 to 9750 have been issued and have been and are to be deemed to be fully paid up and 250 of the said ordinary shares Nos. 9751 to 10,000 have not been issued and nothing is to be deemed to be paid up thereon.

Where the shares of the company are all of one class and the same amount has been paid and is to be repaid in respect of each share.

RESOLUTION.

That the capital of the Company be reduced from £80,000 divided into 16,000 shares of £5 each with £2 10*s.* each paid up thereon to 32,000 divided into 16,000 shares of £2 each with £1 each paid up thereon and £1 each uncalled and that such reduction be effected by returning to the holders of the 16,000 shares which have been issued paid up capital to the extent of £1 10*s.* per share and by reducing the nominal amount of each of such shares from £5 to £2.

MINUTE.

The capital of the Company Limited and Reduced is henceforth £32,000 divided into 16,000 shares of £2 each instead of the original capital of £80,000 divided into 16,000 shares of £5 each. At the time of the registration of this minute the whole of the said 16,000 shares have been issued and have been and are to be deemed to have been paid up to the extent of £1 per share.

Where capital is to be repaid to shareholders upon the footing that it may be called up again (*h*).

RESOLUTION.

That the capital of the Company be reduced from £480,000 divided into 30,000 shares of £16 each with £14 paid up on each share to £480,000 divided into 30,000 shares of £16 each with £11 paid up on each share and that such reduction be effected by returning to the holders of the 30,000 shares in the Company which have been issued the sum of £3 per share upon the footing that the sum so returned on each share or any part thereof may be called up again in the same manner as if it had never been paid up.

(*h*) A resolution to this effect was confirmed in *Re Fore Street Warehouse Co., Ltd.* (1888), 59 L. T. 214; 1 Meg. 67, on the authority of certain unreported cases, and this case was followed in *Watson, Walker and Quickfall* (1898), W. N 69; see also *supra*, p. 641.

MINUTE.

The capital of the Company Limited and Reduced is £480,000 divided into 30,000 shares of £16 each. At the time of the registration of this minute the whole of the 30,000 shares have been issued and allotted and the sum of £11 per share has been and is deemed to have been paid up in respect of each of the said shares.

Where the shareholders are to be released from all further liability in respect of their shares, and the reduced shares are to be converted into stock.

RESOLUTIONS.

1. That the capital of the company be reduced from £20,000 divided into 20,000 shares of £1 each with 15*s.* each paid up thereon and 5*s.* each uncalled to £15,000 divided into 20,000 fully paid shares of 15*s.* each and that such reduction be effected by releasing the holders of the 20,000 shares which have been issued from all further liability in respect of their shares and by reducing the nominal amount of each such share to 15*s.*

2. That such reduced shares be converted into stock.

MINUTE.

The capital of the Company Limited and Reduced is henceforth £15,000 consisting of £15,000 stock instead of the original capital of £20,000 divided into 20,000 shares of £1 each.

Where capital is lost or unrepresented by available assets (*i*), the share capital consisting of stock (*ii*) and shares.

RESOLUTION.

That the capital of the Company be reduced from £10,000 divided into £6000 stock and 4000 shares of £1 each to £5000 divided into £3000 stock and 4000 shares of 10*s.* each and that such reduction be effected by reducing the holding of each stockholder by 50 per cent. and by writing off 10*s.* per share part of the sum of 15*s.* per share which has been paid or credited as paid on the 4000 shares which have been issued.

MINUTE.

The capital of the Company Limited and Reduced is henceforth £5000 divided into £3000 stock and 4000 shares of 10*s.* each instead of £10,000 divided into £6000 stock and 4000 shares of £1 each. At the time of the registration of this minute all the said shares have been issued and the sum of 5*s.* has been and is deemed to be paid up in respect of each of such shares.

Where calls on some shares are in arrear (*j*).

(*i*) See another form in the petition, *supra*, at p. 648.

(*ii*) Cp. *House Property and Investment Co.*, [1912] W. N. 110.

(*j*) *International Conversion Trust, Ltd.* (1892), W. N. 100.

MINUTE.

The capital of the Company Limited and Reduced is henceforth £40,500 divided into 20,000 ordinary shares of £2 each and 100 founders shares of £5 each instead of the former capital of £100,500 divided into 20,000 ordinary shares of £5 each and 100 founders shares of £5 each. At the time of the registration of this minute 2407 of the ordinary shares of £2 each numbered 101 to 2507 both inclusive are issued and are and are to be deemed to be fully paid up except that there are arrears of calls on the following shares that is to say—

Denoting Numbers of Shares.	Amount of Calls in Arrear.
101 to 106, both inclusive . . .	£2 per share.
508 to 607, both inclusive . . .	£1 per share.
1208 to 1307, both inclusive . . .	£1 per share.

and of the founders' shares of £5 each 74 shares numbered 1 to 74 both inclusive are issued of which 50 shares numbered 1 to 50 both inclusive are and are to be deemed to be fully paid up and on the remaining 24 shares 51 to 74 both inclusive the sum of £2 per share has been and is to be deemed to be paid up. At the time of the registration of this minute the residue of the ordinary shares viz. 17,593 numbered 2508 to 20,000 both inclusive and the residue of the founders shares viz. 26 numbered 75 to 100 both inclusive are unissued and nothing has been or is to be deemed to have been paid up thereon.

RESOLUTION FOR REDUCTION BY CANCELLING SHARES WHICH HAVE NOT BEEN TAKEN OR AGREED TO BE TAKEN BY ANY PERSON AT THE TIME OF THE REDUCTION (*k*).

That the capital of the Company be reduced from £20,000 divided into 20,000 shares of £1 each to £18,000 divided into 18,000 shares of £1 each and that such reduction be effected by cancelling 2000 shares numbered 18,001 to 20,000 both inclusive in the capital of the Company which at the date of the passing of this resolution have not been taken or agreed to be taken by any person.

(*k*) Companies (Consolidation) Act, 1908, s. 41. The resolution in such case need not be a special resolution, and does not require to be confirmed by the Court; but every copy of the memorandum issued after the date of the alteration must be in accordance with the alteration. A company making default in complying with this provision will be liable to a fine not exceeding £1 for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorizes or permits the default will be liable to a like penalty, and see *supra*, pp. 83 and 84.

RESOLUTION FOR RETURNING ACCUMULATED PROFITS IN REDUCTION OF PAID-UP CAPITAL—THE UNPAID CAPITAL BEING THEREBY INCREASED BY THE AMOUNT RETURNED (*l*).

That a sum of 7*s.* per share be returned to each shareholder out of the undivided profits which the Company has accumulated in reduction of the capital paid up by him on his shares and to the intent that the capital unpaid by him in respect of his shares may be thereby increased by a similar amount.

In some cases, *e.g.* where a particular class of shares is to be bought out and extinguished, it may be desirable to have an agreement with the holders of shares of such class.

An Agreement made this day of 19 . Between The Company Limited hereinafter called the Company of the one part and the several persons whose names and addresses and the denoting numbers of whose shares are set out in the schedule hereto (*m*) being the holders of all the founders shares of the company of the other part.

Whereby it is agreed between the parties hereto as follows :—

1. The Company shall be at liberty to take such steps as may be requisite for passing a resolution for increasing its capital from £10,000 to £20,000 by the creation of 20,000 new ordinary shares of £1 each and for reducing such increased capital from £20,000 to £19,500 by cancelling all its 500 founders shares of £1 each and returning to the holders of such shares the capital paid up on the same and the parties hereto of the second part shall not take any steps to prevent such increase or reduction or either of them.

2. In the event of such increase and reduction of capital being effectually carried out each of the holders of the founders shares of the company shall in respect of each founders share held by him receive in addition to the capital paid upon his founders shares a sum of £ out of the accumulated profits of the company and shall be allotted and accept an allotment of of the new ordinary shares of the company, the full nominal amount of such shares to be paid by him on allotment.

3. In the event of such increase and reduction not having been effectually carried out before the day of next the Company or any holder of founders shares may give notice in writing terminating this agreement and thereupon this agreement shall become void.

4. Any notice under these presents shall be deemed to be duly given if left at the registered office of the Company.

(*l*) The resolution in this case need not be confirmed by the Court ; the resolution must be a special resolution : Companies (Consolidation) Act, 1908, s. 40, and see *supra*, p. 258. The memorandum to be filed with the Registrar of Companies will be in the form of the first minute on p. 688, *supra*, except that it will speak of the registration "of this memorandum" and not of "this minute."

(*m*) Where the course proposed is within the powers which can be exercised by a class resolution, it is best to have and to recite such a resolution authorizing one of the class to enter into the agreement.

THE SCHEDULE HEREINBEFORE REFERRED TO.

Names and Addresses.	Denoting numbers of founders' shares.

It is sometimes desirable to accompany the notice for the meetings for passing the resolutions by an explanatory circular; such circular would be in some such form as the following :—

THE COMPANY LIMITED.

In order to carry on the business of the Company it is necessary to raise fresh capital, but owing to the rights conferred on the holders of founders shares, it is felt that it will be difficult if not impossible to do this.

Under these circumstances the directors have entered into a conditional agreement with all the holders of founders' shares.

The following are the material terms of such agreement :—

1. Capital of the Company to be increased by the creation of 15,000 new ordinary shares of £1 each and such increased capital to be reduced by cancelling all the founders shares—and repaying to the holders of such shares the amounts paid up by them on their shares as provided by the notice sent herewith.

2. In the event of the proposed resolutions being passed and of the proposed resolution for the reduction of the capital of the Company being subsequently confirmed as a special resolution and sanctioned by the Court each holder of founders shares in respect of each founders share held by him prior to such cancellation to receive in addition a sum of £ (*n*) out of the accumulated profits of the Company and to be allotted and accept an allotment of of the new ordinary shares which the Company proposes to issue, the full nominal amount of such shares to be paid on allotment.

3. Either party to be entitled to give the other notice determining the agreement if such increase and reduction have not been effectually carried out by 19 .

The following is another form of circular in cases where the holders of one class of shares are by the scheme for reduction to give up certain rights and are to receive in return votes :—

THE COMPANY LIMITED.

[State reasons for reduction.]

The preference shareholders are by the scheme referred to in the notice of meeting sent herewith to give up the following rights [the rights are here set out] in return each preference shareholder will receive one vote for each share held by him if the reduction becomes effective and not otherwise.

ALTERATION OF OBJECTS OF COMPANY.

The Companies (Memorandum of Association) Act, 1890 (*o*) gave powers of altering the memorandum of association so far as concerns the objects of a company; these powers are re-enacted by the present

(*n*) See *Anglo-French Exploration Co.*, [1902] 1 Ch. 845; *Development Co. of Central, etc., Africa*, [1902] 1 Ch. 547.

(*o*) 53 & 54 Vict. c. 62.

Act (*p*). These provisions seem by virtue of section 263 of the Act to extend to altering similar provisions in the deed of settlement, contract of co-partnery, costs, book regulations, or other instrument constituting or regulating a company registered under Part VII. of the Act, and not being provisions contained in an Act of Parliament relating to the company or in letters patent, or a royal charter (*pp*).

They only authorize alterations in particular specified ways, and under these powers a company cannot alter the entire scope of its business (*q*).

Thus, a company will not be enabled, under these provisions, to alter its business from one to protect cyclists into one to protect cyclists, motorists, and tourists generally (*r*), nor was a company formed for the purpose of investing its funds in Government securities allowed to alter its objects so as to invest in all sorts of securities (*s*). In another case the Court, while sanctioning a scheme for altering a single ship company, into a company owning and working unlimited ships, intimated that, if there had been any opposition, it would have withheld the requisite sanction (*t*).

Further, the Court will. not, under these provisions, alter a memorandum of association simply for the purpose of enabling a company to set out at length and in modern form, a number of powers or objects which it has already got (*a*).

These are matters for a reconstruction scheme, and the provisions, now under discussion are not meant to enable a company to avoid reconstruction in a proper case, and so to deprive dissentients of their rights (*b*).

A company formed without shares or capital can be wound up, and consequently can avail itself of these provisions to alter its memorandum (*c*).

It has now been decided that a company registered under the Companies Act, 1856 (*d*), and not under the later Acts, can avail itself of these powers to alter its memorandum (*e*). Of course, these

(*p*) Companies (Consolidation) Act, 1908, s. 9.

(*pp*) *Ibid.*, s. 263.

(*q*) S. 9 (1), but cp. *London and Edinburgh Shipping Co.*, [1909] S. C. 1.

(*r*) *Cyclists' Touring Club*, [1907] 1 Ch. 269; and cp. *Western Ranches* v. *Nelson's Trustees* (1899), 38 S. L. R. 576.

(*s*) *Government Stocks Investment Co.* (*No.* 1), [1891] 1 Ch. 649; but see *Government Stocks Investment Co.* (*No.* 2), [1892] 1 Ch. 597.

(*t*) *Bernicia Steamship, Ltd.* (1900), 81 L. T. 816; 69 L. J. (CH.) 194.

(*a*) *Consett Iron Co.*, [1901] 1 Ch. 236; *D. and D. H. Fraser, Ltd.* (1903), 19 T. L. R. 364.

(*b*) *Re Consett Iron Co.*, [1901] 1 Ch. 236.

(*c*) *North of England Iron Steamship Insurance Association*, [1900] 1 Ch. 481; followed in *Monmouthshire and South Wales, etc., Society*, [1909] W. N. 6.

(*d*) 19 & 20 Vict. c. 47.

(*e*) *Euphrates and Tigris Steam Navigation Co.*, [1904] 1 Ch. 360; *Nitrophosphate and Odams, etc., Co.* (1893), W. N. 141; *Hong Kong and China Gas Co.* (1898), W. N. 158; *Copiapo Mining Co.* (1899), 6

powers also enable a company registered under the Companies Act, 1862, to alter its memorandum of association.

Companies formed under the provisions of any Companies Act prior to that of 1856, may alter the form of their constitution by substituting a memorandum and articles of association for a deed of settlement (*f*), where they have registered under Part VII. of the Act (*g*), or have registered but not been formed under the Act of 1856, or the Act of 1862 (*h*).

In such case the alteration is made in the same way as an alteration of the memorandum of association is made (*i*), and the substituted memorandum and articles will on the registration of the alterations being certified by the Registrar of Companies apply to the company in the same manner as if it had been registered under the Act with them, and the deed of settlement will cease to apply (*i*). A memorandum and articles may be substituted for a deed of settlement either with or without an alteration of the objects of the company (*k*). The object clause in the substituted memorandum must not merely set out the objects by reference to the old deed of settlement, and if the company proposes to convert itself from an unlimited into a limited company, it should register under section 57 of the Act before the petition is heard (*l*).

Turning to the alterations which may, under section 9, be made in the memorandum of association, or deed of settlement of a company.

They are divided into five heads. They are alterations that may be required—

1. To enable the company to carry on its business more economically or more efficiently (*m*). Under this head companies formed for purchasing reversions (*n*), and for investing in specified securities (*o*), have been allowed to make alterations enabling them

Manson, 320, which cases did not follow *General Credit Co.* (1891), W. N. 153; and see also Companies (Consolidation) Act, 1908, ss. 245, 246.

(*f*) A deed of settlement for this purpose includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a Royal Charter, or Letters Patent: Companies (Consolidation) Act, 1908, s. 264 (4). A deed of settlement which has been altered by Act of Parliament can, in matters not affected by such Act, be altered under these provisions: *Reversionary Interest Society*, [1892] 1 Ch. 615.

(*g*) Companies (Consolidation) Act, 1908, s. 264. For form of petition, *post*, p. 703, and of order, *post*, pp. 713 and 714.

(*h*) *Euphrates and Tigris Steam Navigation Co.*, [1904] 1 Ch. 360.

(*i*) Companies (Consolidation) Act, 1908, s. 264 (2). A printed copy of the substituted memorandum and articles must be delivered to the Registrar of Joint Stock Companies.

(*k*) Companies (Consolidation) Act, 1908, s. 264 (3).

(*l*) *Royal Exchange Buildings, Glasgow* (1911), S. C. 1337.

(*m*) Companies (Consolidation) Act, 1908, s. 9 (1) (*a*).

(*n*) *Reversionary Interest Society*, [1892] 1 Ch. 615.

(*o*) *Government Stock Investment Co.* (*No.* 2), [1902] 1 Ch. 597.

to issue debentures and give security to their creditors, because these powers would enable them to carry on their main business on a larger scale, and consequently more efficiently; and in another case, a company formed for carrying on a manufacturing business was enabled to form a reserve fund, and to invest it, while not required in its business, in certain specified securities (*p*). Under this provision companies have been allowed to take general powers which may prove useful for carrying on their business (*q*).

II. To attain its main purpose by new or improved means (*r*). It has been said that the word "purpose" was probably intentionally used here, as being more limited than the word "objects," and that consequently this provision is not intended to enable a company, with a memorandum in modern form, to attain any one of its numerous objects by new or improved means (*s*).

III. To enlarge or change the local area of its operations (*t*). In one case a company whose operations were limited to India, was under this power enabled to extend such operations to other places (*u*); and in another case a company formed to acquire land in Egypt was allowed to acquire land in the Soudan also (*x*). Again, a company formed to work laundries at Kircaldy, was allowed to work laundries at other places in the county of Fife (*y*).

IV. To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company (*z*). This is the power of alteration most frequently invoked.

By virtue of this power, companies formed to invest in certain specified securities, have been allowed to invest in a wider range of securities (*a*); a company formed to do marine insurance, has been allowed to undertake general insurance (*b*); a company formed to insure boilers has been allowed to insure kindred objects (*c*); and a

(*p*) *J. and P. Coats, Ltd.* (1900), 2 Fra. 829.

(*q*) *New Westminster Brewery Co.*, (1911), 105 L. T. 247; *Anglo-American Telegraph Co.* (1911), 105 L. T. 947, following an unreported decision of PARKER, J.; *Provident Clerks and General Guarantee Association*, 0040 of 1907, and not following *Youngs' Paraffin Light and Mineral Oil Co.* (1894), 21 Rettie, 384.

(*r*) Companies (Consolidation) Act, 1908, s. 9 (1) (*b*).

(*s*) *Government Stocks Investment Co.* (*No.* 1), [1891] 1 Ch. 649.

(*t*) Companies (Consolidation) Act, 1908, s. 9 (1) (*c*).

(*u*) *Indian Mechanical Gold Extracting Co.*, [1891] 3 Ch. 538.

(*x*) *Egyptian Delta Land and Investment Co.*, [1907] W. N. 16.

(*y*) *Kircaldy Steam Laundry* (1905), 6 Fra. 778.

(*z*) Companies (Consolidation) Act, 1908, s. 9 (1) (*d*).

(*a*) *Foreign and Colonial Government Trust Co.*, [1892] 2 Ch. 395; and *Government Stocks Investment Co.* (*No.* 2), [1892] 1 Ch. 597; see *Empire Trust, Ltd.* (1891), 64 L. T. 221.

(*b*) *Alliance Marine Assurance Co.*, [1892] 1 Ch. 300.

(*c*) *National Boiler Insurance Co.*, [1892] 1 Ch. 306.

company formed to insure cargoes, has also been allowed to insure ships respondentia, bottomry, etc. (*d*).

Again, under this power a bank has been allowed to undertake trusts and executorships, where part of the property was within the jurisdiction (*e*); and a company formed to supply electricity for telephonic purposes was allowed to supply electricity for other purposes (*f*). Under this power a company, which had been a registered Friendly Society, and had, under section 71 of the Friendly Societies Act, 1896, converted itself into a company limited by guarantee, was allowed to enlarge its objects (*g*), and, in another case where there was no opposition, a company was allowed to change itself from a single-ship company into a company with power to own and work unlimited ships (*h*).

V. To restrict or abandon any of the objects specified in the memorandum (*i*). This power is rarely used. It was, however, useful in the case of an insurance company (*k*), which was not carrying on life assurance business, and wished to recover a deposit paid into Court under the Life Assurance Companies Act, 1870, and it may also be useful sometimes in the case of companies seeking foreign concessions.

The alterations are made by special resolution, but they do not take effect until and except in so far as they are confirmed on petition by the Court which has jurisdiction to wind up the company (*l*).

In the case of a company registered in England, petitions may be presented either in the Companies (Winding-up) Department, or in the Chancery Division of the High Court (*m*).

Before confirming the alteration the Court must be satisfied that sufficient notice has been given to (*a*) every holder of debentures or debenture stock of the company; and to (*b*) all persons and classes of persons whose interests will in the opinion of the Court be affected (*n*) by the alteration, and it must also be satisfied

(*d*) *Ulster Marine Insurance* (1891), 27 L. R. Ir. 487.

(*e*) *Munster and Leinster Bank*, [1907] 1 Ir. 237. See also *Barclay and Co.*, 00322 of 1910, *post*, pp. 711 and 712, where the order was not so limited.

(*f*) *Oriental Telephone Co.* (1891), W. N. 153.

(*g*) *Royal London Mutual Insurance Society*, [1910] W. N. 226; 55 Sol. J. 46. This decision is recognized as law by s. 1 (2) of the Companies (Converted) Societies Act, 1910.

(*h*) *Bernicia Steamship Co.* (1900), 81 L. T. 816; 69 L. J. (CH.) 194.

(*i*) Companies (Consolidation) Act, s. 9 (1) (*d*).

(*k*) Cp. *Wool Industries Employers' Assurance Association* (1899), W. N. 259.

(*l*) Companies (Consolidation) Act, 1908, ss. 9 (1) and (2), and 285. In certain cases a Palatine Court or a county court will have jurisdiction (see *post*, pp. 804 and 805). A county court which has winding-up jurisdiction will have power to sanction alterations of this sort if the registered office of the company is within its jurisdiction and the amount of the share capital of the company paid up or credited as paid up does not exceed £10,000: *Rugeley Gas Co.* (1899), W. N. 127; *Portsmouth and District Vacuum Cleaner*, [1908] W. N. 203. See *supra*, p. 638.

(*m*) *Essex and Suffolk Equitable Insurance Society*, [1909] W. N. 102. This was also the practice before the Act: *Islington and General Electric Supply Co.* (1892), W. N. 81; *Mining Shares Investment Co.*, [1893] 2 Ch. 660.

(*n*) A rival corporation was heard under this provision in *Hendon Paper Works & Co.*, Times Newspaper, July 27, 1910.

that with respect to every creditor, who in its opinion is entitled to object and who has signified his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined or has been secured to the satisfaction of the Court (*o*). It is usual, as soon as the petition has been presented, to take out a summons for directions as to what notice should be given to debenture-holders and other persons whose interests may be affected by the proposed alterations, and what advertisements there are to be, and to fix a date for the hearing of the petition (*p*). The order usually directs specific notice of the alterations to be sent to each debenture or debenture stock holder (*pp*).

The Court has, however, power in the case of any person, or class, for special reasons, to dispense with the notices, which are required as above stated (*q*). Thus, in one case, where a company had never carried on business and only consisted of seven members, the Court dispensed with all advertisements (*r*), and advertisements were dispensed with where the shareholders and policy-holders of a company were the only persons concerned (*s*).

The Court must, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors (*t*).

Once the case is within either of the five headings referred to in section 9 (1), the Court has jurisdiction, and the considerations mentioned in section 9 (5) of the Act and set out above, are the only considerations which should guide it in the exercise of such discretion; it is no part of its business to consider whether the scheme is wise or unwise, expedient or inexpedient (*u*). The Court will, however, have regard to the total number of shareholders who support the resolution, and will be slow to confirm a resolution which will make no present alteration in the business of the company, but will only have the effect of rendering the views of an existing majority, permanently binding on the company (*x*). The Court will have to consider alike the persons who actively dissent and those who do not assent (*y*).

(*o*) Companies (Consolidation) Act, 1908, s. 9 (3).

(*p*) *Munster and Leinster Bank*, [1907] 1 Ir. 237. For forms of such orders, *post*, pp. 705 and 706.

(*pp*) For forms of such advertisements and notices, *post*, pp. 706 *et seq*.

(*q*) Companies (Consolidation) Act, 1908, s. 9 (3).

(*r*) *Empire Trust, Ltd.* (1891), 64 L. T. 221.

(*s*) *Ulster Marine Insurance Co.* (1891), 27 L. R. Ir. 487.

(*t*) Companies (Consolidation) Act, 1908, s. 9 (5).

(*u*) *Jewish Colonial Trust*, [1908] 2 Ch. 287, where the principles to guide the Court under this section are stated to be the same as in reduction of capital cases.

(*x*) *Jewish Colonial Trust*, [1908] 2 Ch. 287.

(*y*) *Government Stocks Investment Co.* (*No.* 1), [1891] 1 Ch. 649.

If it thinks fit it may adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members, and it may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement; but no part of the capital of the company may be expended in any such purchase (*z*).

The same petition might combine an application for reducing the capital of the company and for altering the object clause in its memorandum (*a*). In such case, it is thought, the company could, in spite of section 9 (5) of the Act, apply its capital in purchasing its shares (*b*). An order has also been made on a petition combining a scheme of arrangement, an alteration in the memorandum, and a reorganization of share capital (*c*).

The petition must be headed in the matter of the company (naming it), and in the matter of the Companies (Consolidation) Act, 1908. The name of the company being placed first in the title to the petition, and in notices and advertisements, whether the petition is presented in the Companies (Winding-up) Office, or in the Chancery Division (*d*); even where the petition is presented to the Companies (Winding-up) Office, it is headed in the Chancery Division, and is answered before one of the judges exercising the winding-up jurisdiction. In this case there is, of course, no ballot to ascertain what Judge the matter is to come before.

The evidence should include an affidavit exhibiting the memorandum and articles of the company and the minute book containing the minute relating to the special resolution sanctioning the proposed alteration (*e*). The certificate of the incorporation of the company and its register of members will also be exhibited. The affidavi should also explain the reasons for the proposed alteration, and it is often convenient for it to refer to and exhibit the petition.

When the matter comes before the Court, it may make an order confirming the alteration either wholly or in part (*f*).

(*z*) Companies (Consolidation) Act, 1908, s. 9 (5).

(*a*) This was done in *Empire Trust, Ltd.* (1891), 64 L. T. 221; but for reasons not appearing in the report, the petitioners did not attempt to proceed with the reduction part of the petition. Orders have been made on such petitions, *e.g.*, in *London and New York Investment Corporation, Ltd. and Reduced*, 00315 of 1907, NEVILLE, J., January 21, 1908; and in *Customs and Bonded Warehouses, Ltd. and Reduced*, 00218 of 1906, set out *post*, pp. 714 *et seq.*

(*b*) *British and American Trustee & Finance Corporation* v. *Couper*, [1894] A. C. 399.

(*c*) See order in *United States Trust Corporation, Ltd.*, 0084 of 1911, set out *post*, pp. 716 *et seq.*

(*d*) *Woolley Coal Co.* (1891), W. N. 19.

(*e*) *Omnium Investment Co.*, [1895] 2 Ch. 127. For form of affidavit, *post*, pp. 703 and 704. The practice in this and other matters above mentioned seems identical with the practice on a reduction of capital, and it will be necessary, therefore, to strictly prove the summoning of the meetings.

(*f*) Companies (Consolidation) Act, 1908, s. 9 (4).

Under this power to sanction an alteration in part the Court has sometimes added words making any new objects, which are to be inserted, pursuant to the resolution altering the memorandum, incidental to the original objects of the company (*g*).

The Court may also make the order on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper (*h*).

The most common condition imposed by the Court, as a term on which it will sanction an alteration, is one requiring the company to change its name, where the name represents the nature of the business the company carried on under its original memorandum, and not the business the company purposes to carry on under its altered memorandum.

In such case the Court will require that it should approve the new name, and the company's name will have to be altered by special resolution, and with the approval of the Board of Trade under section 8 (3) of the Act. Thus, in the case of a company formed to carry on business in India, which was taking power to do similar work elsewhere, this was done (*i*), and the same condition was imposed in the case of a company formed to acquire land in the Egyptian Delta, which acquired power to acquire land in the Soudan (*k*), in the case of insurance companies extending the scope of the risks they could insure against (*l*), in the case of investment companies extending the range of their investment powers (*m*), and in the case of a company formed to use electricity for telephonic purposes, but making alterations so as to enable them to use it for other purposes (*n*). But a change of name was not required where the company was not a trading company in the ordinary sense, and such a change would have involved considerable expense (*o*).

In one case an insurance company had as a condition to give an undertaking to obtain the consent of all its existing policy-holders, or to postpone the alteration until all the dissentient policy-holders had ceased to hold policies (*p*). In another case a company was

(*g*) *Spiers and Pond* (1895), 13 Reports, 838; 2 Mans. 596; *Fleetwood Estate Co.* (1897), W. N. 20; *Ulster Marine Insurance Co.* (1891), 27 L. R. Ir. 487; see also *National Boiler Insurance Co.*, [1892] 1 Ch. 306.

(*h*) Companies (Consolidation) Act, 1908, s. 9 (4).

(*i*) *Indian Mechanical Gold Extracting*, [1891] 3 Ch. 538.

(*k*) *Egyptian Delta Land and Investment Co.*, [1907] W. N. 16.

(*l*) *Alliance Marine Insurance Co.*, [1892] 1 Ch. 300; *National Boiler Insurance Co.*, [1892] 1 Ch. 306.

(*m*) *Government Stocks Investment Co.* (*No.* 2), [1892] 1 Ch. 597; *Foreign and Colonial Government Trust Co.*, [1891] 2 Ch. 395.

(*n*) *Oriental Telephone Co.* (1891), W. N. 153.

(*o*) *Trust and Agency Co. of Australia* (1909), 25 T. L. R. 61.

(*p*) *National Boiler Insurance Co.*, [1892] 1 Ch. 306.

compelled to give its debenture-holders a floating charge, by way of further security (*q*).

Another condition that is sometimes imposed is that the order shall be advertised in the same way as the petition (*r*). There is no established practice in the matter (*s*), and this condition is rarely imposed.

Sometimes the company is put on an undertaking to perform the condition imposed (*t*), but the more usual course is to direct that the order shall not go till the condition is complied with (*u*), and in such case the Registrar or Master will have to be satisfied with an affidavit or other evidence showing that the condition has been complied with. The certificate of the Registrar of Joint Stock Companies must be produced on a change of name. The order will be dated on the day when the condition is complied with, or if that is in vacation, on the first day of the next sittings.

In the case of a limited company not formed for profit and licensed by the Board of Trade to omit the word "limited" after its name (*x*), the Board of Trade must be served with the petition, and the Court will not sanction any alteration until it has been approved by the Board of Trade (*y*). The proposed alterations should in these cases be submitted to the Board of Trade before they are submitted to the meetings of the company.

An office copy of the order confirming the alteration together with a printed copy of the memorandum as altered or of the memorandum and articles substituted for a deed of settlement (*z*) must within fifteen days from the date of the order or such extended time as the Court may allow be delivered to the Registrar of Joint Stock Companies, and he must register the same and certify the registration under his hand. Such certificate will be conclusive evidence that all the requirements of the Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered will be the memorandum of the company (*a*), or, if it be a case of substituted memorandum and articles, the substituted memorandum and articles will apply to the company as if

(*q*) *Government Stocks Investment Co.* (*No.* 2), [1892] 1 Ch. 597.

(*r*) *Copper Mines Tinplate Co.* (1897), W. N. 20.

(*s*) *Lancaster Banking Co.* (1897), 75 L. T. 647. For such an advertisement, *post*, p. 718.

(*t*) *Government Stocks Investment Co.* (*No.* 2), [1892] 1 Ch. 597. This case and the cases cited in the next note are all cases where a change of name was required.

(*u*) *Foreign and Colonial Government Trust Co.*, [1891] 2 Ch. 395; *Alliance Marine Insurance Co.*, [1892] 1 Ch. 300; *Indian Mechanical Gold Extracting Co.*, [1891] 3 Ch. 538; *National Boiler Insurance Co.*, [1892] 1 Ch. 306; *Egyptian Delta Land and Investment Co.*, [1907] W. N. 16. For form of order, *post*, pp. 712 and 713.

(*x*) Companies (Consolidation) Act, 1908, s. 20 (1).

(*y*) *St. Hilda's College*, [1901] 1 Ch. 556.

(*z*) Companies (Consolidation) Act, 1908, s. 264 (2) (*a*).

(*a*) *Ibid.*, s. 9 (6).

it were a company under the Act, with that memorandum and articles, and the company's deed of settlement will cease to apply to it (*b*).

If default is made in delivering any such documents, the company will be liable to a fine not exceeding £10 for every day in which it is in default (*c*). The old Acts did not give the Court power to extend the time for delivering the necessary documents, but it was held that even after the expiration of the fifteen days it was the duty of the Registrar to register, though apparently the Court could not compel him to do so (*d*). Applications of this sort are very rare, and should be made by motion.

FORM OF PETITION FOR ALTERING PROVISIONS OF MEMORANDUM OF ASSOCIATION AS TO OBJECTS.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

MR. JUSTICE

In the Matter of the Company Limited,
and
In the Matter of the Companies (Consolidation) Act 1908.

TO HIS MAJESTY'S HIGH COURT OF JUSTICE.

The humble petition of the above-named Company hereinafter called the Company showeth as follows:—

1. THE Company was registered on the day of 19 under the Companies Acts 1862 to 1900 with a nominal capital of £50,000 divided into 50,000 shares of £1 each.

2. THE registered offices of the Company are situated at in the City of London.

3. THE objects for which the Company was established are stated by its Memorandum of Association to be—

(*a*) To invest money in the purchase of or otherwise acquire and hold any bonds stocks obligations or securities of foreign colonial or British Governments States dominions sovereigns provinces or ruling or public authorities or the shares or obligations of foreign railways or other undertakings having the guarantee of or subsidized by a foreign or colonial or British Government State dominion sovereign province municipality or ruling or public authority or any other security for the payment of which the credit or any property or revenue of any such Government State dominion sovereign province municipality or ruling or public authority is pledged charged or made liable.

And certain other objects therein more particularly set out (*e*).

(*b*) Companies (Consolidation) Act, 1908, s. 264 (2) (*b*).

(*c*) *Ibid.*, s. 9 (7).

(*d*) *Criccieth Pier and Harbour Co.* (1891), W. N. 15. It may be doubted whether, having regard to the provision enabling the Court to extend the time for registration, the Registrar should register an order after the expiration of the fifteen days, until the Court has extended the time.

(*e*) Usually it is desirable to set out the whole of the objects.

4. OF the said shares of the company 25,000 have been issued and the sum of 10*s.* is paid up or credited as paid up on each such share.

5. BY a special resolution of the Company passed and confirmed at extraordinary general meetings of the Company held on the day of 19 and the day of 19 it was resolved as follows :—

"That the Memorandum of Association of the Company be altered by inserting after clause (*a*) thereof a clause (*a* 1) in the following words that is to say : To invest the moneys of the Company in or lend the moneys of the Company on the security of or otherwise to acquire and hold any bonds debenture stock obligations or mortgages of any companies or corporations formed or incorporated under British foreign or colonial law."

6. IT is at the present time very difficult to carry on the present business of the Company so as to obtain an adequate rate of remuneration owing to the somewhat limited range of investments authorized by the Company's Memorandum of Association and the further business which it is proposed to carry on under the proposed new clause of the Company's altered Memorandum of Association can under existing circumstances be conveniently and advantageously combined with the existing business of the Company.

7. THE Company has sufficient working capital and its financial position is shown by the following summary which is extracted from its last balance sheet which was brought down to the 19 .

The capital paid up was	£
The reserve fund was	£
The undivided profits were	£
	£
The assets of the Company amounted to . .	£
Less liabilities	£
	£

8. The Company has issued 100 debentures of £100 each all of which are now outstanding and it has not issued or agreed to issue any other debentures or debenture stock.

9. NO one will be prejudiced by the proposed alteration of the Memorandum of Association of the Company and under the circumstances it is just and equitable that the same should be confirmed by this Court.

Your Petitioner therefore humbly prays :—

1. That the alteration of the Memorandum of Association of the Company sought to be effected by the special resolution above set out may be confirmed by this Court.

2. Or that such other order may be made in the premises as to this Court may seem meet.

NOTE.—It is not proposed to serve this petition on any one.

PETITION WHERE IT IS PROPOSED TO SUBSTITUTE MEMORANDUM AND ARTICLES OF ASSOCIATION FOR A DEED OF SETTLEMENT.

IN THE HIGH COURT OF JUSTICE,

Chancery Division.

MR. JUSTICE NEVILLE.

In the Matter of the A.B. Co. Ltd.

and

In the Matter of the Companies (Consolidation) Act 1908.

TO HIS MAJESTY'S HIGH COURT OF JUSTICE.

The Humble Petition of your Petitioner The A.B. Co. Ltd. (hereinafter called the Company).

Showeth as follows :—

1. The Company was constituted under a deed of settlement (hereinafter called the deed of settlement) dated 18 and expressed to be made between A.B. of the first part C.D. of the second and the several other persons who had on the said day of 18 signed their names and affixed their seals and who should thereafter sign their names and affix their seals to the deed of settlement of the third part. The said Company was registered under Part VII. of the Companies (Consolidation) Act 1908 as a Company limited by shares on the day of 1910.

2. The registered office of the Company is situate at in the City of London.

3. The capital of the Company is £20,000 divided into 20,000 shares of £1 each 15000 of such shares have been issued and paid for in full and no other shares have been issued.

4. The objects for which the Company was established were set out in clause 4 of the deed of settlement and were as follows that is to say :

[The objects will be here set out in extenso.]

5. The following resolution was duly passed as an extraordinary resolution and confirmed as a special resolution at extraordinary general meetings of the company held on the day of 19 and the day of 19 respectively that is to say :—

"That the Memorandum and Articles submitted to this meeting and 'for the purpose of identification subscribed by X.Y. a solicitor of the "Supreme Court be and the same are hereby approved and that pursuant "to the provisions of sections 9 and 264 of the Companies (Consolidation) "Act 1908 the form of the Company's constitution be altered by substi-"tuting such Memorandum and Articles of Association for the Company's "deed of settlement dated the day of 19 and for "all regulations subsequently made and now in force and that the directors "be and they are hereby authorized to apply to the Court to confirm this "resolution under the said Act."

6. The objects of the Company as set out in the Memorandum of Association referred to in the said special resolution are the same as those contained in the deed of settlement and in paragraph 4 of this petition set out and in the same words except for a purely verbal alteration in clause 3 (*d*) of

such Memorandum of Association (corresponding to clause 4 (*d*) of the deed of settlement). Such alteration was necessitated by the difference in form of the two documents.

[Or set out any differences there may be giving the reasons for the proposed alterations.]

7. With regard to the provisions of the deed of settlement (as the same has been varied from time to time) which would if the Company had been originally formed under the Companies (Consolidation) Act 1908 have been required to be contained in the Company's Articles of Association the new Articles of Association referred to in the said special resolution do make certain alterations in such provisions. Such alterations have been made for the purpose of Stock Exchange requirements and for the purpose of bringing the said Articles of Association up to date having special regard to Acts of Parliament and decisions of the Courts since the year 18 when the Company was registered.

[Or as may be.]

8. The proposed alteration in the form of the constitution of the Company is rendered desirable by reason of the fact that the Company proposes to offer some of its shares for subscription to the public and it is thought that intending investors may well be deterred from subscribing if the documents regulating the Company are different to the documents which ordinarily regulate companies.

9. The financial condition of the Company is sound as is shown by its balance-sheets.

10. Under the circumstances it is just and equitable that the alterations in the form of the constitution of the Company proposed to be effected by the special resolution set out in paragraph 5 of this petition should be confirmed by the Court.

Your petitioner therefore humbly prays as follows :—

1. That this Court may confirm the alteration in the form of the constitution of the Company proposed to be effected by the special resolution set out in paragraph 5 of this Petition by substituting the Memorandum and Articles of Association referred to in such special resolution for the deed of settlement of the Company dated 18 and for all regulations of the Company subsequently made and now in force.

2. Or that such other order may be made in the premises as to this Court may seem meet.

NOTE.—It is not proposed to serve this petition on any one.

AFFIDAVIT IN SUPPORT OF PETITION FOR ALTERING PROVISIONS OF MEMORANDUM AS TO OBJECTS.

(*Title same as Petition.*)

I A.B. of in the County of make oath and say as follows:

1. I am the Chairman of the Board of Directors of the above-mentioned Company (hereinafter called the Company) and I have been a Director of the Company since 19 .

2. The Company was registered under the Companies Acts 1862 to 1900 on the day of 19 and the certificate of incorporation of the Company is now shown to me and marked A.B. (1).

3. On the day of 19 the Company obtained a certificate that it was entitled to commence business and shortly after that date it commenced and has at all times since carried on business. The said certificate that the Company is entitled to carry on business is now shown to me and marked A.B. (2).

4. A printed copy of the Memorandum and Articles of Association of the Company with a copy of every special resolution of the Company now in force annexed thereto is now shown to me and marked A.B. (3).

5. The objects and capital of the Company are as shown in exhibit A.B. (3) hereto and of the said capital 25,000 shares have been issued and 10*s.* is paid up or credited as paid up on each such share.

6. By a special resolution of the Company passed and confirmed at extraordinary general meetings of the Company held on the day of 19 and the day of 19 it was resolved as follows and in the following words. [Set out resolution.] The Minute Book of the Company containing on pp. and thereof a record of the proceedings at the said extraordinary general meetings is now shown to me and marked A.B. (4). I was chairman of each of the said meetings and the signature at the foot of each of the said minutes is mine.

7. [State reasons for alteration of objects as *e.g.* in paragraph 6 of the first petition above given or as follows :—

Experience in the case of other companies has shown that the business now carried on by the Company under its Memorandum of Association can most conveniently and advantageously be carried on with the business which it is proposed by the said special resolution to carry on and in particular the following important Companies combine the said two businesses namely :—

or

as may be.]

8. The Company has sufficient working capital and its financial position is sound and is shown by the last three balance-sheets of the Company which are now shown to me and marked A.B. (5).

9. The Company has issued 100 debentures of £100 each and it has not issued or agreed to issue any other debentures or debenture stock. [On the day of last I directed Mr. C.D. the Secretary of the Company to forward to each of the holders of the said debentures a letter informing him of the proposed alteration but none of the said debenture-holders have raised any objection to the proposed alteration.]

10. The petition herein is now shown to me and marked A.B. (6) and I say that such of the statements therein contained as are within my own knowledge are true and that such of the statements therein contained as are not within my own knowledge I believe to be true.

11. No one as far as I can see will be prejudiced by the proposed alteration.

Sworn at etc.

In addition to any affidavits by persons in the same line of business or other experts which it may be thought wise to obtain there should be an affidavit by the secretary or some one who can prove service of notices; this will be in the same form as the affidavit on reduction to prove the same matters (*ee*), with the addition of a paragraph showing any notices given to debenture-holders or other creditors, where such notice has been given.

The first step after the presentation of a petition is to take out a summons for directions (*f*).

ORDER ON SUMMONS.

(*Title same as Petition.*)

Upon the application by summons dated the 13th day of September 1911 of the above-named Co-operative Varieties Ltd. the petitioner named in the petition preferred unto this Court on the 18th day of August 1911 and upon hearing the solicitors for the applicant and upon reading the said petition and the affidavit of C.C.B. filed the 16th day of October 1911 and it appearing that there are no debenture-holders of the above-named Company and the Court being of opinion that the advertisements hereinafter directed will be sufficient notice to all persons whose interests will be affected by the proposed alteration and extension of the objects of the Company. It is ordered that the said petition be placed in the paper for hearing before his lordship Mr. Justice Swinfen Eady on Tuesday the 7th day of November 1911 when any creditor or shareholder who desires to object may attend and be heard and it is ordered that notice of the presentation of the said petition and of the said day appointed for the hearing thereof be inserted on or before the 27th day of October 1911 once each in *The London Gazette* and in the *Times* newspaper. [*Co-operative Varieties, Ltd.*, 00309 of 1911. Mr. Registrar HOOD, October 17th, 1911.]

ORDER REFIXING DATE OF HEARING AND DIRECTING NOTICES TO DEBENTURE-HOLDERS AND CREDITORS.

(*Title.*)

Upon the application by Summons dated the 14th day of February 1908 of Henderson Craig and Co. Limited the Petitioner named in the Petition presented unto the Court in the above matter on the 30th January 1908 and which Petition was on the 13th February 1908 amended pursuant to leave of the Court. And upon hearing the Solicitors for the Applicant and upon reading the Order herein dated the 7th day of February 1908 the Affidavit of C.T.C. filed the 4th February 1908 and the Affidavit

(*ee*) See *supra*, pp. 650 and 651.

(*f*) This summons is always requisite: *Munster and Leinster Bank*, [1907] 1 Ir. 237. In addition to the affidavits supporting the petition the summons must be supported by an affidavit showing the papers in which it is desirable to advertise the petition, whether there are debentures or no, and in some cases where the alteration is considerable, speaking as to creditors.

of R.B.P. filed the 6th February 1908 and the several Exhibits therein referred to.

IT IS ORDERED that all proceedings under the said Order dated the 7th February 1908 be stayed. And the Court being of opinion that the Advertisements and Notices hereinafter directed will be sufficient Notice to all persons whose interests will be affected by the alteration in the Memorandum of Association of the said Company.

IT IS ORDERED that the said Petition as amended be placed in the Paper for Hearing on Tuesday the 17th day of March 1908.

AND IT IS ORDERED that Notice of the presentation of the said Petition and of the said day fixed for the Hearing thereof be inserted on or before the 28th day of February 1908 in the *London Gazette* and in *The Times* and the *Daily Telegraph* newspapers and that Notice to the like effect and also requiring Notice in writing of any objection to the confirmation of the alteration of the Memorandum of Association of the said Company and stating the grounds of such objection to be sent on or before the 12th March 1908 to its Solicitors be sent on or before the 24th February 1908 to the Holder of the Debenture issued by the said Company and to each creditor of the said Company whose Claim amounts to or exceeds £100. [*Re Henderson Craig & Co., Ltd.*, 0024 of 1908. Mr. Registrar HOOD, February 18th, 1908.]

FORM OF ADVERTISEMENT.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

MR. JUSTICE

In the Matter of the Company Limited
and
In the Matter of the Companies (Consolidation) Act 1908.

Notice is hereby given that a petition was on the day of 19 presented to His Majesty's High Court of Justice by the above named Company to confirm an alteration of the said Company's objects proposed to be effected by a special resolution of the said Company passed at an extraordinary general meeting of the Company held on the 19 and confirmed at an extraordinary general meeting of the Company held on the 19 and which resolution is in the words and figures following [set out resolution]. And notice is hereby further given that the said petition is directed to be heard before his lordship Mr. Justice on the day of 19 and any person interested in the said Company whether as creditor or shareholder or otherwise desirous of opposing the making of an order for the confirmation of the said alteration under the above Act should appear at the time of hearing personally or by counsel for that purpose. A copy of the petition will be furnished to any person requiring the same by the Company's solicitors Messrs. A.B. & Co. of E.C. on payment of the regulated charge for the same.

Dated

A.B. & Co.
Solicitors for the above-named Company.

FORM OF CIRCULAR

Directed in some cases to be sent to Creditors (*g*).

IN THE HIGH COURT OF JUSTICE,

Chancery Division.

MR. JUSTICE NEVILLE

In the Matter of the A.B. Company Limited

and

In the Matter of the Companies (Consolidation) Act 1908.

To Mr.

Take notice that a petition was on the day of 19 presented to His Majesty's High Court of Justice by the above-named A.B. Co. Ltd. praying that the alteration of its memorandum resolved upon by resolution passed at an extraordinary general meeting of the said Company held on the 19 and confirmed at an extraordinary general meeting of the said Company held on the 19 may be confirmed by the Court which resolution was as follows [here set out resolution] and that the said petition is directed to be heard before the Honourable Mr. Justice Neville sitting at the Royal Courts of Justice Strand London on Tuesday the 3rd day of March 19 and further take notice that if you object to the making of an order confirming the said alteration of the Company's Memorandum of Association you are required to give notice in writing of your objection stating the grounds thereof to the undersigned on or before the 27th day of February 19 and that if you have given such notice you may if so advised attend in Court either in person or by counsel at the hearing of the said Petition and be heard thereon. A copy of the petition will be forwarded to you if you require the same by us on payment of the regulated charge for the same.

Dated 19 .

X.Y. of

Solicitors for the Company.

ANOTHER FORM OF NOTICE TO CREDITORS.

(*Title and Heading same as Petition.*)

Notice is hereby given that a petition presented to the High Court of Justice Chancery Division on the 19 for confirming a special resolution which was passed at an extraordinary general meeting of the above-mentioned Company held on the 19 and confirmed at an extraordinary general meeting of the said Company held on the 19 to the effect following [here set out resolution] is directed to be heard before his lordship Mr. Justice at the Royal Courts of Justice Strand London on day the day of 19 .

Any person interested in the said Company as a debenture-holder secured or unsecured creditor or otherwise desiring to oppose the making

(*g*) Where such notices are directed an affidavit showing that they have been duly sent out and exhibiting the answers received must be made. The above form was used in *Henderson, Craig & Co., Ltd.*, 0024 of 1908.

of an order for the confirmation of the said resolutions under the above act should appear at the time of the hearing by himself or his counsel for the purpose and a copy of the Petition will be furnished to any such person requiring the same by the undermentioned solicitors on payment of the regulated charge for the same.

Dated this day of 19 .

Yours etc.
A.B. & Co.
St. E.C.

CIRCULAR ACCOMPANYING LAST PRECEDING NOTICE.

(*Title and Heading same as Notice.*)

Gentlemen (or Sir or Madam)

We beg to enclose formal notice of an application to confirm a resolution for altering the provisions of the Memorandum of Association of the above-named Company which application is to be heard before his lordship Mr. Justice on day the 3rd March 19 .

We are sending you this circular for the purpose of ascertaining whether you as a holder of debentures or as a secured or unsecured creditor assent to or dissent from or are neutral with reference to the proposed alteration.

We shall be obliged by your writing "assenting" "dissenting" or "neutral" on the form sent herewith and returning it to us on or before the 25th inst.

Dated this 10th of February 19 .

Yours etc.
A.B. & Co.
Street, E.C.
Solicitors for the petitioning Company.

FORM TO BE SENT WITH THE ABOVE NOTICE AND CIRCULAR (*h*).

IN THE HIGH COURT OF JUSTICE,
Chancery Division.
MR. JUSTICE

In the Matter of the Company Limited
and
In the Matter of the Companies (Consolidation) Act 1908.

To Messrs. A.B.
Street E.C.
Solicitors for the above-named Company.

Gentlemen,

I/We beg to acknowledge the receipt of your notice dated the day of 19 of an application to confirm a resolution for altering

(*h*) This form with the preceding notice and circular was used in *Alton Court Brewery Co.*, 0019 of 1897.

the provisions of the Memorandum of Association of the above-named Company I/we request that you will return me/us to his lordship Mr. Justice as in reference to such alteration.

I am / We are

Yours etc.

NOTE.—Insert "assenting" "dissenting" or "neutral" as the case may be.

ORDER SANCTIONING ALTERATION OF MEMORANDUM OF ASSOCIATION.

(*Title.*)

Upon the Petition of the above-named City of London Real Property Company Limited on the 2nd December 1910 preferred unto this Court and upon hearing Counsel for the Petitioner, and upon reading the said Petition the Order dated the 5th December 1910 the two Affidavits of S.O.R. filed respectively the 3rd December and the 18th December 1910 the Affidavit of S.W.G.A.A. and C.J.L. filed the 3rd December 1910 the Affidavit of S.W. and the Joint and several Affidavit of B.H.P. and W.E.R.I. both filed the 15th December 1910 and the several Exhibits in the said Affidavits or some of them respectively referred to the *London Gazette* and *The Times* newspaper both of the 9th December 1910 and each containing a Notice of the presentation of the said Petition and that the same was appointed to be heard on the 20th December 1910.

THIS COURT DOTH ORDER that the alteration in the Memorandum of Association of the above-named Company proposed by the Special Resolution of the above-named Company passed and confirmed in accordance with Section 69 of the above-mentioned Act at Extraordinary General Meetings of the above-named Company held respectively on the 2nd December 1910 and the 19th December 1910 (which Special Resolution is set forth in the Schedule hereto) be and the same is hereby confirmed in accordance with the provisions of the above-mentioned Act.

AND IT IS ORDERED that the above-named Company do within 15 days from the date of this Order deliver to the Registrar of Companies an Office Copy of this Order together with a printed Copy of the Memorandum of Association as altered in accordance with the said Resolution.

H. J. Hood,
Registrar.

THE SCHEDULE ABOVE REFERRED TO.

Resolution for altering Company's Memorandum of Association.

1. That the provisions of the Memorandum of Association of the Company with respect to the Objects of the Company be altered pursuant to the provisions of Section 9 of The Companies (Consolidation) Act 1908 so that Clause 3 of such Memorandum may read as follows that is to say:—

Third. The objects for which the Company is established are:—

1. To acquire by purchase lease or otherwise Freehold Copyhold Leasehold and other property in the City of London and its neighbourhood and elsewhere.

2. To develop and turn to account any Land acquired by or in which the Company is interested and in particular by laying out and preparing the same for Building purposes constructing altering pulling down decorating maintaining furnishing fitting up and improving buildings and by planting paving draining cultivating letting on Building Lease or letting agreement and by advancing money to and entering into Contracts or arrangements of all kinds with Builders Tenants and others.

3. To construct maintain improve develop work control and manage any Warehouses Factories Lifts Wells Waterworks Telephone Works Electric Works and other Offices Shops Stores and Works and Conveniences which may seem to the Company calculated directly or indirectly to advance its interests and to contribute or otherwise assist or take part in the construction maintenance development working-control and management thereof.

4. To lend money either with or without Security and generally to such persons or Companies and on such terms and conditions as the Company may think fit and in particular to persons or Companies undertaking to build on or improve any property in which the Company is interested and to Tenants Builders and others.

5. To act as Agents for the investment Loan payment transmission and collection of money for the Purchase Sale improvement development and Management of property and to undertake the Office of Receiver, Manager Treasurer Secretary or Auditor and to undertake any duties in relation to the Registration of Transfers or the issue of Certificates or otherwise.

6. To invest and deal with the moneys of the Company not immediately required in such Stocks Funds Shares Securities as may from time to time be determined.

7. To borrow or raise money in such manner as the Company may think fit and in particular by the issue of Debentures or Debenture Stock perpetual or otherwise charged upon all or upon any part of the Company's property both present and future including its Uncalled Capital and to purchase redeem or pay off any such Securities.

8. To enter into partnership or into any arrangement for sharing profits union of interests co-operation joint adventure reciprocal concession or otherwise with any person partnership or Company carrying on or engaged in or about to carry on or engage in any business or transactions which this Company is authorized to carry on or engage in and any businesses or transaction capable of being conducted so as directly or indirectly to benefit this Company and to guarantee the Contracts of or otherwise assist any such person or Company.

9. To take or otherwise acquire and hold Shares in any other Company having Objects altogether or in part similar to those of this Company or carrying on any business capable of being conducted so as directly or indirectly to benefit this Company.

10. To remunerate any person partnership or Company for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the Shares in the company [Here followed the other objects]. *Re City of London Real Property Co.*, 00428 of 1910. NEVILLE, J., December 20th, 1910.]

ORDER SANCTIONING ALTERATION OF MEMORANDUM OF ASSOCIATION.

(*Title.*)

Upon the Petition of the above-named Barclay and Company Limited on the 24th October 1910 preferred unto this Court and upon hearing Counsel for the Petitioner and upon reading the said Petition the Order dated the 1st November 1910 the Affidavit of F.A.B. the Affidavit of J.E.M. both filed 31st October 1910 and the several Exhibits in the said Affidavits respectively referred to the *London Gazette* and *The Times* newspaper both of the 4th November 1910 and each containing a Notice of the presentation of the said Petition and that the same was appointed to be heard on the 15th November 1910.

This Court doth Order that the alteration in the Memorandum of Association of the above-named Company proposed by Special Resolution of the above-named Company passed at the Annual General Meeting of the above-named Company held on the 21st July 1910 and confirmed in accordance with Section 69 of the above-mentioned Act at an Extraordinary General Meeting of the above-named Company held on the 18th August 1910 (which Special Resolution is set forth in the Schedule hereto) be and the same is hereby confirmed in accordance with the provisions of the above-mentioned Act.

And it is Ordered that the above-named Company do within 15 days from the date of this Order deliver to the Registrar of Companies an office copy of this Order together with a printed copy of the Memorandum of Association altered in accordance with the said Resolution.

THE SCHEDULE ABOVE REFERRED TO.

Resolution for altering Company's Memorandum of Association.

That the provisions of Clause 3 of the Memorandum of Association of the Company with respect to the objects of the Company be altered by inserting after sub-clause (*c*) of that clause the sub-clauses following that is to say:—

(*c* 1) To act as Executors and Administrators and to undertake and execute trusts of all kinds whether private or public including religious or charitable trusts and generally to carry on what is usually known as Trustee and Executor business and in particular and without limiting the generality of the above to act as Judicial and Custodian Trustees Trustees for the purposes of the Settled Land Acts Trustees for the holders of Debentures and Debenture Stock and Administrators of the property of Convicts and to act as Receivers Managers Committees and Liquidators.

(*c* 2) To hold Administer carry on as a going concern turn to account sell realise invest dispose of and deal with all assets business and property of which the Company become Trustees Executors Administrators Receivers Managers Committees or Liquidators.

(*c* 3) To make deposits enter into recognizances and bonds and otherwise give security for the due execution and performance whether by the Company or by any officer of the Company or by any other person of the

duties of Executors Administrators Trustees Receivers Managers Committees or Liquidators and generally to carry on guarantee and indemnity business of all kinds and to effect counter-guarantees. [*Re Barclay & Co., Ltd.*, 00322 of 1910. NEVILLE, J., November 15th, 1910.]

ORDER WHERE AN ALTERATION TO THE MEMORANDUM OF ASSOCIATION HAS BEEN SANCTIONED SUBJECT TO A CHANGE OF NAME—AND SUCH CHANGE HAS BEEN MADE.

(*Title.*)

Upon the Petition of the above-named Co-operative Varieties Ltd. (*i*) now Co-operative and General Varieties Ltd., whose registered office is situate at in the County of on the 18th August 1911 preferred unto this Court and upon hearing Counsel on the 7th November 1911 for the Petitioner and upon reading the said Petition the Order dated the 17th October 1911 the Affidavit of C.C.B. filed the 16th October 1911 the joint and several Affidavit of W.L. and W.S. filed the 20th November 1911 and the Exhibits in the last-mentioned Affidavit referred to the *London Gazette* of the 24th October 1911 and *The Times* newspaper of the 24th October 1911 and each containing a Notice of the presentation of the said Petition and that the same was appointed to be heard on the 7th November 1911.

AND this Court having on the 7th November 1911 imposed a condition to the making of an Order confirming the alteration of the Company's objects as prayed by the said Petition that the name of the Company should be changed from Co-operative Varieties Limited to Co-operative and General Varieties Limited. And it appearing from the certificate of the Registrar of Companies dated the 3rd January 1912 that the name of the Company has been changed accordingly.

THIS COURT DOTH ORDER that the alteration in the Memorandum of Association of the above-named Company proposed by the Special Resolution of the above-named Company passed and confirmed in accordance with Section 69 of the above-mentioned Act, at Extraordinary General Meetings of the above-named Company held respectively on the 7th July and the 28th July 1911 (which Special Resolution is set forth in the Schedule hereto) be and the same is hereby confirmed in accordance with the provisions of the above-mentioned Act.

AND IT IS ORDERED that the above-named Company do within fifteen days from the date of this Order deliver to the Registrar of Companies an office copy of this Order, together with a printed copy of the Memorandum of Association altered in accordance with the said Resolution.

THE SCHEDULE ABOVE REFERRED TO.

Resolutions for altering Company's Memorandum of Association.

" That with a view to carrying on the business and operations of the " Company more efficiently and extending their business and to com- " pletely remove the restrictions at present binding the Company to only " do business with and issue Shares to persons who are Members of The " Variety Artistes Federation the Memorandum and Articles of Associa- " tion be altered in the following manner :—

(*i*) The original name will be in the title.

"1. To omit the words 'of The Variety Artistes Federation or affiliated "'Societies or Bodies' in the 1st and 2nd paragraphs and the word "'Variety' in the 4th line in Clause 'A' of paragraph 3 of the Memo-"randum of Association.

"2. To omit the words 'Variety Artistes Federation' and to sub-"stitute the word 'Company' in the 4th line in Clause 'E' of paragraph 3 "of the Memorandum of Association.

"3. To omit the words 'and in particular to Members of The Variety "'Artistes Federation and affiliated Societies or Bodies and others having "'dealings with the Company' in the 2nd 3rd and 4th lines of Clause "'J' of the Memorandum of Association.

"4. To omit the words 'or may be connected with the Variety Artistes "'Federation or The Variety profession' in the 3rd and 4th lines of "Clause 'S' of the Memorandum of Association.

"5. To omit paragraph 2 of the Articles of Association and to sub-"stitute in place the following:—

"The Shares shall be at the disposal of the Directors and they may "allot or otherwise dispose of them to such persons at such times and "generally on such terms and conditions as they shall think proper pro-"vided always that no Share shall be issued at a discount." [*Re Co-operative Varieties, Ltd.*, 00309 of 1911. SWINFEN EADY, J., January 11th, 1912.]

ORDER SANCTIONING SPECIAL RESOLUTION FOR SUBSTITUTING MEMORANDUM AND ARTICLES OF ASSOCIATION FOR A DEED OF SETTLEMENT (*k*).

(*Title.*)

Upon the petition of the above-named Ransomes Sims and Jefferies Limited on the 25th April 1911 preferred unto this Court and upon hearing Counsel for the petitioner and upon reading the said petition the Order dated the 2nd day of May 1911 the Affidavit of P.E.R. and the Affidavit of H.J.C. both filed the 27th April 1911 and the several Exhibits in the said Affidavits respectively referred to the *London Gazette* and *The Times* newspaper both dated the 5th May 1911 and each containing a notice of the presentation of the said petition and that the same was appointed to be heard on the 16th May 1911.

THIS Court doth Order that the alteration in the form of the Constitution of the above-named Company proposed by the Special Resolution of the above-named Company passed and confirmed in accordance with Section 69 of the Companies (Consolidation) Act 1908 at Extraordinary General Meetings of the above-named Company held respectively on the 3rd and 18th April 1911 (which Special Resolution is set forth in the Schedule hereto) be and the same is hereby confirmed in pursuance of the provisions of the above-mentioned Act.

And it is Ordered that the above-named Company do within 15 days

(*k*) In the Chancery Division the memorandum of association must, if not in the schedule to the order, be filed in the Central Office: Seton, 6th Ed. vol. iii. p. 2504.

from the date of this Order deliver to the Registrar of Companies an office Copy of this Order together with a printed copy of the Memorandum of Association referred to in the said Resolution.

THE SCHEDULE ABOVE REFERRED TO.

Resolution for Altering Form of Constitution of the Company.

"That the Memorandum and Articles of Association submitted to "this Meeting and for the purpose of identification subscribed by the "Chairman be and the same are hereby approved and that pursuant to "the provisions of Sections 9 and 264 of the Companies (Consolidation) "Act 1908 the form of the Company's constitution be altered by sub-"stituting such Memorandum of Association and such Articles of Associa-"tion for the Company's Deed of Settlement dated the 1st of May 1884 "and for all regulations of the Company subsequently made and now in "force and that the Directors be and they are hereby authorised to apply "to the Court to confirm this Resolution under the said Act." [*Re Ransomes, Sims, and Jefferies, Ltd.*, 00155 of 1911. NEVILLE, J., May 16th, 1911.]

ORDER SANCTIONING REDUCTION OF CAPITAL AND ALTERATION IN MEMORANDUM OF ASSOCIATION.

(*Title.*)

Upon the Petition of the above-named Customs and Bonded Warehouses Company Limited and Reduced on the 10th August 1906 preferred unto this Court and upon hearing Counsel for the Petitioner and upon reading the said Petition the Order dated the 10th August 1906 dispensing with the list of Creditors the two several Affidavits of G.F.S. filed respectively the 10th August and the 21st August 1906 the Affidavit of G.B. the Affidavit of F.J.W. the Affidavit of J.A.H. all filed the 21st August 1906 the Affidavit of P.F.R. the Affidavit of G.F.S. both filed the 27th October 1906 and the Joint Affidavit of F.J.W. and G.F.S. filed 19th November 1906 and the exhibits in the said Affidavits or some of them respectively referred to the *London Gazette* dated the 14th August 1906 and *The Times* newspaper dated the 13th August 1906 and each containing a notice of the presentation of the said petition as to the reduction of Capital and that the same was appointed to be heard on the 22nd August 1906.

THIS COURT DOTH ORDER that the cancellation and reduction of the capital of the above-named Company resolved on and effected by the Special Resolution passed and confirmed at two Extraordinary General Meetings of the Petitioners the said Customs and Bonded Warehouses Company Limited and Reduced held respectively on the 23rd July 1906 and the 8th August 1906 and which Resolution was in the words and figures following that is to say:—

"That the Capital of the Company of which an amount of at least "£226774 has been lost or is unrepresented by available assets be reduced "from £500000 divided into 30000 preference shares of £10 each (of "which 23387 have been issued and are fully paid) and 20000 Ordinary "Shares of £10 each (all of which have been issued and are fully paid) to "£207096 divided into 25887 Ordinary Shares of £8 each.

"That this reduction be effected by (*a*) cancelling all the unissued Pre-
"ference Shares (*b*) first reducing the nominal amount of the said 23387
"Preference Shares of £10 each to £8 each and then exchanging them for
"23387 Ordinary Shares of £8 each issued as fully paid thus abolishing
"every preference privilege priority and special right now belonging to
"such Preference Shares and (*c*) first reducing the nominal amount of all
"the 20000 Ordinary Shares from £10 to £1 and then consolidating such
"20000 Ordinary Shares of £1 each into 2500 Ordinary Shares of £8 each
"issued as fully paid"
be and the same is hereby confirmed in accordance with the provisions of the above-mentioned Companies Acts 1867 and 1877. And the Court doth hereby approve the form of the Minute set forth in the First Schedule hereto.

And the Judge being of opinion that the advertisements hereinafter referred to are a sufficient notice to the Debenture Holders of the above-named Company and all other persons whose interests will be affected by the proposed alteration and extension of objects of the above-named Company.

This Court doth Order that the alteration in Clause 3 only of the Memorandum of Association of the above-named Company resolved upon by the Special Resolution of the above-named Company passed and confirmed in accordance with Section 51 of the Companies Act 1862 at the above-mentioned Extraordinary General Meetings of the above-named Company held respectively on the said 23rd of July and 8th August 1906 (which Special Resolution so far as it related to the said Clause 3 of the Memorandum of Association of the above-named Company together with the said Clause 3 as altered by the said Special Resolution as aforesaid are set forth in the Second Schedule hereto be and the same is hereby confirmed in pursuance of the provisions of the Companies (Memorandum of Association) Act 1890.

And it is Ordered that this Order be produced within 15 days from the date thereof to the Registrar of Joint Stock Companies and that an office copy thereof be delivered to him together with a printed copy of the Memorandum of Association altered in regard to Clause 3 thereof in accordance with the said resolution and together with a Minute in the words or to the effect set forth in the said first Schedule hereto.

And it is Ordered that Notice of the Registration by the Registrar of Joint Stock Companies of this Order and of the said Minute be inserted in *The Times* newspaper within 10 days after such Registration.

And it is Ordered that the addition of the words "and Reduced" to the title of the said Company be altogether dispensed with.

H. J. Hood,
Registrar Companies (Winding-up).

THE FIRST SCHEDULE BEFORE REFERRED TO.

Minute approved by the Court.

"The Capital of the Customs and Bonded Warehouses Company
"Limited and Reduced henceforth is £207096 divided into 25887 Ordinary
"Shares of £8 each reduced from the former capital of £500000 divided

"into 30000 Preference Shares of £10 each and 20000 Ordinary Shares "of £10 each.

"At the time of the Registration of this Minute all of the said 25887 "Ordinary Shares have been issued and have been and are to be deemed "to be fully paid."

THE SECOND SCHEDULE ABOVE REFERRED TO.

Resolution and Clause 3 of the Memorandum of Association of the above-named Company as altered thereby and confirmed by the Court.

"That the objects of the Company be altered in accordance with the "print of the Memorandum of Association submitted to this Meeting "and for the purpose of identification signed by the Chairman thereof "with such modifications (if any) as the Court may prescribe."

The objects for which the Company is established are:

(*a*) To carry on in any country or place the business of bonded and general warehousemen wharfingers or proprietors of warehouses wharves docks jetties piers and stores and of shipowners shipbuilders shipwrights engineers dredgers tug owners commission agents merchants carriers by land or by water railway telegraph or telephone proprietors and any other business including advances of funds against goods lying in warehouses which can be conveniently carried on in connection with the business of warehousemen and wharfingers or which are of a character similar or analogous thereto:—

[Here followed the remaining objects verbatim as in the Memorandum of Association.] [*Customs and Bonded Warehouses Company Ltd. and Reduced*, 00218 of 1906. WARRINGTON, J., November 20th, 1906.]

ORDER SANCTIONING RESOLUTION REORGANIZING SHARE CAPITAL OF COMPANY SANCTIONING SCHEME OF ARRANGEMENT AND CONFIRMING ALTERATION IN MEMORANDUM OF ASSOCIATION.

(*Title.*)

UPON the petition of the above-named United States Trust Corporation Limited on the 26th May 1911 preferred unto this Court and upon hearing Counsel for the Petitioners and upon reading the said Petition, the order dated the 7th March 1911 whereby the said Company was ordered to convene separate meetings of

(1) The holders of preferred Stock of the above-named Company.

(2) The holders of deferred Stock of the above-named Company and

(3) The holders of Founder's Shares of the above-named Company for the purpose of considering and if thought fit approving, with or without modification, a Scheme of Arrangement proposed to be made between the holders of Founder's Shares of the Company and the said Company (a copy of which Scheme was set forth in the schedule to the said order) the *London Gazette* and *The Times* newspaper both of the 21st March 1911 and each containing an advertisement of the notice convening the said meetings directed to be held by the said order dated the 7th March 1911

the affidavit of R.H.E. filed the 27th March 1911 the two several affidavits of A.B. filed respectively the 10th May and the 31st May 1911 the affidavit of H.C. filed the 31st May 1911 and the several Exhibits in the said affidavits or some of them respectively referred to and the order dated the 1st June 1911 the *London Gazette* and *The Times* newspaper both dated the 9th June 1911 and each containing a notice of the presentation of the said Petition and that the same was appointed to be heard on the 20th June 1911.

THIS COURT doth order that the reorganisation of the share capital and the scheme of arrangement of the above-named Company (as modified by the Court) resolved on and effected by the special resolution passed and confirmed at the two Extraordinary General Meetings of the Petitioners the said United States Trust Corporation Limited held respectively on the 25th day of April 1911 and the 11th day of May 1911 and which resolution as set forth in the first schedule hereto be and the same are hereby confirmed and sanctioned by the Court in accordance with the provisions of the above-mentioned Act.

AND THIS COURT doth hereby declare the said Scheme of Arrangement (as so modified) to be binding on the holders of the Preferred Stock and Deferred Stock and the holders of Founder's Shares of the above-named Company and also on the said United States Trust Corporation Limited.

AND THIS COURT DOTH ORDER that the alteration of the provisions in the Memorandum of Association of the above-named Company with respect to its objects proposed by the said Special Resolution of the above-named Company passed and confirmed as aforesaid and which Special Resolution so far as the same relates to such alteration is set forth in the third Schedule hereto be and the same is hereby confirmed in accordance with the provisions of the above-mentioned Act.

AND IT IS ORDERED that the above-named Company do within fifteen days from the date of this Order deliver to the Registrar of Companies an office copy of this Order, together with a printed copy of the Memorandum of Association altered in accordance with the said Resolution.

THE FIRST SCHEDULE BEFORE REFERRED TO.

Resolution reorganizing the share capital of the Company and the scheme of arrangement as modified by the Court.

(1) That for the purpose of carrying out the following consolidation the Directors be authorised to convert the Founder's Shares into Stock.

(2) That the conditions of the Company's Memorandum of Association be modified so as to reorganise its share capital by consolidating the said Founder's Shares, or the Stock resulting from the conversion thereof with the £99440 Deferred Stock of the Company, so that the two classes may become one class, consisting of £99640 Deferred Stock, "Provided that, after the consolidation of the Founder's Shares with the Deferred Stock, no dividend in excess of 7½ per cent. on the consolidated Deferred Stock shall be paid in respect of any year until the Company's reserve fund shall amount to £38000."

(3) That upon the consolidation of the Founder's Shares or the Stock resulting from the conversion thereof, with the Deferred Stock of the

Company there be paid out of the reserve fund to each holder of Founder's Shares the sum of £150 for each Founder's Share held by him.

(4) That for the purpose of obtaining confirmation of the arrangement sought to be effected by Resolutions 2 and 3, such arrangement shall be deemed to include any condition or modification which the Court may approve or impose.

THE SECOND SCHEDULE BEFORE REFERRED TO.

Resolution altering the Memorandum of Association of the Company.

(6) That the objects of the Company, set out in paragraphs 4 and 5 of Clause 3 of the Memorandum of Association of the Company be abandoned and that the Memorandum of Association be altered by striking out therefrom the said 4th and 5th paragraphs. [*United States Trust Corporation, Ltd.*, 0084 of 1911. NEVILLE, J., June 20th, 1911.]

FORM OF ADVERTISEMENT OF ORDER (*l*).

IN THE HIGH COURT OF JUSTICE,
Chancery Division.
MR. JUSTICE

In the Matter of the Company Limited
and
In the Matter of the Companies (Consolidation) Act 1908.

Notice is hereby given that by an order made in the above matters it was ordered that the alteration of the Memorandum of Association of the said Company with respect to the objects of the said Company effected by a special resolution of the Company passed on the day of 19 and confirmed on the day of 19 and which was in the words and figures following [set out resolution] be confirmed. And notice is hereby also given that an office copy of the said order together with a printed copy of the Memorandum of Association as altered was within 15 days from the date of the said order delivered by the said Company to the Registrar of Joint Stock Companies and he has duly registered the same.

A.B. of
Solicitors for the said Company.

FORMS OF RESOLUTIONS.

"That the provisions of the Memorandum of Association of the Company be altered with respect to the objects of the Company by striking out of clause 3 sub-clause (b) of such Memorandum of Association the following words [set out words] which are contained in line 5 of the said sub-clause."

(*l*) This advertisement is very rarely ordered.

ANOTHER FORM, CONFERRING BORROWING POWER (*m*).

"That the provisions of the Memorandum of Association of the Company be altered with respect to the objects of the Company by adding the following sub-clauses to clause 3 of the said Memorandum of Association :—

"(A, *a*) To borrow or raise money or secure money already or hereafter from time to time borrowed or raised by the issue of perpetual or terminable bonds debentures debenture stock obligations mortgages and securities of all kinds redeemable or otherwise and to frame constitute and secure the said bonds debentures debenture stock obligations mortgages and securities in such manner and form as may seem expedient with full power to charge and secure the same on the undertaking of the Company and on the whole or any part of its property assets estate rights and effects present and future including any capital from time to time uncalled by a trust deed or otherwise or to secure the same by deposit of securities or other property or otherwise howsoever."

Substitution of memorandum and articles of association for deed of settlement in cases where such substitution is to be accompanied by an alteration of the objects of the company—

That the constitution of the Company be altered by substituting for the Deed of Settlement dated 18 [as varied by the supplemental deed dated 18 and a special resolution of the Company passed and confirmed on 19 and 19] which now constitutes or regulates the Company a Memorandum and Articles of Association in a form which has already been prepared and has for the purposes of identification been signed by Mr. A.B. the solicitor of the Company and which contains a clause extending the objects of the Company as so to enable it to carry on its business at as well as at the other places specified in the said Deed of Settlement

or

That the Memorandum and Articles of Association submitted to this meeting be and the same are hereby approved and that pursuant to the provisions of the Companies (Consolidation) Act 1908 the form of the Company's constitution be altered by substituting such Memorandum of Association with extended objects as therein set forth and such Articles of Association for the Company's Deed of Settlement dated and for all regulations of the Company subsequently made and now in force and that the directors be and they are hereby authorized to apply to the Court to confirm this resolution under the said Act.

Where any notice is accompanied by an explanatory circular, as is sometimes desirable, it should be headed in the same way as a similar circular in the case of a reduction of capital (see *supra*, p. 691), and should make clear any points not shown by the notice summoning the meetings.

(*m*) This form is substantially taken from *Governments Stock Investment Co. (No. 2)*, [1892] 1 Ch. 597.

REORGANIZATION OF SHARE CAPITAL.

A company limited by shares may by special resolution confirmed by an order of the Court modify the conditions contained in its memorandum of association (*n*) so as to reorganize its share capital, whether by the consolidation of shares of different classes, or by the division of its shares into shares of different classes; but no preference or special privilege (*nn*) attached to or belonging to any class of shares can be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class, in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed will bind all shareholders of the class.

Where an order is made under this section an office copy thereof must be filed with the Registrar of Joint Stock Companies within seven days after the making of the order or within such further time as the Court may allow, and the resolution will not take effect until such a copy has been so filed (*o*).

This section apparently applies only where the preference or special privilege is given by the memorandum itself, and not where powers to issue shares with special privileges conferred by the memorandum have been exercised (*p*). There seems to be some question as to the majority requisite at the first class meeting. Must there be an absolute majority of all the shareholders of the class to pass the resolution? or is it enough for any majority of shareholders of the class assembled in general meeting to pass it, provided, of course, that they hold the requisite number of shares? It is submitted that the latter view is the correct one, as the section speaks of "a majority in number of shareholders," not of "the majority," or "a majority in number of the shareholders" (*pp*). Questions, too, may be raised as to whether proxies could be counted in ascertaining such majority—probably they could not, as the Act seems, when it intends to allow proxies in ascertaining a particular number, to say so (*q*).

(*n*) The section has no application where the preferential rights are determined by the articles, and not by the memorandum of association: *Australian Estates and Mortgage Co.*, [1910] 1 Ch. 414.

(*nn*) The right of ordinary shareholders to surplus dividends is not a preference or special privilege: *Stewart Precision Carburettor Co.* (1912), 28 T. L. R. 335.

(*o*) Companies (Consolidation) Act, 1908, s. 45; see also *supra*, pp. 318 and 319.

(*p*) *Australian Estates and Mortgage Co.*, [1910] 1 Ch. 414. In the order given below (pp. 742 and 743) the contrary was assumed to be the case—the point was raised.

(*pp*) Cp. *Clay* v. *The Grand Junction Waterworks* (1904), 21 T. L. R. 31, where however the wording was different.

(*q*) Cp. s. 69 (special resolutions), and s. 120 (compromises); at the confirmatory meetings of the separate classes of shareholders under s. 45 proxies can, if the articles allow, clearly be used, as the resolution has to be confirmed in the same manner as a special resolution of the company. There is no common law right to proxies: *Harbin* v. *Phillips* (1883), 23 C. D. 14.

Where the scheme involves a compromise or arrangement under section 120, meetings directed to be held under that section, will serve as the first meetings of classes of shareholders (*r*).

Where all the members of the company are respondents, and appear by counsel and consent, the Court will sometimes sanction a reorganization even though no class meetings have been held (*rr*).

It is thought that the Court could confirm a compound scheme by which shares are first consolidated into one class and then divided into classes conferring different rights from the rights conferred by the original classes of shares, *e.g.* where the shares were originally divided into 5 per cent. preference shares and ordinary shares, they could by one scheme be all consolidated into ordinary shares, and then divided into 4 per cent. preference shares representing the original preference shares, and ordinary shares.

In *Mellin's Food* (*rrr*) the capital was divided into preference and ordinary shares; and the memorandum provided that the preference shares should rank "both as regards dividends and capital in priority to the ordinary shares," and that "the shares in the capital for the time being" might be divided into several classes with preferential, qualified, or special rights attached thereto, "but not so as to prejudice the preferential right hereby attached to the preference shares." It was held that the company could not increase its capital by issuing preference shares ranking *pari passu* with the original preference shares, unless it complied with s. 45. If this decision is right, it would seem that s. 45 forbids transactions that could have been carried out before it was passed.

The application is made by petition, and it is not usual for any advertisement to be directed (*s*). No summons for directions is issued on these petitions, the petition is presented and then is answered by the following words being written on it: "This Court doth order that all parties concerned do attend hereon on Tuesday, the day of , 19 , at the Royal Courts of Justice, Strand, London, and hereof give notice forthwith." The affidavits in support should prove notices of meeting, exhibit register of shareholders, memorandum and articles, certificate of incorporation, and possibly also the petition, and should explain the reasons for the reorganization.

PETITION FOR REORGANIZING SHARE CAPITAL BY CONSOLIDATING TWO CLASSES OF SHARES INTO ONE.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

MR. JUSTICE

In the Matter of the A.B. Company Ltd.
and
In the Matter of the Companies (Consolidation) Act 1908.

TO HIS MAJESTY'S HIGH COURT OF JUSTICE.

The humble petition of your petitioner the A.B. Company (hereinafter called the Company) sheweth as follows :—

(*r*) See the Order, in *Welsh Flannel Manufacturing Co., Ltd., and Reduced*, 00144 of 1908, *infra*, pp. 742 and 743. In this case the point arose and was argued.

(*rr*) This was done in *Holloway Brothers* (London), 0068 of 1912, NEVILLE, J., February 27th, 1912.

(*rrr*) Unreported, 0018 of 1912, NEVILLE, J., March 5th, 1912.

(*s*) *Ashanti Development*, [1911] W. N. 144; 27 T. L. R. 498.

1. The Company was registered on the day of 1901 under the Companies Acts 1862 to 1900 as a Company limited by shares.

2. The registered office of the Company is situate at in the City of London.

3. The objects for which the company was established were as follows :—

[Here set out the main object or objects] and other objects specified in its Memorandum of Association.

4. The capital of the Company is of £30,000 divided into 10,000 preference shares of £1 each and £20,000 ordinary shares of £1 each. 5000 of the said preference shares and all the said ordinary shares have been issued and all such issued shares are fully paid up.

5. Clause 6 of the Company's Memorandum of Association provides as follows :—

"The preference shares above mentioned shall confer the following "rights and no others, that is to say—

"(1) The right to a 7 per cent. non-cumulative dividend on the amount paid up thereon payable out of the profits of the Company after setting aside such sum to reserve as the directors may from time to time think fit in priority to any dividend on any other shares the Company may issue.

"(2) The right on a winding-up to repayment of the capital paid up thereon before any sum is paid to any other shareholder of the Company in respect of his shares."

6. The following resolution was duly passed as an extraordinary resolution and confirmed as a special resolution at extraordinary general meetings of the Company held on the day of 19 and the day of 19 respectively that is to say—

"That the conditions contained in the Memorandum of Association "of the company be modified so as to reorganize its share capital by the "consolidation of all its shares into shares of one class of ordinary "shares."

7. A separate meeting of the preference shareholders of the Company was held on the day of 19 and at such meeting a resolution in the same words as the special resolution referred to in the last preceding paragraph of this petition was passed by a majority in number of the said preference shareholders holding three-fourths of the share capital of that class. Such resolution was confirmed in the same manner as a special resolution of the Company is required to be confirmed at a subsequent separate meeting of the preference shareholders of the Company held on the day of 19 (*ss*).

8. During the first seven years of its existence the Company did not pay any dividend since then it has not only paid the preference dividend in full but has paid the following dividends on its ordinary shares, that is to say in the year 1909 a dividend at the rate of in the year 1910 a dividend at the rate of in the year 1911 a dividend at the rate of . In addition the Company has a sum of £ standing to reserve.

9. The ordinary shares of the Company are in consequence of the

(*ss*) No separate meeting of ordinary shareholders would be necessary in this case: *Stewart Precision Carburettor Co.* (1912), 28 T. L. R. 335.

foregoing facts at a considerable premium but there may be some difficulty in issuing preference shares at par. Further capital is required and it is felt that under all the circumstances of the case the best and fairest course is to issue the now unissued shares of the Company after first consolidating all the shares of the Company into one class.

10. Under the circumstances it is just and equitable that the reorganization of capital proposed to be effected by the special resolution of the company referred to in paragraph 6 of this petition should be confirmed by the Court.

Your petitioner therefore humbly prays as follows :—

1. That the modification of the conditions contained in the Memorandum of Association of the Company and the consequent reorganization of the share capital of the Company proposed to be effected by the special resolution passed and confirmed at the two extraordinary general meetings of the said Company held respectively on the day of 19 and the day of 19 and referred to in paragraph 6 of this petition may be confirmed by this Court.

2. Or that such other order may be made in the premises as to this Court may seem meet.

NOTE.—It is not proposed to serve this petition on any one.

ORDER ON PETITION TO CONFIRM SPECIAL RESOLUTION FOR REORGANIZATION OF CAPITAL.

(*Title.*)

Upon the Petition of the above-named Cadbury Brothers Limited whose registered office is situate at Bournville in the City of Birmingham on the 27th of November 1911 preferred unto this Court and upon hearing Counsel for the Petitioner and upon reading the said Petition the affirmation of J.S.L. the affirmation of G.C. both filed the 2nd December, 1911 and the several Exhibits in the said affirmations respectively referred to.

THIS COURT DOTH ORDER that the modification of the conditions contained in the Memorandum of the above-named Company and the consequent reorganization of its share capital proposed by the special resolution of the above-named Company passed and confirmed in accordance with section 69 of the above-named Act at extraordinary general meetings of the above-named Company held respectively on the 10th and 25th November 1911 which special resolution is set out in the schedule hereto be and the same is hereby confirmed in accordance with the provisions of the above-mentioned Act and it is ordered that the above-named Company do within 7 days from the date of this Order file with the Registrar of Companies an office copy of this Order.

THE SCHEDULE ABOVE REFERRED TO.

(1) That each of the existing £100 shares in Cadbury Brothers Ltd. (both first preference second preference and ordinary) be subdivided into 100 shares of £1 each. (2) That the existing authorized issues of £4750 six per cent. cumulative first preference shares of £100 each (proposed to be subdivided into £1 shares) and 6000 six per cent. cumulative

second preference shares of £100 each (proposed to be subdivided into £1 shares) in Cadbury Brothers Ltd. be reorganized and consolidated into one class of 1,075,000 six per cent. cumulative preference shares of £1 each all ranking *pari passu* and conferring the right to a cumulative preferential dividend at the rate of six per cent. per annum on the capital for the time being paid up thereon and the right in a winding-up to payment off of capital in priority to all other shares and to participate in any surplus assets which may remain after paying off the remainder of the capital *pari passu* with the ordinary shares to the extent of twenty-five per cent. of their nominal value but no further so that no holder of preference shares shall be entitled as such holder to receive out of such surplus assets any sum in excess of an amount equal to 25 per cent. of the nominal value of the preference shares held by him and that the Company's Memorandum and Articles be altered accordingly. [*Re Cadbury Brothers, Ltd.*, 00430 of 1911. SWINFEN EADY, J., December 5th, 1911.]

COMPROMISES AND ARRANGEMENTS.

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

If a majority in number, representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement will, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound-up, on the liquidator and contributories of the company.

In the section the expression "company" means any company liable to be wound up under this Act (*a*).

This section originally only applied where a company was in winding-up, but the Act of 1907 extended it to other cases. It is not thought that the Court can under this section sanction any act

(*t*) The Court must be satisfied that there has been a meeting of creditors the amount of whose debts can be estimated: *Albert Life Assurance Co.* (1871), 6 Ch. 381. At the time of this decision, however, the rules in winding-up as to the debts which could be proved in winding-up were different to what they now are.

(*a*) Companies (Consolidation) Act, 1908, s. 120.

of a company, which, apart from such provisions, would be *ultra vires*. Thus, if a scheme involves a reduction of capital (*b*), or, it would seem, an alteration to the memorandum (*c*), or a reorganization of capital under section 45 of the Act, the company would, to get the sanction of the Court, have to go through the preliminaries under section 120, and also under the other relevant section or sections of the Act (*d*).

Under the provisions of section 120, secured as well as unsecured creditors can be bound (*e*), and compromises may be made between one class of creditors or contributories and another (*f*). If a company has foreign creditors (including colonial creditors) they will have to be summoned to the meetings (*g*), but such creditors will not be prevented by the mere fact of an arrangement under the section having been entered into here, from enforcing their rights against property abroad (*h*). For this purpose it would seem that a person is a foreign creditor who has entered into a contract which is intended to be governed by foreign law (*i*). The Court has sanctioned a scheme, which had already been sanctioned in New South Wales, and by its sanction bound the English creditors of a company (*k*).

(*b*) *Cooper, Cooper and Johnson*, [1902] 51 W. R. 314. The object of the section is not to enable the company to do anything, but to enable a majority of creditors or shareholders to bind a dissentient minority: *Albert Life Assurance Co.* (1871), 6 Ch. 381; *Alabama New Orleans, Texas and Pacific Junction Railway*, [1891] 1 Ch. 213.

(*c*) The point does not seem to have been taken in *Edinburgh American Land Mortgage Co.* v. *Lang's Trustees*, [1909] S. C. 488. When a special resolution is requisite the Liquidator may summon the meeting under s. 194 of the Act; if the winding-up is voluntary. If it is compulsory, presumably the Liquidator may under s. 173 of the Act, and rr. 121, *et seq.* of the Companies (Winding-up) rules, 1909, summon the meetings. See also s. 158 of the Act, but in such case it may be that the provisions of s. 67 of the Act may be found useful.

(*d*) There have been one or two unreported cases, where there was a reorganization of capital, and compliance with s. 120 was held to be sufficient, but the view above set out was held to be right in *Panama Hat Co.*, 00413 of 1911, NEVILLE, J., February 27th, 1912; *Mellin's Food*, 0018 of 1912, NEVILLE, J., March 5th, 1912.

(*e*) *Empire Mining Co.* (1890), 44 C. D. 402; *Alabama, New Orleans Texas and Pacific Junction Railway*, [1891] 1 Ch. 213.

(*f*) *Dominion of Canada Freehold Estate and Timber Co.* (1886), 55 L. T. 347.

(*g*) Where there is more than one liquidation, it may be that only the creditors in each country will be entitled to be heard at meetings held in that country: *Queensland National Bank*, [1893] W. N. 128.

(*h*) *New Zealand Loan and Mercantile Agency* v. *Morrison*, [1898] A. C. 349; *Gibbs* v. *Société de Métaux* (1890), 25 Q. B. D. 399.

(*i*) *Hamlyn & Co.* v. *Talisker Distillery*, [1894] A. C. 202; *South African Breweries* v. *King*, [1899] 2 Ch. 173; [1900] 1 Ch. 273; *Spurrier* v. *La Cloche*, [1902] A. C. 446; *British South Africa Co.* v. *De Beers Consolidated Mines*, [1910] 1 Ch. 354; [1910] 2 Ch. 502; reversed on another point, [1912] A. C. 52.

(*k*) *Australian Joint Stock Bank*, *Times* Newspaper, 1st April, 1910.

It has been held that the Court cannot compel a liquidator to enter into a compromise of which he does not approve (*l*), and the same remark would seem to apply to a going company; indeed, it has been held in Scotland that if the scheme involves something which is beyond the directors' powers (*e.g.* an amalgamation), the Court cannot even order meetings to be summoned until the Company in general meeting has approved of the scheme (*ll*).

The jurisdiction of the Court would seem, *mutatis mutandis*, to be very similar to that which it has on a reduction of capital, and ought, it is apprehended, to be exercised on much the same principles (*m*).

The Court must, of course, see that the necessary consents have been obtained. It will not be necessary to obtain the consent of any class of persons who are not interested in the property dealt with by the scheme (*n*), and the fact that a certain class of persons take a benefit under the scheme, will not necessarily be conclusive of their having an interest (*o*). Where a petition has failed on the ground that no meeting of one class has been held, if the sanction of that class is subsequently obtained, it will not be necessary to have fresh meetings of other classes which agreed to the scheme prior to the original petition (*p*).

The question of what is "a class" within the meaning of the section is not always an easy one, particularly where creditors are concerned—it seems that it must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest (*q*). It is also necessary for the debts of creditors who are to be bound to be capable of being estimated (*r*). The majority required by the section is a majority of those present at the meeting—and in ascertaining whether they represented the requisite value, only the debts or shares represented at the meeting will be taken into account (*s*). The Court must also satisfy itself that the scheme amounts to a compromise or arrangement; the word "compromise" no doubt

(*l*) *International Contract Co.* (1872), 26 L. T. 358.

(*ll*) *Dailuaine Talisker Distilleries* v. *Mackenzie*, [1910] S. C. 913, and see *General Motor Cab Co.* (1912), 132 L. T. Jo. 534, 28 T. L. R. 332, *infra*, pp. 727 and 728.

(*m*) See *per* NORTH, J., in *Alabama, New Orleans, Texas and Pacific Junction Railway*, [1891] 1 Ch. 213, at pp. 229 and 230.

(*n*) *Brownfield's Guild Potteries*, [1898] W. N. 80. In *Birkbeck Permanent Benefit Building Society* (1912), *Times* Newspaper, March 16th, 1912, the order expressly stated that the scheme was without prejudice to the rights of the "B" shareholders.

(*o*) *Tea Corporation*, [1904] 1 Ch. 12.

(*p*) *United Provident Assurance Co.*, [1911] W. N. 40.

(*q*) *Sovereign Life Assurance Co.* v. *Dodd*, [1892] 2 Q. B. 573, 583. See also *United Provident Assurance Co.*, [1910] 2 Ch. 477, where shareholders who had paid up 10*s.* on their shares and also a further 10*s.* as a payment in advance of calls were treated as a different class to shareholders who had paid up £1, and to shareholders who had paid up 10*s.*, although a call of 10*s.* per share was contemplated on the persons who had paid the 10*s.* in advance. The decision is based on the fact that, as was held, a call could not be made on some only of the partly paid shareholders, and also that interest until repayment was due on the moneys advanced.

(*r*) *Albert Life Assurance Co.* (1871), 6 Ch. 381.

(*s*) *Bessemer Steel and Ordnance Co.* (1875), 1 C. D. 251; *Tunis Railway Co.* (1879), 10 C. D. 270 *n.*

involves the idea of a difficulty of some sort (*t*), though not necessarily either pending litigation (*u*) or a claim which is good in law (*a*); but the word "arrangement" seems to go further, and, subject to questions of *ultra vires*, to cover practically any transaction, except as has recently been held a sale (*aa*).

When the Court has satisfied itself that the scheme has been duly passed, and is one that it can sanction under the section, it will also satisfy itself that the majorities at the various meetings acted *bonâ fide*, and in particular that the minority has not been overruled by a majority who held other and conflicting interests, which induced them to exercise their votes in favour of the scheme (*b*). The Court will also, it would seem, consider the question whether the scheme is one that could reasonably be accepted by ordinarily intelligent men acting with a view to the interest of the class to which they belong (*c*), but the Court will be very slow to withhold its sanction on this last ground, for presumably the persons concerned will be the best judges of what is to their commercial advantage (*d*).

Under the section schemes have been sanctioned by which the property of the company was leased for a term of years (*e*), by which debenture-holders gave up their security for shares in a new company (*f*), by which they postponed the whole (*g*) or part of their security (*h*), by which they gave up their security for less than was due on it (*i*), and by which they agreed to accept annuities in lieu of part of their security (*k*), and perpetual debenture stock for terminable debentures (*l*). A sale for cash or shares must be authorized by a power in a trust deed, an order of Court or some other power (*e.g.* a special resolution under section 192) (*aa*), but subject to this

(*t*) *Mercantile Investment and General Trust Co.* v. *International Co. of America*, [1893] 1 Ch. 484 n.

(*u*) *Sneath* v. *Valley Gold*, [1893] 1 Ch. 477; *Mercantile Investment and General Trust Co.* v. *River Plate Trust Loan and Agency Co.*, [1894] 1 Ch. 578.

(*a*) *Miles* v. *New Zealand Alford Estate Co.* (1886), 32 C. D. 266.

(*aa*) *General Motor Cab Co.* (1912), 102 L. T. Jo. 534, 28 T. L. R. 352.

(*b*) Of course, persons interested in several classes may vote in each class: *Madras Irrigation and Canal Co.*, [1881] W. N. 172.

(*c*) *Alabama, New Orleans, Texas and Pacific Junction Railway*, [1891] 1 Ch. 213; *English, Scottish and Australian Chartered Bank*, [1893] 3 Ch. 385; *London Chartered Bank of Australia*, [1893] 3 Ch. 540. And see *Paterson, Laing and Bruce* (1902), 18 T. L. R. 515.

(*d*) See cases cited in the last preceding note, and *Gillies* v. *Dawson* (1893), 20 Rettie, 1119.

(*e*) *Dynevor, Dyffryn and Neath Abbey Collieries Co.* (1879), 11 C. D. 605.

(*f*) *Empire Mining Co.* (1890), 44 C. D. 402; *Slater* v. *Darlaston Steel and Iron Co.*, [1877] W. N. 139, 165; *Gillies* v. *Dawson* (1893), 20 Rettie, 1119.

(*g*) *Dominion of Canada Freehold Estate and Timber Co.* (1886), 55 L. T. 347.

(*h*) *Alabama, New Orleans, Texas and Pacific Junction Railway*, [1891] 1 Ch. 213; *Edinburgh American Land Mortgage Co.* v. *Lang's Trustees*, [1909] S. C. 488.

(*i*) *Madras Irrigation Co.*, cited by NORTH, J., in *Alabama, New Orleans, Texas, and Pacific Junction Railway*, [1891] 1 Ch. at p. 228.

(*k*) *English, Scottish and Australian Chartered Bank of Australia*, [1893] 3 Ch. 385; *London Chartered Bank of Australia*, [1893] 3 Ch. 500.

(*l*) *Shandon Hydropathic Co.* (1911), 48 S. L. R. 943.

dissentient shareholders can it is thought be deprived of their rights on a reconstruction (*m*). Under such schemes preference shareholders have received certificates entitling them to a share of the profits in lieu of capital written off on a reduction (*mm*), and shareholders of one class have been compelled to give up some of their shares to shareholders of another class (*n*); but the Court will be very slow to sanction a scheme which deprives a creditor of preferential rights which would have been respected in the winding-up (*o*).

These are only some of the instances where the Court will sanction a scheme (*oo*). Perhaps where there is a reduction of capital it may be possible to prevent non-assenting or objecting creditors from claiming the rights conferred on them by sections 49 and 50 of the Act. It is thought that the Court could not sanction a scheme by which persons are forced to take further shares (*p*); the most it can do is to say, "You must take these shares or nothing;" and even this it would seem it will be slow to do (*q*).

Where the scheme involved a trust deed for securing debentures, Vaughan Williams, J., would not allow it to contain a clause empowering a majority in number representing three-fourths in value of the debentures to do, without the sanction of the Court, what with such sanction they could do under the Joint Stock Companies Arrangement Act, 1870 (*r*); but this is not the practice of the Court nowadays, and the same judge also required, and the Court now often requires, that if the scheme provided for the payment of the costs or the remuneration of persons whose assistance was required to carry out the scheme, it should contain express provision for bringing in the costs of remuneration for taxation or allowance by the Court (*s*). On sales to new companies he also required clauses by which the new company undertook to obey the order of the Court as to any

(*m*) *Tea Corporation*, [1904] 1 Ch. 12; *Paterson, Laing and Bruce* (1902), 18 T. L. R. 515; *Melville Coal Co.* v. *Clark* (1904), 6 Fra. 913; *Bruce, Peebles & Co.* (1908), 16 S. L. T. 506. These decisions cannot have been overruled by *General Motor Cab Co.* (1912), 132 L. T. Jo. 534, 28 T. L. R. 352, as the first of them was a decision of the Court of Appeal. *Canning Jarrah Timber Co.*, [1900] 1 Ch. 708, the only case referred to in either judgment, was decided before the Act of 1900 for the first time enabled the Court to bind members of a company. The resolutions under s. 120 should be passed before the special resolution, while all members have an equal right of dissenting.

(*mm*) *Hoare & Co.* (1910), W. N. 87.

(*n*) *Welsh Flannel Manufacturing Co.*, 00144 of 1908, EADY, J., March 30th, 1909. See order below, pp. 742 and 743.

(*o*) See *Richards & Co.* (879), 11 C. D. 676, questioned on other grounds: *Vron Colliery Co.* (1882), 20 C. D. 446. As to the construction of a scheme by which creditors postponed all claims for principal and interest under promissory notes issued by a new company where the claim is for interest accruing after the winding-up of such new company: see *New English Bank of the River Plate* (1898), 14 T. L. R. 526.

(*oo*) For other schemes, see *supra*, pp. 482 and 483.

(*p*) See *per* KEKEWICH, J., *Nicholl* v. *Eberhardt* (1888), 59 L. T. 860, citing *Higg's case* (1865), 2 H. & M. 657. As a matter of fact, this was the scheme in *General Motor Cab Co.* (1912), 132 L. T. Jo. 534, 28 T. L. R. 352.

(*q*) Cp. *Paterson, Laing and Bruce* (1902), 18 T. L. R. 515, and *supra*, note (*m*).

(*r*) *Land Mortgage Bank of Florida*, [1896] W. N. 48.

(*s*) *Mortgage Insurance Corporation*, [1896] W. N. 4.

proceedings the Court might think proper to be taken against the officers of the old company; and to apply a portion of the assets transferred in the payment of the costs of such proceedings; but these last requirements never applied where the old company was perfectly solvent, and what was being done was a mere sale to a new company (*t*), and such clauses are not now required at all. It is usual to insert in a scheme provisions enabling the company to assent to any modification of the scheme, which may be directed by the Court (*u*).

An order when made is binding on members and creditors (*x*), and can only be challenged on appeal (*x*); but this does not apply to members or creditors who belong to a class of which meetings have not been summoned (*y*). For this purpose a landlord will, on the sale of property by a company to which he has granted a lease of such property, be an unsecured creditor and rightly treated as a member of the class of unsecured creditors (*z*); but a policy-holder whose policy has matured at the date of the scheme will not be a member of a class of policy-holders (*a*). Where there is a winding-up that will by itself stay all actions, unless the winding-up is purely voluntary, in which case an order can be obtained under section 193 of the Act to stay all proceedings; then, when the scheme is sanctioned, the release (if any) by creditors which ensues is a release by operation of law, and will consequently not release sureties (*b*), who, on payment in full, will be entitled to step into the shoes of the principal creditor, and to have his rights under the scheme (*c*). Where there is no winding-up the Court has, it would seem, no power to order a stay of execution because a scheme is pending (*d*), otherwise the effect of a scheme would seem to be much the same, whether the company is or is not in liquidation. With regard to the practice, it is usual to take out a summons for an order directing meetings to be held, directions are then given as to the dates when the meetings are to be held, what notices sent, and what advertisements inserted (*e*), and also as to the proxies to be used. If the company

(*t*) *Practice Note*, [1894] W. N. 166.

(*u*) Without, or, it is thought, even with, such a clause, the Court cannot, without fresh meetings, sanction a scheme with any very material alterations: *London Chartered Bank of Australia*, [1893] 3 Ch. 540.

(*x*) *Nicholl* v. *Eberhardt Co.* (1889), 61 L. T. 489. A person who has not appeared at the trial may not appeal without leave: *Securities Insurance Co.*, [1894] 2 Ch. 410. As to foreign creditors, see *supra*, p. 725.

(*y*) *Sovereign Life Assurance Co.* v. *Dodd*, [1892] 2 Q. B. 573.

(*z*) *Craig's Claim*, [1895] 1 Ch. 267.

(*a*) *Sovereign Life Assurance Co.* v. *Dodd*, [1892] 2 Q. B. 573.

(*b*) *London Chartered Bank of Australia*, [1893] 3 Ch. 540. See also *Law Guarantee Trust and Account Society* v. *Munich Reinsurance Corporation*, [1912] 1 Ch. 138.

(*c*) *Dane* v. *Mortgage Insurance Corporation*, [1894] 1 Q. B. 54; *Finlay* v. *Mexican Investment Corporation*, [1897] 1 Q. B. 517.

(*d*) *Booth* v. *Walkden Spinning and Manufacturing Co.*, [1909] 2 K. B. 368.

(*e*) Unless reduction or an alteration in the memorandum forms part of the scheme, it is usual only to direct advertisements as to the dates of the meetings. On all petitions involving the exercise of more than one power conferred on the Court the same advertisements and interlocutory orders must be made as if a separate petition had been presented with regard to the exercise of each power. For Form of Order, *post*, p. 737, and for forms of advertisement and notice, *post*, pp. 740 and 741.

is being wound up by the Court or under supervision, or if there has been an application in a voluntary winding-up and liberty to apply has been reserved, the summons will be in the winding-up, in other cases an originating summons will usually be necessary. A petition is presented for the sanction of the Court when the scheme has been sanctioned by the meetings (*ee*). Such sanction has, however, been obtained by summons (*f*) or petition in an action (*g*). Moreover, even if the sanction of the Court has been obtained before that of all the meetings, the Court of Appeal will not reverse the decision of the Court below for that reason alone (*h*), and the Court, when the case has come to a hearing, will in a proper case direct further meetings (*i*). Section 120 does not expressly empower the Court to give directions as to the manner in which the meetings are to be held; where the company is in winding-up this defect would seem to be cured by sections 145 and 219 of the Act (*k*). This does not, of course, apply to cases where the company is not in winding-up; but in one case (*k*) Vaughan Williams, J., held that the Court had inherent jurisdiction to give directions as to the conduct of the meetings, and gave elaborate directions for the purpose of enabling the views and votes of foreign creditors to be taken quickly. It is usual to order a particular form of proxy to be used (*l*). Apparently no one can hold a proxy at a class meeting, unless he is a member of the class (*m*). The order directing meetings usually directs who is to be chairman of

(*ee*) The practice in Ireland is the same. *John Clarke & Co.*, [1912] 1 Ir. 24.

(*f*) *Nicholl* v. *Eberhardt* (1889), 61 L. T. 489. This practice is, however, not a good one, is not liked by the Judges, and has not now been followed for many years.

(*g*) *Tea Corporation*, [1904] 1 Ch. 12; *Slater* v. *Darlaston Steel and Iron Co.*, [1877] W. N. 139, 165.

(*h*) *Dynevor, Dyffryn and Neath Abbey Collieries Co.* (1879), 11 C. D. 605.

(*i*) *Slater* v. *Darlaston Steel and Iron Co.*, [1877] W. N. 139, 165; *Madras Irrigation and Canal Co.*, [1881] W. N. 120; *Central Bahia Railway* (1902), 18 T. L. R. 503; and *Akankoo Gold Coast Mining Co.* (1888), 1 Meg. 43, where CHITTY, J., on a sale of the company's assets for shares, stood the petition over for a special resolution to be passed. He was acting by analogy to s. 161 of the Act of 1862 (s. 192 of the present Act). This case was before the 1900 Act, which first provided for meetings of contributories: cp. *United Provident Assurance Co.*, [1911] W. N. 40, and also *supra*, p. 672, note (*y*). This course was apparently not suggested in *General Motor Cab Co.* (1912), 132 L. T. Jo. 534, 28 T. L. R. 352.

(*k*) *English, Scottish and Australian Chartered Bank*, [1893] 3 Ch. 385; and see *Queensland National Bank*, [1893] W. N. 128, as to the right of foreign creditors to be heard at meetings here.

(*l*) *Practice Direction*, [1896] W.N. 56. The order must now provide for this form or such other form as may be settled in chambers being used: *Practice Direction*, [1910] W. N. 154, see *post*, p. 742 for form; see also *Inter-Oceanic Co. of Mexico* (1896), 3 Mans. 162.

(*m*) *Madras Irrigation and Canal Co.*, [1881] W. N. 120; *Central Bahia Railway* (1902), 18 T. L. R. 503. The proxy form now in use requires this. Where the winding-up is compulsory, the proxies will not require to be stamped. Finance Act, 1895, s. 16.

each meeting, and requires him to report the results of the meetings to the Court. This report will be verified by affidavit (*mm*). The summons will be supported by an affidavit exhibiting the scheme and giving such particulars as are necessary to enable the Registrar to judge what meetings should be held and advertisements inserted. The petition will be verified by an affidavit, which will be in much the same form *mutatis mutandis*, as in the case of reduction of capital, and the due summoning of the various meetings must be proved (*mmm*). Proceedings under this section, even where the company is not in winding-up, are in practically all cases brought in the winding-up department.

Where the company is in winding-up every application to approve a reconstruction or other scheme of arrangement under section 120 of the Act must bear a £5 impressed stamp, and the order, if made in Court, a £1 impressed stamp (*n*).

In a winding-up by the Court, if application is made to the Court to sanction any arrangement or compromise, the Court may, before giving its sanction thereto, hear a report by the official receiver as to the terms of the scheme and as to the conduct of the directors and other officers of the company, and as to any other matters which, in the opinion of the official receiver or Board of Trade ought to be brought to the attention of the Court. The report will not be placed on the file unless and until the Court shall direct (*o*).

PETITION FOR SANCTION TO A SCHEME OF ARRANGEMENT INVOLVING A REDUCTION AND REORGANIZATION OF CAPITAL.

IN THE HIGH COURT OF JUSTICE,

Chancery Division.

MR. JUSTICE SWINFEN EADY.

In the Matter of the A. B. Company Limited (*p*) and Reduced,

and

In the Matter of the Companies (Consolidation) Act, 1908.

TO HIS MAJESTY'S HIGH COURT OF JUSTICE.

The humble petition of the above-named Company (hereinafter called the Company) sheweth as follows :—

(*mm*) For form of report and affidavit verifying it, *post*, pp. 738 *et seq.*

(*mmm*) For form of this affidavit, *post*, pp. 737 and 738.

(*n*) Order as to fees of July 31, 1908, and see also order as to fees of December 2, 1903.

(*o*) Companies (Winding-up) Rules, r. 74. Such a report is a private document, and may not be seen by any one without the leave of the Judge.

(*p*) Where the Company is in winding-up the order of the headings should be reversed.

1. The Company was incorporated in the year 1874 under the Companies Acts 1862 and 1867 as a Company limited by shares.

2. The registered office of the Company is situate at .

3. The objects for which the Company was established are the carrying on of a certain business referred to in the Memorandum of Association of the Company and the conducting of all the usual operations connected with the spinning and manufacturing of wool cotton and mixed materials and carrying on the trade and business of spinners and manufacturers of woollen cotton and mixed goods and fabrics and the business of Merchants and Dealers therein and any other businesses manufactures and transactions which the Company might consider to be in any way auxiliary to the trades and businesses aforesaid or any of them or proper to be carried on in connection therewith and certain other objects set forth in the said Memorandum of Association.

4. Shortly after its incorporation the Company commenced and has since carried on its business.

5. The original capital of the Company was £30,000 divided into 3000 shares of £10 each but it was provided by the Memorandum of Association of the Company that the Company might increase its capital by the creation of new shares and might attach to any of such new shares or any of its original shares before the issue thereof any preference or guarantee which the Company in general meeting might think fit. The Company has since its incorporation in exercise of the said power and of the powers conferred on it by its Articles of Association increased its capital to £50,000 by creating 4324 Cumulative Preference Shares of £1 each and 15,676 Pre-preference Shares of £1 each.

6. By resolutions creating and defining the rights of the said Preference and Pre-preference Shares and dated respectively it was provided that the said Preference Shares should confer the right to a cumulative preferential dividend at the rate of per cent. per annum on the amount paid up thereon and that the said Pre-preference Shares should confer the following rights that is to say (1) the right to a cumulative preferential dividend at the rate of per cent. per annum on the amount paid up thereon ranking in priority to the dividend on the said preference shares and (2) the right on a winding-up to priority over the other shares of the Company as regards repayment of capital and to participate with the other shares of the Company in any surplus assets of the Company remaining after repayment of the capital paid up on such other shares.

7. The Company has issued 2600 of its ordinary shares the whole of its cumulative preference shares and 7556 of its pre-preference shares and no more; and all the said shares with the exception of 95 ordinary shares which have been forfeited have been fully paid. The said forfeited shares are all paid up to the extent of £8 per share.

8. By Clause 4 of the Articles of Association of the Company it is provided as follows :—" Subject to the provisions of the statutes and with the authority of a special resolution all the shares or as the case may be all the shares of any class may be consolidated into a smaller number of shares or divided into a larger number of shares. The said Articles of Association

did not prior to the special resolution next hereinafter mentioned contain any power for the Company to reduce its capital.

9. By Special Resolution of the Company duly passed and confirmed at extraordinary general meetings held respectively on the 31st October 1909 and the 15th November 1909 it was resolved "That the Articles of Association of the Company be altered by inserting the following article to be called 4a after article 4. The Company may from time to time by special resolution (1) Reduce its capital (2) Cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person."

10. By special resolution of the Company duly passed and confirmed at extraordinary general meetings thereof held respectively on the 15th November 1909 (after the confirmation of the Special Resolution in the last paragraph hereof mentioned) and the 30th November 1909 it was resolved as follows:—

(1) That the capital of the Company be reduced from £50,000 to £38,767 by cancelling the following shares which at the date of this resolution have not been taken or agreed to be taken by any person namely the 400 Ordinary Shares of £10 each numbered 2601 to 3000 both inclusive and the 7233 Pre-preference Shares numbered 8444 to 15676 both inclusive.

(2) That the capital of the Company be reduced from £38,767 to £20,000 by writing the following sums off the following Ordinary Shares of £10 each namely the sum of £7 off each of the Ordinary Shares numbered 1 to 50 both inclusive 101 to 681 both inclusive and 702 to 1343 both inclusive (hereinafter called the £3 shares) and the sum of £8 off each of the Ordinary Shares numbered 1344 to 2065 both inclusive 2076 to 2532 both inclusive 2543 to 2590 both inclusive and 2596 to 2600 both inclusive (hereinafter called the £2 shares).

(3) That each of the forfeited shares of the Company being such of the shares numbered 1 to 2600 both inclusive as are not mentioned in the foregoing resolution be subdivided into 10 Ordinary Shares of £1 each and each of the £3 shares be subdivided into three Ordinary Shares of £1 each and each of the £2 shares into two Ordinary Shares of £1 each.

(4) That the capital of the company after such cancellation reduction and subdivision as aforesaid be reorganized by cancelling the preferences and special privileges attaching to 4324 Cumulative Preference Shares of £1 each which have been issued to the 7556 Pre-preference Shares of £1 each which have been issued and to the 887 Pre-preference Shares of £1 which have not been issued and by consolidating such shares and the 7233 subdivided Ordinary Shares into one class of 20,000 Ordinary Shares of £1 each.

11. Previously to the passing of such special resolution paid-up capital of the Company to the extent of £18,767 and upwards had been lost or was unrepresented by available assets and the arrears of the cumulative dividend on the said Preference Shares amounted to £3585 and on the said Pre-preference Shares to £4528.

12. The alterations in the capital of the Company effected or proposed to be effected by the Special Resolution lastly hereinbefore referred to

formed part of a scheme of arrangement (being the scheme of arrangement set forth in the Schedule hereto) proposed to be made under section 120 of the Companies (Consolidation) Act, 1908 (*r*) between the Company and the Pre-preference Preference and Ordinary Shareholders thereof and it was a further part of such scheme of arrangement (1) that each holder of an original Ordinary Share of the Company should be entitled to retain only one out of the 2 or 3 fully paid subdivided shares to which he was entitled under such special resolution (2) that the remaining fully paid subdivided shares should be so applied as to give the Pre-preference Shareholders one of such fully paid subdivided shares for every two Pre-preference Shares held by him and (3) that the holders of the existing Pre-preference and Preference Shares should give up all rights and claims to any arrears of dividends in respect of such shares.

13. It was also part of the said scheme of arrangement that all interest in arrear in respect of the debentures of the Company down to and including the interest payable on the 1st day of July 1908 should be capitalized by the persons entitled to such interest receiving debentures of the existing issue in lieu of and in full satisfaction for the same. The persons entitled to such interest have all agreed with the Company that they will accept such debentures in lieu of and in full satisfaction for such interest in the event of this scheme being confirmed by this Court.

14. Pursuant to and in manner directed by an order of this Court dated the 16th day of December 1909 separate meetings of the Pre-preference Preference and Ordinary Shareholders of the Company were duly convened for the 9th day of January 1910 for the purpose of considering and if thought fit of approving with or without modification the said scheme of arrangement. The said scheme was unanimously approved without any modification at the separate meetings so convened. The whole of the Pre-preference Shareholders were present in person or by proxy at the meeting of the Pre-preference Shareholders and voted in favour of the said scheme. 17 out of 25 Preference Shareholders representing 3710 out of 4324 Preference Shares were present in person or by proxy at the meeting of Preference Shareholders and voted in favour of the said scheme 23 out of 25 Ordinary Shareholders representing 1839 out of 2600 Ordinary Shares (or counting the forfeited shares out of 2500 Ordinary Shares) were present in person or by proxy at the meeting of Ordinary Shareholders and voted in favour of the said scheme. With a view so far as necessary to comply with section 45 of the Companies (Consolidation) Act 1908 the resolutions approving the said scheme respectively passed by the said separate meetings of the Pre-preference and Preference Shareholders were duly confirmed in the same manner as special resolutions of the Company are required to be confirmed at separate meetings of the Pre-preference and Preference Shareholders held on the 30th day of January 1910.

15. The reduction of capital aforesaid does not involve the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital.

(*r*) The notices of the meetings stated that the special resolutions which were, of course, set out, formed part of such arrangement, and a copy of the scheme of arrangement was enclosed.

16. There is every prospect of the Company carrying on a successful business in the future but unless this scheme is sanctioned by the Court it will be years before any dividend is payable except on the Pre-preference Shares.

17. The form of minute proposed to be registered is as follows:— "The capital of the A. B. Company Limited and Reduced henceforth is £20,000 divided into 20,000 Ordinary Shares of £1 each numbered 1 to 20,000 all of which are Ordinary Shares instead of the previous capital of £38767 divided into 2600 Ordinary Shares of £10 each 4324 cumulative preference shares of £1 each and 8443 Pre-preference Shares of £1 each. At the time of the registration of this minute the sum of £1 has been and is to be deemed to be paid up on each of the 18163 shares of the Company which are issued and outstanding being the shares numbered 1 to 18163 both inclusive, and the sum of 16*s.* has been and is to be deemed to be paid up on each of the 950 shares 18164 to 19113 both inclusive. The remaining shares numbered 19114 to 20,000 both inclusive have never been issued and nothing has been or is to be deemed to be paid up thereon.

Your petitioner therefore humbly prays as follows:—

1. That this Court may sanction the scheme of arrangement set out in the schedule hereto and may declare the same to be binding upon the holders of the Pre-preference Preference and Ordinary Shares of the Company.

2. That the reduction and reorganization of capital resolved on by the special resolutions referred to in paragraph 9 of this petition may be confirmed and that the above-mentioned minute may be approved by the Court.

3. That to this end all inquiries and directions necessary and proper may be given and that a day may be fixed on and after which the Company shall be at liberty to discontinue the addition to its name of the words "and reduced."

4. Or that such other order may be made on the premises as to the Court shall seem meet.

And your petitioner will ever pray etc.

NOTE.—It is not intended to serve this petition on any person.

THE SCHEDULE HEREINBEFORE REFERRED TO.

The A. B. Company Limited.

Scheme of Arrangement.

1. All interest in arrear in respect of the debentures issued by the A. B. Company Limited (hereinafter called the Company) down to and including the interest payable on the 1st day of July 1908 to be capitalized and the persons entitled to such interest to receive in lieu of and in full satisfaction for the same debentures forming part of the existing issue of debentures. The directors of the Company to make provision in such way as they shall think fit for cases where the arrears of interest to which any person is entitled are not exactly equal to the amount secured by a debenture or debentures of such issue.

2. The following unissued shares of the Company namely the 400 Ordinary Shares of £10 each numbered 2601 to 3000 both inclusive and the 7233 Pre-preference Shares of £1 each numbered 8444 to 15676 both inclusive to be cancelled.

3. The capital of the Company after such cancellation as aforesaid to be reduced from 38767 to £20,000 such reduction to be effected by writing the following sums off the following ordinary £10 shares of the Company, that is to say the sum of £7 off each of the Ordinary Shares numbered 1 to 50 both inclusive 101 to 681 both inclusive and 702 to 1343 both inclusive (hereinafter called the £3 shares) and the sum of £8 off each of the Ordinary Shares numbered 1344 to 2065 both inclusive 2076 to 2532 both inclusive and 2543 to 2590 both inclusive and 2596 to 2600 (*s*) both inclusive (hereinafter called the £2 shares).

4. The following of the original Ordinary Shares of £10 which have been forfeited and in respect of each of which the sum of £8 has been paid that is to say the Ordinary Shares numbered 51 to 100 both inclusive 682 to 701 both inclusive 2066 to 2075 both inclusive 2533 to 2542 both inclusive and 2591 to 2595 to be subdivided into 10 Ordinary Shares of £1 each with 16*s*. credited paid up thereon (hereinafter called the forfeited shares) and each of the £3 shares to be subdivided into 3 Ordinary Shares of £1 each and each of the £2 shares to be subdivided into 2 Ordinary Shares of £1 each (all of which subdivided £3 and £2 shares other than the forfeited shares are hereinafter called the fully paid subdivided ordinary shares).

5. The capital of the Company after such cancellation reduction and subdivision as is hereinbefore provided for to be reorganized by cancelling all preferences and special privileges attaching to the 4324 Preference Shares of £1 each which have been issued and to the 7556 Pre-preference Shares of £1 each which have been issued and by consolidating the 6283 fully paid subdivided shares and the 950 forfeited shares and such 4324 Cumulative Preference Shares and 7556 Pre-preference Shares and the 887 unissued Pre-preference Shares of £1 each into one class of 20,000 Ordinary Shares of £1 each.

6. Each holder of an original Ordinary Share to be entitled to retain one fully paid subdivided Ordinary Share for every original Ordinary Share held by him and all further or other fully paid subdivided Ordinary Shares (hereinafter called the surplus shares) to be transferred to such persons as the directors of the Company shall direct.

7. Each holder of an existing Pre-preference Share to be entitled to one of the surplus shares for every two of such Pre-preference Shares held by him and the directors of the Company to make provision by means of fractional certificates or otherwise as they shall see fit in cases where any such person holds an uneven number of Pre-preference Shares.

8. The holders of the existing Cumulative Preference and Pre-preference shares to give up all claim and right to any arrears of dividend in respect of such shares.

9. The directors of the Company to be at liberty in case of any person neglecting to make any transfer required by Clause 6 hereof and in any other case where they may consider it desirable for the purpose of carrying

(*s*) None of the forfeited shares were included in this paragraph, as they were not fully paid.

into effect the provisions of this scheme relating to surplus shares to rectify the register of the Company and they may execute and do all documents and things requisite for carrying this scheme into effect.

10. The Company forthwith to take all steps necessary for obtaining the sanction of the proper Court to this scheme either as it is or with such modification as such Court may require.

ORDER ON SUMMONS FOR SUMMONING MEETINGS UNDER SECTION 120 OF THE COMPANIES (CONSOLIDATION) ACT, 1908, WHERE THERE IS NO LIQUIDATION.

(*Title same as Petition.*)

Upon the application by Originating Summons dated the day of 19 of the above-named Company whose registered office is situate at and upon reading the said originating summons the affidavit of H.S.S. filed on the day of 19 and the several exhibits therein referred to exhibit H.S.S. (4) being the scheme of arrangement hereinafter mentioned. It is ordered that the above-named Company do convene separate meetings to be held in London of (1) the ordinary shareholders (2) the holders of the 6 per cent. cumulative preference shares and (3) the holders of the 7 per cent. cumulative preference shares respectively in the said Company for the purpose of considering and if thought fit approving (with or without modification) a scheme of arrangement proposed to be made between the said Company and holders of the ordinary shares and 6 per cent. cumulative preference shares and 7 per cent. cumulative preference shares in the said Company and it is ordered that at least 10 clear days before the day appointed for such meetings an advertisement convening the same and stating that a copy of the said scheme can be seen at the registered office of the Company be inserted once each in the *London Gazette* and *The Times* newspaper and in addition that at least 10 clear days before the day appointed for such meetings a notice to the like effect and enclosing a copy of the said scheme and a proper stamped form of proxy in the form directed to be used by the direction of the Court on the 8th May 1896 or in such other form as may be settled in Chambers be sent by prepaid letter addressed to each of the said holders of ordinary shares and 6 per cent. cumulative preference shares and 7 per cent. cumulative preference shares respectively at their registered or last-known addresses and the Court doth hereby appoint the said H.S.S. or failing him A.K. chairman of the said meetings and doth order that the said chairman do report the result of such meetings respectively to the Court. [*Re J. C. & J. Field, Ltd.*, 00141 of 1911. Mr. Registrar HOOD, April 25th, 1911.]

AFFIDAVIT AS TO SERVICE OF NOTICES CONVENING MEETINGS PURSUANT TO ORDER UNDER SECTION 120.

(*Heading same as Summons.*)

I A.B. of Secretary of the above-named Company make oath and say as follows:—

1. I have been Secretary of the above-named Company for 3 years.

2. Notice of the separate meetings of (1) the holders of the Pre-preference Shares of the above-named Company (2) the holders of the Preference Shares of the above-named Company and (3) the holders of the Ordinary shares of the above-named Company directed by the order herein dated were duly advertised once in the *London Gazette* and once in *The Times* newspapers respectively dated the day of 1911, and the day of 19 .

3. There is now produced and shown to me and marked A, a copy of the notice convening the separate meetings of the holders of the Pre-preference Preference and Ordinary Shares of the above-named Company convened for also forms of proxy for holders of Pre-preference Shares Preference Shares and Ordinary Shares marked respectively B.C. and D. and a copy of the scheme of arrangement herein marked E.

4. I served copies of the said notice convening the said meetings in manner hereinafter appearing on each of the holders of Pre-preference Preference and Ordinary Shares of the above-named Company according to their respective names and addresses as appearing in the register of the Members of the above-named Company which is now produced and shown to me marked F. I personally supervise the keeping of the said register and I say that on the day of 19 such register contained the name of every member of the company.

5. I put copies of the said notices convening the said meetings into envelopes duly addressed to such members respectively according to their respective names and addresses appearing in the said register and I also put in each such envelope a copy of the said scheme of arrangement and a duly stamped proxy. Such proxy being in the form applicable to the class of shares held by the member to whom it was sent.

6. I checked such addressed envelopes with the said register and I served the said copies of the said notices together with the said copies of the said scheme of arrangement and the said duly stamped forms of proxies by putting the envelope containing the same prepaid into the post office at before the hour of o'clock in the noon on day day of 19 .

Sworn at etc.

AFFIDAVIT OF CHAIRMAN OF MEETINGS AS TO THEIR RESULT.

I A.B. of in the county of make oath and say as follows :—

1. The meetings convened pursuant to the order in this matter dated the day of 19 were duly held on the day of 19 at and I attended and acted as Chairman at all such meetings as directed by the above-mentioned order of 19 .

2. I prepared a report of the result of such meetings. Such report which is dated is now produced and shown to me and marked A. It is a full and true report of the proceedings at and result of the said

meetings of Pre-preference Preference and Ordinary Shareholders respectively and the copy scheme annexed to such report is a true copy of the scheme as approved at such meetings respectively.

Sworn at etc.

REPORT EXHIBITED TO THE ABOVE AFFIDAVIT.

(Heading the same as Summons.)

I A.B. of the person appointed by the Court to act as Chairman of the meetings of (1) the Ordinary Shareholders (2) the Preference Shareholders and (3) the Pre-preference Shareholders of the above Company convened pursuant to an order in this matter dated and summoned by notice dated and by advertisements dated the same date appearing in *The Times* and *London Gazette* newspapers of the and respectively and held at on do hereby report to the Court the result of such meetings as follows:—

1. The scheme of arrangement dated proposed to be made between the said Company and the Pre-preference Preference and Ordinary Shareholders of the said Company was considered respectively at the respective meetings and the question submitted to the said meetings was whether the said scheme should be approved with or without modification. Each of the said meetings was of opinion that the said scheme should be approved without modification and it was approved accordingly.

2. The meeting of the holders of Pre-preference Shares was attended either personally or by proxy by holders of Pre-preference Shares whose shares amounted in the aggregate to shares out of a total issue of Pre-preference Shares of whom shareholders holding together shares were present in person and shareholders holding together shares were present by proxy.

3. The meeting of the holders of Preference Shares was attended either personally or by proxy by holders of Preference Shares whose shares amounted in the aggregate to shares out of a total issue of Preference Shares of whom shareholders holding together shares were present in person and shareholders holding together shares were present by proxy.

4. The meeting of the holders of Ordinary Shares was attended either personally or by proxy by holders of Ordinary Shares whose shares amounted in the aggregate to shares out of a total issue of ordinary shares of whom shareholders holding together shares were present in person and shareholders holding together shares were present by proxy.

5. All shareholders so attending either in person or by proxy voted in favour of the said scheme being approved without modification and no shareholder voted against the said scheme or in favour of any modification thereof.

6. A printed copy of the said scheme of arrangement as passed as aforesaid at such meetings is hereunto annexed and signed by me.

Dated 19 .

A.B.
Chairman.

PRELIMINARY ADVERTISEMENT.

(*Title same as Petition.*)

Notice is hereby given that by an order dated the 16th day of December 1908 the Court has directed SEPARATE MEETINGS of

(1) The PRE-PREFERENCE SHAREHOLDERS of the above-named Company.

(2) The PREFERENCE SHAREHOLDERS of the said Company and

(3) The ORDINARY SHAREHOLDERS of the said Company to be convened for the purpose of considering and if thought fit approving with or without modification a scheme of arrangement dated the 4th November, 1908, proposed to be made between the said Company and the Pre-preference, Preference and Ordinary Shareholders of the said Company and that such meetings will be held at on Saturday the 9th day of January 1909 at the times below mentioned namely :—

The meeting of the said Pre-preference Shareholders at 2 o'clock in the afternoon.

The meeting of the said Preference shareholders at 2.15 in the afternoon or so soon thereafter as the preceding meeting shall have been concluded and

The meeting of the Ordinary Shareholders at 2.30 o'clock in the afternoon or so soon thereafter as the preceding meeting shall have been concluded.

At which place and respective times all the aforesaid shareholders are respectively requested to attend. A copy of the said scheme of arrangement can be seen at the office of the Company between the hours of 10 a.m. and 2 p.m. on any week day prior to the day appointed for the said meetings.

The said shareholders may attend such meetings respectively and vote in person or by proxy provided that all forms appointing proxies are deposited with the Company at its registered office aforesaid not later than 12 o'clock noon on Friday the 8th day of January 1909. Forms of proxy may be obtained from the Secretary of the Company. The Court has appointed X.Y. or failing him M.N. to act as Chairman of the said meetings and has directed the Chairman to report the result thereof to the Court. The said scheme of arrangement will be subject to the subsequent approval of the Court.

Dated this 22nd day of December 1908.

A.B. & Co. of

Agents for C.D. of

Solicitor to the above-named Company.

NOTICE OF MEETING ORDERED UNDER SECTION 120 OF THE ACT.

No. of 1911.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

MR. JUSTICE NEVILLE.

In the Matter of A.B. Limited
and
In the Matter of the Companies (Consolidation) Act, 1908.

NOTICE IS HEREBY GIVEN that by an Order dated the 25th day of April, 1911, made in the above matter the Court directed separate meetings to be convened of the classes of Shareholders of the Company specified in the first column of the Schedule hereto for the purpose of considering, and, if thought fit, approving (with or without modification) a Scheme of Arrangement proposed to be made between the said Company and such Shareholders (a printed copy of which Scheme is enclosed herewith), and that such meetings will be held at
on Tuesday, the 16th day of May, 1911, at the respective times specified in the second column of the said Schedule hereto at which respective times and place all such Shareholders are respectively requested to attend.

ANY such Shareholder may attend the meeting of any class of which he is a member and vote thereat either in person or by proxy. Forms of proxy applicable for the meetings of the different classes or such one of them as you are entitled to attend are enclosed herewith. Proxies must be lodged with the Secretary, at the registered office of the Company,
not later than noon, on
Monday, the 15th day of May, 1911. By the said Order S.S., or failing him, A.K., is appointed Chairman of such meetings, and the Chairman is directed to report the results thereof to the Court. The said Scheme will be subject to the subsequent approval of the Court.

Dated 3rd May 1911.

Secretary.

THE SCHEDULE.

Particulars of Meetings ordered to be convened.	Time appointed for Meeting on the 16th May, 1911.
1. Holders of 6 per cent. Cumulative Preference Shares in the Company	1. At 12 o'clock noon.
2. Holders of 7 per cent. Cumulative Preference Shares in the Company	2. At 12.15 p.m.
3. Holders of Ordinary Shares in the Company	3. At 12.30 p.m.

FORM OF PROXY FOR MEETINGS UNDER SECTION 120 (*t*).

No. of 1911.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.
MR. JUSTICE NEVILLE.

In the Matter of A.B. Limited
and
In the Matter of the Companies (Consolidation) Act, 1908.

* the undersigned, of † being an Ordinary Shareholder of the above-named A.B. Limited, hereby appoint of or failing him of , or failing him of as * proxy to act for ‡ at the meeting of the Ordinary Shareholders to be held at on Tuesday, the 16th day of May, 1911, at 12.30 o'clock in the afternoon, for the purpose of considering, and, if thought fit approving the proposed Scheme of Arrangement referred to in the notice convening the meeting, and at such meeting or any adjournment thereof to vote for ‡ and in * name § the said Scheme, either with or without such modification as * proxy may approve.

Dated the day of May, 1911.

(Signature)

* Fill in "I" or "we," "my" or "our" throughout, as the case may be.
† Fill in your address.
‡ "Me" or "us."
§ If "for" insert "for." If "against" insert "against," and strike out the words after "scheme" and initial such alteration.

NOTES.—(1) This proxy must be signed and lodged with the Secretary of the Company, at
not later than 12 o'clock noon, on Monday, the 15th day of May, 1911. (2) Any alteration in the proxy should be initialled. (3) The person to whom the proxy is given must be a member of the class (*i.e.* Ordinary), who must attend the meeting in person to represent you.

ORDER ON SANCTIONING SCHEME OF ARRANGEMENT INVOLVING A REDUCTION AND REORGANISATION OF CAPITAL.

(*Title same as Petition.*)

Upon the petition of the above-named Company Limited and Reduced and [of a debenture-holder and shareholder of the above-named Company] (*u*) on the 3rd day of March 1909 presented unto this Court and upon hearing Counsel for the Petitioners and upon reading the said Petition the Order dated the 16th day of December 1908 whereby the said Company was ordered to convene separate meetings of (1) The Pre-preference Shareholders of the said Company (2) The Preference Shareholders of the said Company and (3) the Ordinary Shareholders of the said Company for the purpose of considering and if thought fit approving with or without modification a scheme of arrangement proposed to be made between the said Pre-preference Preference and Ordinary Shareholders and the said Company (a copy of which scheme was the exhibit A. to the affidavit of H.F.B. filed the day of hereinafter referred to) the order

(*t*) See *Practice Directions*, [1896] W. N. 56; [1910] W. N. 154.

(*u*) Words in square brackets now unnecessary.

dated the 9th March 1909 dispensing with the list of creditors. The *London Gazette* dated the 25th December 1908 and *The Times* newspapers dated the 23rd December 1908 and each containing an advertisement of the notice convening the said meetings directed to be held by the said Order dated the 16th day of December 1908 the *London Gazette* dated the 19th March 1908 etc. and each containing a notice of the presentation of the said Petition and that the same was appointed to be heard on the 30th day of March 1909 and the four several affidavits of etc. and the exhibits in the said affidavits or some of them respectively referred to and the Report dated the 1909 of the result of the meetings directed to be held by the said Order of the 16th day of December 1908. This Court doth hereby sanction the scheme of arrangement as set forth in the Schedule to the Petition and in the first Schedule hereto and doth declare the same to be binding on the holders of the Pre-preference Preference and Ordinary Shares of the said Company and this Court doth order that the cancellation and reduction of the capital of the above-named Company resolved on and effected by the special resolution passed and confirmed at two extraordinary general meetings of the Petitioner the said Welsh Flannel Manufacturing Company Limited and Reduced held respectively on the day of and the day of 1908 and which resolution was (*inter alia*) in the words and figures following [Here followed the special resolutions for reduction of capital] be and the same is hereby confirmed in accordance with the provisions of the Companies Act 1867 and the Companies Act 1877 and the Court doth hereby approve of the Minute set forth in the 2nd Schedule hereto and this Court doth further Order that the Special resolution passed and confirmed at the above-mentioned extraordinary general meetings of the Petitioner the Welsh Flannel Manufacturing Company Limited and Reduced held respectively etc. modifying the conditions contained in its Memorandum of Association so as to reorganize its capital and which resolution was *inter alia* in the words and figures following that is to say [Here followed the special resolution for reorganisation of share capital] be and the same is hereby confirmed and it is ordered that this order be produced to the Registrar of Joint Stock Companies and that an office copy thereof be delivered to him with a minute in the words or to the effect of the minute set forth in the second schedule hereto. And it is ordered that notice of the registration by the Registrar of Joint Stock Companies of this order so far as it applies to the cancellation and reduction of the capital of the above-named Company and of the said minute be published as follows that is to say once each in the *London Gazette* and in the within 10 days after such registration. And it is ordered that the addition of the words "and reduced" to the title of the said Company be continued for one month from the date of this Order.

The First Schedule contained the scheme of arrangement.

The Second Schedule contained the minute.

Welsh Flannel Manufacturing Company Limited and Reduced, 00144 of 1908. SWINFEN EADY, J., March 30th, 1909.

SCHEME OF ARRANGEMENT INVOLVING A REDUCTION OF CAPITAL BY WHICH THE LIABILITY ON THE ORDINARY SHARES IS EXTINGUISHED AND PART OF THE PAID-UP CAPITAL REDUCED—THE HOLDERS OF THE LIFE GOVERNORS' SHARES CONSENTING AS THEY ARE UNDER THE SCHEME GIVING UP VALUABLE RIGHTS.

(*Title.*)

UPON the Petition of the above-named Diamond Exploration and Finance Syndicate Limited and Reduced whose registered office is situate at in the City of London on the 7th March 1911 preferred unto this Court, and upon hearing Counsel for the Petitioners and for J.P. and T.D. and C.E.D. holders respectively of the two Life Governors Shares of the above-named Company and upon reading the said Petition the order dated the 23rd November, 1910 whereby the above-named Company was ordered to convene a meeting of the holders of the Ordinary Shares of the Company for the purpose of considering and if thought fit approving (with or without modification) a Scheme of Arrangement proposed to be made between the said Company and the holders of its Ordinary and Life Governors' Shares respectively (a copy of which Scheme was the exhibit H.C.U. (2) to the affidavit of H.C.U. filed the 22nd November 1910 hereinafter mentioned) the Order dated the 14th March, 1911 the affidavit of H.C.U. filed the 22nd November 1910 the two further several affidavits of the said H.C.U. and the affidavit of J.P. (being the report of the Chairman of the result of the meeting held pursuant to the said order dated the 23rd November, 1910) all filed the 9th June, 1911 and the exhibits in the said affidavits or some of them respectively referred to the Certificate of the Registrar Companies (Winding-up) dated the 12th July 1911 of the result of the inquiry directed to be made by the said Order of the 14th March 1911.

The *London Gazette* and *The Times* newspaper both dated 2nd December 1911 and each containing an advertisement of the notice convening the said Meeting directed to be held by the said Order dated 23rd November, 1910, the *London Gazette* and *The Times* newspaper both dated the 14th July 1911, and each containing a notice of the presentation of the said petition and that the same was appointed to be heard on the 25th July 1911.

AND the said J.P. and T.D. and C.E.D. by their Counsel consenting to this Order.

THIS COURT DOTH HEREBY sanction the Scheme of Arrangement as set forth in the Schedule to the said Petition and in the first Schedule hereto and doth declare the same to be binding on the holders of the Ordinary Shares of the said Company and on the said Company.

AND THIS COURT DOTH ORDER that the *cancellation* and reduction of the capital of the above-named Company resolved on and effected by the special resolution passed and confirmed at two Extraordinary General Meetings of the Petitioners the said Diamond Exploration and Finance Syndicate Limited and Reduced held respectively on the 21st December 1910 and the 11th January 1911 and which resolution was in the words and figures following, that is to say :—

"THAT the Scheme of Arrangement submitted to this Meeting and the "reduction of the Capital of the Company from £100,000 to £60,000 and "the subdivision of the unissued ordinary shares of the Company thereby "contemplated be approved"
be and the same is hereby confirmed in accordance with the provisions of the above-mentioned Act.

AND THE COURT DOTH HEREBY approve the form of the Minute set forth in the 2nd Schedule hereto.

AND IT IS ORDERED that this Order be produced to the Registrar of Companies and that an Office Copy thereof be delivered to him together with a Minute in the words or to the effect set forth in the said Schedule.

AND IT IS ORDERED that Notice of the Registration by the Registrar of Companies of this Order (so far as it confirms the reduction of the Company's Capital) and of the said Minute be published as follows that is to say once each in the *London Gazette* and in *The Times* newspaper within 10 days after such Registration.

AND IT IS ORDERED that the addition of the words "and Reduced" to the title of the said Company be continued for one month from the date of this Order.

Registrar Companies (Winding-up).

THE FIRST SCHEDULE BEFORE REFERRED TO.

Scheme of Arrangement.

(1) That the Capital of the Company be reduced from £100,000 divided into 99,998 Ordinary Shares of £1 each and Two Life Governors Shares of £1 each, to £60,000 divided into 60,000 Ordinary Shares of 6*s.* 8*d.* each, 39,998 Ordinary Shares of £1 each and Two Life Governors Shares of £1 each and that such reduction be effected :—

(*a*) by extinguishing the liability in respect of the uncalled capital to the extent of 7*s.* 6*d.* per share upon the 60,000 Ordinary Shares of the Company numbered 1 to 60,000 inclusive which have been issued ; and

(*b*) by cancelling capital which has been lost or is unrepresented by available assets to the extent of 5*s.* 10*d.* per share upon the 60,000 Ordinary Shares of the Company numbered 1 to 60,000 inclusive which have been issued and are outstanding and by reducing the nominal amount of such Ordinary Shares from £1 to 6*s.* 8*d.* per share.

(2) That each of the 39,998 Ordinary Shares of the Company of £1 each numbered 60,001 to 99,998 inclusive which are unissued be subdivided into three shares of 6*s.* 8*d.* each and that the shares resulting from such subdivision be numbered from 60,001 to 179,994 inclusive.

(3) That until such time as the Company shall have distributed by way of dividend among the holders of the Ordinary Shares of the Company numbered 1 to 60,000 inclusive profits of the Company to an aggregate amount of £17,500 the holders of the Life Governors Shares be not entitled to participate in any distribution of any of the profits of the Company.

(4) In the event of the winding-up of the Company before such time as profits of the Company to the aggregate amount of £17,500 shall have

been distributed by way of dividend among the holders of the Ordinary Shares of the Company numbered 1 to 60,000 inclusive the assets of the Company remaining after payment of the debts and liabilities of the Company be applied first in payment to the holders of the said Ordinary Shares of such an amount as will together with the aggregate amount of the dividends paid upon such Ordinary Shares subsequent to the confirmation of this Scheme by the Court be equivalent to the sum of £17,500.

(5) That subject to the provisions of this scheme the provisions of the Company's Memorandum of Association do remain of full force and effect.

THE SECOND SCHEDULE BEFORE REFERRED TO.

Minute approved by the Court.

"The capital of the Diamond Exploration and Finance Syndicate "Limited and Reduced is henceforth £60,000 divided into 179,994 Ordinary "Shares of 6*s.* 8*d.* each and two Life Governors' Shares of £1 each instead "of the former capital of £100,000 divided into 99,998 Ordinary Shares "of £1 each and two Life Governors' Shares of £1 each. At the time of "the registration of this Minute 59,950 of the said Ordinary Shares numbered "1 to 38,155 inclusive and 38,206 to 60,000 inclusive and the two Life "Governors' Shares numbered 99,999 and 100,000 respectively have been "issued and the full nominal amount thereof has been paid and is to be "deemed to have been paid up on each of such issued shares respectively.

"50 of the said Ordinary Shares numbered 38,156 to 38,205 inclusive "have been issued and the sum of 4*s.* 2*d.* has been paid and is to be "deemed to have been paid up on each of such shares, respectively. The "said 50 shares have been forfeited by the Company for non-payment of "calls and have not been re-issued. The remaining 119,994 Ordinary "Shares have not been issued and nothing has been or is to be deemed "paid up thereon." [*Re The Diamond Exploration and Finance Syndicate Limited and Reduced,* 00406 of 1910. NEVILLE, J., July 25th, 1911.]

ORDER SANCTIONING SCHEME OF ARRANGEMENT BETWEEN A COMPANY AND ITS CREDITORS WITH DIRECTION AS TO TAXATION OF COSTS.

(*Title.*)

UPON the Petition of the above-named B.U.R.T. Company Limited whose registered office is situate at in the County of London on the 15th June 1911 preferred unto this Court, and upon hearing Counsel on the 20th June 1911 for the Petitioners for the respondents Company Limited and for the and another and for respectively creditors of the above-named Company, and upon reading the said Petition the order dated the 23rd day of May 1911 whereby the said B.U.R.T. Company Limited was ordered to convene separate meetings of

(1) The unsecured Creditors of the Company

(2) The Shareholders in the Company
for the purpose of considering and if thought fit approving with or without modification a Scheme of Arrangement proposed to be made between the said Creditors and the said Company a copy of which Scheme was set forth in the schedule to the Summons issued in these matters on the 19th day of May 1911 the *London Gazette* and *The Times* newspaper both of the 26th May 1911 and each containing an advertisement of the notice convening the said meetings directed to be held by the said order dated the 23rd May 1911 the affidavit of F.P. filed the 14th June 1911 the joint and several affidavits of R.R.W. and R.O.M. filed the 15th June 1911 and the affidavit of the said R.R.W. filed this day and the several Exhibits in the said affidavits or some of them respectively referred to.

THIS COURT doth hereby sanction the Scheme of Arrangement as set forth in the 10th paragraph of the said Petition and in the Schedule hereto and doth declare the same to be binding on the above-named B.U.R.T. Company Limited and all its unsecured Creditors.

AND IT IS ORDERED that the costs of the Petitioners referred to in the said Schedule the costs of the Respondents of this Petition and the costs of the   and another of appearing on the said Petition be taxed and paid by the said Company as provided by the said scheme of Arrangement.

THE SCHEDULE ABOVE REFERRED TO.

Scheme of Arrangement.

THAT all Creditors whose claims would be preferential in the winding-up of the Company be paid in full in cash and that all the other unsecured Creditors of the Company accept in their option Debentures of the Company payable at the expiration of one year from the date of issue carrying interest at five per cent. per annum payable half-yearly for the amount of their debts in full at par such Debentures to constitute a charge upon the whole of the Company's undertaking and assets with a proviso that no security ranking in priority to the Debentures shall be created by the Company and shall contain Clauses enabling the holders of not less than half of the Debentures to appoint a Receiver and Manager and to enable compromises and arrangements to be sanctioned by Extraordinary Resolution of the Debenture-holders with the alternative right to accept a composition of 10*s.* in the £ payable in cash as to 2*s.* 6*d.* in the £ within 14 days from the sanction of the Court to the Scheme, as to 2*s.* 6*d.* in the £ within one month thereafter, as to 2*s.* 6*d.* in the £ within two months thereafter and as to the remaining 2*s.* 6*d.* in the £ within three months thereafter such Debentures or cash to be accepted in full satisfaction of their claims.

THAT the costs of and incident to the Application to the Court for and the summoning and holding of the Meetings and the Petition for obtaining the sanction of the Court to the Scheme and of all parties properly appearing thereon and the costs of the existing Winding-up Petition be paid in cash out of the assets of the Company. [*Re B.U.R.T. Company, Ltd.*, 00188 of 1911. NEVILLE, J., July 27th, 1911.]

ORDER SANCTIONING SCHEME OF ARRANGEMENT INVOLVING THE FORMATION OF A NEW COMPANY (*a*).

(*Title.*)

UPON the Petition of the above-named Anglo-Canadian Finance Company Limited whose registered office is situate at   in the City of London on the 15th November 1911 preferred unto this Court and upon hearing Counsel for the Petitioners and upon reading the said Petition, the order dated the 21st July 1911 whereby the said Company was ordered to convene separate meetings of

(1) The fully paid ordinary shareholders

(2) The partly paid ordinary shareholders and

(3) The deferred shareholders of the said Company

for the purpose of considering and if thought fit approving with or without modification a Scheme of Arrangement proposed to be made between the said respective shareholders and the said Company (a copy of which Scheme was the exhibit J.R.T. (1) to the affidavit of J.R.T. hereinafter mentioned) the three several affidavits of J.R.T. filed respectively the 20th July the 25th October and the 22nd November 1911 the affidavit of H.B. A.H.V. filed the 22nd November 1911 and the affidavit of H.B. filed the 27th November 1911 and the Exhibits in the said affidavits or some of them respectively referred to (the exhibit J.R.T. (3) to the above-mentioned affidavit of J.R.T. filed the 25th October 1911 being the Report of the Chairman of the result of the Meetings hereinbefore referred to). And the Judge having waived the omission to advertise notice of the meetings above referred to as directed by the said Order of 21st July 1911.

THIS COURT doth hereby sanction the Scheme of Arrangement as set forth in the 9th paragraph of the said Petition as modified at the said meetings and which Scheme of Arrangement as so modified is set forth in the Schedule hereto and doth declare the same to be binding on the said fully paid Ordinary shareholders the partly paid Ordinary shareholders and the deferred shareholders of the above-named Company and also on the said Company.

THE SCHEDULE BEFORE REFERRED TO.

The Anglo-Canadian Finance Company, Limited.

Scheme of Arrangement.

1. A new Company shall be formed under the Companies (Consolidation) Act, 1908, as a Company limited by shares with the same name as the present Company, or with such other name as may be determined by the Directors or Liquidator of the present Company.

2. The Capital of the new Company shall be £200,000, divided into 400,000 shares of 10s. each, all of one class. The objects of the new Company shall include the acquisition and undertaking of all or any of the assets and liabilities of the present Company. The first Directors of the new Company shall be the present Directors of the present Company, or in the case of the refusal or inability of any of the said persons to act, some other person nominated in his place by the others of the said Directors. The Memorandum and Articles of Association of the new Company shall

(*a*) Cp. *General Motor Cab Co.* (1912), 132 L. T. Jo. 534; 28 T. L. R. 352, discussed *supra*, pp. 727 and 728.

be framed in accordance with the draft which has been already prepared with the privity of the present Directors of the Company.

3. The present Company shall by its Directors or Liquidator enter into an agreement with the new Company for the adoption of this scheme by the new Company and for the transfer to the new Company, upon the terms and subject to the provisions of this scheme, of the business and all the assets of the present Company as existing on the date on which such transfer of the business is effected, except as hereinafter mentioned.

4. There shall be excepted from the assets of the present Company to be transferred to the new Company, under this scheme, cash or other assets of the present Company to be selected by the Directors or the Liquidator of the present Company to the amount or value required—

(*a*) To pay and discharge all the debts and liabilities of the present Company excepting only any such debts and liabilities which are paid or discharged by the new Company or are taken over by it in such manner that the present Company is released and discharged from all liability in respect thereof.

(*b*) To pay and discharge all costs charges and expenses of the present Company of and incidental to this scheme and the preparation thereof and the carrying of the same into effect, including all costs charges and expenses of and incidental to the winding-up and dissolution of the present Company.

(*c*) To pay to the holders of the ordinary shares of the present Company a dividend at the rate of 6 per cent. per annum from the first of January 1911, until the date of the transfer of the business to the new Company, upon the capital paid up on such shares.

Such excepted assets shall be applied in paying and discharging the debts, liabilities, costs, charges, and expenses and dividend aforesaid.

5. Each holder of fully paid ordinary shares of the present Company shall, in respect of each two such shares held by him, be entitled to claim an allotment of five shares of 10*s*. each in the new Company, credited as fully paid up.

6. Each holder of partly paid ordinary shares of the present Company shall (subject, as regards any such shares upon which a less sum than 10*s*. is now paid up, to his paying up the same to the extent of 10*s*. per share) be entitled in respect of each four such shares to claim an allotment of five shares of 10*s*. each in the new Company, credited as fully paid up. No call shall either before or in the course of the winding-up of the present Company be made upon the holders of such partly paid ordinary shares in respect of the 10*s*. per share not at present called up thereon.

7. Each holder of Deferred shares in the present Company shall, in respect of every five such deferred shares held by him, be entitled to claim an allotment of eight shares of 10*s*. each in the new Company, credited as fully paid up.

8. The new Company shall not be bound to allot any shares hereunder to any person unless within 28 days from the date of the posting of the notice to him by the Liquidator of the present Company, of his right to claim the shares to which he is entitled (or such longer period if any as the said Liquidator and the new Company may in any particular case in their discretion allow) he shall, by writing addressed to the new Company,

claim the allotment. The Liquidator of the present Company shall, with all reasonable despatch after this scheme has become operative as hereinafter provided, post to each member at his registered address notice of his right to claim the shares to which he is entitled hereunder.

9. The Liquidator of the present Company shall sell, for what they will fetch, such of the above-mentioned shares of the new Company as the members of the present Company shall be entitled to claim but shall not claim within the period aforesaid, and the new Company shall allot the said shares to the purchasers, and the net purchase money received by the Liquidator for the shares so sold (after deducting all expenses of sale) shall be distributed rateably amongst those members who were respectively entitled to claim but did not, within the period aforesaid, claim such shares.

10. Nothing in this scheme contained shall entitle any person to claim an allotment of any fraction of a share in the new Company, but those shares in the new Company which, but for this provision, would have been distributed in fractions, shall be sold by the Liquidator of the present Company and the net proceeds shall be divided rateably amongst those members of the present Company who but for this provision, would have been entitled to such fractions of shares.

11. As soon as conveniently may be after this scheme becomes operative, the present Company and the Liquidator thereof and all other necessary parties shall do and execute all such deeds documents and things as may be necessary for the conveyance and transfer to the new Company of the business and assets of the present Company (except as hereinbefore provided) in the terms of this scheme, and for otherwise carrying this scheme into effect. Until such transfer the present Company shall, by its Directors and Liquidator, carry on the said business in the same manner as heretofore, so as to maintain the same as a going concern. If any consents shall be required to the transfer of any of the said assets, which cannot be obtained, the present Company and its Liquidator shall dispose of or otherwise deal with the same, at the expense and on account of the new Company, as the new Company shall direct.

12. This scheme shall become operative as soon as (*a*) the new Company shall have been formed and such agreement between it and the present Company entered into as hereinbefore provided, and (*b*) a Special Resolution shall have been duly passed and confirmed for winding-up the present Company; and, unless within a period of three calendar months from the date of this scheme being sanctioned by the Court or such longer period (if any) as the Court may allow such conditions shall have been complied with, this scheme shall never come into operation nor be of any force or effect.

13. The Directors or Liquidator of the present Company may assent to any modification of this scheme or to any condition which the Court may think fit to approve or impose.

14. Nothing in this scheme contained shall affect any charge lien or security if any such exist. [*Anglo-Canadian Finance Corporation*, 00275 of 1911. SWINFEN EADY, J., November 28th, 1911.]

ANOTHER FORM OF SCHEME OF ARRANGEMENT INVOLVING THE FORMATION OF A NEW COMPANY (*x*).

1. A new Company (hereinafter called the new Company) shall be formed under the Companies (Consolidation) Act 1908 as a Company limited by shares—with the same name as the present Company or such other name as may be determined by the liquidator of the present Company (hereinafter called the liquidator).

2. The capital of the new Company shall be £100,000 divided into 100,000 shares of £1 each—and the Memorandum and Articles of Association shall be in the form of a draft Memorandum and Articles which have already been prepared and a copy of which have for the purpose of identification been signed by A.B. a solicitor of the Supreme Court.

3. The liquidator shall forthwith enter into an agreement for the transfer to the new Company of all the assets of the existing Company such an agreement to be on the footing and subject to the provisions of this scheme.

4. Each holder of a debenture of the issue of 10,000 debentures of £100 each of the existing Company shall receive in lieu of each of his debentures and in full satisfaction of all claims he has thereunder a debenture for £100 of the new Company. Such debentures of the new Company to form part of a total issue of 20,000 debentures of £100 each to be issued by the new Company. The said debentures of the new Company are to be secured by a trust deed in the form of a draft trust deed which has already been prepared and a copy of which has for the purpose of identification been signed by the said A.B. and are to be in the form of the debenture set out in the first schedule to the said draft trust deed.

5. The new Company shall pay and satisfy the unsecured debts and liabilities of the existing Company and also all costs charges and expenses of or incidental to the winding-up of the existing Company including the costs of obtaining the sanction of the Court to this scheme and of carrying the same into effect—and the existing Company shall be released from the said unsecured debts and liabilities and costs charges and expenses and from all claims in respect of the same.

6. Each member of the existing Company shall on duly applying for the same be entitled to one £1 share of the new Company with 10*s.* credited as paid up thereon for every fully paid share of the existing Company now registered in his name and to one £1 share of the new Company with 7*s.* 6*d.* paid up thereon for every share of the existing Company with 17*s.* 6*d.* paid up thereon now registered in his name.

7. The liquidator shall forthwith after the sanction of the Court to this scheme has been obtained send a notice to each member of the old Company informing him of the number of shares to which on duly applying for the same he is entitled under this scheme and the amount to be credited as paid up thereon and that he must apply by writing addressed to the new Company for such shares or such of them as he requires before the expiration of one calendar month from the date when such notice is to be deemed to be served as hereinafter provided and that he must enclose with such application the amount payable on application being a sum of

(*x*) A scheme somewhat similar to this was sanctioned in *Tea Corporation*, [1904] 1 Ch. 12, where the scheme is fully set out. The trustees for the debenture-holders had issued a summons in a debenture-holder's action for liberty to sell. Cp. *General Motor Cab Co.* (1912), 132 L. T. Jo. 534 ; 28 T. L. R. 352, *supra*, pp. 727 and 728.

1*s*. for every share applied for. The new Company shall not be bound to make any allotment of shares hereunder unless such shares are duly applied for in manner and within the period mentioned in such notice and no shares shall be deemed to have been duly applied for unless the application was accompanied by the amount payable on application for the shares so applied for.

8. The liquidator may at the expiration of the said period of one calendar month sell any of the shares in the new Company to which any shareholders of the existing Company were entitled on application but which have not been duly applied for—and the net proceeds of such sale after deducting all costs thereof shall be distributed among the persons who would have been entitled to such shares had they duly applied for them and in proportion to the number of such shares to which they would have been so entitled.

9. No further call shall be made by the existing Company or the liquidator on any member of the existing Company but the liquidator shall forthwith on being indemnified by the new Company against any costs he may incur in so doing take all steps that the new Company may consider advisable for getting in any sums due from members of the existing Company in respect of any shares that have been forfeited.

10. As soon as this scheme becomes binding the existing Company and the liquidator and all other persons shall take all steps and execute and do all documents and things which may be necessary for carrying it into effect and for effectually vesting in the new Company the assets of the existing Company.

11. Unless this scheme is adopted by the new Company within three weeks after the sanction of the Court has been obtained and at least shares of the new Company have been allotted within such period the liquidator may with the sanction of the Court declare that the scheme is at an end.

12. All further proceedings in the liquidation of the existing Company shall be stayed except such as may be necessary for carrying into effect this scheme and obtaining the sanction of the Court thereto unless the liquidator shall under the last preceding clause hereof declare that the scheme is at an end in which case such liquidation shall proceed in its ordinary course.

13. The liquidator may accept such modifications of or alterations to this scheme as the Court may require.

14. All notices to be given hereunder to any member of the existing Company shall be given in manner in which notices are by the Articles of Association of the existing Company required to be given and every such notice shall be deemed to have been received at the expiration of 24 hours from the time when an envelope containing the same was put into the post-box.

Dated

AMALGAMATION OR TRANSFER OF ASSURANCE COMPANIES' BUSINESSES.

Where it is intended to amalgamate two or more assurance companies, or to transfer the assurance business of any class from one assurance company to another company, the directors of any

one or more of such companies may apply to the Court (*a*) by petition to sanction the proposed arrangement.

The Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established.

Before any such application is made to the Court (*b*): (1) notice of the intention to make the application must be published in the *Gazette* (*bb*); and (2) a statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary, must, unless the Court otherwise directs, be transmitted to each policy-holder of each company in manner provided by section 136 of the Companies Clauses Consolidation Act, 1845, for the transmission to shareholders of notices not requiring to be served personally, but it will not be necessary to transmit such statement and other documents to policy-holders other than life, endowment, sinking fund, or bond investment policy-holders, nor in the case of a transfer to such policy-holders if the business transferred is not life assurance business or bond investment business; and (3) the agreement or deed under which the amalgamation or transfer is effected must be open for the inspection of the policy-holders and shareholders at the offices of the companies for a period of fifteen days after the publication of the notice in the *Gazette*.

No assurance company may amalgamate with another, or transfer its business to another, unless the amalgamation or transfer is sanctioned by the Court in accordance with this section (*c*).

Where an amalgamation takes place between any assurance companies, or where any assurance business of one such company is transferred to another company, the combined company or the purchasing company, as the case may be, must, within ten days from the date of the completion of the amalgamation or transfer, deposit with the Board of Trade—

(*a*) Certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer; and

(*a*) Such petitions are usually presented to the Chancery Division. It is thought, however, that they can be presented in the winding-up department where the company is not in liquidation: where it is in liquidation they should be presented in that department.

(*b*) *I.e.*, before the petition comes on for hearing, not before its presentation: *Briton Life Association* (1890), 59 L. J. (CH.) 988.

(*bb*) The expression "The Gazette" means the *London*, *Edinburgh*, or *Dublin Gazette*, as the case may be: Assurance Companies Act, 1909, s. 29.

(*c*) Assurance Companies Act, 1909, s. 13.

(*b*) A certified copy of the agreement or deed under which the amalgamation or transfer is effected; and

(*c*) Certified copies of the actuarial or other reports upon which the agreement or deed is founded; and

(*d*) A declaration under the hand of the chairman of each company and the principal officer of each company that to the best of their belief every payment made or to be made by any person whatsoever on account of the amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been or are to be made either in money policies, bonds, valuable securities, or other property by or with the knowledge of any parties to the amalgamation or transfer (*d*).

Section 136 of the Companies Clauses Consolidation Act, 1845, referred to above, contains the following provision:—

"Notices requiring to be served by the Company upon the shareholders "may unless expressly required to be served personally be served by the "same being directed according to the registered address or other known "address of the shareholder within such period as to admit of its being "delivered in due course of delivery within the period if any prescribed "for the giving of such notice and on proving such service it shall be "sufficient to prove that such notice was properly directed and that it "was so put into the post office."

The provisions of the Assurance Companies Act, 1909, with respect to amalgamation above set out, do not apply where the only classes of assurance business carried on by both the companies are fire insurance business or accident assurance business, or fire insurance and accident insurance business, and the provisions with respect to the transfer of assurance business from one company to another do not apply to fire insurance business or accident insurance business (*e*).

In the case of a company carrying on life assurance business, which proposes to amalgamate with or transfer its life assurance business to another assurance company, the Court cannot sanction the amalgamation or transfer in any case in which it appears to the Court that the life policy holders representing one-tenth or more of the total amount assured in the company dissent from the amalgamation or transfer (*f*).

The expression "actuary" in the Assurance Companies Act, 1909, means an actuary possessing such qualifications as may be prescribed by rules made by the Board of Trade (*g*).

(*d*) Assurance Companies Act, 1909, s. 14. The Board of Trade need not be served with the petition.

(*e*) Assurance Companies Act, 1909, ss. 31 (*f*) and 32 (*e*).

(*f*) Assurance Companies Act, 1909, s. 30 (*d*).

(*g*) Assurance Companies Act, 1909, s. 29, and see Order of Board of Trade of June 6, 1910. Rules relating to Qualification of Actuaries, rr. 1 and 2, set out *supra*, p. 416.

The provisions as to amalgamation and transfer of assurance companies apply even when the transferor company is in liquidation (*h*), but the section is not an enabling one, and a company seeking to sell all its assets must have power so to do either in its original charter (*i*), or in its charter as altered under a power in that behalf contained in its original charter (*k*). Section 192 of the Companies (Consolidation) Act, 1908, will enable an assurance company which has registered under Part VII. of that Act to enter into a scheme for reconstruction or amalgamation (*l*), subject, however, to the confirmation of the Court under section 13 of the Assurance Companies Act, 1909.

Where it is impossible or very difficult to notify any policy-holder it would seem that the Court can dispense with such notification, except possibly in case of the amalgamation or transfer of a life assurance company or life assurance business where if such policy-holder dissented, such dissent would bring the total amount of dissentients up to one-tenth of the total amount assured by the company (*m*). Notices need not be sent to persons who have taken out policies in the transferor company between the time when the policy-holders were notified and the order (*n*).

Trustees under a deed for securing annuities will be policy-holders (*o*). Under the section it would appear that the Court cannot confirm a transfer of part of one class of a company's business (*o*). The Court cannot under the section bind dissentient policy-holders to take out policies with the new company, though under a scheme under section 120 of the Companies (Consolidation) Act, 1908, it can no doubt require them to take such policies or nothing (*p*). It would appear that the old cases on novation will, having regard to the fact that section 7 of the Life Assurance Companies Act, 1872, has not been reenacted, resume their previous importance. In such cases a tripartite agreement between the original debtor, the new debtor and the creditor must

(*h*) *Life and Health Assurance Association*, [1910] 1 Ch. 458.

(*i*) *Sovereign Life Assurance Co.* (1889), 42 C. D. 540.

(*k*) *Argus Life Insurance Co.* (1888), 39 C. D. 571; *Doman's Case* (1876), 3 C. D. 21.

(*l*) *Southall* v. *British Mutual Life Assurance Society* (1871), 6 Ch. 614.

(*m*) Cp. *London and Southwark Insurance Corporation* (1880), 42 L. T. 247, and the power conferred on the Court by s. 13 (3) (*b*) of the Assurance Companies Act, 1909, to "otherwise direct," it is thought that *Briton Life Association* (1887), 56 L. J. (CH.) 988 would not now be followed on this point having regard to this provision and to the fact that s. 7 of the Life Assurance Companies Act, 1872, is repealed and not re-enacted.

(*n*) *Universal Life Assurance Society* (1901), 18 T. L. R. 198.

(*o*) *Sovereign Life Assurance Co.* (1889), 42 C. D. 540.

(*p*) For a form of order sanctioning an agreement and scheme, see *New Era Assurance Corporation* (1909), 53 Sol. J. 743, and *infra*, pp. 763 and 764.

be shown (*q*). Such an agreement will in a proper case be inferred from the facts, and the question whether there is or is not such an agreement is in all cases a question of fact turning on the intention of the parties (*r*).

A person who knows of an agreement for amalgamation or transfer under which the new company is to take over the assets and pay the debts of the old company, and acts on the footing of such agreement as by paying premiums (*s*) and accepting bonuses from the new company cannot usually even in cases where he was not a creditor of the old company, but had only the right to resort to a given part of its assets (*t*), claim that his rights against the original debtor are intact (*u*). It will probably be more difficult to show novation in the case of an annuity than a policy seeing that in the former case payments are made to, and not as in the latter case, by the creditor (*x*). Where a policy has been delivered to the new company for endorsement and premiums have been paid there again, there will usually be novation (*y*). There are also some cases where the Court will infer an agreement by which the creditor is to be entitled to look to both the original and the new debtor (*z*), novation will perhaps be inferred easily where the policy-holder has in his character of shareholder in the old company received shares in the new company (*a*). Where there have been two transfers and novation with the ultimate debtor is sought to be established, probably a rather stronger case will be required than in the ordinary case of one transfer (*b*), and decisions in partnership cases where partners

(*q*) *Manchester and London Life Assurance and Loan Association* (1870), 9 Eq. 643; 5 Ch. 640.

(*r*) *Family Endowment Society* (1870), 5 Ch. 118.

(*s*) Possibly the payment of one premium will not be enough: *Ex parte Blood* (1870), 9 Eq. 316.

(*t*) *Anchor Assurance Co.* (1870), 5 Ch. 632; cp. also *Hort's Case* (1875), 1 C. D. 307; *Cocker's Case* (1876), 3 C. D. 1; *Dowse's Case* (1876), 3 C. D. 384, in all of which there was a power of transfer in the deed, and the funds alone were liable, and it was held that after transfer the transferor company ceased to be liable.

(*u*) *Spencer's Case* (1871), 6 Ch. 362; *Times Life Assurance and Guarantee Co.* (1870), 5 Ch. 381.

(*x*) *Family Endowment Society* (1870), 5 Ch. 118; *National Provincial Life Assurance Society* (1870), 9 Eq. 306; *Commercial Bank Corporation of India and the East, Felix Jones's Claim* (1868), 18 L. T. 668; *India and London Life Assurance Co., Dykes' Claim* (1872), 7 Ch. 651, affirming (1872), 20 W. R. 586.

(*y*) *Ex parte Blood's Case* (1870), 9 Eq. 316; and cp. *Re Head* (*No.* 1), [1893] 3 Ch. 426; *Re Head* (*No.* 2), [1894] 2 Ch. 236.

(*z*) *Ex parte Gibson* (1869), 4 Ch. 662; *Rouse* v. *Bradford Banking Corporation*, [1894] 2 Ch. 32; [1894] A. C. 586.

(*a*) *Fleming's Case* (1871), 6 Ch. 393; but cp. *Shayler's Case* (1872), 16 Sol. J. 501.

(*b*) *Manchester and London Life Assurance and Loan Association* (1870), 5 Ch. 640, with which cp. *Anchor Assurance Co.* (1870), 5 Ch. 632, reversing the judgment of JAMES, V.C., 5 Ch. 635 *n.*, see especially at p. 636 *n.*

have come in or gone out will not necessarily be followed, even where the facts are otherwise the same, in the case of amalgamated companies, for in the latter class of case more will be required to establish novation (*c*).

An agreement will be entered into (*d*), and then the petition will be presented.

The petition will be supported by an affidavit of a director of each of the companies, exhibiting the agreement, the certificate of incorporation, and the memorandum and articles of association (containing all special resolutions in force) or deed of settlement of each company, and also the minute book of each company with duly signed minutes of the meetings, such signatures being duly proved. Before the petition is heard a summary showing the nature of the amalgamation or transfer (*e*), and the material facts embodied in the agreement (the agreement itself being open to inspection (*f*)), and the actuarial reports should be sent to each member with his notice of meeting. Each policy-holder entitled to notices or reports under section 13 (3) (*b*) of the Assurance Companies Act, 1909, will receive such notices and reports, and will be informed of his right to inspect the agreement. It is also desirable at this stage to send a form to policy-holders of the transferor company, for the purpose of effecting novation (*g*), and substituting the liability of the transferee company for that of the transferor company. This form will be signed, filled in, and returned, and all forms so signed, filled in and returned with a copy of any notices or reports sent to policy-holders or members, will be exhibited to the affidavit of the secretary of the transferor company, which will, in addition, prove the due convening of meetings (as on a reduction of capital), the register of members and of policy-holders being exhibited. The secretary of the transferee company will prove that the meeting of that company was duly convened. Actuarial evidence will also be required. Such evidence should show what assets and what liabilities are to be taken over, and should state why the deponent regards the scheme as sound. Not infrequently a subsequent petition for payment out of the deposit will be necessary. Such payment will not, however, be directed where the transferor company remains liable on any of its policies of the same class as the business transferred, or where it

(*c*) *Family Endowment Society* (1870), 5 Ch. 118, 132.

(*d*) This agreement will be in the same form as an ordinary reconstruction agreement, except that it will provide for policy-holders (see petition, *infra*, pp. 760 *et seq.*), and will be conditional on the sanction of the Court being obtained.

(*e*) This summary will contain the matters set out in paragraphs 11 and 12 of the petition; see *infra*, pp. 762 and 763.

(*f*) See *supra*, p. 753.

(*g*) In spite of the repeal of s. 7 of the Life Assurance Companies Act, 1872, this is advisable. For such forms, see *infra*, pp. 758 and 759.

carries on other business which requires a deposit, and is not transferred, and it has no other deposit (*h*).

It is not usual to take out a summons when these petitions have been presented, as the only advertisement required is the one in the *Gazette*, and that must, to comply with the provisions of section 13 (3) (*c*), be inserted so as to give fifteen clear days for inspection of the agreement. If, however, it is desired that some of the requirements of section 13 (3) (*b*) of the Act shall be dispensed with, a summons asking for leave to dispense with such requirements will be taken out. In such case if leave is given, further advertisement will usually be required. Occasionally leave to dispense with some of these requirements is given at the hearing of the petition (*i*).

FORM OF CIRCULAR TO BE SENT TO THE POLICY-HOLDERS OF THE TRANSFEROR COMPANY.

The A.B. Company Ld.

Sir (or Madam),

An agreement dated the day of 19 has been entered into for the sale of the business and assets of the above-named Company to the C.D. Company Ld. The transfer proposed to be effected by such agreement is conditional on the sanction of the Court being obtained. Such agreement can be seen at the offices of Messrs. X.Y. & Co., No. Street, E.C. during business hours on any day before the day of next. The actuarial reports of Messrs. and a statement of the transfer or amalgamation together with an abstract containing the material facts embodied in the said agreement are enclosed herewith (*j*). If you are willing in the event of such sanction being obtained to abandon all claims which you have against the A.B. Company Ld. under any policy or policies which you have effected with that Company and to accept in lieu thereof the liability of the C.D. Company Ld. you are requested to sign and return the enclosed form of novation.

Dated the day of 19 .

By order of the Boards of the A.B. Company Ld. and of the C.D. Company Ld.

X.L.

Secretary of the A.B. Company Ld.

FORM OF NOVATION.

To the Directors of the A.B. Company Ld. and the C.D. Company Ld.

Gentlemen,

In the event of the sanction of the Court being obtained to the agreement dated the day of 19 and made between the

(*h*) Cp. Board of Trade Rules as to deposits, 1910, r. 7 (*d*), and *post*, p. 774.

(*i*) This was done in *Omnium Insurance Corporation*, 1911—0—0116, 1911—0—0117, Mr. Justice HORRIDGE (as Vacation Judge), August 30, 1911.

(*j*) This statement and abstract will set out such matters as are set out in paragraphs 11 and 12 of the Petition set out below, pp. 762 and 763. See also the advertisement below on p. 760.

A.B. Company Ld. of the one part and the C.D. Company Ld. of the other part I abandon all claims which I may have against the A.B. Company Ld. in respect of any policy or policies I have effected with them and in lieu thereof I accept the liability of the C.D. Company Ld.

Dated.

Signed.

FORM OF ADVERTISEMENT FOR INSERTION IN THE *GAZETTE* PURSUANT TO SECTION 13 (2) (*a*) OF THE ASSURANCE COMPANIES ACT, 1909.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.
MR. JUSTICE

19 A No. 00.

In the Matter of the Assurance Companies Act 1909
and
In the Matter of the A.B. Company Limited.

Notice is hereby given that a petition was on the day of 19 presented to this Court by E.F.G.H. H.I. and J.K. the directors of the above-named A.B. Company Limited and L.M. N.O. P.Q. and R.S. the directors of the C.D. Company Limited praying that a conditional agreement dated the day of 19 and made between the A.B. Company Limited of the one part and the C.D. Company Limited of the other part and the transfer intended to be effected thereby may be sanctioned and confirmed by the Court or that such further or other order may be made in the premises as to the Court shall seem fit, and notice is hereby also given that the said petition is directed to be heard before the Honourable Mr. Justice sitting at the Royal Courts of Justice Strand in the County of London on day the day of 19 and any person interested in the above named A.B. Company Limited or in the above-named C.D. Company Limited as a policy-holder or shareholder and desiring to oppose the making of an order for the sanction and confirmation of the said conditional agreement and the transfer of the business of the A.B. Company Limited to the C.D. Company Limited to be effected by such conditional agreement should appear by himself or his counsel for that purpose and a copy of the said petition will be furnished to any such person requiring the same by the undersigned solicitors to the petitioners on payment of the regulated charges for the same. And notice is hereby also given that for 15 days before the said day fixed for the hearing of the said petition any person interested as aforesaid may inspect the said agreement and also copies of the actuarial report of the A.B. Company Limited and a report of an independent actuary at the office of the A.B. Company Limited Street in the City of London or at the office of the C.D. Company Limited Street in the said City during the usual business hours.

Dated the day of 19 .

X.Y.
Street, E.C.
Solicitors for the petitioners.

FORM OF ADVERTISEMENT PURSUANT TO AN ORDER DISPENSING WITH THE TRANSMISSION OF DOCUMENTS TO POLICY-HOLDERS OF THE TRANSFEREE COMPANY UNDER SECTION 13 (2) (b) OF THE ASSURANCE COMPANIES ACT, 1909, AND DIRECTING AN ADVERTISEMENT INSTEAD.

THE C.D. COMPANY LIMITED.

Notice to Policy-holders.

Notice is hereby given that an agreement dated the day of 19 has been entered into by which the business and assets of A.B. Company (a mutual office) are to be transferred to the C.D. Company Limited subject to the sanction of the Court under the Assurance Companies Act 1909. The effect of the agreement shortly stated is that the assets of the A.B. Company will be kept as a separate fund for fulfilling the contracts of the A.B. Company that the C.D. Company Limited shall guarantee all the policies and annuities of the A.B. Company and make up any deficiency of the A.B. Company's fund in respect of those liabilities and shall also guarantee to the participating policy-holders of the A.B. Company certain minimum reversionary bonuses but the life assurance fund of the C.D. Company Limited is unaffected by the agreement. No consideration is to be paid for the transfer but certain arrangements are to be made in favour of the directors and officers of the A.B. Company. Notice is also given that on the day of 19 a petition which has been presented for the sanction of the Court to the said agreement is to be heard before Mr. Justice at the Royal Courts of Justice Strand London when any policy-holder of either of the said companies desiring to oppose the making of an order for the sanction of the said agreement may attend in person or by his counsel and be heard and that for 15 days before the day of such hearing any policy-holder of either of the said companies or person authorized by any such policy-holder may inspect the said agreement and also copies of the actuarial report of the A.B. Company and a report of an independent actuary at the office of the said C.D. Company Limited Street E.C. during the usual business hours.

By order of the Board.

X.Y.

General business manager of the C.D. Company Ld.

FORM OF PETITION.

IN THE HIGH COURT OF JUSTICE,

Chancery Division.

MR. JUSTICE .

In the Matter of the Assurance Companies Act 1909

and

In the Matter of the A.B. Company Limited.

TO HIS MAJESTY'S HIGH COURT OF JUSTICE.

THE humble Petition of your Petitioners the E.F.G.H. H.I. and J.U. the directors of the said A.B. Company Limited (hereinafter called the Transferor Company) and L.M. N.O. P.Q. and R.S. the directors of the

C.D. Company Limited (hereinafter called the Transferee Company) showeth as follows :—

1. This is a petition to sanction a transfer of the business and assets of the transferor Company to the transferee Company pursuant to section 13 of the Assurance Companies Act 1909.

2. The transferor Company was registered in the year 1892 under the Companies Act 1862 to 1890 as a Company limited by shares and its registered office is situate at in the city of London.

3. The transferee Company was registered in the year 1865 under the Companies Act 1862 as a Company limited by shares and its registered office is situate at in the city of London.

4. The objects for which the transferor Company was registered were "To carry on the business of life assurance in all its branches" and certain other objects specified in its memorandum of association.

5. The objects for which the transferee Company was registered were—

"To carry on the business of life assurance in all its branches."

"To acquire the whole or any part of the property undertaking and "assets of any Company carrying on any business of the same nature "as that carried on by the" transferor "Company and certain other "objects specified in its Memorandum of Association."

6. The capital of the transferor Company is £ divided into shares of £ each. The whole of such capital has been issued and has been fully paid up.

7. The capital of the transferee Company is £ divided into shares of £ each. Of such shares have been issued and the sum of £ has been paid up on each of such issued shares.

8. Both the transferor and the transferee Company have complied with the requirements of the Assurance Companies Act 1909 as to making deposits and otherwise.

9. At extraordinary general meetings of the transferor Company held respectively on the day of 19 and the day of 19 the following resolution was duly passed and confirmed as a special resolution :—

"That the transfer of the business and assets of this Company to the "C.D. Company Ld. on the terms set out in a draft agreement "expressed to be made between this Company of the one part and "the C.D. Company Ld. of the other part and which has for the "purposes of identification been signed by X.Y. a solicitor of the "Supreme Court be and the same is hereby sanctioned and that the "directors of this Company be and are hereby authorized to enter "into such agreement."

10. At an extraordinary general meeting of the transferee Company held on the day of 19 the following resolution was duly passed :—

"That the transfer of the business and assets of the A.B. Company Ld. "to this Company on the terms set out in a draft agreement ex-"pressed to be made between the A.B. Company Ld. of the one "part and this Company of the other part and which has for the "purpose of identification been signed by J.N. a solicitor of the "Supreme Court be and the same is hereby sanctioned and that

"the directors of this company be and are hereby authorized to "enter into such agreement."

11. By an agreement dated the day of 19 and made between the transferor Company of the one part and the transferee Company of the other part (being the agreement a draft whereof was referred to in the resolutions set out in the two last preceding paragraphs hereof) it was provided that—

(1) The transferor Company do sell and the transferee Company do purchase all the business and all the assets of the transferor Company.

(2) As part of the consideration for such purchase the transferee Company was to pay to the transferor Company or its liquidator the sum of £ such sum to be satisfied by the allotment to the transferor Company or its liquidator of fully paid up shares of £ each in the transferee Company.

(3) As the remainder of the consideration for such purchase the transferee Company was to pay satisfy and discharge all the debts and liabilities of the transferor Company including all debts and liabilities in respect of policies effected with the transferor Company in cases where the holders of such policies were not willing to accept the liability of the transferee Company in lieu of the liability of the transferor Company and all costs charges and expenses of the liquidation of the transferor Company except such of the sums payable to dissentient members under section 192 of the Companies (Consolidation) Act 1908 as were thereinafter sufficiently provided for.

(4) The transferor Company was to go into voluntary liquidation within 3 calendar months from the date when the transfer proposed to be effected by such agreement was sanctioned by the Court and each shareholder of the transferor Company who had not dissented in manner provided by section 192 of the Companies (Consolidation) Act 1908 was to be entitled to one share in the transferee Company for every share held by him in the transferor Company if he should apply for such shares or share within 14 days after receiving notice from the liquidator of the transferor Company informing him of his rights. Such liquidator to give such notices accordingly.

(5) The liquidator of the transferor Company was to sell (a) all the shares in the transferee Company which shareholders in the transferor Company who had dissented in manner provided by section 192 of the Companies (Consolidation) Act 1908 would have been entitled to but for such dissent and (b) the shares in the transferee Company which shareholders in the transferor Company who had not dissented in manner aforesaid should not have applied for, and to apply the proceeds of sale of the shares of the said dissentient shareholders in or towards satisfying their claims under section 192 of the Companies (Consolidation) Act 1908 and to distribute the proceeds of sale of the other shares to be sold as aforesaid among the shareholders of the transferor Company who would have been entitled to such shares had they

applied for the same and in the proportions in which they would have been so entitled.

The said agreement (hereinafter called the transfer agreement) also contained provisions as to notices title and other matters.

12. The transfer agreement was conditional on the sanction of this Court being obtained to the transfer proposed to be effected thereby either upon the terms in the said agreement set out or with such modifications as this Court should require.

13. On the day of 19 there were policy-holders in respect of life policies which were then unmatured in the books of the transferor Company. Such policies were for a total sum of £ and there were annuitants for annuities amounting in all to £ .

14. On the said day of the documents required to be transmitted to policy-holders and annuitants by section 13 (3) (b) of the Assurance Companies Act, 1909, were thereby transmitted to each policy-holder and annuitant of the transferor Company and of the transferee Company and a form was sent to the said policy-holders and annuitants of the transferor Company for such policy-holders and annuitants to accept the liability of the transferee Company in lieu of the liability of the transferor Company in the event of the sanction of the Court to the said proposed transfer being obtained.

15. The form referred to in the last preceding paragraph hereof has been signed by of such policy-holders representing policies to the value of £ and by of the such annuitants representing annuities to the value of £ .

16. The provisions of section 13 (3) (a) and (c) of the Assurance Companies Act 1909 have been complied with (*jj*).

17. The transferee Company is in a prosperous and flourishing condition and is now and in the event of the transfer proposed to be effected by the transfer agreement being carried into effect will be in a thoroughly sound condition actuarially speaking and under the circumstances it is just and equitable that such transfer should be sanctioned by this Court.

Your petitioners therefore humbly pray—

(1) That the transfer agreement and the transfer proposed to be effected thereby may be sanctioned by this Court.

(2) Or that such other order may be made in the premises as to this Court seem meet.

NOTE.—It is not proposed to serve this petition on any person.

ORDER SANCTIONING TRANSFER OF ASSURANCE COMPANY'S BUSINESS.

1911—E—064.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.
MR. JUSTICE WARRINGTON.

Thursday the 3rd day of August 1911.

In the Matter of the Assurance Companies Act 1909
and
In the Matter of the Economic Life Assurance Society.

Upon the Petition of Chairman

(*jj*) Paragraphs 13, 14, 15, and 16 will be omitted where the requirements of section 13 (3) of the Assurance Companies Act, 1909, are (as will usually be the case) not complied with until after the petition is presented.

and [here followed the names of the other directors of the Alliance Assurance Company] Directors of the Alliance Assurance Company Limited on the 10th July 1911 preferred unto this Court and upon hearing Counsel for the Petitioners and for the Respondents the Economic Life Assurance Society on the 29th day of July 1911 and upon reading the said Petition a Provisional Agreement dated 5th day of April 1911 in the said Petition mentioned and made between on behalf of the Economic Life Assurance Society of the one part and on behalf of the Alliance Assurance Company Limited of the other part the order dated 8th May 1911 made in these matters dispensing with transmission of documents under section 13 of the above-mentioned Act to the policy-holders in the Alliance Assurance Company Limited the *London Gazette* of the 11th July 1911 *The Times* newspaper of the 11th July 1911 an affidavit of R.S.P. filed 15th July 1911 an affidavit of O.K. filed 27th July 1911 two Affidavits of G.T. filed 27th July and this day respectively and an Affidavit of R.L. filed 28th July 1911 and the several exhibits to each of the said Affidavits respectively.

This Court doth Order that the said Provisional Agreement dated the 5th of April 1911 and the transfer intended to be effected thereby be sanctioned and confirmed and be carried into effect.

REMOVAL OF DEFUNCT COMPANIES FROM THE REGISTER.

Where the Registrar of Joint Stock Companies has reasonable cause to believe that a company is not carrying on business or in operation, he must send to the company by post a letter inquiring whether the company is carrying on business or in operation.

If the Registrar does not within one month of sending the letter receive any answer thereto, he must within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette*, and send to the company by post a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a

period of six consecutive months after notice by the Registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the Registrar may publish in the *Gazette* and send to the company a notice similar to the one above mentioned.

At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and must publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice the company will be dissolved; but the liability (if any) of every director, managing officer, and member of the company will continue, and may be enforced as if the company had not been dissolved.

If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on the application of the company, or member, or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company will be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be, as if the name of the company had not been struck off.

A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar of Joint Stock Companies, may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in the memorandum of association (*k*).

The fact that a company's name has been struck off the register under this section would appear to be no bar to a compulsory winding-up order being made (*l*). There is, of course, in these cases often a difficulty about service, and it would seem right to take out a summons for directions on this point (*m*).

(*k*) Companies (Consolidation) Act, 1908, s. 242. "The Gazette" means as respects Companies registered in England, the *London Gazette*, as respects Companies registered in Scotland, the *Edinburgh Gazette*, and as respects companies registered in Ireland, the *Dublin Gazette*, *ibid.*, s. 285.

(*l*) *Anglo-American Exploration and Development Co.*, [1898] 1 Ch. 100; *Grosvenor House Property Acquisition and Investment Building Society* (1902), 71 L. J. (CH.) 748; see *Alliance Heritable Security* (1886), 14 Rettie 34. A creditor can, since the Act of 1900, petition for the company's name to be restored, and possibly the Court would not now allow a creditor to petition for a winding-up order, until he has got the name of the company restored to the register: Buckley, 9th Ed. 527.

(*m*) See the first two cases cited in last preceding note—in the latter

The fact that the company is in compulsory (*n*) or voluntary liquidation (*o*) will not prevent the name of the company being restored to the register under the section, but the Court will not make an order for this purpose unless it is shown that some good may accrue by the order going, *e.g.* that debts can be got in or that the company will be enabled to carry on its business, and that the company is carrying on its business or in operation (*p*). The Court has no power to impose a penalty as a condition of making an order for restoring the name of the company to the register (*q*).

Applications to restore a company's name to the register are usually made by petition. In some cases an order has been made on an originating summons, but this is contrary to the almost universal practice. The usual practice is to assign these matters to the winding-up Judge, but they may, apparently even when the company is in winding-up (*s*), be assigned a Judge of the Chancery Division, in which case such Judge will be ascertained by ballot in the ordinary way. Every petition should be headed in the Matter of the Companies (Consolidation) Act, 1908, and in the Matter of the Company; the company's name in all cases coming as the second, and not, as in the case of petitions to alter the objects of the company or to reduce its capital, as the first title. The application must be by the company or a member thereof or a creditor. The company's name can presumably be used by any person who has a considerable holding of its shares (*t*). The Registrar of Joint Stock Companies must always be made a respondent and, though it is not necessary (*u*), it would appear desirable in all cases to have the company or its directors either as petitioners or as respondents. If

of them the petition was served by advertisement—in the *London Gazette* and *Times*, and by sending a copy of the advertisement to the company's two principal creditors.

(*n*) *Financial Corporation* (1883), 27 Sol. J. 199; *Estates Investment* (1883), 27 Sol. J. 585; and see also *Johannesburg Mining and General Syndicate*, [1901] W. N. 46.

(*o*) *Outlay Assurance Society* (1887), 34 C. D. 479.

(*p*) *Carpenter's Patent Davit, etc., Co.* (1888), 1 Meg. 26.

(*q*) *Brown Bayley's Steel Works* (1905), 21 T. L. R. 374.

(*s*) EADY, J., as the Judge doing the Manchester Registry work, made such an order in the case of the *Educational and Commercial Publishing Co., Ltd.*, on July 21, 1906. See order, *post*, pp. 770 and 771. The application must, where the company is in winding-up, bear a £2 impressed stamp. See the orders as to fees of July 31, 1908, and December 2, 1903. The order will in such case, if made in Court, bear a £1 impressed stamp: *ibid.*

(*t*) *Anglo-American Exploration and Development Co.*, [1898] 1 Ch. 100; and see *Johannesburg Mining and General Syndicate*, [1901] W. N. 46, as to the company and not its liquidator being the proper petitioner.

(*u*) In *Blandford Gas and Coke Co.*, 00128, of 1908, May 19, 1890, EADY, J., did not require the name of the company to be added, because the section did not require it; but he required the petitioners who were directors, to undertake to make the returns.

this is done the company can be ordered to pay the costs and to give the usual undertaking as to making returns required by the Board of Trade. The Court will sometimes, in ordering the petitioner to pay the costs of the Registrar, declare that such payment is to be without prejudice to any question between the company and the petitioner as to who shall ultimately bear such costs (*uu*). A summons for directions is never taken out in these cases now, and the petition is answered in the ordinary way, *i.e.* by writing on it the *fiat* of the Registrar fixing the day of hearing. It is unnecessary to advertise either the date of hearing or the presentation of the petition, but when an order is made restoring the name of a company, such order invariably directs the Registrar of Joint Stock Companies to insert an advertisement in the *London Gazette* only.

PETITION FOR RESTORING COMPANY'S NAME TO REGISTER.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.
MR. JUSTICE
In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the Company Limited.
TO HIS MAJESTY'S HIGH COURT OF JUSTICE.

The humble petition of the above-named Company (*x*) (hereinafter called the Company) sheweth as follows:—

1. The Company was registered under the Companies Act 1862 to 1900 on the day of 1901 with a capital of £ divided into shares of £ each.

2. The registered office of the Company is situate at

3. The objects for which the Company was formed are as follows: [Here set out the main objects for which the Company was formed], and other objects set forth in the Memorandum of Association thereof.

4. Of the said capital of the Company shares have been issued and the sum of 10*s*. has been or is deemed to have been paid-up in respect of each of such shares.

5. Ever since its incorporation the Company has carried on and it is now carrying on a large and prosperous business.

6. In the years 1909 and 1910 the Company omitted to make up and forward to the Registrar of Joint Stock Companies (1) the annual lists and summaries as required by section 26 of the Companies (Consolidation) Act 1908, and (2) a copy of the register containing the names addresses and the occupations of its directors and managers in compliance with section 75 of the Companies (Consolidation) Act 1908, and in the year 1910 the Company changed its registered office from to but it omitted to give the said Registrar notice of such change as required by section 62 of the Companies (Consolidation) Act 1908.

7. Under the circumstances aforesaid the Registrar of Joint

(*uu*) This was done in *Rockhouse Hotel Co.*, 0048 of 1912, NEVILLE, J., February 22nd, 1912. The petitioner in this case was a contributory.

(*x*) Or of A.B., a creditor or member, as the case may be, of the above-named company. Frequently two or three of the principal members or the liquidator join with the company as co-petitioners.

Stock Companies after taking as he alleges and the Company does not deny the preliminary steps required by section 242 of the Companies (Consolidation) Act 1908 caused the name of the Company to be struck off the register of Joint Stock Companies on the 1911 and notice thereof was published in the *London Gazette* of 1911.

8. The defaults and omissions made by the Company as stated in paragraph 6 hereof arose by reason of the inadvertence or negligence of a former secretary of the Company and the Company did not in fact receive any notice sent to it pursuant to the provisions of section 242 of the Companies (Consolidation) Act 1908 nor did any advertisement published in the *London Gazette* pursuant to the said section come to its knowledge at any time before the 19 .

9. By reason of the Company having been dissolved in manner aforesaid the Company is and will unless its name is restored to the register of Joint Stock Companies be unable to continue its business or to get in the book debts due to it and in particular the Company is unable to bring any action to recover a sum of £ which is now and has for the last six months been due and owing to it.

10. The Company was at the time of its name being struck off the register of Joint Stock Companies carrying on business and in operation and it is just that the name of the Company be restored to such register.

11. At the date when the name of the Company was struck off such register A.B. was the largest shareholder of the Company being the holder of shares (*a*).

Your Petitioner therefore humbly prays as follow:—

(1) That this Court may order that the name of the Company be restored to the register of Joint Stock Companies.

(2) That this Court do give such directions and make such provisions as to it may seem just for placing the Company and all other persons in the same position as nearly as may be as if its name had never been struck off such register.

(3) That such further or other order may be made as to this Court may seem meet.

NOTE.—It is intended to serve this petition upon the Registrar of Joint Stock Companies [and upon the Company] (*b*).

The petition will be supported by an affidavit of the petitioner or where the petitioner is the Company of one or more of its principal shareholders verifying and where necessary amplifying the facts set out in the petition and exhibiting the Memorandum and Articles of Association of the Company—and its certificate of incorporation and in some cases the certificate entitling it to commence business.

ORDER ON PETITION FOR RESTORING COMPANY'S NAME TO REGISTER.

(*Title same as the Petition.*)

Upon the petition of the above-named Brown Bayleys Steel Works Ltd. whose registered office is situate at and R.T. of in the City of Chairman of the said Company

(*a*) Paragraph 11 should be added when the company is to be a respondent.

(*b*) The words in brackets should be added when the company is to be a respondent.

and D.M.F. of in the City of respectively directors and contributories of the said Company on the 22nd day of March 1905 preferred unto this Court and upon hearing counsel for the petitioners and for the Registrar of Joint Stock Companies and upon reading the said petition and the joint affidavits of the said R.T. and D.M.F. both filed the 24th March 1905 and the exhibits therein respectively referred to and the Petitioners by their counsel undertaking (*c*) to forthwith make up and forward to the Registrar of Joint Stock Companies. (1) The annual lists and summaries now in arrear for the years 1902, 1903, and 1904, as required by section 26 of the Companies Act 1862 as amended by section 19 of the Companies Act 1900 and (2) a copy of the register containing the names and addresses and the occupations of the directors or managers of the said Company in compliance with sections 45 and 46 of the Companies Act 1862 as amended by section 20 of the Companies Act 1900. This Court doth order that the name of Brown Bayleys Steel Works Ltd. be restored to the Register of Joint Stock Companies and pursuant to the provisions of the Companies Act 1880 the said Brown Bayleys Steel Works Ltd. is to be deemed to have continued in existence as if its name had never been struck off and it is ordered that the Registrar of Joint Stock Companies do advertise this order in his official name in the *London Gazette* AND IT IS ORDERED that the petitioners Brown Bayleys Steel Works Ltd. R.T. and D.M.F. do pay to the Registrar of Joint Stock Companies his costs of and occasioned by the said petition such costs to be taxed (*d*). [*Re Brown Bayleys Steel Works, Ltd.*, 0081 of 1905. BUCKLEY, J., March 28th, 1905.]

ORDER RESTORING COMPANY'S NAME TO THE REGISTER.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. JUSTICE SWINFEN EADY,

Wednesday, the 17th day of June 1908.

In the Matter of the Companies Acts 1862 to 1900 (*e*).

and

In the Matter of the Garden City Laundry Ltd.

UPON the petition of H.M.M. of in the County of Middlesex

(*c*) This undertaking is usually inserted: *Hollingwood Estate Co.* (1887), 3 T. L. R. 232, except where the company is in winding-up, in which case it is unusual: *Johannesburg Mining Syndicate*, [1901] W. N. 46, referred to in the Scotch case of *Healy* v. *Board of Trade* (1903), 5 Fra. 644. Where a creditor is petitioner and the company is not made a respondent, as was apparently the case in *Parrocha Iron Ore and Railway Co., Ltd.* (Unreported), before WARRINGTON, J., on July 24, 1905, there is no one to give the undertaking.

(*d*) This order made in *Brown Bayleys Steel Works, Ltd.* (1905), 21 T. L. R. 374, is the common form of order. It is thought that BUCKLEY, J.'s remarks in this case as to the directors remaining personally liable, by reason of not giving directions relieving them from liability, are wrong. This would seem to be the view of Sir F. B. Palmer, vol. i. 10th Ed. pp. 1236 and 1237. The case is not referred to in the 9th (last) Ed. of Buckley.

(*e*) This would now be In the

a Member and T.H.W.I. and W.T.W.I. both of in the said County of Middlesex Creditors of the above-named Company on the 4th June 1908 preferred unto this Court and upon hearing Counsel for the Petitioners and for the Registrar of Joint Stock Companies and upon reading the said petition the affidavit of the said H.M.M. filed the 10th June 1908 and the several exhibits in the said affidavit referred to.

AND the petitioners by their Counsel undertaking to make up and forthwith forward to the Registrar of Joint Stock Companies (1) the Annual Lists and Summaries now in arrear for the years 1905 1906 and 1907 as required by section 26 of the Companies Act 1862 as amended by section 19 of the Companies Act 1900 and (2) a copy of the Register containing the names and addresses and occupations of the Directors or Managers of the said Company in compliance with sections 45 and 46 of the said Act of 1862 as amended by section 20 of the said Act of 1900 and also to give notice of the situation of the registered office of the above-named Company as required by section 40 of the said Act of 1862.

THIS COURT DOTH ORDER that the name of the said Garden City Laundry Limited be restored to the Register of Joint Stock Companies and pursuant to the Companies Act 1880 the said Garden City Laundry Limited is to be deemed to have continued in existence as if the same had never been struck off.

AND IT IS ORDERED that the Registrar of Joint Stock Companies do advertise this Order in his official name in the *London Gazette*.

AND IT IS ORDERED that the Petitioners the said H.M.M., T.H.W.I. and W.T.W.I. do pay to the Registrar of Joint Stock Companies his costs of the said Petition such costs to be taxed. [*Re Garden City Laundry, Ltd.*, 00154 of 1908. SWINFEN EADY J., June, 17th, 1908.]

FORM OF ORDER WHERE THE NAME OF A COMPANY IN WINDING-UP HAS BEEN STRUCK OFF THE REGISTER.

(*Title same as Petition.*)

UPON the etc. This Court doth order that the name of the said Company be restored to the Register of Joint Stock Companies and that pursuant to the Companies Act 1880 the said Company be deemed to have continued in existence as if the name thereof had never been struck off. And it is ordered that the Registrar of Joint Stock Companies do advertise this order in his official name in the *London Gazette* and it is ordered that the order of the County Court of Lancashire holden at Manchester dated 10th day of April 1906 for the compulsory winding-up of the above-named Company be continued and that the Company be wound up under the same order as effectually as if the name of the Company had not been struck off the register. And it is ordered that the said A.B. the petitioner do pay to the Registrar of Joint Stock Companies his costs of and occasioned by the said petition such costs to be taxed, and that the said petitioner may be at liberty to apply in the matter of the winding-up for the costs

Matter of the Companies (Consolidation) Act, 1908. The order was made before the Act came into force.

of the restoration of the name of the said Company to the register including therein the costs above-mentioned. [*Re Educational and Commercial Publishing Co., Ltd.* SWINFEN EADY, J., July 21st, 1906.]

ORDER RESTORING THE NAME OF A COMPANY IN LIQUIDATION TO THE REGISTER.

(*Title.*)

UPON the Petition of George Stapylton Barnes of 33 Carey Street in the County of London the Official Receiver and Liquidator of the above-named Company and The Johannesburg Mining and General Syndicate Limited the above-named Company on the 9th February 1901 preferred unto this Court. And upon hearing Counsel for the Petitioners and for the Registrar of Joint Stock Companies. And upon reading the said Petition the Affidavit of George Stapylton Barnes filed the 20th February 1901 and the Exhibit therein referred to.

THIS COURT DOTH ORDER that the name of the above-named Johannesburg Mining and General Syndicate Limited be restored to the Register of Joint Stock Companies and pursuant to The Companies Act 1880 the said Company is deemed to have continued in existence as if its name had never been struck off.

AND IT IS ORDERED that the Registrar of Joint Stock Companies do in his official name advertise this Order in the *London Gazette.*

AND IT IS ORDERED that the Petitioner the said George Stapylton Barnes do out of the assets of the above-named Company pay to the Registrar of Joint Stock Companies his costs of and occasioned by the said Petition such costs to be taxed in case the parties differ. And that the Costs of the Petitioner of the said Petition be taxed and included in the costs of the said George Stapylton Barnes as part of his costs of the Winding-up of the said Company. [*Re Johannesburg Mining and General Syndicate, Ltd.,* 0055 of 1901. COZENS-HARDY, J., February 20th, 1901.]

FORM OF ADVERTISEMENT.

HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. JUSTICE NEVILLE.

In the Matter of the Companies (Consolidation) Act 1908.

and

In the Matter of the Company Limited.

Notice is hereby given that by an order made the day of 1909 upon the petition of the above-named Company and of A.B. of in the county of Chairman of the said Company and of C.D. of in the county of respectively directors and contributories of the said Company and upon hearing counsel for the petitioners and for the Registrar of Joint Stock Companies and the petitioners by their counsel undertaking to make up and forward to the Registrar of Joint Stock Companies (1) the annual list and summaries now in arrear for the years as required by section 26 of the Companies (Consolidation) Act 1908.

(2) A copy of the register containing the names and addresses and the occupations of its directors and managers in compliance with section 75 of the Companies (Consolidation) Act 1908 it was ordered that the name of the said Company be restored to the Register of Joint Stock Companies and pursuant to the provisions of the Companies (Consolidation) Act 1908 the said Company shall be deemed to have continued in existence as if the name thereof had never been struck off. And it was ordered that the Registrar of Joint Stock Companies do advertise this order in his official name in the *London Gazette* and it was ordered that the petitioners do pay to the Registrar of Joint Stock Companies his costs of and occasioned by the said petition such costs to be taxed.

A.B.
Registrar of Joint Stock Companies.

DEALINGS WITH DEPOSITS BY ASSURANCE COMPANIES.

Under the Assurance Companies Act, 1909, the Board of Trade are empowered to make rules as to (amongst other things) the investment of or dealing with deposits made under that Act, the payment of the interest or dividends from time to time accruing due on any securities in which deposits are for the time being invested and the withdrawal and transfer of such deposits. The rules so made are to have the same effect as if they were enacted in the Act and are to be laid before Parliament as soon as may be after they are made (*f*).

The Board of Trade, on June 6, 1909, issued the following order relating to these matters.

RULES RELATING TO DEPOSITS BY ASSURANCE COMPANIES PURSUANT TO SECTION 2 OF THE ASSURANCE COMPANIES ACT, 1909.

4. Where a lodgment of money or securities has been made under the preceding Rules (*g*) the Court may on the application of the Company order—

(*a*) Investment in such of the stocks funds or securities in which cash under the control of or subject to the order of the Court may for the time being be invested as the applicants desire and the Court thinks fit either by way of original investment or by way of variation of investment (*h*).

(*b*) Payment to the Company of the interest dividends or income from time to time accruing due on any stocks funds or securities in which the deposit is for the time being invested.

(*c*) Transfer or payment in the cases provided for in the rules following of the deposit or securities for the time being representing the same either from one ledger credit of the Company to another or out of Court.

(*f*) Assurance Companies Act, 1909, s. 2 (6).

(*g*) See *supra*, pp. 20 and 21, for these rules.

(*h*) This seems to limit the power of investment more than did the order made under the Life Assurance Act, 1870; see *Blue Ribbon Life, Accident Mutual and Industrial Co* (1890), 59 L. J. (CH.) 276.

5. In the subsequent provisions of these Rules the term "the deposit fund" means the money or securities deposited, or the stocks, funds, or securities for the time being representing the same, as the case may be.

6. In any case where it may appear to be just and equitable so to do, and in particular in any of the following cases, namely :—

(*a*) Where a Company having carried on or having intended to carry on only a class or classes of assurance business in respect of which a separate assurance fund is not required to be kept (that is to say either fire insurance business or accident insurance business) and having a deposit fund standing to the credit of the Company generally, intends subsequently to carry on a class of assurance business in respect of which a separate assurance fund is required to be kept ;

(*b*) where a Company having carried on employers' liability (*i*) insurance business or bond investment business (*k*) as the case may be and having a deposit fund standing to a special ledger credit in respect of the class of business in question, has a fund amounting to £40,000 set apart and secured for the satisfaction of the claims of policy-holders of that class, and intends subsequently to carry on in the first case bond investment business or in the second case employers' liability insurance business or in either of the said cases life assurance business ;

the Court may on the application of the Company order the deposit fund to be transferred from the general account of the Company to a special ledger credit in respect of a particular class of assurance business, or from one special ledger credit in respect of one particular class of assurance business to another special ledger credit in respect of another particular class of assurance business, or otherwise to be dealt with as may be just and equitable and not in contravention of any provisions of the Act.

7. In any case where it may be just and equitable so to do, and particularly in any of the following cases, namely :—

(*a*) Where a Company having carried on or having intended to carry on either fire insurance business, or accident insurance business, or both, and having a deposit fund standing to the credit of the Company generally, makes a further deposit in respect of any other class of assurance business ;

(*i*) With regard to employers' liability business, s. 33 (*c*) of the Assurance Companies Act, 1909, contains the following provision :—

"As soon as the employers' liability fund set apart and secured for the satisfaction of the claims of policy holders of that class amounts to forty thousand pounds, the Paymaster General shall, if the company has made a deposit in respect of any other class of assurance business, return to the company the money deposited in respect of its employers' liability insurance business, and it shall not thereafter be necessary for the company to keep any sum deposited in respect of that business, so long as the sum deposited in respect of any other class of assurance business is kept deposited."

(*k*) S. 33 (c) of the Assurance Companies Act, 1909, contains the same provisions in respect of bond investment business as those in respect of employers' liability insurance business mentioned in the last preceding note.

(*b*) where a Company has a deposit fund to a special ledger credit in respect of employers' liability business, and the employers' liability fund of the Company set apart and secured for the claims of policy-holders of that class amounts to £40,000, and the Company has or makes a further deposit in respect of any other class of assurance business as provided for in section 33 (*e*) of the Act;

(*c*) where a Company has a deposit fund to a special ledger credit in respect of bond investment business, and the bond investment fund of the Company set apart and secured for the claims of the policy-holders of that class amounts to £40,000, and the Company has or makes a further deposit in respect of any other class of assurance business as provided for in section 34 (*c*) of the Act;

(*d*) where a Company has ceased altogether to carry on within the United Kingdom, either assurance business of any class, or the particular class of assurance business to the special ledger credit whereof a deposit fund (not being the sole deposit fund) is standing, and all liabilities in respect of the deposit fund have been satisfied or are otherwise provided for;

the Court may, on the application of the Company, order the deposit fund to be paid or transferred out of Court and returned to the Company or as it shall direct.

9. Any application under these Rules to the Court shall be made in such manner as shall from time to time be prescribed by Rules of Court, and until otherwise prescribed in the like manner in which similar applications under the Life Assurance Companies Acts, 1870 to 1872, and the Employers Liability Insurance Companies Act, 1907, were made immediately prior to the commencement of the Act. Provided always that any application under Rule 6 or Rule 7 shall be served on the Board of Trade.

10. These Rules shall, so far as may be, extend to and authorize applications with regard to deposits already made by existing Companies under the provisions of the Life Assurance Companies Acts, 1870 to 1872, and the Employers Liability Insurance Companies Act, 1907, and for this purpose deposits made under the Life Assurance Companies Acts, 1870 to 1872, and the deposit funds representing the same shall *primâ facie* and in default of reason to the contrary be treated and dealt with as having been made in respect of the life assurance business of the Companies by or on behalf of which such deposits were made, and deposits made under the Employers Liability Insurance Companies Act, 1907, and the deposit funds representing the same shall *primâ facie* and in default of reason to the contrary, be treated and dealt with as having been made in respect of the employers' liability insurance business of the Companies by or on behalf of which such deposits were made.

Where any such deposit as in this Rule mentioned has been made by an Irish Company, the same may be ordered by the Supreme Court of Judicature in England to be transferred from the account of the Paymaster-General of the English Court to a corresponding account of the Accountant General of the Supreme Court of Judicature in Ireland.

Under the Life Assurance Acts, 1870 to 1872, the power of the Court to order payment out to a company seems to have been far

more limited. It could under them order payment out: (*a*) in the case mentioned in s. 3 of the Life Assurance Act, 1870, *viz.*, so soon as its Life Assurance fund accumulated out of the premiums amounted to £40,000 (*l*); (*b*) where the company was dissolved or was in some other way released from all claims on the fund, and where there was no prospect of its continuing its business (*m*); and (*c*) where the money had been paid in unnecessarily, and in the mistaken belief that it was necessary to make such payment, and the company could not carry on any business which was within the Acts (*n*). In no other cases it would seem could the Court order payment out (*o*). Although the cases where the Court can order payment out have been extended it is thought that the cases where it will do so, will be rather fewer than more than formerly. Except in the cases of employers' liability insurance business and bond investment business, the Act does not give any right to payment out where a fund of £40,000 has been accumulated, and even in such cases the Act only requires payment out where there is a deposit in respect of some other business (*p*), and in the case of employers' liability business, any such business carried on outside the United Kingdom is not to be treated as part of the employers' liability business of the company (*q*). In one case (*r*), where the company's business covered accident business, and the Board of Trade had required a deposit under the Life Assurance Acts, 1870 and 1872, and one had also been made in respect of employers' liability insurance under the Act of 1907, the Court ordered £20,000 to be transferred to an account entituled "*Ex parte* the Company Employers' Liability Insurance business," and the costs of the petitioners and the Board of Trade to be taxed, and paid out of the other £20,000, the balance of which was to be paid to the petitioners. This case depended on the fact that accident policies are not policies on human life within the Act of 1909, whatever may have been the case under the earlier Acts. The old practice, which is retained, is for applications to be by petition as provided by the Rules of the Board of Trade of August 28, 1872, and this seems also to be the case with applications for a change

(*l*) Premiums accumulated on business done outside the United Kingdom before the company started doing business here could be counted as forming part of such fund of £40,000: *Colonial Mutual Life Assurance Society* (1882), 21 C. D. 837.

(*m*) *Popular Life Assurance Co.*, [1909] 1 Ch. 80.

(*n*) *Wool Industries Employers Assurance Association* [1899], W. N. 259.

(*o*) *Scottish Economic Life Assurance Society* (1890), 45 C. D. 220; *Life and Health Assurance Association*, [1910] 1 Ch. 458. But see *Widnes Railway Co.* (1873), 15 Eq. 108, which, however, was decided under another Act.

(*p*) Assurance Companies Act, 1909, s. 33 (*c*), and s. 34 (*c*).

(*q*) *Ibid.*, s. 33 (*c*).

(*r*) *Welsh Insurance Corporation Times Newspaper*, July 21, 1910, p. 3.

of investment (*s*), and on applications as to payment of the interest accruing (*t*).

Under rr. 6 and 7 of the Rules of June 6, 1910 above set out, the application must, it would seem, always be made by the company, formerly where the deposit had been made by persons other than the company, they were the persons to apply for payment out (*u*), though it was desirable to join the company as a petitioner (*x*), and where the company was dissolved and another company was entitled to the fund, such other company was sole petitioner (*y*). Even now it may, perhaps, be best to join as co-petitioner with the company the persons who have made the deposit, or an assignee of the fund, if payment is to be made to them.

The petition should be sealed with the seal of the company, where payment is not to be made the person entitled to the fund and there has been no formal deed of assignment, and under the old rules where money had been deposited by persons other than the Company the petition was signed by such persons (who were made co-petitioners) their signatures being verified by affidavit (*z*). Where payment out is required by any rule the petition should set out such rule or the material part of such rule as the rules may be altered, and in such case the fact that it is set out will be convenient for future reference (*a*). These petitions must be presented in the Chancery Division (*b*), and the Judge before whom they are to come will be ascertained by ballot in the ordinary way. Where a change of investment is sought, there must be evidence of the desirability of change (*c*), and the petition must in all cases be verified by affidavit and the Paymaster's certificate as to the fund produced, and, in the case above-mentioned (*cc*), the petition must be served on the Board of Trade.

(*s*) *Blue Ribbon Life, Accident, Mutual and Industrial Co.* (1890), 59 L. J. (CH.) 276.

(*t*) *Royal Exchange Assurance Corporation*, [1910] W. N. 211.

(*u*) *Colonial Mutual Life Assurance Society* (1882), 21 C. D. 837.

(*x*) *Scottish Life Assurance Co.*, [1887] W. N. 64.

(*y*) *Popular Life Assurance Co.*, [1909] 1 Ch. 80.

(*z*) *Re Brettingham*, [1904] W. N. 168; *Scottish Life Assurance Co.*, [1887] W. N.; *Colonial Mutual Life Assurance Society* (1882), 21 C. D. 837.

(*a*) *Le Phenix* (1888), 58 L. T. 512.

(*b*) Judicature Act, 1873, s. 34 (2), and Order of Board of Trade of August 28, 1872.

(*c*) *Blue Ribbon Life, Accident, Mutual and Industrial Society* (1890), 59 L. J. (CH.) 276.

(*cc*) See Rule 9, *supra*, p. 774.

FORM OF PETITION BY ASSURANCE COMPANY FOR PAYMENT OUT (*d*).

IN THE HIGH COURT OF JUSTICE,
Chancery Division.
MR. JUSTICE
In the Matter of "*Ex parte* the A.B. Co. Ltd. in respect of Employers' Liability Insurance Business"
and
In the Matter of the Assurance Companies Act 1909.

The humble petition of the A.B. Company Ltd. (hereinafter called the Company) sheweth as follows :—

1. The Company was incorporated under the Companies (Consolidation) Act 1908 on the day of August 1910 and has its registered office at in the City of London.

2. The objects for which the Company was formed are [here set out the principal objects] and certain other objects specified in its Memorandum of Association.

3. In pursuance of the requirements of the Assurance Companies Act 1909 and on the authority of a warrant issued by the Board of Trade and dated the day of 1910 a sum of £20,000 was paid into Court on the day of 1910 and in further pursuance of the requirements of the said Act and on the authority of a warrant issued by the Board of Trade and dated the day of 1910 a further sum of £20,000 was paid into Court on the day of 1910. Both the said payments were made by the subscribers of the Memorandum of Association of the Company in the name of the Company.

4. The said first-mentioned sum of £20,000 is now represented by the sum of £ . New Consols now standing to the credit of "*Ex parte* the Company in respect of Employers' Liability Insurance Business" being the sum of £ . New Consols referred to in the Payment Schedule to this petition and the said second mentioned sum of £20,000 is now represented by the sum of £ . New Consols now standing to the credit of "*Ex parte* the Company in respect of life assurance business."

5. The Company has the firstly above-mentioned deposit fund standing to the above-mentioned special ledger credit in respect of its employers' liability insurance business and the employers' liability fund of the Company set apart and secured for the satisfaction of the claims of policy-holders of that class amounts to £40,000 and the Company has a further deposit in respect of its life assurance business as is above-mentioned.

6. The Order of the Board of Trade dated the 6th day of June 1910 and made in pursuance of the power in that behalf conferred on the said Board by section 2 of the Assurance Companies Act 1909 provides by Rule 7 thereof that "In any case where it may be just and equitable so to do and particularly in any of the following cases namely :—

. . . .

(*d*) There is no claim in this petition for payment of the interest on the sum which is to remain deposited in respect of life assurance business. There would, however, appear to be no reason why such a claim should not in a proper case be joined with a claim similar to the one in this petition.

(*b*) Where a Company has a deposit fund to a special ledger credit in respect of its employers' liability business and the employers' liability fund of the Company set apart and secured for the claims of policy-holders of that class amounts to £40,000 and the Company has or makes a further deposit in respect of any other class of assurance business as provided for by section 33 (*e*) of the Act . . . the Court may on the application of the Company order the deposit fund to be paid or transferred out of Court and returned to the Company or as it shall direct."

7. The Company desires that the deposit fund which is now standing to the above-mentioned special ledger account in respect of its employers' liability business shall subject to the payment of all proper costs of this application (*e*) be transferred or paid out of Court and returned to the Company and under the circumstances it is just and equitable that this should be done.

Your petitioner therefore humbly prays as follows :—

(1) That the costs of your petitioner and the Board of Trade of this application may be taxed by the Taxing Master.

(2) That the sum of £ New Consols now standing to the credit of " *Ex parte* the Company Employers' Liability Insurance Business " and mentioned in the Payment Schedule hereto may be dealt with in manner directed by the said schedule.

(3) Or that such other order may be made on the premises as to this Court shall seem meet.

And your petitioner will ever pray etc.

NOTE.—It is intended to serve this petition on the Board of Trade.

PAYMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE,
Chancery Division.

Date of Order.

" *Ex parte the A.B. Company in respect of Employers' Liability Insurance Business.*"

Ledger Credit as above.
Funds in Court £ New Consols.

Particulars of Payments, Transfers, or other Operations to be carried out by the Paymaster.	Payees and Transferees or Titles of Separate Accounts.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Sell so much new Consols as may be necessary to pay the costs to be taxed under this order.							
Out of proceeds—							
Pay costs to be taxed as aforesaid.							
Balance if any	The A.B. Company Ltd., of						
Transfer balance of new Consols.	The said Company.						

(*e*) Not infrequently the company will, in order to save a sale, take no order as to costs, and will pay them out of other funds.

CHAPTER IX.

Winding-up.

Companies that can be wound up.

The Court can wind up companies which at the date of the winding-up petition (*a*) are registered under the Act or the Act of 1862, or the Joint Stock Companies Acts (*b*); (2) certain other companies in the Act called unregistered companies.

(1) With regard to the former class, there was formerly some doubt as to whether the Court could wind up companies which ought never to have been registered under the Act, but which in fact, had been registered and had obtained a certificate of incorporation. Thus it was held that a banking company, which, though not entitled to registration, was registered under the Joint Stock Banking Companies Act, 1857, could not be voluntarily wound up as a company registered under that Act (*c*), and that where the memorandum of association of a company had been signed by only six signatories, the company could not be wound up by the Court (*d*). It is true that these decisions seem scarcely consistent with either *Oakes* v. *Turquand* (*e*) or *Peel's Case* (*f*), and that it has been held that until the validity of the company's registration is challenged in proper proceedings, it must be treated as well registered (*g*), but they may

(*a*) *Hercules Insurance Co.* (1871), 11 Eq. 321.

(*b*) See Companies (Consolidation) Act, 1908, s. 285. This expression means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable joint stock banking companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require, but does not include the Act passed in the eighth year of Her Majesty Queen Victoria, c. 110. Such Companies need not re-register under the Act, see *Torquay Bath Co.* (1863), 32 Beav. 581; *London India Rubber Co.* (1866), 1 Ch. 329, and the definition of the expression "Company" in s. 285 of the Companies (Consolidation) Act, 1908. Section 287 of the Act provides that a company in winding-up at the commencement of the Act will be wound-up under the Act or Acts in force when the winding-up commenced, and in the same manner and with the same incidents as if the Act had not passed.

(*c*) *Northumberland and Durham District Banking Co.* (1858), 2 De G. & J. 357.

(*d*) *National Debenture and Assets Corporation*, [1891] 2 Ch. 505. It was otherwise where some of the signatories were infants: *Nassau Phosphate Co.* (1876), 2 C. D. 610; *Laxon & Co.* (*No.* 2), [1892] 2 Ch. 555; *Hertfordshire Brewery Co.* (1874), 43 L. J. (ch.) 358.

(*e*) (1867), L. R. 2 H. L. 325.

(*f*) (1867), 2 Ch. 674.

(*g*) *George Hill & Co.* v. *Hill* (1887), 55 L. T. 769; and see *per* Lord Davey, *Salomon* v. *Salomon & Co.*, [1897] A. C. 22, at p. 56. It is not

possibly be good nowadays in the case of companies registered under the Joint Stock Companies Acts, but, as regards companies registered under the Act of 1862, or under the present Act section 1 of the Companies Act, 1900 (which is retrospective), and section 17 of the Companies (Consolidation) Act, 1908, seem to do away with the difficulty, and by making the certificate of the Registrar of Joint Stock Companies conclusive for all purposes, to render such companies capable of being wound up in all cases (*h*) ; but an English Court cannot wind up a Scotch or Irish company, and a Scotch Court cannot wind up an English or Irish company, and an Irish Court cannot wind up an English or Scotch company (*i*). It is thought that trades unions, which notwithstanding section 5 of the Trades Union Act, 1871, have managed to get registered as companies cannot be wound up by the Court (*k*).

Another exception to the general rule, if it can be called an exception, is that where the company has gone into voluntary winding-up, and has been dissolved by the expiration of three months from the date of the registration of the liquidator's final return (*l*), there can be no subsequent compulsory order if the petition has been presented after the dissolution (*m*), unless it would seem the dissolution is declared void under section 223 of the Act (*n*), or is set aside on the ground of fraud (*o*). This exception does not, however, hold

at all clear how such registration can be set aside. See *Princess of Reuss* v. *Boss* (1871), L. R. 5 H. L. 176 ; *Glover* v. *Giles* (1881), 18 C. D. 173 ; Lindley on Companies, 6th Ed. p. 151 *n.* (*e*).

(*h*) See *Ennis and West Clare Railway* (1879), 3 L. R. Ir. 94 ; *McGlade* v. *Royal London Mutual Insurance Co.*, [1910] 2 Ch. 169 ; Companies (Converted Societies) Act, 1910, s. 1.

(*i*) *Scottish Joint Stock Trust*, [1900] W. N. 114. These remarks only apply to registered companies.

(*k*) See s. 294 of the Companies (Consolidation) Act, 1908, which provides that nothing in the Act is to affect the provisions of s. 5 of the Trade Union Act, 1871 : *British Association of Glass Bottle Manufacturers* v. *Nettlefold* (1911), 27 T. L. R. 527 ; *Edinburgh and District Aerated Water* v. *Jenkinson* (1904), 5 Fra. 1159. The latter case was the case of a company which was registered under the Act of 1862, and with regard to such companies as s. 294 is new, there would seem to be some difficulty in saying that the certificate is not conclusive ; but it must be borne in mind that the provisions of the Companies (Converted Societies) Act, 1910, are very sweeping.

(*l*) See Companies (Consolidation) Act, 1908, s. 195.

(*m*) *Pinto Silver Mining Co.* (1878), 8 C. D. 273 ; *London and Caledonian Marine Insurance* (1879), 11 C. D. 140. See also *Westbourne Grove Drapery Co.* (1878), 39 L. T. 30, where the winding-up was under supervision.

(*n*) There was no provision similar to s. 223 at the time of the decisions in the last note.

(*o*) For a case where an attempt was made to get an order set aside on the ground of fraud, see *Schooner Pond Coal Co.*, [1888] W. N. 70. Very possibly if the remedy under s. 223 of the Act is gone, by the expiration of two years from the date of the dissolution, there will be no remedy, even in the case of fraud.

good where the petition has been presented before the expiration of the three months (*p*), and it does not apply to defunct companies which have been struck off the register under section 242 of the Act (*q*). It is suggested in Buckley (9th edition, at p. 527), that the proper course in the case of a defunct company whose name has been struck off the register is first of all to get the company's name restored to the register, and then to petition, and it is pointed out that the order in *Anglo-American Exploration and Development Co.* (*r*) was made on a creditor's petition, and that at that time a creditor could not apply to have a company's name restored to the register—no doubt this would usually be the wiser course—but having regard to the fact that the liability of every director managing director and member is expressly preserved by the section (*s*), it would seem not to be absolutely necessary. A company formed with the object of carrying on its business entirely abroad, even assuming it ought never to have been registered here (*t*), and a company whose articles, or it is thought, whose memorandum contains illegal provisions (*e.g.* for bearer warrants being issued for partly paid shares) can be wound up under the Act (*u*), and also a railway company registered under Part VII. of the Act (*x*) and companies registered under the Act which have statutory powers for purposes of public utility (*y*). The fact that a company is carrying on illegal business, and was conceived and brought forth in fraud and for the purpose of carrying on such illegal business, does not deprive the Court of the jurisdiction to wind it up, but is a reason why it should exercise such jurisdiction (*z*).

(2) With regard to unregistered companies, Part VIII. of the Act deals with these, and provides as follows:—

"For the purposes of this Part of this Act the expression 'unregistered company' shall not include a railway company incorporated by Act of Parliament (except in so far as is provided by the

(*p*) *Crookhaven Mining Co.* (1866), 3 Eq. 69; *Whiteley Exerciser* v. *Gamage*, [1898] 2 Ch. 405, and see *Salton* v. *New Beeston*, [1900] 1 Ch. 43, which, however, is inconsistent with *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, as to a solicitor appearing for a company when he knows, or but for his own negligence would know, of its dissolution.

(*q*) *Anglo-American Exploration and Development Co.*, [1898] 1 Ch. 100; see also *Grosvenor House Property, etc., Building Society* (1902), 71 L. J. (CH.) 748.

(*r*) [1898] 1 Ch. 100.

(*s*) Companies (Consolidation) Act, 1908, s. 242 (5). See *supra*, p. 765.

(*t*) It is thought that there is no objection to the registration of such a company, see *supra*, p. 11.

(*u*) *Princess of Reuss* v. *Bos* (1871), L. R. 5; H. L. 176.

(*x*) *Ennis and West Clare Railway* (1879), 3 L. R. Ir. 94.

(*y*) *Barton-upon-Humber and District Water Co.* (1889), 42 C. D. 585.

(*z*) *International Securities Corporation* (1908), 99 L. T. 581 (an unregistered company), citing *Thomas Edward Brinsmead and Son*, [1897] 1 Ch. 45, 406, the case of a registered company.

Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them) nor a company registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, or under this Act, but, save as aforesaid, shall include any partnership, association, or company consisting of more than seven members, and any trustee savings bank certified under the Trustees Savings Banks Act, 1863, and any limited partnership" (*a*).

Companies registered under any Act other than the Joint Stock Companies Acts, the Companies Act, 1862, and the Companies (Consolidation) Act, 1908, are within the section (*b*), if at the date of the petition they consist of more than seven members (*c*). Under the Act of 1862 it was necessary for a company to consist of more than seven members at the time of the petition, and the representatives of deceased members and the trustees in bankruptcy of bankrupt members did not count as members for this purpose (*d*); at the same time the expression "members" was not confined to shareholders, it included, for instance, members of guarantee companies which had no share capital and statutory corporators (*e*). The fact that a company has been dissolved under the old Companies Acts will, where its affairs have not been completely wound up, be no bar to the jurisdiction (*f*).

(*a*) Companies (Consolidation) Act, 1908, s. 267. The provisions for winding up unregistered companies, and particularly limited partnerships, differ in some cases from those for winding up registered companies. These differences will be dealt with as they occur, see *Hughes & Co.*, [1911] 1 Ch. 342 for an instance of a winding-up order against a limited partnership.

(*b*) *Bowes* v. *Hope Life Insurance Co.* (1865), 11 H. L. C. 389.

(*c*) *Bolton Benefit Loan Society* (1879), 12 C. D. 679. In *New York and Continental Line* (1909), 54 Sol. J. 117, it was suggested by EADY, J., that under the Companies (Consolidation) Act, 1908, it was not necessary for an unregistered company to have more than seven members in order to enable it to be wound up. It will be observed that s. 267 of that Act merely "includes" the companies therein-named under the expression "unregistered companies."

(*d*) *Bowling and Welby's Contract*, [1895] 1 Ch. 663.

(*e*) *South London Fish Market Co.* (1888), 39 C. D. 324. In this case eight persons were incorporated by special Act into a company, and were made the first directors, and were to continue until the first ordinary meeting, which was never held. The Act provided for a director's qualification of 40 shares. These shares were duly allotted to all the eight persons, but five of them subsequently transferred their shares to another one of such eight persons. It was held that the transferors remained members for the purposes of the section.

(*f*) *Family Endowment Society* (1870), 5 Ch. 118. The distinction between the expression "dissolution" in the Companies Act, 1862, and the Companies (Consolidation) Act, 1908, and the same expression in other Acts is brought out in *Re Ruddington Land*, [1909] 1 Ch. 701.

Turning, first of all, to the exception in the case of railway companies incorporated by special Act of Parliament. Apparently dock companies which have powers for constructing railways are not railway companies for the purposes of this section if such powers are merely ancillary to the main purposes of the company (*g*), although such companies are railway companies within the definition of a railway in the Railway Companies Act, 1867 (*h*). Tramway companies incorporated by special Act of Parliament are also not railway companies for the purposes of the section (*i*).

The section, moreover, has nothing to do with railway companies, which, though incorporated by special Act of Parliament, have registered under Part VII. of the Act. These are wound up under the earlier sections of the Act (*k*).

Section 4 of the Abandonment of Railways Act, 1869, is as follows :—

"Where a warrant has been granted under the principal Acts for the abandonment of the whole railway of any railway company a petition for winding-up the affairs of such company may be presented under the Companies Acts, 1862 and 1867 by the company or any person who under the last-mentioned Acts is authorized to present a petition (*l*) for winding-up a company or by any person upon whose application the Board of Trade may proceed in pursuance of section 32 of the Railway Companies (Scotland) Act, 1867 and the Railway Companies Act, 1867 as the case may be and for that purpose the railway company whose railway is so authorized to be abandoned shall be deemed to be an unregistered company which may be wound-up under the Companies Acts, 1862 and 1867, and the provisions of the principal Acts which remain in force relating to winding-up shall be construed as if the Companies Acts, 1862 and 1867, and the winding-up provided by this section were therein referred to."

The principal Acts referred to in this section are the Abandonment of Railways Act, 1850, and the Railway Companies Act, 1867, and the Railway Companies (Scotland) Act, 1867. Under the Act of 1850 (as amended by 14 & 15 Vict. c. 64) (*m*), the Board of Trade can grant a warrant for the abandonment of any railway belonging to a company authorized by any Act of Parliament then (*n*) already passed. This power has been extended to railways belonging to

(*g*) *Exmouth Docks* (1873), 17 Eq. 181.

(*h*) *Great Northern Railway Co.* v. *Tahourdin* (1884), 13 Q. B. D. 320; *East and West India Dock Co.* (1888), 38 C. D. 576.

(*i*) *Brentford and Isleworth Tramways* (1884), 26 C. D. 527.

(*k*) *Ennis and West Clare Railway* (1879), 3 L. R. Ir. 94.

(*l*) Prior to this Act a creditor could not petition in the case of an abandoned railway: *North Kent Railway Co.* (1869), 8 Eq. 356.

(*m*) See also Interpretation Act, 1889, s. 12 (8).

(*n*) August 14, 1850.

railway companies authorized to make railways by Acts of Parliament passed before the Session of Parliament of 1867 (*o*).

It would seem that with regard to railway companies authorized at a later date, the Board of Trade cannot grant a warrant, and the Court can consequently, apart from any provision in any special Act of Parliament, not make a winding-up order in the case of such companies (*p*).

In the case of companies incorporated by special Act of Parliament, other than railway companies, the Court has jurisdiction to make a winding-up order, and it can also wind-up companies on whom statutory powers have been conferred. Thus, it has wound up tramway companies (*q*), canal companies (*r*), water companies (*s*), ferry companies (*t*), and telegraph companies incorporated by special Act of Parliament (*u*); and it has held that it has jurisdiction to do so in the case of a docks company (*x*). It has also wound up a company registered under the Companies Acts, but having statutory powers of supplying water (*y*). Again, in the case of an association, which was recognised as a corporation by an Act of Parliament, which gave it certain powers, an order was only refused on the ground that no good would result from making it (*z*).

It has also made orders in the cases of companies incorporated by the Crown by Royal Charter (*a*), and on companies privileged by the Crown under the powers conferred on it by 7 Will. IV. and 1 Vict. c. 73 (*b*).

The Court can also wind up registered building societies under the Building Societies Act, 1874, and the Building Societies Act,

(*o*) Railway Companies Act, 1867, s. 31; Railway Companies (Scotland) Act, 1867, s. 31, and see *infra*, p. 808, as to the Court to wind-up these companies.

(*p*) See *Uxbridge and Rickmansworth Rail. Co.* (1890), 43 C. D. 536; and see *Ward* v. *Sittingbourne and Sheerness Railway* (1874), 9 Ch. 488, as to a railway company which has, pursuant to Act of Parliament, ceased to carry on business.

(*q*) *Borough of Portsmouth Tramways*, [1892] 2 Ch. 362; *Brentford and Isleworth Tramways* (1884), 26 C. D. 527; *South Staffordshire Tramways* (1894), 1 Mans. 292; see also *Portstewart Tramway Co.*, [1896] 1 Ir. 265, a company incorporated by order in Council under the Irish Tramway Acts.

(*r*) *Bradford Navigation Co.* (1870), 10 Eq. 331; *Basingstoke Canal* (1886), 14 W. R. 956.

(*s*) *St. Neots Water Co.* (1906), 22 T. L. R. 478.

(*t*) *Isle of Wight Ferry Co.* (1865), 2 H. & M. 597.

(*u*) *Electric Telegraph Co. of Ireland* (1856), 22 Beav. 471.

(*x*) *Exmouth Docks* (1873), 17 Eq. 181.

(*y*) *Barton upon-Humber District Water Co.* (1889), 42 C. D. 585. The order in this case was not, of course, made under Part VIII. of the Act.

(*z*) *Company of Fraternity of Free Fishermen of Faversham* (1887), 36 C. D. 329.

(*a*) Cp. *Haytor Granite Co.* (1865), 1 Ch. 77.

(*b*) *Oriental Bank Corporation* (1885), 52 L. T. 556; 54 L. J. (CH.) 481.

1894 (*c*); and it may also wind-up as unregistered companies unincorporated building societies established under 6 & 7 Will. IV. c. 32 (*d*), at all events, if they were certified before the year 1856, and probably if they were certified after that date (*e*).

Friendly societies, whether registered (*f*) or unregistered (*g*), can be wound up as unregistered companies. With regard to societies under the Industrial and Provident Societies Acts, it was formerly held that these could not be wound-up as unregistered companies, as the Acts which regulated them provided a code by which they were to be wound-up, and, in particular, provided that they were to be wound-up by the County Court (*h*); but the Industrial and Provident Societies Act, 1893 (*i*) has now assimilated the procedure in the case of these societies, to the procedure in the case of limited companies (*k*). The Court can also wind-up a loan society (*l*) and an ordinary partnership which consists of more than seven members (*m*), and a partnership for working mines in the Stannaries (*n*).

(*c*) Building Societies Act, 1874, s. 32; Building Societies Act, 1894, s. 8.

(*d*) *Midland Counties Benefit Building Society* (1864), 4 De G. J. & S. 468 *St. George's Benefit Building Society* (1858), 4 Dr. 154; and see also *Doncaster Permanent Benefit Building Society* (1863), 11 W. R. 459; *Western Benefit Building Society* (1864), 33 Beav. 368

(*e*) *Smith* v. *Irvine and Fullarton Investment and Building Society* (1903), 6 Fra. 99; but see *Ilfracombe Permanent, etc., Building Society*, [1901] 1 Ch. 102, where WRIGHT, J., seems to have inclined to a contrary view. It is submitted that such a society was formed in pursuance of some other Act of Parliament, see Companies (Consolidation) Act, 1908, s. 1, and that though it has not so continued, it is not prohibited by s. 1.

(*f*) *Irish Mercantile Loan Society*, [1907] 1 Ir. 98.

(*g*) *Independent Protestant Loan Fund Society*, [1895] 1 Ir. 1; and see *Alfreton District Friendly and Provident Society* (1863), 11 W. R. 301; *The Twentieth Century Equitable Friendly Society*, [1910] W. N. 236; *Marrs* v. *Thompson & Co.* (1902), 86 L. T. 759. The Court can also order a dissolution: *Lead Company's Workmen's Fund*, [1904] 2 Ch. 196; *Blake* v. *Smither* (1906), 22 T. L. R. 698; and see *Londonderry Equitable Co-operative Society*, [1910] 1 Ir. 69.

(*h*) *Chatham Co-operative Industrial Society* (1864), 33 L. J. (CH.) 737; and *Sheffield and Hallamshire Co-operative Society* therein referred to; and see also (1865), 34 L. J. (CH.) 593; *London and Suburban Bank*, [1892] 1 Ch. 604.

(*i*) See s. 58.

(*k*) See *Belfast Tailor's Company Partnership*, [1909] 1 Ir. 49; *Friendly Protestant Partnership Loan Fund*, [1895] 1 Ir. 1.

(*l*) *Sherwood Loan Co.* (1851), 1 Sim. (N. S.) 165.

(*m*) *Royal Victoria Palace Theatre Syndicate* (1874), 30 L. T. 3; see also *Adansonia Fibre Co.* (1874), 9 Ch. 635; and also possibly now partnerships which do not consist of more than seven members, see *supra*, p. 782, note (*c*); limited partnerships, whether they do or do not consist of more than seven members, can be wound up.

(*n*) See *Frank Mills Mining Co.* (1883), 23 C. D. 52.

The Court (*o*) may order the winding-up of an assurance company in accordance with the Companies (Consolidation) Act, 1908, and the provisions of that Act apply subject, however, to the following modifications.

Such a company may be ordered to be wound-up on the petition of ten or more policy-holders (*p*) owning policies of an aggregate value of not less than £10,000; but a petition presented by policy-holders may not be presented except by the leave of the Court, and the Court cannot grant leave until a *primâ facie* case has been established to the satisfaction of the Court and until security for costs for such amounts as the Court may think reasonable has been given (*q*). These provisions would appear not to affect the right conferred by the Companies (Consolidation) Act, on an ordinary creditor or a contributory of such a company to present a petition.

The meaning of assurance company has already been discussed (*r*). It is obvious that it may include companies not capable of being wound-up under the Companies (Consolidation) Act, 1908, as unregistered companies—*e.g.* some trades unions and bodies consisting of less than seven members (*s*).

It was held (*t*) under the Life Assurance Companies Act, 1870, that in the case of a company which was already in voluntary winding-up it was unnecessary to show a *primâ facie* case, the decision does not, however, seem to be very satisfactory. It is thought that now where policy-holders wish to petition, their first step will be to take out a summons asking for leave to do so, and that security should be fixed. Such summons should, it is thought, be intituled

(*o*) This expression means the High Court of Justice in England, except that in the case of a company registered or having its head office in Ireland it means the High Court of Justice in Ireland, and in the case of a company registered or having its head office in Scotland, it means the Court of Session in either division thereof: Assurance Companies Act, 1909, s. 29.

(*p*) *I.e.* the person who for the time being is the legal holder of the policy for securing the contract with the assurance company (*ibid.*), and see *supra* for the meaning of policy in the case of the different companies, see *supra*, p. 17, and note (*t*) on that page, and note (*w*) on p. 18. An investment bond-holder will, where he has not made all the payments under his bond, be a policy-holder within the meaning of this section: *British Equitable Bond and Mortgage Corporation*, [1910] 1 Ch. 574.

(*q*) Assurance Companies Act, 1909, s. 15. The provisions of the section as to policy-holders are restrictive and not enabling, and may in some cases deprive a contingent or prospective creditor of the rights given him by s. 137 (1) (*c*) of the Companies (Consolidation) Act, 1908: *British Equitable Bond* and *Mortgage Corporation*, [1910] 1 Ch. 574.

(*r*) See *supra*, pp. 16 *et seq.*

(*s*) See s. 35 of the Assurance Companies Act, 1909, as to unregistered trade unions, and cp. also *Great Britain Mutual Society* (1880), 16 C. D. 246; but it is difficult to see why such a company could not have been wound up as an unregistered company.

(*t*) *British Alliance Corporation* (1878), 9 C. D. 635.

In the Matter of the Assurance Companies Act, 1909 (*u*); also In the Matter of the Companies (Consolidation) Act, 1908 (*x*); and In the Matter of an intended petition against the A.B. Company, Ltd., it need not be served on any one (*y*).

A trade union cannot be wound-up as an unregistered society (*z*).

The Court has jurisdiction to wind-up as an unregistered company a foreign company consisting of more than seven members if it has an office and assets here (*a*), and it would seem to be sufficient to give the Court jurisdiction that the company has had an office and transacted business here (*b*). Nor will the fact that an order for winding the company up (*c*), or for continuing its winding-up subject to supervision (*d*) has been made by a competent Court of the place of the company's incorporation make any difference to the jurisdiction of the Court here. In such case the order will usually be restricted and the sanction of the Court will be required if further proceedings are taken (*dd*), and the liquidation here will be ancillary to that of the Court of the country where the company is incorporated; but in spite of its desire to assist the foreign Court, the Court here will not give up the forensic rules which govern the conduct of its own liquidation (*e*). The Court will not wind-up an inchoate foreign company, which has never really come into existence, and it would probably not wind-up a partnership for promoting a foreign company (*f*).

(*u*) See *British Alliance Corporation* (1877), W. N. 261.

(*x*) See Companies (Winding-up) Rules, 1909, r. 11.

(*y*) Cp. *London and Manchester Association* (1876), 1 C. D. 466. A provisional liquidator can, of course, not now be appointed till a *primâ facie* case is made out and security given, as until then the petition cannot be presented. The section differs in this respect from s. 21 of the Life Assurance Companies Act, 1870.

(*z*) Trade Union Act, 1871, s. 5.

(*a*) *Syrian Ottoman Rail. Co.* (1904), 20 T. L. R. 217; *Matheson Bros.* (1884), 27 C. D. 225; *Commercial Bank of India* (1868), 6 Eq. 517; *Jarvis Conklin Mortgage Co.* (1895), 11 T. L. R. 373, and see s. 274 of the Companies (Consolidation) Act, 1908 as to these companies. The case of *Madrid and Valencia Railway* (1852), 3 De G. & Sm. 127; 2 Mac. & G. 169, was the case of an English company. Where the head office of a company being wound-up is situated out of England and the liquidation takes place partly in England and partly elsewhere, such reduction may be made in the fees ordered by the order as to fees of December 2, 1903, as is sanctioned by the Lord Commissioners of His Majesty's Treasury on the application of the Board of Trade order as to fees of December 2, 1903. Apparently the order as to fees of July 31, 1908, does not affect this.

(*b*) *Commercial Bank of India* (1868), 6 Eq. 517.

(*c*) *Matheson, Bros.* (1884), 27 C. D. 225; *Commercial Bank of South Australia* (1886), 33 C. D. 174.

(*d*) *Federal Bank of Australia* (1893), 62 L. J. (CH.) 561.

(*dd*) For such an order see *infra*, p. 877.

(*e*) See *per* VAUGHAN WILLIAMS, J., *English, Scottish, and Australian Chartered Bank*, [1893] 3 Ch. 385, at p. 394.

(*f*) *Imperial Anglo-German Bank* (1872), 26 L. T. 229.

Pearson, J., held in one case (*g*) that he had no jurisdiction to wind-up a foreign company which had no assets and no place of business in England. This case seems to a certain extent to run contrary to the case of *Commercial Bank of India* (*h*), for there the company had, at the date of the order, no office and no business anywhere, and to *Union Bank of Calcutta* (*i*), where Knight Bruce, V.C., assumed without deciding that he had jurisdiction to make an order. The learned Vice-Chancellor apparently took the view that the company had never had an office here; but it is thought that Pearson, J.'s, decision is right for section 268 (1) of the Act seems to contemplate all unregistered companies having a place of business in the United Kingdom (*k*).

For this reason it has been held that a society under the Literary and Scientific Institutions Act, 1854, is not an unregistered company which can be wound-up under the Act (*l*) and under the old winding-up Acts it was held that a club could not be wound-up (*m*).

Section 209 of the Companies Act, 1862, required that all insurance companies completely registered under the Joint Stock Companies Act, 1844, and all companies required to register by an Act repealed by the Companies Act, 1862, should register under that Act (*n*), and one of the penalties for a company not registering was that it should be incapable of suing either at law or in equity, but such a company was not made incapable of being made a defendant to a suit either at law or in equity (*o*), and it was not made an illegal company (*p*). The result of these provisions was that such companies if not registered could not be wound-up on the petition of the company, even if a shareholder was joined as co-petitioner, but could be wound-up on the petition of a shareholder (*q*). But after the passing of the Life Assurance Companies Act, 1870, the Court had power under section 21 of that Act to wind-up life assurance companies (*r*), and section 15 of the Assurance Companies Act, 1909, would now seem

(*g*) *Lloyd Generale Italiano* (1885), 29 C. D. 219.

(*h*) (1868), 6 Eq. 517.

(*i*) (1850), 3 De G. & Sm. 253.

(*k*) This same subsection prevents a Scotch or Irish unregistered company being wound up by the English Court, or *vice versâ*, see *supra*, p. 786.

(*l*) *Bristol Athenæum* (1889), 43 C. D. 236; see also *Russell Institution*, [1898] 2 Ch. 72; *Re Jones*, [1898] 2 Ch. 83.

(*m*) *St. James's Club* (1852), 2 De G. M. & G. 383, the case of a members' club. Proprietary clubs would seem to stand on a different footing.

(*n*) The section had no application to insurance companies formed between July 14, 1856, when the Joint Stock Companies Act, 1856 was passed, and August 25, 1857, when the Joint Stock Companies Act, 1857, came into force: *Bank of London and National Provincial Insurance Co.* (1871), 6 Ch. 421.

(*o*) Companies Act, 1862, s. 210 (1).

(*p*) Companies Act, 1862, s. 210.

(*q*) *Waterloo Life, etc., Assurance Co.* (1862), 31 Beav. 586.

(*r*) *Great Britain Mutual Life Assurance Society* (1880), 16 C. D. 246.

to give the same power in the case of all Assurance Companies within the meaning of that Act.

The Court cannot wind-up as an unregistered company any unregistered company association or partnership which, owing to the provisions of section 1 of the Act (prohibiting large partnerships) or the corresponding provisions of the Companies Act, 1862, ought to have registered (*s*); but it can wind-up a foreign company founded fraudulently, and for the purpose of carrying on an illegal business (*t*).

A winding-up order made in a case where there was no jurisdiction to make it, will not, it would seem, be binding on a stranger, as, for instance, a purchaser from the liquidator (*u*), but it will be binding on the company itself and its contributories (*x*), and it is thought, on a creditor at the date of the order (*y*), and it can only be set aside on an appeal (*x*), and cannot be disputed in a subsidiary application in the winding-up (*z*).

CIRCUMSTANCES UNDER WHICH COMPANY MAY BE WOUND-UP BY COURT.

A company registered under the Act, or the Companies Act, 1862, or the Joint Stock Companies Acts (*a*) may be wound-up by the Court in the following cases:—

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

(*s*) *Padstow Total Loss and Collision Assurance Association* (1882), 20 C. D. 137; *South Wales Atlantic Steamship Co.* (1876), 2 C. D. 763, and see *supra*, p. 785, note (*e*), as to unincorporated Building Societies. See also *Hume* v. *Record Reign Jubilee Syndicate* (1899), 80 L. T. 404; and see *Londonderry Equitable Building Co-operative Society*, [1910] 1 Ir. 69, where the Court wound up an Industrial and Provident Society, but declined to deal with a part of the business, which it had no power to carry on.

(*t*) *International Securities Corporation* (1908), 99 L. T. 581.

(*u*) *Bowling and Welby's Contract*, [1895] 1 Ch. 663.

(*x*) *Padstow Total Loss Association* (1882), 20 C. D. 137.

(*y*) See Companies (Consolidation) Act, 1908, s. 138 as to the effect of a winding-up order: *Watson* v. *Care* (*No.* 1) (1881), 17 C. D. 19; *Securities Insurance Co.*, [1894] 2 Ch. 410; *Bradford Navigation Co.* (1870), 5 Ch. 600; but cp. *Bowling and Welby's Contract*, [1895] 1 Ch. 663.

(*z*) *Arthur Average Association* (1875), 10 Ch. 542; *London Marine Insurance Association* (1869), 8 Eq. 176; *Lord Londesborough's Case* (1854), 4 De G. M. & G. 411; *Underwood's Case* (1854), 5 De G. M. & G. 677; *Barclay's Case* (1858), 26 Beav. 177; *Overend, Gurney & Co.* (1867), 36 L. J. (CH.) 413.

(*a*) For definition of Joint Stock Companies Acts, see *supra*, p 779 note (*b*).

(*aa*) Such an order was made on *Kent Outcrop Coal Co.*, [1912] W. N. 26, where it was stated (erroneously) that this was the first case under this provision. On these petitions the Court has made orders directing the statutory report to be filed or the statutory meeting to be held.

(vi) If the Court is of opinion that it is just and equitable that the company should be wound-up (*b*).

Cases (i) and (ii), *supra*, seem to call for no special remark.

With regard to (iii). The fact that a company has not commenced its business for a whole year, or has suspended its business for a like period, is not necessarily a reason why the Court should in its discretion wind it up. The Court must be satisfied either that it has no intention of ever carrying on its business—a point on which the views of the majority of the shareholders on the register (for the Court will not go behind the register) is important—or that it is impossible for the company ever to carry on its business in the future (*c*). Thus, in one case (*d*), a company was formed to build a warehouse over a station which the Metropolitan Railway was to build, and to work such warehouse in conjunction with the railway company, the railway company had not, within a year of the company's incorporation, acquired the land for its station, but was actively pursuing negotiations for so doing, and it was held that these facts constituted a sufficient answer to a petition presented against the wishes of the majority of the shareholders, and a satisfactory explanation of why the company had not started its business. Again, where a company formed to build, use, and let assembly rooms had started building such rooms, but had then stopped their building for about three years owing to the depressed state of trade in the neighbourhood, the Court declined to make an order against the wishes of the majority of the shareholders (*e*).

In one case under the old winding-up Acts, the Court came to the conclusion that a company formed to work a foreign railway had completely ceased to carry on its business, and that this, coupled with a reduction of capital, was sufficient ground for making a winding-up order (*f*).

Where a company is incorporated for the purpose of carrying on

(*b*) Companies (Consolidation) Act, 1908, s. 129. And see also the cases where a company is in voluntary winding-up, or is being wound up subject to the supervision of the Court, *infra*, pp. 1291 *et seq.*, and ss. 16 and 23 of the Assurance Companies Act, 1909, *post*, pp. 803 and 804, for special cases for winding up in the case of companies subject to that Act.

(*c*) *Tomlin Patent Horse Shoe Co.* (1886), 55 L. T. 314; *Middlesborough Assembly Rooms* (1880), 14 C. D. 104; *Petersburg and Viborg Gas Co.*, [1874] W. N. 196. The case of *Tumacacori Mining Co.* (1874), 17 Eq. 534, seems difficult to support except on the ground that the Vice-Chancellor was perfectly satisfied that if the company continued it never would commence business. See also *New Gas Generator Co.* (1877), 4 C. D. 874, on this case.

(*d*) *Metropolitan Railway Warehousing Co.* (1867), 36 L. J. (CH.) 827.

(*e*) *Middlesborough Assembly Rooms* (1880), 14 C. D. 104.

(*f*) *Madrid and Valencia Railway Co.* (1852), 3 De G. & Sm. 127; 2 Mac. & G. 169.

business both here and abroad, the mere fact that it has not within the year started business here, although it has done so abroad, would not seem to be enough to enable the Court to wind it up under this heading (*g*), although, no doubt, such fact will be an element which will, if there are other circumstances pointing the same way, enable the Court to come to the conclusion that it is just and equitable to make a winding-up order (*h*). An order was made under this provision in the case of a company with the same name as a foreign company, which latter company had complied with the provisions of the Acts as to foreign companies (*i*). In this case the two companies were intimately connected, and their co-existence was thought likely to lead to confusion and to be injurious to creditors.

With regard to case (iv) there seem to be no reported cases where the Court has made a winding-up order on the ground of the number of the company's members having fallen below two or seven, as the case may be. Indeed, the fact of a company having a very small number of members would appear to be a reason why the Court should not, at all events on a shareholder's petition, make an order (*k*). Thus, the Court has declined to make an order on the ground that a company had only nine members (*l*), and in two other cases where there were only seven members (*m*). But Malins, V.C., made an order where there were only seven members (*n*), and the Court will certainly make an order in such cases if a case of fraud is made (*o*), or if there is a case for investigation, even though there is an existing voluntary winding-up (*p*). On the petition of a creditor the mere fact of the company having a small number of shareholders will apparently make no difference (*q*).

Turning to case (v), the Act provides that a company shall be deemed to be unable to pay its debts—

(i) If a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding fifty pounds then due, has served

(*g*) *Capital Fire Insurance Co.* (1882), 21 C. D. 209.

(*h*) *Princess of Reuss* v. *Bos* (1871), L. R. 5 H. L. 176, affirming, but not for quite the same reasons, the decision of GIFFARD, L.J., in *General Company for the Promotion of Land Credit* (1870), L. R. 5 Ch. 363.

(*i*) *Cæmentium (Parent) Co.*, [1908] W. N. 257.

(*k*) This was the rule before the Act of 1862. See *Ex parte Wise* (1853), 1 Drew, 465; *Ex parte Inderwick* (1850), 3 De G. & Sm. 231.

(*l*) *Natal, etc., Co.* (1863), 1 H. & M. 639.

(*m*) *New Gas Generator Co.* (1877), 4 C. D. 874, in which *Tumacacori Mining Co.* (1874), 17 Eq. 534 was disapproved; and see *Sea and River Marine Insurance Co.* (1866), 2 Eq. 545.

(*n*) *Sanderson's Patent Association* (1871), 12 Eq. 188.

(*o*) *London and County Coal Co.* (1866), 3 Eq. 355.

(*p*) *West Surrey Tanning Co.* (1866), 2 Eq. 737.

(*q*) *Lacey & Co.* (1877), 46 L. J. (CH.) 660; *Anglo-Mexican Mint Co.*, (1875) W. N. 168. The case of a company having no assets is dealt with below, p. 855 and pp. 856 *et seq.*

on the Company, by leaving the same at its registered office, a demand under his hand requiring the Company to pay the sum so due, and the Company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor.

(ii) If in England or Ireland, execution or other process issued on a judgment decree or order of any Court in favour of a creditor of the Company, is returned unsatisfied in whole or in part ; or

(iii) If, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made ; or

(iv) If it is proved to the satisfaction of the Court that the Company is unable to pay its debts, and in determining whether a Company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the Company (*r*).

To found a case under sub-section (i) of this section, twenty-one days must elapse between the date when the demand is served on the company, and the date when the petition is presented (*s*). Where a company has no registered office, the demand may be served at its unregistered office (*t*). Such a demand cannot be waived, though, no doubt, it can be withdrawn either expressly or by implication where the person making the demand has not proceeded with the matter, but the fact of doing nothing for a period of about six months after the right to present a petition accrued, followed by a correspondence of two months before a petition was actually presented has in one case (*u*) been held not to be amount to a withdrawal.

The corresponding section (*x*) of the Act of 1862 enabled a creditor by assignment or otherwise to whom the company was indebted *at law or in equity* to serve a demand. Under this section an assignee of part of a debt was entitled to serve a demand (*y*), although such an assignment is probably only an equitable assignment (*z*), and the question arises as to whether owing to the omission of the words "at law or in equity" in the present section, such an assignee loses this right ? It is thought that this will be the effect of the omission of these words (*a*), for Byrne, J.'s, decision in *Montgomery Moore Ship*

(*r*) Companies (Consolidation) Act, 1908, s. 130.

(*s*) *Catholic Publishing and Bookselling Co.* (1864), 2 De G. J. & S. 116 ; 33 L. J. (CH.) 325.

(*t*) *British and Foreign Gas Generating Co.* (1865), 13 W. R. 649 ; 12 L. T. 368.

(*u*) *Imperial Hydropathic Hotel Co.* (1882), 49 L. T. 147.

(*x*) S. 80 (1).

(*y*) *Montgomery Moore Ship Collision Doors* (1903), 72 L. J. (CH.) 624.

(*z*) *Hughes* v. *Pump House Hotel Co.*, [1902] 2 K. B. 190.

(*a*) *Durham, Bros.* v. *Robertson*, [1898] 1 Q. B. 765 ; *Jones* v. *Humphreys*, [1902] 1 K. B. 10 ; but see *Skipper and Tucker* v. *Holloway* [1910] 2 K. B. 630, which was not followed by BRAY, J., in *Forster* v. *Baker*, [1910] 2 K. B. 636.

Collision Doors (*b*), seems to have been mainly, if not entirely, founded on dicta in *Combined Weighing and Advertising Machine Co.* (*c*), and on the decision in *Ex parte Cooper* (*d*), and the dicta of Bowen, L.J. (*c*), in the former case, were based on these words, and the decision in the latter case turned on similar words in the Bankruptcy Act, 1869. Where only part of a debt is assigned, it would seem that the relation of debtor and creditor does not exist between the company and the assignee, the rights of the latter being against the property (*e*).

The first clause of the section was not intended to enable a creditor whose debt is *bonâ fide* disputed to force the company, under threat of a winding-up petition, to pay his whole claim, and the company cannot be said to have "neglected" to pay a debt where it can put forward a genuine reason for not so doing (*f*); where a petition has been presented in respect of a genuinely disputed debt, the proper course is to dismiss it (*g*), and not to allow it to stand over until the matter can be tried, unless the Court takes the view that it is doubtful whether the company will be able to pay the debt if established (*h*). Where, however, the dispute depends on the construction of a document before the Court (*i*), or the contention of the company, however honest, is obviously, and on the face of it, utterly untenable (*k*), there the Court will try the question itself, and make the order. The Court will make an order on a petition presented by a small creditor, but supported by other creditors to a large amount, notwithstanding the fact that a shareholder of the company comes forward with an offer to pay the petitioner's debt (*l*), and it would

(*b*) (1903), 72 L. J. (ch.) 624.

(*c*) (1889), 43 C. D. 99, at p. 104.

(*d*) (1875), 20 Eq. 762. See also *Ex parte Culley* (1878), 9 C. D. 307, at p. 311.

(*e*) *Burn* v. *Carvalho* (1839), 4 My. & Cr. 690; and see also *London and Birmingham Flint Glass Co.* (1859), 1 De G. F. & J. 257.

(*f*) *London and Paris Banking Corporation* (1874), 19 Eq. 444; and see the cases in the succeeding notes.

(*g*) *London and Paris Banking Corporation* (1874), 19 Eq. 444; *Brighton Club and Norfolk Hotel* (1867), 35 Beav. 204; *General Exchange Bank* (1866), 14 L. T. 582; *London Wharfing and Warehousing Co.* (1865), 35 Beav. 37; *Public Works and Contract Co.* (1888), 4 T. L. R. 670; *Rhodesian Properties*, [1901] W. N. 130, not following *Rhydydefed Colliery Co.* (1858), 3 De G. & J. 80, or the view of Turner, L.J., in *Catholic Publishing and Bookselling Co.* (1864), 2 De G. J &. S. 116; 33 L. J. (ch.) 325. See also *Universal Bank* (1866), 14 W. R. 705, 906.

(*h*) See *London Wharfing and Warehousing Co.* (1865), 35 Beav. 37; *Universal Bank* (1866), 14 W. R. 906; and also *Imperial Guardian Life Assurance* (1869), 9 Eq. 447.

(*i*) *Imperial Silver Quarries* (1868), 16 W. R. 1220.

(*k*) *Imperial Hydropathic Co.* (1882), 49 L. T. 147; *King's Cross Industrial Dwellings* (1870), 11 Eq. 149. In this case, and the case in the last preceding note, the Judge in making the order, gave the company a short time to enable them to pay the debt.

(*l*) *Parys Patent Felted Fabric Co.* (1876), 24 W. R. 91.

seem that a demand under this subsection will enable members of the company and creditors, other than those making the demand, to present petitions (*m*). Where judgment creditors have refrained from levying execution, because they have been told by the solicitor of the company that the company has no assets on which they can levy execution, there will be sufficient ground for a winding-up petition, without further proof of the inability of the company to pay its debts (*n*).

Where bills of the company have been dishonoured (*o*), or it has failed to pay an undisputed debt (*p*), it will be deemed to be unable to pay its debts, but where a company has called its creditors together and asked them to give it further credit, this would by itself not seem to be enough to justify a winding-up petition (*q*), nor will an order be made merely because it is shown that the company is carrying on business at a loss (*r*). In ascertaining whether a company is or is not unable to pay its debts, regard will be had to the capital of the company which can be called up (*s*), but not, it would seem, to reserve capital which can only be called up in a winding-up (*t*).

Formerly a company could not be said to be unable to pay its debts when it had found money to pay all the debts that had become due, in due course as they became due (*u*), and the mere fact of suits being brought against it was not enough to show it was insolvent (*x*); but now the section (*y*) provides that the contingent and prospective liabilities of a company must be taken into account in determining whether a company is unable to pay its debts.

The Court can also make an order for winding-up a company when it is of opinion that it is just and equitable to do so. This power is very wide in terms, but it was long ago held that it must be read with the rest of the section, and that an order would only be

(*m*) *Island of Anglesea Coal and Coke Co., Ex parte Owen* (1861), 4 L. T. 684.

(*n*) *Flagstaff Silver Mining Co. of Utah* (1875), 20 Eq. 268; *Yate Collieries and Limeworks Co.* (1883), W. N. 171; and see also *South of France Potteries Association* (1877), 36 L. T. 651.

(*o*) *Globe New Patent Iron and Steel Co.* (1875), 20 Eq. 337; *Great Northern Copper Mining Co. of Australia* (1869), 20 L. T. 264.

(*p*) *Chapel House Colliery Co.* (1883), 24 C. D. 259.

(*q*) *Phœnix Bessemer Steel Co.* (1877), 4 C. D. 108, at p. 121.

(*r*) *Joint Stock Coal Co.* (1869), 8 Eq. 146.

(*s*) *National Live Stock Insurance Co.* (1858), 27 L. J. (CH.) 669; *European Life Assurance Co.* (1869), 9 Eq. 122; and see *National Funds Assurance* (1876), 24 W. R. 1066.

(*t*) *Bristol Joint Stock Bank* (1890) 44 C. D. 703.

(*u*) *European Life Assurance Co.* (1869), 9 Eq. 122; *Ex parte Spackman* (1849), 1 Mac. & G. 170; but debts presently due but not demanded, are taken into consideration: *Bristol Joint Stock Bank* (1890), 44 C. D. 703.

(*x*) *Anglo-Australian, etc., Life Assurance Co.* (1860), 1 Dr. & Sm. 113.

(*y*) Companies (Consolidation) Act, 1908, s. 130 (iv.).

made in cases which were *ejusdem generis* with the other cases for winding-up mentioned in the section (z). On two occasions (a) Vaughan Williams, J., stated that this rule had been considerably departed from in late years, but it is not thought that the cases bear out this proposition, nor is it quite easy to see, having regard to the antiquity and high authority of the cases that established the rule, how any Court short of the House of Lords could now depart from it.

The most important class of cases which come under this heading are the cases where it has become impossible for the company to carry on its business, or to use the common expression where the substratum of the company has gone.

These cases trace back to the old partnership case of *Baring* v. *Dix* (b), in which a partnership for the purpose of working a particular patent was dissolved on the patent turning out to be worthless, these cases are within the *ejusdem generis* rule because they are analogous to the case mentioned in section 129 (iii) of the Act, of a company not carrying on or suspending its business (c). Thus, a company formed to construct and work an electric telegraph which had never carried on business and had no reasonable prospect of so doing was wound-up (d), and a company formed to work a particular mine, to which it turned out that it had no title, was, in spite of wide powers in its memorandum, ordered to be wound-up on this ground (e); and the same fate befell a company formed to acquire and work a German patent which it could not get, for making coffee from dates; although it had wide powers in its memorandum and was making coffee from dates (f).

An order was made in the case of a company formed to carry on a banking business in Northamptonshire, which was only carrying on in London a business of land speculation and investing in various securities (g), and also in the case of a banking company, which, though not actually insolvent, had not sufficient assets ever to be able really to carry on its business (h). The Court also made an order

(z) *Ex parte Spackman* (1849), 1 Mac. & G. 170; *Suburban Hotel Co.* (1867), 2 Ch. 737; *European Life Assurance* (1869), 9 Eq. 122. See also *Langham Skating Rink* (1877), 5 C. D. 669.

(a) See *Amalgamated Syndicate*, [1897] 2 Ch. 600; *Sailing Ship "Kentmere,"* [1897] W. N. 58. The same view was taken by a Scotch Court in *Symington* v. *Symington Quarries* (1906), 8 Fra. 121.

(b) (1786), 1 Cox 213.

(c) *New Gas Co.* (1877), 36 L. T. 364; affirmed (1877) 37 L. T. 111; 5 C. D. 703.

(d) *Electric Telegraph Co., of Ireland* (1856), 22 Beav. 471.

(e) *Haven Gold Mining Co.* (1882), 20 C. D. 151.

(f) *German Date Coffee* (1882), 20 C. D. 169; but cp. *New Gas Co.* (1877), 36 L. T. 364; 37 L. T. 111; 5 C. D. 703.

(g) *Crown Bank* (1890), 44 C. D. 634.

(h) *Bristol Joint Stock Bank* (1890), 44 C. D. 703.

in the case of a mining company formed to acquire and work mines in "West Australia and elsewhere," which, after its original mine in West Australia had failed, proposed to acquire and work a mine in Victoria (*i*), and in the case of a mining company which, after its original mine had failed, had authorized its directors to look out for another property (*k*).

In one case a company formed for laying cables, and in particular, a cable from Portugal to the Azores, under a concession which it was alleged had failed, had an interest in another cable, but had not sufficient money to finish its own cable. Under these circumstances the Court ordered the petition to stand over until it was ascertained whether the concession had really become void, or whether it was merely voidable (*l*). A company for letting seats for the Diamond Jubilee was, after that function had taken place, ordered to be wound-up, although it proposed to carry on business, and had very wide powers in its memorandum (*m*).

For these reasons, too, a company formed to carry on a fraudulent business, which, after being restrained from so doing, had no substantial business left (*n*), and a company formed for the purpose of carrying on a fraudulent and illegal lottery business have been wound-up (*o*). Orders, too, have been made against companies where they themselves have ceased to carry on their business, and their debenture-holders are doing this for them (*p*), and in the case of mere bubble companies, which have, practically speaking, never had a business to carry on (*q*). An order was made where a company had sold all its assets except a few worthless patents and a small sum in cash, the Court taking the view that it was practically impossible for the company to carry on its business (*r*), and the same view seems to have been taken in *Wey and Arun Junction Canal Co.* (*s*), and the Scotch Court made an order where a company formed to purchase, charter, and hire vessels had lost its only vessel,

(*i*) *Coolgardie Consolidated Coal Mines* (1897), 76 L. T. 269.

(*k*) *Red Rock Gold Mining Co.* (1889), 1 Meg. 436; 61 L. T. 785.

(*l*) *International Cable Co.* (1890), 2 Meg. 183.

(*m*) *Amalgamated Syndicate*, [1897] 2 Ch. 600.

(*n*) *Thomas Edward Brinsmead*, [1897] 1 Ch. 406.

(*o*) *International Securities* (1908), 99 L. T. 581.

(*p*) *Alfred Melson & Co.*, [1906] 1 Ch. 841. See also *Chic, Ltd.*, [1905] 2 Ch. 345.

(*q*) *London and County Coal Co.* (1866), 3 Eq. 355; *West Surrey Tanning Co.* (1866), 2 Eq. 737, but the company in this case was already in voluntary liquidation, and so the case is as was stated in *Suburban Hotel Co.* (1867), 2 Ch. 737, not much of an authority on when the Court will exercise its power under the "just and equitable" clause. See also *Thomas Edward Brinsmead*, [1897] 1 Ch. 45 and 406.

(*r*) *Diamond Fuel Co.* (1879), 13 C. D. 400, discussed in *Thomas Edward Brinsmead*, [1897] 1 Ch. 45, 406.

(*s*) (1867), 4 Eq. 197.

was liable for damage it had done, and had only a small sum of money left, but in this case a majority of the shareholders, almost, but not quite, sufficient to pass a special resolution, supported the petition, and so no doubt the Court to a certain extent treated the case as analogous to the case where a special resolution for the compulsory winding-up of the company had been passed (*t*). But the Court is extremely slow to take the view that the substratum of a company has gone before it has had a fair chance to start its business (*u*), and, having regard to section 129 (iii), this is especially so where the company has not been formed for a year.

A strong example of this is to be found in the Scotch case of *Scobie* v. *Atlas Works* (*x*), there the company was formed to work a patent for making horseshoes, which, it was alleged, was worthless, and the Court declined to make an order because the company had only been in existence for about six months, and had scarcely started business. This case was very similar in its facts to the *German Date Coffee Co.* (*y*), where the company had also not been formed a year.

Again, the Court declined to make an order in the case of a company which during the two years following its incorporation, had not started business; in this case the preparations for starting business were in an advanced state, and a large majority of the shareholders opposed the petition (*z*).

Again, the Court will not make an order where part only of the company's business has become impossible.

Thus, in the leading case of the *Suburban Hotel Co.* (*a*), an order was refused in the case of a company formed to construct and carry on a hotel in or about London which had had to abandon a big hotel it was constructing in Hampstead Heath, and an order was not made in the case of a company formed to work a skating rink on a large scale, which, owing to insufficient means, subsequently started working a much smaller rink (*b*). In both these cases a large majority of the shareholders opposed the winding-up. Again, a company formed to make gas under a particular patent which had failed, was not wound-up; in this case the company was carrying on business, and the Court took the view that, having regard to the wide powers in its memorandum, the making of gas under the patent was only one of the objects of the company (*c*).

(*t*) *Pirie* v. *Stewart* (1905), 6 Fra. 847.

(*u*) See *Patent Artificial Stone Co.* (1864), 34 Beav. 185.

(*x*) (1906), 8 Fra. 1052.

(*y*) (1882), 20 C. D. For the facts of this case, see *supra*, p. 795.

(*z*) *Petersburg and Viborg Gas Co.* (1874), W. N. 196.

(*a*) (1867), 2 Ch. 737.

(*b*) *Langham Skating Rink* (1877), 5 C. D. 669.

(*c*) *New Gas Co.* (1877), 36 L. T. 364; 37 L. T. 111; 5 C. D. 703; *Kronand Metal Co.* (1899), W. N. 14, was also a case of this class; but cp. *German Date Coffee Co.* (1882), 20 C. D. 169, where a much more limited construction was given to the memorandum.

No order will be made against a company formed to carry on two specific businesses, which has abandoned only one of them (*d*), and the Court has declined to make an order where a concession of certain auriferous property had been granted to the company, but no one knew where this property was, although commissions were at the date of the petition being sent out to ascertain (*e*). In the case of a mining company whose mine was alleged to be worthless, the Court declined to make an order on the petition of a small shareholder, not being satisfied that the mine was in truth worthless (*f*).

Other cases also bearing, it is thought, an analogy to the case where a company has ceased to carry on its business are the cases where it is impossible for the company to carry on its business owing to internal disputes having brought the affairs of the company to a deadlock.

There are apparently four of these cases. The first and fourth are cases which have already been mentioned as cases where the *ejusdem generis* rule has been stated to be relaxed. With regard to the first (*g*) the facts are not set out in any report, but from an examination of the file they appear to have been as follows. Two managing directors were appointed by the articles, both of them had ceased to hold office in 1896, and in May of that year a new managing director was appointed; but in 1897 it was discovered that there had been no quorum present at the meeting at which he was appointed. Meetings were then summoned with a view of altering the article as to the quorum and appointing a managing director. Three meetings were held, but nothing was done at them as the members differed in their views, and a three-quarters majority could not be obtained. The Court apparently took the view that the company could not carry on its business, and made a winding-up order.

In the second (*h*) the Court of Appeal sustained a compulsory order on the ground of a deadlock, there being 14,000 votes against and 15,000 for it. In this case the Court was satisfied that the business could no longer be carried on.

In the third case (*i*) an order was refused because it was not absolutely impossible to carry on the company's business, and there was therefore held not to be a deadlock. In this case there were two large shareholders. These two shareholders were the only directors, they held 6000 shares each, and were at absolute variance as to the conduct of the company's business. There were only five

(*d*) *Norwegian Titanic Ore Co.* (1865), 35 Beav. 223; *Patent Bread Machinery* (1866), 14 L. T. 582.

(*e*) *Nylstroom Co.* (1889), 1 Meg. 169; 60 L. T. 477.

(*f*) *M'Donald Gold Mines* (1898), 14 T. L. R. 204.

(*g*) *Sailing Ship "Kentmere"* (1897), W. N. 58.

(*h*) *Fromm's Extract Co.* (1901), 17 T. L. R. 302.

(*i*) *Furriers' Alliance* (1906), 51 Sol. J. 172.

other members of the company, these held one share each, and it was thought that two of these would vote one way and three another. Warrington, J., declined to make an order because there was a majority one way or another, and such majority could elect a third director, and the business of the company could in this way be carried on.

Symington v. *Symington Quarries* (*k*), the fourth case, was a Scotch case. There had been an arrangement by two brothers to sell their business to a company, each of such brothers was to have the same number of shares as the other, and a third brother was to have a few shares to hold the balance between them. The company entered into possession, but no formal agreement was ever entered into, and the only shares allotted were seven—one to each of the signatories of the memorandum. These signatories favoured one of the two first-mentioned brothers, and when trouble arose, appointed him to be sole director. The Court made a winding-up order on the ground that there was a deadlock, and also that the substratum of the company was gone, the sole director being appointed and kept in place by persons who had no interest. This case went on the relaxation of the *ejusdem generis* rule. It seems to go much further than *Sailing Ship* " *Kentmere* " (*l*), and to be quite inconsistent with the *Furrier's Alliance Case* (*m*), and *Fromms Extract Co.* (*n*), and it is submitted that it was wrongly decided. Surely the injured brother could either have recovered his property or got the shares which were the consideration for the sale of it, without a winding-up order ?

The mere fact that there has been fraud in the promotion of the company or otherwise (*o*), or that the directors are or may be liable at the suit of the company to disgorge moneys improperly received (*p*), or that the company is doing something which is *ultra vires*, *e.g.* issuing shares at discount (*q*) or entering into an illegal amalgamation (*r*), does not make it just and equitable to wind-up a company, at all events, on a contributory's petition. If the company is doing an *ultra vires* act, the remedy of a member is by injunction (*r*), and the fraud may be waived by the company (*s*) ; but where there has been fraud in the promotion of the company, the fact that the persons guilty of the fraud control a majority of the votes of the company may afford a ground for winding-up the company, for in

(*k*) (1906), 8 Fra. 121.

(*l*) [1897] W. N. 58.

(*m*) (1906), 51 Sol. J. 127.

(*n*) (1901), 17 T. L. R. 302.

(*o*) *Nylstroom Co.* (1889), 1 Meg. 169 ; 60 L. T. 477 ; *Haven Gold Mining Co.* (1882), 20 C. D. 151.

(*p*) *Anglo-Greek Steam Co.* (1866), 2 Eq. 1 ; *Newcastle Commercial Banking Co.* (1857), 5 W. R. 31 ; *Bwlch-y-Plum* (1867), 17 L. T. 235.

(*q*) *Pioneers of Mashonaland Syndicate*, [1893] 1 Ch. 731.

(*r*) *Ex parte Fox* (1871), 6 Ch. 176.

(*s*) *Haven Gold Mining Co* (1882), 20 C. D. 151.

such case there can be no waiver of the fraud (*t*). Of course, we are here not discussing the cases, which have already been mentioned where the whole basis of the company is fraudulent. In many cases of fraud there will have been no proper statutory report filed, and possibly an order may be made on this ground or on grounds which are *ejusdem generis* to it. Fraud must be clearly alleged in the winding-up petition (*u*).

An order may be sometimes made under the just and equitable clauses where though the company is not technically insolvent or unable to pay its debts it is commercially insolvent. In ascertaining whether this is the case the Court will take into account the existing and probable assets of the company, and its existing liabilities (*x*), and it is thought now also its contingent liabilities (*y*). It will include the uncalled capital (*x*) other, it would seem, than capital which can only be called-up in a winding-up (*z*) on the assets side of the account; but in such cases the Court has nothing to do with possible future mismanagement, or future profit or loss, prudence or imprudence (*x*).

The mere fact that a company is carrying on its business at a loss is no reason for making an order, at all events against the wishes of the majority of its members (*a*), and the Court has declined to make an order against an industrial and provident society, which has suspended withdrawals, where it did not appear to be reasonably certain that it could not meet its liabilities (*b*).

In one case an order was made in the case of a company formed but not completely registered under the old Acts to work a concession, which had subsequently been withdrawn. In this case the company supported the petition, it being thought that a winding-up order was the most convenient way of finally disposing of the assets of the company (*c*).

CIRCUMSTANCES UNDER WHICH UNREGISTERED COMPANIES MAY BE WOUND-UP.

The different sorts of unregistered companies which can be wound-up have already been discussed. Such companies can be wound-up in the following cases :—

(*t*) See *Thomas Edward Brinsmead*, [1897] 1 Ch. 45 and 406 *General Phosphate Co.* (1893), W. N. 142; *Consolidated South Rand Mines Deep*, [1909] 1 Ch. 491, was a case where the company was already in voluntary liquidation, and so it is not exactly in point.

(*u*) *Rica Gold Washing Co.* (1879), 11 C. D. 36.

(*x*) *European Life Assurance Co.* (1869), 9 Eq. 122.

(*y*) See Companies (Consolidation) Act, 1908, s. 130 (iv.).

(*z*) *Bristol Joint Stock Bank* (1890) 44 C. D. 703.

(*a*) *Factage Parisian* (1865), 13 W. R. 214; *National Live Stock Insurance* (1858), 26 Beav. 153; 27 L. J. (CH.) 669; *Ex parte Pocock* (1849), 1 De G. & Sm. 731.

(*b*) *Horsham Industrial and Provident Society* (1894), 70 L. T. 801. See also *London and Metropolitan Counties Benefit Building and Investment Society* (1889), 1 Meg. 135.

(*c*) *Anglo-Mexican Mint Co.* (1875), W. N. 168.

(*a*) If the Company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs;
(*b*) If the Company is unable to pay its debts;
(*c*) If the Court is of opinion that it is just and equitable that the Company should be wound-up; (*d*)

An unregistered company will, for the purposes of the Act, be deemed to be unable to pay its debts—

(*a*) If a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding fifty pounds then due, has served on the Company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the Company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;
(*b*) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the Company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the Company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, and the Company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceedings to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs damages and expenses to be incurred by him by reason of the same;
(*c*) If in England or Ireland execution or other process issued on a judgment, decree, or order obtained in any Court in favour of a creditor against the Company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the Company, is returned unsatisfied;
(*d*) If in Scotland the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;
(*e*) If it is otherwise proved to the satisfaction of the Court that the Company is unable to pay its debts (*e*).

(*d*) Companies (Consolidation) Act, 1908, s. 268 (1) (iii.), and s. 23 of the Assurance Companies Act, 1909, *post*, pp. 803 and 804, for the special provisions for winding-up subsidiary companies, and companies which are subject to, and have not complied with the provisions of that Act.

(*e*) Companies (Consolidation) Act, 1908, s. 268 (1) (iv.).

In the case of limited partnerships the provisions of the Act with respect to winding-up apply with such modifications (if any) as are provided by rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors (*f*).

The present provisions are contained in the Limited Partnership (Winding-up) Rules, of 1909, which, with certain modifications, incorporate alike the Act and the Companies (Winding-up) Rules, 1909 (*g*). So far as material for the present purpose, they provide that for the purposes of the application of section 268 of the Act the expression "principal place of business" as used in that section is to mean the principal place of business as registered, and the word "member" as used in that section is to mean a general partner only, and is not to include a limited partner (*h*), and that every demand for payment and every notice of the institution of any action or other proceeding under section 268 of the Act as applied by these rules, and every petition for the winding-up of a limited partnership unless presented in the name of the firm by all the general partners jointly, if there are more than one shall be served upon the limited partnership at the principal place of business of the limited partnership as registered by delivering the same to one of the general partners there or to some person having at the time of service the control or management of the partnership business there unless the Court or a Judge shall otherwise direct.

Every petition for the winding-up of a limited partnership presented in the name of a firm by all the general partners jointly if there are more than one or presented by any general partner must be served on each of the limited partners personally unless the Court or a Judge shall otherwise direct.

Every notice and other document requiring to be served upon the limited partnership for the service of which no special mode is prescribed, may be served by post or by leaving the same at the principal place of business of the limited partnership as registered in an envelope addressed to the limited partnership in the firm's name as registered (*i*).

Nothing in this part of the Companies (Consolidation) Act, 1908 (*k*), affects the operation of any enactment which provides for

(*f*) Companies (Consolidation) Act, 1908, s. 268 (1) (vii.).

(*g*) By rule 1, the definition rule, "limited partnership" is substituted for "company," "general partner" for "director," and for "secretary" and for "secretary or chief officer," "manager clerk or servant" for "officer," "partner" for "member or shareholder,' and "principal place of business as registered" for "registered office," in the construction of the rules.

(*h*) Limited Partnerships (Winding-up) Rules, 1909, r. 6.

(*i*) *Ibid.*, r. 11.

(*k*) *I.e.* Part VIII. of the Act, dealing with the winding-up of unregistered companies.

any partnership association or company being wound-up or being wound-up as a company or as an unregistered company under any enactment repealed by the Act except that references in any such first-mentioned enactment to any such repealed enactment are to be read as references to the corresponding provisions, if any, of the Consolidation Act (*l*).

The Assurance Companies Act, 1909, besides incorporating the provisions of the Companies (Consolidation) Act, 1908 (*m*), contains the following additional provisions :—

Where the assurance business or any part of the assurance business of an assurance company has been transferred to another company under an arrangement in pursuance of which the first-mentioned company (in this section called the subsidiary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section called the principal company), then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the subsidiary company to be wound-up in conjunction with the principal company, and may by the same or any subsequent order, appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the Court necessary, with a view to the companies being wound-up as if they were one company (*n*). A company will not be a subsidiary company unless there has been an actual transfer of its assurance business, and a company will not be a subsidiary company where another company holds the bulk of its shares, guarantees its policies, and enters into a treaty of mutual re-insurance with it (*o*).

The commencement of the winding-up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding-up of the subsidiary company.

In adjusting the rights and liabilities of the members of the several companies between themselves, the Court shall have regard to the constitution of the companies, and to the arrangements entered into between the companies, in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding-up of a single company, or as near thereto as circumstances admit.

Where any company alleged to be subsidiary is not in process of being wound-up at the same time as the principal company to which it is subsidiary, the Court shall not direct the subsidiary company to be wound-up unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound-up,

(*l*) Companies (Consolidation) Act, 1908, s. 268 (2).

(*m*) See *supra*, pp. 786 and 787.

(*n*) Assurance Companies Act 1909, s. 16 (1).

(*o*) *Lancashire Plate Glass Fire and Burglary Insurance Co.*, [1912] 1 Ch. 35.

the Court is of opinion that the company is subsidiary to the principal company, and that the winding-up of the company in conjunction with the principal company is just and equitable.

An application may be made in relation to the winding-up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company.

Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the Court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section (*p*).

If default in complying with any of the provisions of the Assurance Companies Act, 1909, continue for a period of three months after notice of default by the Board of Trade (which notice shall be published in one or more newspapers as the Board of Trade upon the application of one or more policy-holders or shareholders direct) the default will be a ground upon which the Court may order the winding-up of the company in accordance with the Companies (Consolidation) Act, 1908 (*q*).

COURTS HAVING JURISDICTION TO WIND-UP COMPANIES.

The Courts having jurisdiction to wind-up companies registered in England under the Act or the Companies Act, 1862, or the Joint Stock Companies Acts (*qq*), are the High Court, the Chancery Courts of the Counties Palatine of Lancaster and Durham, and the County Courts.

Where the amount of the share capital of a company paid-up or credited as paid-up exceeds ten thousand pounds, a petition to wind-up the company must be presented to the High Court, or, in the case of a company whose registered office (*r*) is situate within the jurisdiction of either of the Palatine Courts aforesaid, either to the High Court or to the Palatine Court having jurisdiction (*s*).

(*p*) Assurance Companies Act, 1909, s. 16.

(*q*) *Ibid.*, s. 23.

(*qq*) See *supra*, p. 773, note (*b*), for definition of Joint Stock Companies Acts.

(*r*) The expression "registered office" in this section means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding-up: Companies (Consolidation) Act, 1908, s. 131 (8); but it has been held that where a petition has been presented in a county court within whose district the company has not had its registered office for the requisite period, such Court can make an order under sub-s. 7: *Southsea Garage* (1911), 27 T. L. R. 295; see also *Ex parte French* (1890), 24 Q. B. D. 63; *Ex parte May* (1884), 14 Q. B. D. 37, ss. 95 and 97 of the Bankruptcy Act, 1883, are, however, differently worded.

(*s*) See *Longendale Cotton Spinning Co.* (1878), 8 C. D. 150. The Palatine Court of Durham is regulated by the Palatine Court of Durham Act, 1889, and the Chancellor of the County Palatine exercises the powers of the Judge, and the Palatine Court of Lancaster by the Court of Chancery of Lancaster Acts, 1850 and 1854, and the Chancery

Where the amount of the share capital of a company paid-up or credited as paid-up does not exceed ten thousand pounds, and the registered office (*ss*) of the company is situated within the jurisdiction of a County Court having jurisdiction under the Act, a petition to wind-up the company must be presented to that County Court.

Where a company is formed for working mines within the Stannaries, and is not shown to be actually working mines beyond the limits of the Stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind-up the company must be presented to the Court exercising the Stannaries jurisdiction, whatever may be the amount of the capital of the company, and wherever the registered office of the company is situate.

The Lord Chancellor may by order exclude a County Court from having jurisdiction under the Act, and for the purposes of such jurisdiction may attach its district, or any part thereof, to the High Court or any other County Court, and may revoke such order or any like order made under the Companies (Winding-up) Act, 1890.

In exercising his powers under the section the Lord Chancellor must provide that a County Court shall not have jurisdiction under the Act unless it has for the time being jurisdiction in bankruptcy, and orders made under these provisions do not affect any jurisdiction or powers vested in any Court by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896.

The section does not invalidate proceedings by reason of their having been taken in the wrong Court (*t*).

It was held under the corresponding section of the Act of 1890 (*u*), that the section gave jurisdiction over all companies, and that, except so far as cut down by this section the old jurisdiction of the Chancery Division remained on foot, and that consequently petitions for the winding-up of companies without a share capital were rightly presented to the High Court (*x*), it is thought that the present Act does not alter this. The various County Courts which are excluded from Bankruptcy jurisdiction and also from jurisdiction in the winding-up of companies are specified in the County Courts (Bankruptcy and Winding-up) Jurisdiction Order, 1899 (*y*). This order expressly

of Lancaster Act 1890, and the Vice-Chancellor of the Duchy exercises the powers of the Judge. Section 237 of the Companies (Consolidation) Act, 1908, provides that rules and directions given by the Lord Chancellor under that section shall be adopted by the authority for the time being empowered to make rules for the Palatine Court of Lancaster. The Judge of that Court must sanction directions as to the remuneration of officers of that Court. As a matter of fact, no rules have been made by either Palatine Court, and the Companies (Winding-up) Rules, 1909, are applicable. Appeals from both Courts are to the Court of Appeal.

(*ss*) See *supra*, p. 804, note (*r*), for definition of registered office.

(*t*) Companies (Consolidation) Act, 1908, s. 131 (1) (2) (3) (4) (5) and (7). Wrong in sub-s. (7) means inappropriate, and does not mean a Court having no jurisdiction: *South-sea Garage Co.* (1911), 27 T. L. R. 295. It is difficult to see how the Court had jurisdiction in this case: cp. *North of England Iron Steamship Insurance Association*, [1900] 1 Ch. 481.

(*u*) S. 1.

(*x*) *North of England Iron Steamship Insurance Association*, [1900] 1 Ch. 481; *Monmouthshire and South Wales Employers' Mutual Indemnity Society*, [1909] W. N. 6.

(*y*) See W. N. July 1, 1899, and also the County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Orders of August, 1904, and

provides that nothing therein contained is to limit or affect the London Bankruptcy District or the jurisdiction of the High Court therein, and that nothing in the order contained is to give jurisdiction to any County Court within such jurisdiction (*z*). Even before this order it was held that the High Court alone had jurisdiction in the case of a company within the district of the City of London Court (*a*), or of an ordinary London County Court (*b*).

Subject to the orders of the Lord Chancellor, the place of sitting of each County Court having jurisdiction under the Act is, for the purposes of such jurisdiction, the town and place in which the Court holds its Sittings for the general business of the Court, under the County Court Acts (*c*).

Subject to the provisions of the Act, the times of the sitting of each Court, other than the High Court, in matters of the winding-up of companies are those which are appointed for the transaction of the general business of the Court, unless the Judge of any such Court otherwise orders (*d*).

It is the duty of the high bailiff of a County Court to serve such orders, summonses, petitions, and notices as the Court may require him to serve ; to execute warrants and other process ; to attend any sittings of the Court (but not sittings in Chambers) ; and to do and perform all such things as may be required of him by the Court.

But this rule is not to be construed to require any order, summons, petition, or notice to be served by a bailiff or officer of the Court which is not specially by the Acts or Rules required to be so served, unless the Court in any particular proceeding by order specially so directs (*e*).

A County Court Judge has no power to issue a writ addressed to the sheriff of the county (*f*), he cannot order any matter before him to be referred to arbitration or vary any order he has made (*g*), nor can he object to take any proceedings transferred to him by the High Court if the High Court had jurisdiction to make the order (*h*).

June, 1909 ; Law Reports Current Index, 1904, p. xc. ; and W. N. July 17, 1909, and the orders of December, 1906, April, 1907, May, 1907, and June, 1907.

(*z*) County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, 1899, r. 7.

(*a*) *Real Estates Co.*, [1893] 1 Ch. 398.

(*b*) *Court Bureau* (1891), 7 T. L. R. 223.

(*c*) Companies (Winding-up) Rules, 1909, r 9. The Companies (Winding-up) Rules, 1909, apply to a County Court.

(*d*) *Ibid.*, r. 10.

(*e*) Companies (Winding-up) Rules, 1909, r. 22.

(*f*) *Basset's Plaster*, [1894] 2 Q. B. 96.

(*g*) *London Scottish Building Society* (1894), 63 L. J. (Q. B.) 112.

(*h*) *Reg.* v. *East Stonehouse County Court Judge* (1892), 65 L. T. 730. In this case an order was made in the High Court in Chambers, which it was said should have been made in Court, and the proceedings were transferred to the County Court, it was held that the County Court must deal with the matter, even if the order should have been made in Court.

The Court exercising the Stannaries jurisdiction (*i*) is the proper Court to wind-up a company which is formed for working mines in the Stannaries, and is not shown to be actually working any mines beyond those limits, or to be engaged in any undertaking beyond those limits, or to have entered into a contract for such working or undertaking. And this is so even in the case of a company which has never had a mine within the Stannaries district, and whose memorandum allows of its working mines outside that jurisdiction (*k*), and although it is thought that this jurisdiction is not exclusive (*l*), the High Court will usually remit petitions and other winding-up matters relating to such companies to that Court (*m*).

The Court having jurisdiction to wind-up companies registered in Ireland is the High Court of Ireland (*n*), and, where the High Court in Ireland makes an order for winding-up a company it may, if it things fit, direct that all subsequent proceedings in the winding-up be had in the Court of Bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon those proceedings will be taken in that Court of Bankruptcy accordingly, and that Court will, for the purposes of the winding-up, have all the powers of the High Court in Ireland (*o*).

The Court having jurisdiction to wind-up companies registered in Scotland, is the Court of Session in either division thereof, or, in the event of a remit to a permanent Lord Ordinary, that Lord Ordinary, during session, and in time of vacation, the Lord Ordinary on the bills (*p*).

Where the Court in Scotland makes a winding-up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the

(*i*) Under the rules dated December 16, 1896, and made under the Stannaries Court Abolition Act, 1896, this jurisdiction was transferred to the County Courts having bankruptcy jurisdiction in Cornwall. This is now the County Court of Cornwall, holden at Truro. See County Courts (Bankruptcy and Winding-up) Jurisdiction Order, 1899.

(*k*) *New Terras Tin Mining Co.*, [1894] 2 Ch. 344; *Buller and Basset Tin and Copper Co.* (1891), 35 Sol. J. 260. The case of *Silver Valley Mines* (1881), 18 C. D. 472, is not and has not since December 1, 1887, when the Stannaries Act, 1887, came into force, been law.

(*l*) It is doubtful if it ever was exclusive. See *New Molton Mining Co.* (1886), 54 L. T. 602; but see *East Botallack Consolidated Mining Co.* (1864), 34 Beav. 82; but s. 133 of the Companies (Consolidation) Act, 1908, seems to make it clearly not so now. See *post*, p. 813.

(*m*) *New Terras Tin Mining Co.*, [1894] 2 Ch. 344; *Buller and Basset Tin and Copper Co.* (1891), 35 Sol. J. 260.

(*n*) A registered company can only be wound up in that part of the United Kingdom (England, Ireland or Scotland) where it has a registered office, even if it is carrying on business or has an office elsewhere: *Scottish Joint Stock Trust*, [1900] W. N. 114.

(*o*) Companies (Consolidation) Act, 1908, s. 134.

(*p*) *Ibid.*, s. 135.

winding-up to be taken before one of the permanent Lords Ordinary, and remit the winding-up to him accordingly, and thereupon that Lord Ordinary will for the purposes of the winding-up, have all the powers and jurisdiction of the Court; but the Lord Ordinary may report to the division of the Court any matter which may arise in the course of the winding-up (*q*).

An unregistered company is, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; and the principal place of business situate in that part of the United Kingdom in which proceedings are being instituted will, for all the purposes of the winding-up, be deemed to be the registered office of the company (*r*).

The Court having jurisdiction to wind-up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, is the High Court in England or Ireland, or the Court of Session in Scotland, according as the railway was authorized to be made in England, Ireland, or Scotland, and the special provisions of those Acts apply to the winding-up with the substitution of references to the Act for references to the Companies Acts, 1862 and 1867 (*s*).

Section 131 of the Companies (Consolidation) Act, 1908, does not apply to limited partnerships, but every petition for the winding-up of a limited partnership registered in England must be presented to the High Court which is subject to what is said below the Court having jurisdiction to wind-up limited partnerships in England, but a Judge of the High Court may by the winding-up order (*ss*) or by any further order direct that the winding up of a limited partnership whose principal place of business as registered is situate within the jurisdiction of either of the Palatine Courts or of a County Court having winding-up jurisdiction, shall proceed in the Chancery Court of the County Palatine or in the County Court within the jurisdiction of which such office is situate, and thereupon the winding-up will proceed accordingly, and such Palatine or County Court will, for the

(*q*) Companies (Consolidation) Act, 1908, s. 136.

(*r*) *Ibid.*, s. 268 (1) (i.).

(*s*) Companies (Consolidation) Act, 1908, s. 268 (1) (v.). Subject to general rules and to orders of transfer made, as respects England, under the authority of the Supreme Court of Judicature Act, 1873, and, as respects Ireland, under the authority of the Supreme Court of Judicature (Ireland) Act, 1877, the jurisdiction of the High Court in England or Ireland under this provision shall be exercised by the Chancery Division of that Court: *ibid.*

(*ss*) See *infra*, pp. 876 and 877 for such an order.

purpose of such winding-up, have all the jurisdiction and powers of the High Court in relation to such winding-up, and every officer of such Palatine Court or County Court who as the prescribed (*t*) officer in relation to the winding-up of companies in that Court is bound to perform any duties in relation to such winding-up, must perform the same duties in relation to the winding-up of a limited partnership, and has for that purpose all the powers of the prescribed (*t*) officer of the High Court (*u*).

In the case of assurance companies they will be wound-up by the High Court, unless they are registered or have their head office in Ireland or in Scotland, in which cases the High Court in Ireland or the Court of Session in Scotland, as the case may be, will be the Court to wind them up (*x*).

With regard to building societies, the question as to whether building societies certified under the Building Societies Act, 1836, after 1856, but never incorporated as required by the Building Societies Act, 1894, are not illegal associations, and therefore incapable of being wound-up, has already been discussed ; subject to this question, societies certified under the Act of 1836 could always be wound-up by the High Court in the same way as an ordinary company (*y*), but where a building society had registered under the Building Societies Act, 1874, between the date of an order dismissing a petition against it and an appeal from such order, the Court of Appeal had no jurisdiction to entertain the appeal (*z*). The Building Societies Act, 1874, did not alter the law as regards such societies unless they became incorporated under that Act (*a*), but it provided that all Building Societies incorporated under it could be terminated or dissolved in certain ways (*b*), one of which was " By winding-up either voluntarily under the supervision of the Court, or by the Court if the Court shall so order on the petition of any member authorized by three-fourths of the members (*c*) present at a General meeting of the society specially summoned for the purpose to

(*t*) Prescribed means prescribed by the Companies (Winding-up) Rules, 1909.

(*u*) The Limited Partnerships (Winding-up) Rules, 1909, r. 7.

(*x*) Assurance Companies Act, 1909, s. 29.

(*y*) *Midland Counties Benefit Building Society* (1864), 4 De G. J. & S. 468 ; *St. George's Benefit Building Society* (1858), 4 Drew. 154 ; *Second Commercial Benefit Building Society* (1879), 48 L. J. (CH.) 753.

(*z*) *Old Swan and West Derby Permanent Benefit Building Society* (1888), 57 L. T. 381.

(*a*) See *Old Swan and West Derby Permanent Benefit Building Society* (1888), 57 L. T. 381 ; *Second Commercial Benefit Building Society* (1879), 48 L. J. (CH.) 753 ; *London and Metropolitan Counties Benefit Building and Investment Society* (1889), 1 Meg. 135.

(*b*) See Building Societies Act, 1874, s. 32.

(*c*) This would usually include members who had given notice of withdrawal : *Sibun* v. *Pearce* (1890), 44 C. D. 354.

present the same on behalf of the society or on the petition of any judgment creditor for not less than £50, but not otherwise."

The expression "the Court" is defined by the Act (*d*) as meaning: in England, the County Court of the district in which the chief office or place of meeting for business was situate; in Scotland, the Sheriff Court of the county in which such chief office or place of business was situate; and in Ireland, the Civil Bill Court—now the County Court—within the jurisdiction of which such chief office or place of business was situate.

It was held that under these provisions the High Court had no jurisdiction to wind-up a building society incorporated under the Act of 1874, and could not transfer any winding-up pending in a County Court to the High Court (*e*), In a winding-up under these provisions the County Court was governed by the law which governed the High Court in cases before it (*f*), and alterations in that law (*e.g.* the Companies (Winding-up) Act, 1890) affected the winding-up of these societies (*g*).

The Building Societies Act, 1894, provides that notwithstanding anything in the Building Societies Acts, a Building Society under those Acts (*h*) shall be deemed to be a company within the meaning of the Companies (Winding-up) Act, 1890, and that proceedings in the winding-up of any such society which at the date of the passing of the Act were pending in a County Court, might, on the application of the Registrar of Friendly Societies, with the consent of the Secretary of State, be transferred to the High Court, and that thereupon the provisions of the Companies (Winding-up) Act, 1890 should, so far as applicable, apply (*i*). This brings the law relating to building societies into line with the law relating to ordinary companies, so far as the courts which have jurisdiction to wind-up are concerned.

With regard to Industrial and Provident Societies, under the original Act of 1852, and the Winding-up Acts then in force, the High Court could wind-up these societies (*k*). But the Industrial and Provident Societies Act, 1862, altered this, and gave the County

(*d*) Building Societies Act, 1874, s. 4.

(*e*) *Real Estates Co.*, [1893] 1 Ch. 398.

(*f*) *Andrews* v. *Swansea and Cambrian Benefit Building Society* (1881), 50 L. J. (C. P.) 428.

(*g*) *Portsea Island Building Society*, [1893] 3 Ch. 305.

(*h*) This did not include unincorporated Buildings Societies certified under the Building Societies Act, 1836.

(*i*) Building Societies Act, 1894, s. 8. It must be borne in mind that the Companies (Winding-up) Act, 1890 did not apply to Scotland or Ireland. It is thought that Building Societies registered in these countries must still be wound-up by the Courts prescribed by the Act of 1874.

(*k*) *National Industrial and Provident Society* (1861), 30 L. J. (CH.) 940.

Court exclusive jurisdiction over these societies whether they had registered under the Act, or had omitted to do so (*l*), unless they had registered under the Companies Act, 1862. This was not altered by the Industrial and Provident Societies Act, 1876 (*m*), the County Court administering the law which from time to time governed the winding up of companies (*n*). The Industrial and Provident Societies Act, 1893, provides (*o*) that a registered society (*p*) may be dissolved (*inter alia*)—

"By an order to wind up a Society or a resolution for the winding-up thereof made as is directed in regard to Companies by the Companies Acts 1862 to 1890 the provisions whereof shall apply to any such order or resolution except that the term Registrar shall for the purpose of such winding up have the meaning given to it by this Act (*q*)."

"Any proceedings in the winding-up of a registered Society which at the passing of this Act are pending in any County Court may on application by or on behalf of the Registrar (*q*) with the consent of the Treasury be transferred to the High Court and thereupon the Companies (Winding-up) Act 1890 shall so far as applicable apply thereto accordingly."

The Court for winding up these societies, even though not registered as companies, is therefore now the same Court as if they were registered under the Companies Act, 1862, or the existing Act (*r*).

The County Court Rules, 1903 (*s*) provide that—

"The provisions of the Companies Acts 1862 to 1890 and the rules made thereunder so far as they relate to winding-up shall apply to the winding-up of societies registered under the Building Societies Act 1874 and the Acts amending the same or under the Industrial and Provident Societies Act 1893 and the winding-up of any such Societies shall be conducted in all respects as if such Societies were companies registered under

(*l*) *Chatham Co-operative Industrial Society* (1864), 33 L. J. (CH.) 737, following *Hallamshire Ancient Order of Foresters Society*, unreported; *Rotherhithe, etc., Industrial Society* (1862), 32 Beav. 57; and see *Midland Counties Benefit Building Society* (1864), 4 De G. J. & S. 468.

(*m*) *London and Suburban Bank*, [1892] 1 Ch. 604.

(*n*) *Ferndale Industrial Co-operative Society*, [1894] 1 Q. B. 828.

(*o*) SS. 58 (*a*) and 59.

(*p*) Including any incorporated society at the date of the Act registered or certified under any Act relating to Industrial and Provident Societies: Industrial and Provident Societies Act, 1893, s. 79.

(*q*) The Registrar is defined with regard to England as the Central Office established by the Friendly Societies Act, 1875, and with regard to Scotland or Ireland as the Assistant Registrar of Friendly Societies for either country respectively. The central office means the central office so established, and Chief Registrar and Assistant Registrar mean Chief Registrar and Assistant Registrar of Friendly Societies respectively: Industrial and Provident Societies Act, 1893, s. 79.

(*r*) *Friendly Protestant Partnership Loan Fund*, [1895] 1 Ir. 1; *Belfast Tailors' Company Partnership*, [1909] 1 Ir. 49; *Twentieth Century Equitable Friendly Society*, [1910] W. N. 236. Section 1 of the Industrial and Provident Societies Act, 1895, provides that the Sheriff's Court is to wind-up these societies in Scotland.

(*s*) O. 41, r. 12.

any of the said Companies Acts. Costs shall be taxed according to the scale of costs for the time being in use in the Supreme Court."

Every Court in England having jurisdiction under this Act to wind-up a company has, for the purposes of that jurisdiction, all the powers of the High Court, and every prescribed (*t*) officer of the Court must perform any duties which an officer of the High Court may discharge by order of the Judge thereof or otherwise in relation to the winding-up of a company (*u*). County Court Judges acting under the winding-up jurisdiction thus given to them are, for the purpose of such jurisdiction, in the same position as High Court Judges, they are not liable to *certiorari* (*x*) or prohibition (*y*), and the remedy of a person aggrieved by any order they may make is by appeal to a Divisional Court. It would seem, however, that a mandamus will lie against a County Court Judge who declines to hear a matter remitted to him (*z*).

The Act, however, does not give any County Court jurisdiction to decide questions which have arisen before and outside the winding up, between the company and a stranger (*a*).

Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction to wind-up companies of the High Court in England under the Act is, as the Lord Chancellor may from time to time by general order direct, to be exercised, either generally or in specified classes of cases, either by such Judge or Judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction or by the Judge who for the time being exercises the bankruptcy jurisdiction of the High Court (*b*)

By an order of the 11th January, 1908, the jurisdiction of the High Courts in Companies (Winding-up) is assigned to Mr. Justice Swinfen Eady and Mr. Justice Neville. It is exercised by Mr. Justice Swinfen Eady in the terms in which he is taking non-witness work, and by Mr. Justice Neville (the Judge who is bracketted with him) in the other terms.

TRANSFER OF PROCEEDINGS.

The winding-up of a company by the Court in England or any proceedings in the winding-up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one Court to another Court, or may be retained

(*t*) Prescribed means prescribed by general rules Companies (Consolidation) Act, 1908, s. 285.

(*u*) *Ibid.*, s. 131 (6).

(*x*) *Skinner* v. *Northallerton*, [1898] 2 Q. B. 680; [1899] A. C. 439.

(*y*) *New Par Consols* (*No.* 2), [1898] 1 Q. B. 669.

(*z*) *Reg.* v. *East Stonehouse County Court Judge* (1892), 65 L. T. 730.

(*a*) *Ilkley Hotel Co.*, [1893] 1 Q. B. 248. It is doubtful whether this would apply to a case of fraudulent preference: *ibid.* It is thought probably not.

(*b*) Companies (Consolidation) Act, 1908, s. 132.

in the Court in which the proceedings were commenced, although it may not be the Court in which they ought to have been commenced.

The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any Judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other Court, by the Judge of that Court (*c*).

The powers of transfer and retainer under this section only apply to courts which have jurisdiction under the Act, and the High Court has no power to remit a winding-up to a County Court which has no winding-up jurisdiction (*d*).

The effect of the section seems to be to give the High Court jurisdiction in the case of all English companies, including companies formed for working mines in the Stannaries (*e*).

The High Court has jurisdiction under this section to make a winding-up order in the case of a company whose paid-up capital is £10,000 or under, and to remit all further proceedings to the County Court (*f*), or to make an order without remitting such proceedings (*g*).

Where there is a difficult question of law as to the jurisdiction of any Court to make a winding-up order, the Court will order that the winding up be transferred from a County Court to the High Court (*h*), and it would seem that it will also do so where there is a winding-up in a County Court, which is intimately connected with a winding-up in the High Court (*i*).

Orders for transfer and retainer can be made under this section as soon as a petition has been presented (*k*), and also in cases of applications under section 193 of the Act in a voluntary winding-up (*l*).

The Judge of the High Court may at any time for good cause shown order any proceedings in any Court other than the High Court to be transferred to the High Court, or any proceedings in the

(*c*) Companies (Consolidation) Act, 1908, s. 133 (1) and (2).

(*d*) *Real Estate Co.*, [1893] 1 Ch. 398.

(*e*) Cp. *New Terras Tin Mining Co.*, [1894] 2 Ch. 344, where the question arose in a voluntary winding-up, and the argument that the High Court had no jurisdiction was dropped as soon as the Court intimated that the corresponding section of the Companies (Winding-up) Act, 1890 applied to a voluntary winding-up.

(*f*) *Milford Haven Shipping Co.*, [1895] W. N. 16; and cp. *Rugeley Gas Co.*, [1899] W. N. 127 (a case of altering the memorandum of association).

(*g*) Cp. *Portsmouth and District Vacuum Cleaner*, [1908] W. N. 203 (a case of reduction of capital).

(*h*) *Laxon & Co. (No. 1)*, [1892] 3 Ch. 31.

(*i*) Cp. *Real Estates Co.*, [1893] 1 Ch. 398.

(*k*) *Laxon & Co. (No. 1)*, [1892] 3 Ch. 31.

(*l*) *Reg.* v. *East Stonehouse County Court Judge* (1892), 65 L. T. 730; *Stock and Share Auction and Banking Co.*, [1894] 1 Ch. 736, at p. 742; *New Terras Tin Mining Co.*, [1894] 2 Ch. 344.

High Court to be transferred from the High Court to any other Court (*m*).

The Judge of any Court, other than the High Court (*n*) or a Palatine Court, may at any time, for good cause shown, order any proceedings which have been commenced or are pending in his Court to be transferred to any Court which has jurisdiction to order the winding-up of a company, not being the High Court or a Palatine Court (*o*).

In a winding-up by the Court, notice of an application for a transfer of proceedings must, before the hearing thereof, be served by the applicant on the Official Receiver (*p*) of the Court in which the proceedings are pending and on the Official Receiver of the Court to which the proceedings are sought to be transferred (*q*).

When an order for the transfer of proceedings has been made—

(1) The person on whose application the transfer has been made must lodge with the Registrar of the Court (*r*) to which the proceedings are transferred a sealed copy (*s*) of the order of transfer.

(2) In a winding-up by the Court the Official Receiver of the Court to which the proceedings are transferred will become the Official Receiver in the proceedings.

(3) The records of the proceedings must be transmitted to the Registrar of the Court to which the proceedings are transferred, and in a winding-up by the Court such Registrar, as soon as he has received the records, must give notice of the transfer to the Official Receiver of his Court, who must give notice of the transfer to the Board of Trade.

(4) The proceedings will receive a new distinctive number (*t*).

Whenever the Lord Chancellor, by order under his hand, excludes any County Court from having jurisdiction under the Act, or attaches the district or any part of the district of a County Court to the High Court, or any other County Court, or detaches the district or any

(*m*) Companies (Winding-up) Rules, 1909, r. 43.

(*n*) *I.e.* the Judge thereof or other officer who exercises the powers of the Judge thereof: (Companies (Winding-up) Rules, 1909, r. 2.

(*o*) Companies (Winding-up) Rules, 1909, r. 44. Palatine Court means one of the Chancery Courts of the Counties Palatine of Lancaster and Durham: *ibid.*, r. 2.

(*p*) The expression "Official Receiver" includes any officer appointed by the Board of Trade to discharge the duties of Official Receiver under the Act: *ibid.*, r. 2.

(*q*) *Ibid.*, r. 45.

(*r*) Registrar means in the High Court any of the Registrars in Bankruptcy of the High Court and any person appointed to fill the office of Registrar under the Companies (Winding-up) Rules, 1909: and where a winding-up of a company is in the District Registry of Liverpool or Manchester it means the District Registrar. In a County Court where there are joint Registrars, it means either of such Registrars or a deputy Registrar, and in any other Court than the High Court, it means the officer of the Court whose duty it is to exercise in relation to a winding-up the functions which in the High Court are exercised by a registrar or master: Companies (Winding-up) Rules, 1909, r. 2.

(*s*) *I.e.* sealed with the seal of the Court: *ibid.*, r. 2.

(*t*) *Ibid.*, r. 46.

part of the district of any County Court from the district and jurisdiction of the High Court, any winding-up matters pending in the Court or district to which the order relates will become transferred to such Court as is mentioned for the purpose in the order; and, thereupon, the Rules as to transfer of proceedings will apply to the transfer of such pending proceedings in all respects as if the proceedings had been transferred by order of a Court having power to transfer proceedings (*u*).

Applications for transfer in all Courts are made in chambers (*x*), and are therefore made by summons (*y*). They come before the Judge in person. Where the liquidator of the company is the applicant, the summons will be an *ex parte* summons (*z*). Where a winding-up has been properly commenced in the High Court, the Judge will usually be very slow to transfer it to another Court, and the fact that a debenture-holder's action is already pending in another Court will not be a sufficient ground for such an application (*a*).

FORM OF SUMMONS FOR TRANSFER.

No. of 1909.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. JUSTICE EADY (OR NEVILLE) (*b*).
In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the A.B. Company Limited.

Let C.D. the Official Receiver and Liquidator of the above-named Company attend at the Chambers of the Registrar Bankruptcy Buildings Carey Street on day the day of 19 at o'clock in the noon on the hearing of an application of X.Y. a contributory of the above-named Company for an order that the proceedings in the winding-up of the above-named Company be transferred from the High

(*u*) Companies (Winding-up) Rules, 1909, r. 47.

(*x*) Seee *ibid.*, rr. 5 and 6.

(*y*) Every application in chambers must be made by summons, which, unless otherwise ordered, shall be served on every person against whom an order is sought, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons: *ibid.*, r. 8 (2).

(*z*) For form of such summons, see R. S. C., Appendix K. The stamp must be the same as on a like summons in proceedings in the High Court order as to fees of July 31, 1908.

(*a*) *Wearwell Cycle Co.*, 00180 of 1910 (unreported), before EADY, J., in chambers, June 28, 1910. In this case the receiver appointed on behalf of the debenture-holders and the great bulk of the shareholders, lived at Birmingham, and the books of the company were there: but his Lordship declined to order a transfer. This case was followed in *Staffordshire Financial Co.*, 00104 of 1911, also unreported, and before EADY, J., in chambers, October 31, 1911.

(*b*) This will be the Winding-up Judge sitting in chambers in the term when the summons is issued. See *post*, pp. 833 and 834 as to titles.

Court to the County Court of holden at and that the costs of this application may be provided for.

Dated the day of 19 .

This summons was taken out by of solicitors for the said X.Y.

To the said C.D.

NOTE.—If you do not attend in person or by your solicitor at the time and place above-mentioned such order will be made and proceedings taken as the Judge (or Registrar) may think right and expedient.

The summons must be served two clear days before the return thereof, unless in any case it is otherwise ordered (*c*) : it must be supported by an affidavit setting out the reasons for transfer.

The affidavit in support must (as is the case in all applications by summons in a winding-up) be filed, and notice of such filing must be served on the opposite party at the time of the service of the summons. The opposite party must file his evidence in answer within eight days of the service of the summons, and such notice and the applicant's evidence in reply must be filed within three days from such last-mentioned time (*Practice Directions*, June, 1892) (*d*).

Where an affidavit is presented for filing out of time such affidavit will only be received on the undertaking of the solicitor to abide by the order of the Court as to the solicitor's right to charge any such costs against his client (*e*).

No application for the transfer of the winding-up of a company or any proceeding therein from a County Court to the High Court will be entertained until the list of parties who have given notice of their intention to attend the hearing of the petition has been closed. The party applying for such transfer must give four days' notice by

(*c*) The Companies (Winding-up) Rules, 1909, contain no special provision as to the time to elapse between the service and the return of a summons, and therefore the Ordinary Practice of the Supreme Court applies, see *ibid.*, r. 218, and O. 54, r. 4 (E.), R. S. C; see also Companies (Winding-up) Rules, 1909, r. 23, as to service, *infra*, p. 1018. Where the application is by originating summons, as would be the case where an application is made to transfer a winding-up from a county court to the High Court, the title will be "In the Matter of the Companies (Consolidation) Act, 1908, and in the Matter of a petition presented in the County Court of holden at in the Matter of the A.B. Company Ld." This was the form in *Laxon & Co.* (*No.* 1), [1892] 3 Ch. 31 ; cp. also Daniell's Chancery Forms, 5th Ed. p. 1951. In this case the summons must be served eight clear days before the return, see O. 54, r. 4 (B), R. S. C., and Appendix K., R. S. C.

(*d*) Chadwyck Healey, 3rd Ed. p. 891, 892 ; Palmer, 10th Ed. vol. 2, p. 1202.

(*e*) [1894), W. N. 368 ; Palmer, 10th Ed. vol. 2, p. 1203. This rule is, however, little acted on now, and is set out here mainly because a direction to this effect is still displayed in the winding-up offices.

postal letter of such application to the petitioner and to all parties named in such list. The letter must state that unless notice is given to the applicant by any of such parties of intention to oppose, the application for such transfer will be taken as not objected to by such parties.

No costs will be allowed to any parties appearing to support or oppose a transfer unless for special reasons the Judge shall otherwise determine (*Practice Direction*, May, 1892) (*f*).

All documents filed in the winding-up office must have a stitching margin of at least one inch. If this rule is not complied with in the case of any document such document will not be accepted except by the leave of the Registrar (*Practice Directions*, February 15, 1893) (*f*).

Orders can be made under O. 35, r. 16, R. S. C. (*h*) for the removal of a winding-up from the Liverpool or Manchester District Registry, and such orders will be made where the petition was wrongly presented there, or where the winding-up can be dealt with more conveniently in London (*i*).

FORM OF ORDER OF TRANSFER (*k*).

* Name of applicant.
† Court from which the transfer is to be made.
‡ Court to which the transfer is to be made.

Dated this day of , 19 .

(*Title.*)

Upon the application of * and upon hearing and upon reading it is ordered that the said proceedings be transferred from the † Court to the ‡ Court.

NOTICE OF TRANSFER OF PROCEEDINGS TO THE BOARD OF TRADE AND OFFICIAL RECEIVER (*l*).

(*Title.*)

The proceedings in the winding-up of the above-named Company have been by order dated the 19 , transferred to this Court from

(*f*) Chadwyck Healey, 3rd Ed. 891, 892; Palmer, 10th Ed. vol. 2, p. 1202.

(*h*) See also Companies (Winding-up) Rules, 1909, r. 219.

(*i*) *Neath and Bristol Steamship Co.* (1888), 58 L. T. 180; and see *Ebersley's Hotel Co.* (1884), W. N. 252.

(*k*) Appendix to Companies (Winding-up) Rules, 1909, Form 18. Orders made in chambers in a winding-up now bear the same stamps as orders made in chambers in the Chancery Division: Order as to Fees of July 31, 1908.

(*l*) Appendix to Companies (Winding-up) Rules, 1909, Form 19.

the [High Court] *or* [the County Court of , holden at], [*or as the case may be*] and have had the above letter and number allotted to them. The letter and number before transfer were

Registrar.

Dated this day of 19 .

If any question arises in any winding-up proceeding in a County Court which all the parties to the proceeding, or which one of them and the Judge of the Court, desire to have determined in the first instance in the High Court, the Judge can state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, will be transmitted to the High Court for the purposes of the determination (*m*).

PERSONS WHO MAY PRESENT A PETITION.

Section 137 of the Act deals with the persons who are entitled to present a winding-up petition. It provides as follows :—

(1) "An application to the Court for the winding-up of a Company "shall be by petition, presented subject to the provisions of this section "either by the Company, or by any creditor or creditors (including any "contingent or prospective creditor or creditors), contributory or contri- "butories (*n*), or by all or any of those parties, together or separately : "Provided that—

"(*a*) A contributory shall not be entitled to present a petition for "winding-up a Company unless—

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

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

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

"(*c*) The Court shall not give a hearing to a petition for winding-up "a Company by a contingent or prospective creditor until "such security for costs has been given as the Court thinks "reasonable and until a *primâ facie* case for winding-up has "been established to the satisfaction of the Court (*o*).

(*m*) Companies (Consolidation) Act, 1908, s. 133 (3). This section applied to Building Societies even before the Building Societies Act, 1894 ; *Portsea Island Building Society*, [1893] 1 Ch. 205.

(*n*) As to Building Societies under the Act of 1874, see s. 32 of that Act, *supra*, pp. 809 and 810.

(*o*) The wording of this sub-section

"(2) Where a Company is being wound up voluntarily or subject to "supervision in England, a petition may be presented by the official "receiver attached to the Court, as well as by any other person authorized "in that behalf under the other provisions of this section, but the Court "shall not make a winding-up order on the petition unless it is satisfied "that the voluntary winding-up or winding-up subject to supervision "cannot be continued with due regard to the interests of the creditors "or contributories (*p*).

"(3) Where under the provisions of this Part of this Act any person "as being the husband of a female contributory is himself a contributory, "and a share has during the whole or any part of the six months been held "by or registered in the name of the wife or by or in the name of a trustee "for the wife or for the husband the share shall for the purposes of this "section be deemed to have been held by and registered in the name of "the husband" (*q*).

A petition for winding-up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings Banks Act, 1887, as well as by any person authorized under the other provisions of the Act to present a petition for winding-up a company (*r*).

With regard to limited partnerships the provisions of section 137, subsection (1), paragraphs (*a*) and (*b*), and sub-section (3) do not apply (*s*).

To turn first of all to creditors entitled to present a petition, it has already been shown that a disputed debt is rarely, if ever, a good ground for a winding-up petition.

Formerly persons who were contingent or prospective creditors could not petition. Thus a debenture-holder, where no principal

follows closely the wording of the corresponding provisions of s. 21 of the Life Assurance Act, 1870, now repealed. The practice is to mark the petition with a special fiat in the following form: "This Court doth order that this petition be referred to chambers to inquire whether a *primâ facie* case within the meaning of s. 137 (*c*) of the Companies (Consolidation) Act, 1908, is established, and to consider the security for costs to be given pursuant to the same section, and the result of such inquiry is to be certified to the Court." The matter is then heard *ex parte* before the Registrar in chambers on affidavit evidence: if he is satisfied he writes on the back of the petition, "I hereby certify that a *primâ facie* case that the company is unable to pay its debts and that it is just and equitable that the company should be wound-up, has been established to the satisfaction of the Judge, and that security for costs has been given to the amount of £ ;" see *British Equitable Bond and Mortgage Corporation*, No. 1 of 1910 (Manchester District Registry) Mr. District Registrar Watts, March 17th, 1910, [1910] 1 Ch. 574.

(*p*) As to this see *post*, pp. 1291 *et seq.*, voluntary winding-up, and *Jubilee Sites Syndicate*, [1899] 2 Ch. 204.

(*q*) Companies (Winding-up) Act, 1908, s. 137.

(*r*) Companies (Consolidation) Act, 1908, s. 268 (1) (vi), and see *ibid.*, s. 269 for the definition of a contributory in the case of an unregistered company.

(*s*) Limited Partnerships (Winding-up) Rules, 1909, r. 8.

money or interest was due under his debenture (*t*), and the holder of a bill of exchange which had not matured, even though he had notice that the bill of exchange would not be met at maturity (*u*), could not present a petition, and a landlord was not entitled to petition in the middle of a quarter for rent which would become payable at the end of the quarter (*x*). It is true that in one case (*y*) an order was made on the petition of creditors who had agreed to postpone their rights of payment, but there at all events, there had at one time been a debt due, and, moreover, the order was made by the consent of all parties with a view of enabling a scheme under the Joint Stock Companies Arrangement Act, 1870, to be carried through. Now, however, even a person whose debt is not due, and will only become due at a future date, if he makes payments in the meantime is a good petitioner (*z*).

A winding-up order will not be made on the petition of a person who, after a petition has been actually presented, has taken an assignment of the debt and the right to petition (*a*), but it would seem that a creditor by assignment can petition, even though he has admittedly purchased the debt with a view to getting a winding-up order (*b*).

It was held under the old Act that a person who was a creditor only in equity, *e.g.* the assignee of part of a debt, could present a petition (*c*). It is possible that this is no longer the law with regard to equitable creditors, though it may be held that an assignment of a specified part of a debt is a good assignment within section 25 (6) of the Judicature Act, 1873 (*d*) ; if this is so, such an assignee is a creditor at law, and can, of course, petition.

Where the equity of redemption of property in mortgage has been

(*t*) *Melbourne Brewery and Distillery*, [1901] 1 Ch. 453.

(*u*) *W. Powell and Sons* (1892), W. N. 94.

(*x*) *United Club and Hotel Co.* 1889), 60 L. T. 665. The provisions of the Apportionment Act, 1870, were held not to help the landlord. See also *New Travellers' Chambers* v. *Chase* (1894), 70 L. T. 271.

(*y*) *Australian Joint Stock Bank* (1897), W. N. 48, explained in *Melbourne Brewery and Distillery*, [1901] 1 Ch. 453.

(*z*) *British Equitable Bond and Mortgage Corporation*, [1910] 1 Ch. 574. Where an investment bond holder who at a future date would be entitled to a sum if he made payments in the meanwhile, was, before the Assurance Companies Act, 1909, came into force, held entitled to petition. It was, however, said that such a person would be a policy-holder within the meaning of that Act, and that consequently his right to petition would, after the Act came into force, be limited by s. 15. See *supra*, pp. 786 and 787.

(*a*) *Paris Skating Rink* (1877), 5 C. D. 959.

(*b*) See *Fitzroy* v. *Cave*, [1905] 2 K. B. 364 ; *British Cash and Parcel* v. *Lamson Store Service*, [1908] 1 K. B. 1006.

(*c*) *Montgomery Moore Ship Collision Doors* (1903), 72 L. J. (CH.) 624.

(*d*) See this point discussed, *supra*, pp. 792 and 793.

assigned to a company, neither the mortgagees nor sureties for the original mortgagor are in the absence of a covenant by the company with them creditors who can petition for its winding-up (*e*).

Secured creditors are entitled to present a winding-up petition, and do not thereby prejudice their security in any way (*f*), but where a secured creditor has taken no steps to enforce his security, and such security covers all the assets of the company, it would seem that the Court will be slow to make an order unless such creditor can show he will or may get something out of a winding-up order which he could not get out of an action for enforcing his security (*g*). It was at one time held that persons who held securities over the property of statutory companies could not, where they had a statutory remedy by the appointment of a receiver, get an order for the winding-up of such companies (*h*). This view has, however, not prevailed, and such a creditor can get an order where he has appointed a receiver and failed thereby to get his debt paid (*i*), or where he has simply got judgment for his debt (*k*), or it is thought in other cases where a secured creditor of a company could get an order.

The holder of bearer debentures can get an order (*l*), but where debenture-holders (*m*) or debenture stock holders (*n*) have no direct covenant for payment from a company, but rely on a covenant with trustees of a covering deed, under which they are *cestuis qui trustent*, there the trustees alone are creditors of the company, and the debenture-holder or debenture stock holder cannot petition. It will be otherwise where the debenture or debenture stock certificate (*o*), gives a direct covenant with the company, or where interest is in arrear, and there are coupons for it which are negotiable instruments (*p*).

Where a person has got a garnishee order against a debt due

(*e*) *Law Court Chambers Co.* (1889), 61 L. T. 669.

(*f*) *Moor* v. *Anglo-Italian Bank* (1879), 10 C. D. 681; and see also *Carmarthenshire Anthracite Coal and Iron Co.* (1875), 45 L. J. (CH.) 200. In *Cambrian Mining Co.* (1881), 29 W. R. 881, a petitioning mortgagee was restrained from exercising the power of sale in his mortgage pending the hearing of the petition.

(*g*) *Great Western Forest of Dean Coal Consumers Co.* (1882), 21 C. D. 769.

(*h*) *Herne Bay Waterworks Co.* (1878), 10 C. D. 42; *Exmouth Docks* (1873), 17 Eq. 181.

(*i*) *Borough of Portsmouth, etc., Tramways*, [1892] 2 Ch. 362.

(*k*) *Portstewart Tramways*, [1896] 1 Ir. 265.

(*l*) *Olathe Silver Mining Co.* (1884), 27 C. D. 278.

(*m*) *Uruguay Central and Hygueritas Railway Co. of Monte Video* (1879), 11 C. D. 372. The form of debenture was very unusual. The coupons were mere tokens, and not negotiable instruments.

(*n*) *Dunderland Iron Ore*, [1909 1 Ch. 446.

(*o*) Cp. *Robinson* v. *Montgomeryshire Brewery*, [1896] 2 Ch. 841.

(*p*) *Dunderland Iron Ore*, [1909] 1 Ch. 446.

from a company, neither he (*q*), nor, it would seem, the person against whom such order has been made (*r*), is a creditor who can petition to wind up the company; they could probably jointly petition (*s*), and the garnishor can in a proper case obtain judgment under O. 42, r. 24, R. S. C., and then present a petition in respect of such judgment, but where there is property on which execution can be levied, execution, and not an order of this nature, is the proper remedy in respect of a garnishee order (*t*). Where a person has parted with his interest in a debt, he is not a proper sole petitioner, even though there has been no assignment legal or equitable (*u*). A creditor for an unliquidated or unascertained amount cannot present a winding-up petition. Thus, where a company had taken possession of land under the Lands Clauses Acts, and the amount it had to pay had been fixed, but the title had not been investigated, it was held that the owner of the land had not got a good petitioning creditor's debt (*x*), and a similar result followed where the claim was based on alleged fraudulent misrepresentations (*y*). In such cases the claimant must convert his claim into a judgment before he can petition (*y*). A judgment creditor is not bound on a petition to show that his judgment has been regularly obtained, but where it is impeached the Judge may stand the petition over until the question is settled in a separate action (*z*), or he may try the question on the hearing of the petition itself (*a*).

An illegal debt will not support a petition (*b*). A debt incurred in a voluntary winding up will be sufficient to support a petition for a compulsory order, and also it is thought, for an order to continue the voluntary winding up under supervision (*c*). In one case where a company on presentation of a petition against it paid part of the petitioning creditor's debt, and agreed to pay the rest on a certain day, and the petitioner, on the company making default, proceeded with his petition, an order was made on the terms that he should pay back the money he had received (*d*).

(*q*) *Combined Weighing and Advertising Machine Co.* (1889), 43 C. D. 99.

(*r*) *European Banking Co.* (1866), 2 Eq. 521; and see also the case cited in the preceding note.

(*s*) Cp. *Bartitsu Light Cure*, *Times* Newspaper, January 13, 1908.

(*t*) *Pritchett* v. *English and Colonial Syndicate*, [1899] 2 Q. B. 428.

(*u*) *Pentalta Exploration* (1898), W. N. 55.

(*x*) *Milford Docks Co.* (1883), 23 C. D. 292.

(*y*) *Pen-y-van Colliery Co.* (1877), 6 C. D. 477; see also *Gold Hills Mine Co.* (1883), 23 C. D. 210.

(*z*) *Bowes* v. *Hope Life Assurance Co.* (1865), 11 H. L. C. 389; *Universal Bank* (1866), 14 W. R. 705, 906.

(*a*) *United Stock Exchange* (1885), 51 L. T. 687.

(*b*) *South Wales Atlantic Steamship Co.* (1876), 2 Ch. 763.

(*c*) *Bank of South Australia* (*No.* 2), [1895] 1 Ch. 578, which throws considerable doubt on *Bank of South Australia* (*No.* 1), [1894] 3 Ch. 722.

(*d*) *Liverpool Civil Service Association* (1874), 9 Ch. 511.

The Court is very unwilling to allow its winding-up jurisdiction to be used for the purpose of collecting small debts, and it has therefore made a rule that in the absence of special circumstances it will not make a winding-up order, where the petitioning creditor's debt is under £50 (*e*). But this rule does not hold where special grounds for a winding-up order are shown (*f*), or where it is obvious that the company is making use of the rule for the purpose of defeating its creditors (*g*) or where the petition is supported by other creditors whose debts with that of the petitioning creditor exceed £50 (*h*). The executor of a creditor can petition before he has proved the will (*i*). Where a judgment creditor had had his judgment reversed between the presentation and hearing of the petition, the petition was dismissed with costs (*k*). The Scotch Courts apparently take the view that the fact that the petitioning creditor's debt is under £50 is no reason for declining to make a winding-up order, even where the company has no assets (*l*).

With regard to contributories, the term "contributory" means every person liable to contribute to the assets of a company (*m*) in the event of its being wound-up (*n*).

In the event of a company being wound up, every present and past member is subject to the provisions of section 123 of the Act (for limiting liability, etc.) liable to contribute to the assets of the company (*o*).

Under the old Act it was held (*p*) that a contributory included a

(*e*) *Milford Docks Co.* (1883), 23 C. D. 292; *Herbert Standring & Co.*, (1895), W. N. 99; *Industrial Assurance Association*, [1910] W. N. 245. The rule was not applied in *Yates Collieries and Limeworks Co.* (1883), W. N. 171.

(*f*) *Fancy Dress Balls* (1899), W. N. 109. A case where execution had been issued and had been returned unsatisfied: see the old case of *Ex parte Wright* (1859), 1 De G. F. & J. 257.

(*g*) *World Industrial Bank*, [1909] W. N. 148; *In re Cobo Co.* (unreported), 0034 of 1911, on October 17, 1911, EADY, J., intimated he was prepared to follow this case, but the petitioner was ultimately paid, so no order went.

(*h*) *Leyton and Walthamstowe Cycle Co.* (1902), 50 W. R. 93; [1901] W. N. 225.

(*i*) *Masonic and General Life Assurance Co.* (1885), 32 C. D. 373.

(*k*) *Anglo-Bavarian Steel Ball Co.* (1899), W. N. 80. The petitioner had taken steps towards appealing from such reversal.

(*l*) *Spiers & Co.* v. *Central Building Co.*, [1911] S. C. 331.

(*m*) In s. 74 of the Companies Act, 1862, the words "under this Act" occur here.

(*n*) Companies (Consolidation Act, 1908, s. 124.

(*o*) *Ibid.*, s. 123.

(*p*) *National Savings Bank Association* (1866), 1 Ch. 547; *Anglesea Colliery Co.* (1866), 1 Ch. 555; *Rica Gold Washing Co.* (1879), 11 C. D. 36; *Peveril Gold Mines*, [1898] 1 Ch. 122; The jurisdiction was doubted in the earlier case of *Cheshire Patent Salt Co.* (1863), 1 N. R. 533: and see also *Patent Bread Machinery Co.* (1866), 14 L. T. 582: but was recognized in *Lancashire Brick and Tile Co.* (1865), 34 Beav. 330; *London*

fully paid shareholder, because he was liable to contribute to the assets of the company under section 38 of the Act of 1862 (*q*), although it was true that the later words of that section took away such liability. Some emphasis was laid in these decisions on the words "under this Act," in section 74 of the Act of 1862, but probably the absence of such words in the existing section does not make any difference.

With regard to share warrant holders "the bearer of a share "warrant may if the articles so provide be deemed to be a member "of the company within the meaning of this Act either to the full "extent or for any purposes defined in the articles" (*r*). It would seem, therefore, that a share warrant holder is, at all events, where the articles provide that he is to be a member for all purposes, a contributory (*s*), but he will in many cases where section 137 (1) (*a*) (ii) (*t*) applies, be precluded from petitioning, as the shares in such share warrant will not have been "held by him *and* registered" in his name for at least six out of the eighteen months preceding the winding-up (*u*).

Under section 137 (3) the shares have only to be "held by *or* registered" in the name of the wife or a trustee for the husband or wife.

As the expression "share" usually includes "stock" in the Act (*x*), it is thought that the section will not exclude stockholders.

A fully paid shareholder will, however, have to prove and allege in his petition that there will be substantial assets for distribution among the shareholders (*y*), though possibly, since the Companies (Winding-up) Act, 1890, less will in some cases have to be shown in this way than formerly.

Armoury Co. (1865), 11 Jur. (N. S.) 963; *Tumacacori Mining Co.* (1874), 17 Eq. 534; *Constantinople and Alexandria Hotels* (1865), 13 W. R. 851, and also probably in *Patent Artificial Stone Co.* (1864), 34 Beav. 185.

(*q*) Corresponding with s. 123 of the present Act.

(*r*) Companies (Consolidation) Act, 1908, s. 37 (4). There is an exception which is immaterial for the present purpose.

(*s*) In *Littlehampton Steamship Co.* (1865), 2 De G. J. & S. 521, an order was made on the petition of a holder of a scrip certificate for shares on his undertaking to do all things to become a complete shareholder. This was decided in 1865 before the Act of 1867 first introduced provisions corresponding with those of s. 137 (1) (*a*) (ii.) of the present Act.

(*t*) See *supra*, p. 818.

(*u*) See *Wala Wynaad Indian Gold Mining Co.* (1882), 21 C. D. 849. In *Positive Government Security Life Assurance* (1877), W. N. 23, the point was argued, but the petition was dismissed on other grounds.

(*x*) Companies (Consolidation) Act, 1908, s. 285.

(*y*) *Rica Gold Washing Co.* (1879), 11 C. D. 36; *Diamond Fuel Co.* (1879), 13 C. D. 400. But cp. *Fromm's Extract Co.* (1901), 17 T. L. R. 302.

Advanced (*z*) and withdrawing members (*a*) of building societies, unless, in the latter case, they have been paid off (*b*), are contributories (*c*).

It would also seem that persons liable to be placed on the B list of contributories are entitled to petition always assuming they are not precluded by section 137 (1) (*a*) (ii) of the Act (*d*).

With regard to section 137 (*a*) (ii) of the Act, as already pointed out, it may preclude share warrant holders from petitioning in some cases, but a person in whose name shares have been registered will not be precluded from petitioning by the fact that he has not been beneficially interested in the shares during all or part of the requisite six months (*e*).

It has been held that where an order was made requiring a company to allot certain shares to a person, and to register them in his name, and the company made default for a period of six months, such person was not precluded by the section from petitioning (*f*); but where the Court is dealing with these provisions, it usually will not deal with the question of whether a person ought to have been registered or to have been an original allottee, but will have regard only to what has actually happened (*g*). A shareholder in a statutory company can petition (*h*).

A company cannot by its articles in any way derogate from a shareholder's right to petition (*i*), and it is doubtful whether it can enter into an agreement with a member or any other person precluding him from petitioning, on the whole, however, it is thought that such an agreement would be binding (*k*). At one time it was considered that the fact of a shareholder being in arrear with calls was an absolute bar to his presenting his petition (*l*), and that if this

(*z*) *Professional Commercial and Industrial Building Society* (1871), 6 Ch. 856; *Queen's Building Society* (1871), 6 Ch. 815; *Doncaster Building Society* (1867), 3 Eq. 158.

(*a*) *Sibun* v. *Pearce* (1890), 44 C. D. 354; and see also *Pepe* v. *City and Suburban Permanent Building Society*, [1893] 2 Ch. 311.

(*b*) *Sheffield and South Yorkshire Permanent Building Society* (1889), 22 Q. B. D. 470.

(*c*) See *supra*, pp. 809 and 810, as to the restrictions on a contributory of a building society incorporated under the Act of 1874 presenting a petition.

(*d*) Buckley, 9th Ed. p. 321, and cp. *Times Fire Assurance Co.* (1861), 30 Beav. 596.

(*e*) *Wala Wynaad Gold Mining Co.* (1882), 21 C. D. 849.

(*f*) *Patent Steam Engine Co.* (1878), 8 C. D. 464.

(*g*) *Re a company*, [1894] 2 Ch. 349, reported *sub nom.*; *Advance Boiler Co.* (1894), 63 L. J. (CH.) 565.

(*h*) *South Staffordshire Tramways* (1894), 1 Mans. 292; 8 Rep. 288.

(*i*) *Peveril Gold Mines*, [1898] 1 Ch. 122.

(*k*) This seems to be the result of *Welton* v. *Saffery*, [1897] A. C. 299. See also *Punt* v. *Symons & Co.*, [1903] 2 Ch. 506; *Bailey* v. *British Equitable*, [1904] 1 Ch. 374; [1906] A. C. 35 *Ellis* v. *Dadson* (1891), 60 L. J. (CH.) 353.

(*l*) *European Life Assurance Society* (1870), 10 Eq. 403.

fact appeared on the petition it rendered it demurrable (*m*). This view was not the view originally taken by the Courts (*n*), and it has not prevailed, for a petitioner has been allowed to proceed with his petition on paying the amount of his arrears into Court (*o*), and on his undertaking that the order, if made, should not be drawn up till all arrears of calls were paid (*p*). In this last case the petition was ultimately dismissed, and a peremptory order was made on the petitioner to pay his calls and interest, and also a debt due from him within a week. Usually, however, no winding-up order will be made unless all calls have been paid or paid into Court (*p*).

A petitioner who, while his winding-up petition is pending, votes for a resolution for voluntary winding-up will find it difficult to get a compulsory order, but the fact of his having so voted will not affect him if he ask for a winding-up subject to supervision (*q*).

ABUSE OF THE PROCESS OF THE COURT.

A person who threatens to present a petition which, if presented, would amount to an abuse of the process of the Court, will be restrained by injunction from so doing. Thus, in the case of disputed debts, petitioners have been restrained from presenting petitions in respect of such debts (*r*). In these cases the Court has jurisdiction to interfere, because the mere presentation of a petition would or might do irreparable damage (*s*).

In these cases the application must be made in a separate action started for the purpose, but an order may be on an interlocutory application in such action (*t*). For similar reasons where a petition has been presented which amounts to an abuse of the process of the Court, an order may be made on an interlocutory motion in the winding-up restraining the petitioner from advertising the petition

(*m*) *Steam Stoker Co.* (1875), 19 Eq. 416. In this case the petition showed a conditional tender by the petitioner, and a subsequent offer by his solicitor of his own cheque, which was held not to be a good tender.

(*n*) *In re Hodsell* (1850), 19 L. J. (CH.) 234, an order was made though an action was pending against the petitioner for calls. See also *Petersburg and Viborg Gas Co.* (1875), 33 L. T. 637; *Birch Torr and Vitifer Co.* (1854), 1 K. & J. 204.

(*o*) *Diamond Fuel Co.* (1879), 13 C. D. 400, where JAMES, L.J., said that in *European Life Assurance Society* (1870), 10 Eq. 403, he had been supplementing rather than interpreting the Act.

(*p*) *Crystal Reef Gold Mining Co.*, [1892] 1 Ch. 408.

(*q*) *Marine and General Land and Investments* (1890), 62 L. T. 723.

(*r*) *Cercle Restaurant Castiglione* v. *Lavery* (1881), 18 C. D. 555; *Niger Merchants Co.* v. *Capper* (1877), 18 C. D. 557 n.; 25 W. R. 365, citing the apparently unreported case of *Merchants' Banking Co. of London* v. *Hough*, December 3, 1874; *New Traveller's Chambers* v. *Chuse* (1894), 70 L. T. 271.

(*s*) *Cadiz Waterworks Co.* v. *Barnett* (1874), 19 Eq. 182.

(*t*) See cases in the two preceding notes. These cases show what will amount to a threat to present a petition.

and staying all further proceedings therein (*u*). On an application of this sort the Court has power to dismiss the petition with costs (*x*).

Such orders have been made where the petition showed that the petitioner was not entitled to petition because he had not held his shares for a sufficient period (*y*), and in cases where the petitioning creditor's debt was disputed (*x*).

A person presenting a petition may also find himself cast in damages in an action for malicious prosecution. In such cases the injury which will be presumed to be caused to its fair fame and credit by the public advertisement of the petition, will be all the damage the company will have to show, and if the company has paid its promoters and is still a going concern, the fact that there was fraud in its promotion, or that articles detrimental to it have appeared in the papers, will not afford a reasonable and probable ground for the petition. Once the question of reasonable and probable cause is left to the jury, the question of malice is left to them (*z*). There will be no reasonable and probable cause for petitioning where a person presents a petition as a contributory, if it turns out that he is not a contributory unless he can show that he not only believed he was a contributory, but had *bonâ fide* satisfied himself of the truth of his belief (*a*).

CONTEMPT OF COURT.

Where a petition has been presented or is about to be presented (*b*), persons who get proxies for a voluntary winding-up and an investigation, will be guilty of contempt of Court if the investigation is all a sham, and intended to hoodwink shareholders into passing a resolution for voluntary winding-up, and thus preventing a compulsory order being made (*c*).

It has been held that it is a contempt of Court to set out in a newspaper the contents of a petition which contains charges of fraud (*d*), or to speak of a bank against which a petition has been

(*u*) *Re A Company*, [1894] 2 Ch. 349, *sub nom. Advance Boiler Co.* (1894), 63 L. J. (CH.) 565. For order in this case, see *infra*, p. 833. An *ex parte* injunction was granted in the first instance in this case. In *London and Paris Exchange Co.*, 00315 of 1905 (unreported), WARRINGTON, J., stayed three petitions by creditors before they came on for hearing. All the shareholders of the company consented.

(*x*) *Gold Hill Mines* (1883), 23 C. D. 210.

(*y*) *Re A Company*, [1894] 2 Ch. 349, *sub nom. Advance Boiler Co.* (1894), 63 L. J. (CH.) 565. An *ex parte* injunction was granted in the first instance in this case.

(*z*) *Quartz Hill Consolidated Gold Mining Co.* v. *Eyre* (1883), 11 Q. B. D. 674.

(*a*) *Quartz Hill Consolidated Gold Mining Co.* v. *Eyre* (*No.* 2) (1884), 50 L. T. 274.

(*b*) Apparently the petition need not actually have been presented. See *Hunt* v. *Clarke* (1889), 58 L. J. (Q. B.) 490; *Rex* v. *Parke*, [1903] 2 K. B. 432; *Rex* v. *Davies*, [1906] 1 K. B. 32.

(*c*) *Septimus Parsonage & Co.*, [1901] 2 Ch. 424.

(*d*) *Cheltenham and Swansea Railway Carriage and Wagon Co.* (1869), 8 Eq. 580. For other cases where

presented as a so-called bank and a fraudulent concern, and to say that if its directors are examined there will be interesting revelations (*e*). These cases depend on the principle that "nothing is "more incumbent upon courts of justice than to preserve their "proceedings from being misrepresented, nor is there anything of "more pernicious consequence than to prejudice the minds of the "publick against persons concerned as parties in causes before the "cause is finally heard" (*f*). They have been doubted in some of the later cases (*g*), but it is thought that they are good law (*h*) subject to this, that the Court is now very slow to punish for contempt where it is satisfied that the Act complained of is not in truth calculated to interfere with the course of justice (*i*), and in this class of case, where there is only a Judge and no jury, it will be more difficult to show that matters of this sort will interfere with the course of justice (*k*).

A petitioner issuing circulars to fellow shareholders or, it would seem, creditors, with a view of getting them to support a petition, will not be guilty of a contempt, or, at all events, will not be punished for contempt, whether such circulars contain statements substantially the same as those in the petition or the affidavits supporting it (*l*), or actual extracts from the same (*m*), though, of course, such circulars may be libellous (*n*).

Where reflections on a party to litigation are not prompted by the litigation, and do not directly bear on it, the Court will be very slow to look upon such reflections as a contempt of Court (*o*). Where

the publication of pleadings has been held to be a contempt of Court, cp. *Bowden* v. *Russell* (1877), 46 L. J. (CH.) 414; *Kitcat* v. *Sharpe* (1883), 52 L. J. (CH.) 134; and see also the remarks of the Court in *Re Townshend* (1906), 22 T. L. R. 341.

(*e*) See *Crown Bank* (1890), 44 C. D. 649. See also *General Exchange Bank* (1866), 14 L. T. 582, where reflections on the petitioner were complained of.

(*f*) *Per* Lord HARDWICKE, *Roach* v. *Garvan* (or *Hall*) (1742), 2 Atk. 469.

(*g*) See *New Gold Coast Co.*, [1901] 1 Ch. 860; *Reg.* v. *Payne*, [1896] 1 Q. B. 577, which also commented on *J. and P. Coats* v. *Chadwick*, [1894] 1 Ch. 347, which certainly was an extremely strong instance of the power of the Court.

(*h*) *Hunt* v. *Clarke* (1889), 58 L. J. (Q. B.) 490; *Greenwood* v. *Leather Shod Wheel Co.* (1898), 14 T. L. R. 241.

(*i*) *Plating Co.* v. *Farquharson* (1881), 17 C. D. 49; *New Gold Coast Exploration Co.*, [1901] 1 Ch. 860. In both of these cases the application was dismissed with costs, it being intimated in the former that the application itself almost amounted to a contempt of Court: *Reg.* v. *Payne*, [1896] 1 Q. B. 577; *London Flour Co.* (1868), 17 L. T. 636.

(*k*) *Metropolitan Music Hall* v. *Lake* (1889), 58 L. J. (CH.) 513.

(*l*) *New Gold Coast Exploration Co.*, [1901] 1 Ch. 860.

(*m*) *London Flour Co.* (1868), 16 W. R. 474: but see *Sir John Moore Mining Co.* (1878), 37 L. T. 242.

(*n*) Cp. *Quartz Hill Consolidated Mining Co.* v. *Beall* (1882), 20 C. D. 501.

(*o*) *Re Labouchere* (1902), 18 T. L. R. 208; *Phillips* v. *Hess* (1902), 18 T. L. R. 400.

the party publishing such reflections does not know that there is any litigation pending (*p*), or does not know and is under no duty to know that he is publishing them, there will be no contempt (*q*), and the Court will rarely, if ever, convict a person for a contempt unless he has actual knowledge of the fact that he is doing a thing which does or may amount to a contempt (*r*). Where it is sought to make a company liable for contempt, the application should ask that the company do attend and answer the contempt (*s*), but it cannot be committed for contempt (*t*).

Bribing a witness, or attempting to do so (*u*), or publishing reports of a private examination, afford examples of other forms of contempt (*x*).

Where a contempt of Court has been committed the Court can, instead of making an order for committal, grant an injunction (*y*), and it can in proceedings of this nature give solicitor and client costs (*z*). Applications for committal being of a criminal nature cannot be compromised without the leave of the Court (*a*).

SECURITY FOR COSTS.

A question a petitioner will have to consider is whether or no he will have to give security for costs of the petition. The liability of a limited company to do this under section 278 of the Act has already been considered, but in other cases the poverty of a petitioner is no ground for ordering security unless, indeed, the petitioner is a mere *nominis umbra*, and acting entirely in the interest of some one else (*b*).

The broad general rule is that a person ordinarily resident out of the jurisdiction and coming forward as an actor or plaintiff is

(*p*) *Metropolitan Music Hall* v. *Lake* (1889), 58 L. J. (CH.) 513; *Re Townshend* (1906), 22 T. L. R. 341; *Rex* v. *Freeman's Journal*, [1902] 2 Ir. 82, seems scarcely consistent with these cases.

(*q*) *Mcleod* v. *St. Aubyn*, [1899] A. C. 549. It would seem that in *Hunt* v. *Clarke* (1889), 58 L. J. (Q. B.) 490, there was a duty to know.

(*r*) *Rex* v. *Freeman's Journal*, [1902] 2 Ir. 82; *Rex* v. *Dolan*, [1907] 2 Ir. 260.

(*s*) *Rex* v. *Freeman's Journal*, [1902] 2 Ir. 82, referring to *Onslow's case* (1874), L. R. 9 Q. B. 219.

(*t*) *Re Hooley, Ex parte Hooley* (1899), 79 L. T. 706. Where it is sought under O. 42, r. 31, R. S. C. to make a director liable for the contempt of a company he must be personally served: *McKeown* v. *Joint Stock Institute*, [1899] 1 Ch. 671. In fact, except where substituted service is allowed, these applications must always be served personally. See *Annual Practice*, 1912, pp. 725 *et seq.*, and *Yearly Practice*, 1912, pp. 625 *et seq.*, notes to O. 44, r. 1, as to the practice in these cases.

(*u*) *Re Hooley*; *Tucker's Case* (1899), 79 L. T. 306.

(*x*) *American Exchange* (1889), 58 L. J. (CH.) 706; *Re Hooley, Ex parte Hooley* (1899), 79 L. T. 706.

(*y*) *J. and P. Coats* v. *Chadwick*, [1894] 1 Ch. 347.

(*z*) *Plating Co.* v. *Farquharson* (1881), 17 C. D. 49.

(*a*) *Rex* v. *Newton* (1903), 19 T. L. R. 627.

(*b*) *Cowell* v. *Taylor* (1886), 31 C. D. 34; *White* v. *Butt*, [1909] 1 K. B. 50, overruling it is thought *Carta Para Mining Co.* (1881), 19 C. D. 457.

always liable for security for costs unless the company is indebted to him or has moneys of his in hand (*c*). Under this rule a petitioner with an English judgment or an admitted debt will not be liable to give security (*d*), but it is otherwise where the debtor company has admittedly no assets and is in the course of voluntary winding up (*e*), or where the judgment is a foreign one (*f*). For this purpose a person resident in Scotland or Ireland, but petitioning here, is resident out of the jurisdiction (*g*), but it would seem that security will not be ordered against persons resident in Scotland and Ireland who come forward as actors or plaintiffs in proceedings in the course of a winding up, for in such case the provisions of section 180 of the Act (*h*) provide a sufficient means for recovering any costs they may be liable to pay (*i*). Where, however, a person resident out of the jurisdiction has a considerable amount of property of a more or less fixed and permanent nature within the jurisdiction, there will be no order for security (*k*).

Order 65, r. 6, R. S. C. provides that in any cause or matter in which security for costs is required the security shall be of such amount and be given at such times and in such manner and form as the Court or a Judge shall direct. The mere fact that a company against whom a petition has been presented has put in affidavits, will be no waiver of a right to security (*l*). A special case will have to be made out where security for more than £100 is asked for (*m*). Other cases where security will be ordered are cases where the petitioner cannot be found at the address given and has no other known address (*n*), and cases where the petitioner is a contingent or prospective creditor (*o*).

(*c*) *Pretoria Pietersberg Railway Co.*, (*No.* 2) [1904] 2 Ch. 359; *Ex parte Latta* (1850), 3 De G. & Sm. 186.

(*d*) *Contract and Agency* (1887), 57 L. J. (CH.) 5.

(*e*) *Alabama Portland Cement*, [1909] W. N. 157.

(*f*) *Crozat* v. *Brogden*, [1894] 2 Q. B. 30.

(*g*) *East Llangynog Lead Mining Co.* (1875), 23 W. R. 587; *Fontaines case* (1889), 41 C. D. 118. It is not thought that the effect of s. 100 of the Judicature Act, 1873, is to make an order on a winding-up petition a judgment within the meaning of the Judgments Extension Act, 1868. See *Ex parte Chinery* (1884), 12 Q. B. D. 342; and s. 180 of the Companies (Consolidation) Act, 1908, seems to have no application, as if the petition is dismissed the order will not be "for or in the course of winding-up a company."

(*h*) See *post*, pp. 1022 *et seq.*, as to this section.

(*i*) *Queensland Mercantile Agency* (1892), 61 L. J. (CH.) 48.

(*k*) *Fontaine's Case* (1889), 41 C. D. 118; *Apollinaris Co.'s Trade-marks*, [1891] 1 Ch. 1.

(*l*) *Home Assurance Association* (1871), 12 Eq. 112.

(*m*) *Paxton* v. *Bell* (1876), 24 W. R. 1013.

(*n*) *Sturgis* (*British*) *Motor Power Syndicate* (1886), 53 L. T. 715.

(*o*) Companies (Consolidation) Act, 1908, s. 137 (1) (*c*).

ORDER FOR SECURITY FOR COSTS.

00417 of 1910.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. REGISTRAR HOOD.

Thursday the 1st day of December 1910.

In the Matter of The Companies (Consolidation) Act 1908
and
In the Matter of the Netherlands Promotion Syndicate Limited.

UPON THE APPLICATION (by summons dated the 28th day of November 1910) of the above-named Netherlands Promotion Syndicate Limited whose registered office is situate at   in the City of London and upon hearing the solicitors for the Applicant and for H. A. F. (the Petitioner named in the petition to wind-up the above-named Company presented unto the Court in the above matter on the 24th November 1910) the Respondent to the said summons and upon reading the said petition and the affidavit of H. A. F. filed the 24th November 1910—

IT IS ORDERED that the Petitioner the said H. A. F. do forthwith procure some fit and proper person on his behalf to give security by bond to the above-named Company in the penal sum of Twenty-five pounds conditioned to answer costs in case any costs shall be ordered to be paid by the said H. A. F. but in lieu of procuring such bond the said H. A. F. is to be at liberty forthwith to lodge the sum of Twenty-five pounds in Court as directed in the Lodgment Schedule hereto.

AND IT IS ORDERED that until such bond is procured or lodgment made and notice thereof given to the Solicitors for the Netherlands Promotion Syndicate Limited all further proceedings in the matter of the said Petition be stayed.

LODGMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).

1st December 1910.

Re The Companies (Consolidation) Act, 1908. *And Re The Netherlands Promotion Syndicate Limited.* 00417 *of* 1910.

Ledger Credit as above "Security for Costs of The Netherlands Promotion Syndicate Limited."

Particulars of Funds to be lodged to the Account of the Paymaster-General.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Cash	H. A. F. . . .	25	0	0			

Registrar Companies (Winding-up).

CONTENTS OF THE PETITION.

The petition must show all the facts on which the petitioner relies, for an order will only be made *secundum allegata et probata.* Thus it will be necessary to set out definitely any debt or demand on which the petitioner relies (*p*), and, in the case of a fully paid shareholder, the petition must show that there will be some tangible assets for distribution among the shareholders (*q*); but it would seem to be unnecessary for a petition to show assets in other cases (*r*). Again, where the petitioner's case is that there has been fraud, he must clearly set out the fraud complained of (*s*), and where his case is that the substratum of the company is gone, he must show on the face of his petition that substantially speaking, the company is not carrying on any business it is entitled to carry on (*t*). It is apparently not absolutely necessary for a contributory to show in his petition that he is not precluded by section 137 (1) (*a*) (ii) from petitioning, as this is a matter which the company can ascertain from its own books (*x*), but the practice is to set out this fact in the petition, and it is necessary, where the company does not appear, for affidavits to satisfy the Court on this point (*y*).

Where a petition for a compulsory order had been presented, and before the hearing a voluntary winding-up took place, it was formerly not absolutely necessary for the petitioner, if at the hearing he asked that the voluntary winding-up should be continued under supervision to amend his petition by setting out the voluntary winding-up (*z*): but now it is the universal practice and also, it may be said, convenient, to ask for leave to so amend.

Where a petition does not on the face of it show a case for winding-up, it is what is called demurrable, and may be dismissed at the

(*p*) *Wear Engine Works Co.* (1875), 10 Ch. 188.

(*q*) *Rica Gold Washing Co.* (1879), 11 C. D. 36: this is not altered by s. 141 (1) of the Companies (Consolidation) Act, 1908; *Kaslo-Slocan Mining and Financial Corporation*, [1910] W. N. 13.

(*r*) This view is contrary to a practice note set out in, [1902] W. N. 77; 18 T. L. R. 503; but having regard to s. 141 (1) and *Crigglestone Coal Co.*, [1906] 2 Ch. 327, and the other cases cited therewith, *post*, p. 855 and pp. 856 *et seq.*, such note would seem to be wrong. This is borne out by the forms (4 and 5) on the Appendix to the Companies (Winding-up) Rules, 1909, and rule 203 of the Companies (Winding-up) Rules, 1909.

(*s*) *Rica Gold Washing Co.* (1879), 11 C. D. 36.

(*t*) *New Gas Co.* (1877), 36 L. T. 365; 37 L. T. 111; 5 C. D. 703. See also *Langham Skating Rink* (1877), 5 C. D. 669.

(*x*) *City and County Bank* (1875), 10 Ch. 470.

(*y*) *Glendower Steamship Co.* (1899), W. N. 114.

(*z*) *Marine and General Land and Investment Co.* (1890), 62 L. T. 723; and see also *National Whole Meal Bread and Biscuit Co.*, [1891] 2 Ch. 151, where a petition asking for a winding-up under supervision was amended so as to ask for a compulsory order; as to readvertising in such cases, see *post*, pp. 840 and 841.

hearing without the company putting in any evidence (*a*), and it would seem that in such case all further proceedings in it may be stayed, or it may be dismissed on an interlocutory application in the winding-up (*b*).

ORDER STAYING ALL FURTHER PROCEEDINGS ON PETITION.

(*Title.*)

Upon motion etc. this Court doth order that the said G.J. be perpetually restrained from advertising the said petition and from all further proceedings thereunder. And it is ordered that the said G.J. do pay to the said Advance Boiler Company Ltd. the costs of the said motion. Such costs to be taxed. *Advance Boiler Company, Ltd.*, 0089 of 1894, VAUGHAN-WILLIAMS, J., April 18th, 1894 (reported *sub nom. Re a Company*, [1894] 2 Ch. 349).

At the same time the Court, or even the Court of Appeal (*c*), can give leave to amend, and even after the order was made, but before it was drawn up, it has given leave to amend a slip in the name of the company, as it appeared in the title to the winding-up (*d*). A winding-up petition must be dated and will have a distinctive number assigned to it in the office of the Registrar (*e*), and will have a title in one of the following forms. Every petition will bear a £2 impressed stamp (*f*).

GENERAL TITLE (HIGH COURT).

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. JUSTICE

No. of 19 .

In the Matter of the Companies (Consolidation) Act 1908.

and

In the Matter of * Limited.

* Insert full name of Company.

(*a*) *New Gas Co.* (1877), 36 L. T. 364; 37 L. T. 111; 5 C. D. 703.

(*b*) See *Re a Company*, [1894] 2 Ch. 349, reported *sub nom. Advance Boiler Co.* (1894), 63 L. J. (CH.) 565; *Gold Hill Mines* (1883), 23 C. D. 210.

(*c*) *Wear Engine Works Co.* (1875), 10 Ch. 188; *Queen's Building Society* (1871), 6 Ch. 815.

(*d*) *Army and Navy Hotel* (1886), 31 C. D. 644; *Newcastle Machinists Co.* (1888), W. N. 246; but see *Samuel Birch Co.* (1907), W. N. 31, and *infra*, p. 839, as to the practice now in cases where the name is wrongly given.

(*e*) Companies (Winding-up) Rules, 1909, r. 11, and Appendix, Form 1. Numbers and dates may be denoted by figures. All proceedings in any matter subsequent to the first proceeding must bear the same number as the first proceeding.

(*f*) Order as to fees of July 31, 1908.

GENERAL TITLE (COUNTY COURT).

IN THE COUNTY COURT OF
holden at

No. of 19 .

* Insert full name of Company.

In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of * Limited (*g*).

Where an Industrial and Provident Society or an incorporated Building Society is the subject of a petition the title "In the Matter of the Industrial and Provident Societies Acts 1893 to 1895" or "in the Matter of the Building Societies Acts 1874 to 1894," as the case may be, will be put before the title "In the Matter of the Companies (Consolidation) Act 1908."

Where a petition is against a Limited Partnership the title will be
In the Court of
Limited Partnerships Winding-up (*h*).
In the Matter of the Limited Partnerships Act 1907 and of
The Companies (Consolidation) Act 1908
and
the name of the matter to which it relates (*i*).

Every petition for the winding-up of a company by the Court or subject to the supervision of the Court must be in the Forms 4 and 5 in the Appendix to the Companies (Winding-up) Rules, 1909, with such variations as circumstances may require (*k*).

Such forms are as follows:—

FORM OF PETITION (NO. 4).

(*Title.*)

* Insert title of Court.

† Insert full name, title, etc., of petitioner.

‡ State the full address of the registered office so as sufficiently to show the district in which it is situate.

To *

The humble petition of † sheweth as follows:—

1. The Company, Limited (hereinafter called the Company) was in the month of , incorporated under the Companies Acts.

2. The registered office of the Company is at ‡

3. The nominal capital of the Company is £ divided into shares of £ each. The amount of the capital paid up or credited as paid is £ .

4. The objects for which the Company was established are as follows:—

To

and other objects set forth in the Memorandum of Association thereof.

[Here set out in paragraphs the facts on which the petitioner relies, and conclude as follows]:—

(*g*) Companies (Winding-up) Rules, 1909, r. 11, and Appendix, Form 2.

(*h*) The name of the Judge will be set out in the following line.

(*i*) Limited Partnerships (Winding-up) Rules, 1909, r. 10.

(*k*) Companies (Winding-up) Rules, 1909, r. 25.

Your petitioner therefore humbly prays as follows :—

(1) That the Company, Limited, may be wound-up by the Court under the provisions of the Companies (Consolidation) Act 1908.

(2) Or that such other order may be made in the premises as shall be just.

NOTE.—*It is intended to serve this petition on

* This note will be unnecessary if the Company is petitioner.

PETITION BY UNPAID CREDITOR ON SIMPLE CONTRACT (NO. 5).

(*Title.*)

Paragraphs 1, 2, 3, and 4 [as in the preceding form].

5. The Company is indebted to your petitioner in the sum of £ for *

6. Your petitioner has made application to the Company for payment of his debt, but the Company has failed and neglected to pay the same or any part thereof.

7. The Company is [insolvent and] unable to pay its debts.

8. In the circumstances it is just and equitable that the Company should be wound-up.

Your petitioner therefore, etc. [as in the preceding form].

* State consideration for the debt with particulars so as to establish that the debt claimed is due.

Where the petitioner is a contributory it is the practice, though, as stated above, not absolutely necessary, to show that he is an original allottee, or has held his shares and had them registered in his name for six out of the preceding eighteen months.

In substratum cases the clause in the memorandum which is alleged to limit the powers of the company should be set out, and if such clause refers to an agreement, the effect of such agreement may often be usefully set out.

Where the petitioner is the holder of fully paid shares, it is necessary to set out by reference to the last balance sheet or otherwise, the reasons the petitioner has to think he will get something out of the winding-up (*l*), and it may possibly be desirable to do this in some other cases also. Where there is a voluntary winding-up this fact should be stated, and the reasons why the petitioner wants a supervision or compulsory order (*m*). The facts that are meant to show fraud or a likelihood of misfeasance proceedings, or the desirability of an examination under section 174 or section 175 of the Act should also be fully set out.

Where the petition is against a limited partnership, the provisions of Rules 25 and 28 of the Companies (Winding-up) Rules, 1909, and of Rule 3 of the Rules of the Supreme Court (Ireland), 1905, do not apply, but every petition will be in the form below set

(*l*) See *supra*, p. 824. (*m*) See *infra*, pp. 1291 *et seq.*

out, with such variations as the circumstances may require, and must be served in manner prescribed by the rules (*n*).

A petition for the winding-up of a limited partnership if presented in the name of the firm, must be signed by all the general partners if there be more than one (*o*).

FORM OF PETITION FOR WINDING-UP A LIMITED PARTNERSHIP (*p*).

(*Title.*)

* Insert title of Court.

† Insert full name, title, etc., petitioner.

‡ State the full address of the present principal place of business as registered, so as to show the district in which it is situate, and all changes made during the continuance of the partnership.

To *

The humble petition of † showeth as follows:—

(1) The firm of (hereinafter called "the firm") was, on the day of registered under the Limited Partnerships Act 1907.

(2) The principal place of business of the firm registered under the said Act is at ‡ and was formerly at

(3) The general nature of the business as registered is as follows:—

(4) The full name of each of the partners as registered is as follows:—

The said and being registered as general partners and and as limited partners.

(5) The sums contributed by each of such limited partners was as follows:—

By the said £ .

By the said £ .

and the same sums were respectively paid in cash and otherwise to the following extent.

As to the said sum of £ the sum of £ part thereof in cash and the balance (in goods or as the case may be).

As to the said sum of £ the sum of £ part thereof in cash, and the balance (represented by the value of the goodwill of the business acquired by the said firm, or as the case may be).

(6) The firm was on the day of dissolved by (mutual consent or as the case may be) (or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs).

(Or is unable to pay its debts.)

(Or in the circumstances, it is just and equitable that the firm should be wound up by the Court.)

§ If all the partners join in the petition this note will be unnecessary.

Your Petitioner therefore humbly prays as follows:—

1. That the firm may be wound-up by the Court.
2. Or that such other order may be made in the premises as shall be just.

NOTE.—§ It is intended to serve this petition on

(*n*) See *supra*, p. 802. See *Hughes & Co.*, [1911] 1 Ch. 342, for a case of a winding-up order against a limited partnership.

(*o*) Limited Partnerships (Winding-up) Rules, 1909, r. 9.

(*p*) Limited Partnerships (Winding-up) Rules, 1909, Appendix, Form 1.

PRESENTATION AND ADVERTISEMENT OF PETITION.

A petition must be presented at the office or chambers of the Registrar, and he appoints the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition is written on the petition and sealed copies thereof, and the Registrar may at any time before the petition has been advertised, alter the time appointed, and fix another time (*q*).

The expression "Registrar" in these rules means in the High Court any of the Registrars in Bankruptcy of the High Court, and any person who is appointed to fill the office of Registrar under these rules, and where a winding-up of a company is in the District Registry of Liverpool or Manchester, means the District Registrar; and in a County Court, where there are joint registrars, means either of such Registrars, or a Deputy Registrar, and in any Court other than the High Court, means the officer of the Court whose duty it is to exercise in relation to a winding-up the functions which in the High Court are exercised by a Registrar or Master (*r*).

Where a petition is presented in or immediately before vacation, then as soon as the Registrar has fixed a time for the hearing of a petition, an *ex parte* application is made to the vacation Judge, if the vacation has begun, and if it has not, to the winding-up Judge, to fix a day in the vacation for the hearing if the petitioner desires that the petition shall come on in vacation.

Every petition must be advertised seven clear days before the hearing as follows:—

(1) In the case of a Company whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles of the principal entrance of the Royal Courts of Justice once in the *London Gazette*, and once at least in one London daily morning newspaper, or in such other newspaper as the Court (*s*) directs.

(2) In the case of any other Company, once in the *London Gazette*, and once at least in one local newspaper circulating in the district where the registered office, or principal or last known place of business, as the case may be, of such Company is or was situate, or in such other newspaper as the Court directs.

(3) The advertisement must state the day on which the petition was

(*q*) Companies (Winding-up) Rules, 1909, r. 26.

(*r*) Companies (Winding-up) Rules, 1909, r. 2. Petitions presented in the district registries of Liverpool and Manchester respectively and requiring answer must be answered in the name of one of the district registrars of the same respective registries: *ibid.*, r. 219 and r. 2. Rules of Supreme Court, 1887. A petition is "answered" when the time and place for hearing is written on it.

(*s*) *I.e.* the Court having jurisdiction to wind up the company: Companies (Winding-up) Rules, 1909, r. 2.

presented, and the name and address of the petitioner, and of his solicitor and London agent (if any), and must contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notices of his intention to the petitioner, or to his solicitors or London agent, within the time and manner prescribed by Rule 33 (*t*), and an advertisement of a petition for the winding-up of a Company by the Court which does not contain such a note will be deemed irregular (*u*).

If the petitioner or his solicitor does not within the time prescribed by the rules or within such extended time as the Registrar allows, duly advertise the petition in manner prescribed by this rule, the appointment of the time and place at which the petition is to be heard will be cancelled, and the petition will be removed from the file in the Companies (Winding-up) office, unless the Judge or Registrar otherwise directs (*u*).

The object of the last part of this rule is to prevent a petition being presented, and then hung up and not advertised. This practice having formerly prevailed, the idea being by the mere threat of the petition being advertised to force the company to terms. It has been said that the advertisement of a petition is notice to all the world of its having been presented (*x*), but later this doctrine was limited to cases where the person alleged to have notice could have seen the advertisement (*y*), and now it would seem that such an advertisement is only notice to those who have, in fact, actually seen it (*z*).

The form of advertisement prescribed by the rules is as follows (*a*):—

FORM OF ADVERTISEMENT.

(*Title*) (*b*).

* If the winding-up is to be subject to supervision insert instead of "by" the words "subject to supervision of."

Notice is hereby given that a petition for the winding-up of the above-named Company by * the High Court of Justice [*or* the County Court of holden at] [*or, as the case may be*], was, on the day of 19 presented to the said Court by the said Company [*or, as the case may be*]. And that the said petition is directed to be heard before the Court sitting at on the day of 19 and any creditor or contributory of the said Company desirous to support or oppose the

(*t*) See *post*, p. 839, note (*c*), and pp. 853 and 854.

(*u*) Companies (Winding-up) Rules, 1909, r. 27.

(*x*) *Emerson's Case* (1866), 2 Eq. 231, affirmed (1866), 1 Ch. 433; *Chapman's Case* (1866), 1 Eq. 346.

(*y*) *Oriental Bank Corporation, Ex parte Guillemin* (1884), 28 C. D. 643; *National Bank's case* (European Arbitration), L. T. 92.

(*z*) *Fryer* v. *Ewart*, [1902] A. C. 187.

(*a*) See Companies (Winding-up) Rules, 1909, Appendix, Form 6.

(*b*) The title will be the same as that of the petition.

* In the County Court add "his solicitor or."

† To be signed by the solicitor to the petitioner or by the petitioner if he has no solicitor.

making of an order on the said petition may appear at the time of hearing by himself or * his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said Company requiring the same by the undersigned on payment of the regulated charge for the same.

Signed † [Name]
[Address]

NOTE.—Any person who intends to appear on the hearing of the said petition must serve on or send by post to the above-named, notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their solicitor (if any), and must be served, or, if posted, must be sent by post in sufficient time to reach the above-named not later than six o'clock in the afternoon of the of 19 (c).

In one case (d) Sir George Jessel directed a petition to be re-advertised because the title referred only to the Companies Act, 1862, and not, as it should have done, to the Act of 1867. Whether this case would or would not be followed in a similar case, it seems quite clear that an error, however small, in the name of the company as appearing in the title to the advertisement, may render the advertisement of no effect (e), and the Court has never dispensed with advertisement, though possibly it has power to do so (f). The practice nowadays in these cases would seem to be to order readvertisement (g), and even where an order has been made on a petition in which a company was wrongly named, the wrong name appearing also in the advertisement, the Court ordered the petition to be amended, re-served, and re-advertised, and then brought on for hearing again (h).

(c) The day before the date appointed for the hearing of the petition: Companies (Winding-up) Rules, 1909, r. 33.

(d) *Marezzo Marble Co.* (1874), 43 L. J. (CH.) 544.

(e) *City and County Bank* (1875), 10 Ch. 470. And see cases cited below (next note but one) but cp. *Broad's Patent Night Light Co.*, [1892] W. N. 8.

(f) See Companies (Winding-up) Rules, 1909, r. 216, as to extending and abridging time, and r. 217 validating proceedings in spite of formal defects or of irregularities unless the Court is of opinion substantial injustice has been caused thereby.

(g) *London and Provincial Pure Ice Manufacturing Co.*, [1904] W. N. 136. Readvertisement was required by BUCKLEY, J., in *Ramsgate Marine Palace and Pier Co.*, 0013 of 1905, January 31, 1905, the word "limited" having been omitted from the advertisement.

(h) *Samuel Birch Co.*, [1907] W. N. 31, not following *Army and Navy Hotel Co.* (1886), 31 C. D. 644; *Newcastle Machinists Co.* (1888), W. N. 246. In *E. S. Snell and Sons, Ltd.*, *Times* newspaper, December 20, 1911, EADY, J., made the order, though the advertisement and petition spoke of "E. S. Snell and Son, Ltd." The petition was directed to be amended. There was evidence that the same mistake occurred in the name of the company over its place of business.

Where, however, a wrong name appeared in the first advertisement, but on the next day a fresh advertisement was inserted, such second advertisement, being a day out of time, the Court dispensed with further advertisement (*i*), though usually re-advertisement will be ordered where the advertisement has not been inserted seven clear days (*k*) before the hearing of the petition (*l*). An advertisement stating a petition would be heard on Saturday, December 20, December 20 being a Thursday, has been held to be bad (*m*), and so has an advertisement that a petition would be heard on a legal holiday (*n*), but the time for advertisements will run in vacation (*o*). If, by some oversight, the advertisement has not appeared seven clear days before the hearing of the petition, this can be remedied by an order under rule 216 of the Companies (Winding-up) Rules, 1909. The application can be made by summons in chambers, but usually the Judge is asked to make such an order at the hearing of the petition.

Re-advertisement was not required where the advertisement wrongly stated the date when the petition was presented (*p*), nor was it required where the note at the foot of the advertisement required persons intending to appear to give notice some days before the time when the rules require them to give notice (*q*), the omission of such note will, however, invalidate the advertisement (*r*).

Where the advertisement and the petition only speak of a compulsory order, their re-advertisement will usually be necessary if a supervision order only is asked for at the hearing (*s*), but in such cases a supervision order has occasionally been made without re-advertisement if the majority of the creditors and contributories,

(*i*) *City and County Bank* (1875), 10 Ch. 470; *Consolidated Mineral Lead Mining Co.* (1877), 25 W. R. 36.

(*k*) Not only n the *London Gazette*, but also in the other papers in which it has to be inserted. See *English and Irish Church, etc., Society* (1862), 5 L. T. 306; and see the present r. 27, *supra*, pp. 837 and 838.

(*l*) *London and Westminster Wine Co.* (1863), 1 H. & M. 561; but see *McLean & Co.* (1881), W. N. 8.

(*m*) Joint Stock Companies Winding-up Act, (1849) 13 Beav. 434.

(*n*) *Dublin Grains Co.* (1886), 17 L. R. Ir. 512.

(*o*) *London India Rubber Co.* (1866), 14 W. R. 527, 594.

(*p*) *Bull, Bevan & Co.*, [1891] W. N. 170.

(*q*) *Saul Moss and Sons*, [1906] W. N. 142; *Broad's Patent Night Light Co.*, [1892] W. N. 5.

(*r*) *Hille India Rubber Co*, [1897] W. N. 6. In *Mont de Piete of England*, [1892] W. N. 166, V. WILLIAMS, J., made an order though the advertisement contained no such note, but said it was not to be a precedent.

(*s*) Practice Note, [1902] W. N. 77; *New Oriental Bank (No. 1)* [1892] 3 Ch. 563. But in *Marine and General Land and Investment* (1890), 62 L. T. 723; *Civil Service Brewery*, [1893] W. N. 5; and *United Bacon Curing Co.*, [1890] W. N. 74, readvertisement was not required. And see also *Electric and Magnetic Co.* (1881), 50 L. J. (CH.) 491. For form of readvertisement, see *post*, p. 841.

or, in the case of a creditor's petition, a majority of the creditors are before the Court. Where the advertisements and the petition speak of a compulsory or supervision order alternatively, a supervision order will be made without re-advertisement (*t*). Where the advertisements and petition only speak of a supervision order, it will usually not be necessary to readvertise if a compulsory order is asked for at the hearing (*u*), the reason being that a compulsory order is considered to be more favourable to all parties.

Where a petition requires re-advertisement it will be stood over for a fortnight (*x*). Re-advertisements will have to be not only in the *London Gazette*, but in all the papers in which the original advertisement appeared (*y*).

An advertisement which appeared a few hours before the petition was presented was, under the old rules, held to be good (*z*).

FORM OF RE-ADVERTISEMENT.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. JUSTICE NEVILLE.

No. 002 of 1911.

In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the A.B. Limited.
In the Matter of a Petition dated 14th July, 1911.

Notice is hereby given, that the above petition for winding-up of the above-named Company by the High Court of Justice, directed to be heard on the 17th day of October, 1911, was adjourned by the Court, and will be heard on Tuesday, the 24th day of October, 1911, before the Court, sitting at the Royal Courts of Justice, Strand, London, when, in consequence of the Shareholders of the Company having, at an Extraordinary General Meeting held on the 12th day of October, 1911, resolved that the Company be wound up voluntarily, and that H.E., of , be appointed Liquidator, the Court will be asked by the petitioner to make an order for the compulsory winding-up of the Company, or, in the alternative, for an order continuing the voluntary winding-up of the Company under the supervision of the Court, instead of making an order for the winding-up of the Company by the Court. Any creditor or contributory of the Company desirous to support or oppose the making of an order on the said petition, either for continuing the winding-up of the Company under the supervision of the Court or for the

(*t*) *New Morgan Gold Mining Co.*, [1893] W. N. 79, does not represent the present practice.

(*u*) *National Wholemeal Bread and Biscuit Co.*, [1891] 2 Ch. 151, does not represent the present practice.

(*x*) *London and Provincial Pure Ice Manufacturing Co*, [1904] W. N. 136; *London and Westminster Wine Co.* (1863), 1 H. & M. 561.

(*y*) *Dombey and Son*, [1895] W. N. 146.

(*z*) *Cork and Youghal Railway* (1866), 14 L. T. 750.

winding-up by the Court, may appear at the time of hearing, by himself or his Counsel, for that purpose.

X.Y. & Co.,
London, W.C.,
Solicitors for the Petitioner.

NOTE.—Any person who intends to appear on the hearing of the said petition on the 24th day of October, 1911, must serve on or send by post to the above-named, notice in writing of his intention to do so. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their Solicitor (if any), and must be served, or, if posted, must be sent by post in sufficient time to reach the above-named not later than six o'clock in the afternoon of the 23rd day of October, 1911.

The advertisement amounts to an invitation to creditors and contributories to come in and support or oppose the petition (*a*).

SERVICE OF PETITION.

Every petition must, unless presented by the company, be served at the registered office, if any, of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business or by being served on such member or members of the company as the Court may direct; and where the company is being wound-up voluntarily, must also be served upon the liquidator (if any), appointed for the purpose of winding-up the affairs of the company (*b*).

This rule is merely directory, and where service of the petition has been accepted by a duly authorized solicitor, that will be sufficient (*c*). Where there is a difficulty as to service, a summons for directions as to the manner in which the service is to be effected should be taken out (*d*). Such summons should ask for service in a particular manner specified in the summons. The Court has acceded to an application for service by advertisement (*e*).

Where the registered office of a company has been shut up service has been effected by leaving a copy of the petition in the post-box, and serving the solicitor and the directors who could be found (*f*), and where the company has abandoned its registered office, but has not taken a fresh one, service at the old registered office may be in some cases sufficient (*g*).

(*a*) *New Gas Co.* (1877) 5 C. D. 703.

(*b*) Companies (Winding-up) Rules, 1909, r. 28.

(*c*) *Regent United Service Stores* (1878), 8 C. D. 75.

(*d*) See *Anglo-American Exploration and Development Co.*, [1898] 1 Ch. 100.

(*e*) Such orders were made in *The Sherbro Trading Syndicate*, 0186 of 1911, May 19, 1911, see Order, *post*, pp. 843 and 844, and in *Investment and Agency Co.*, 0031 of 1906, February 14, 1906, and see p. 844 for order for substituted service.

(*f*) *London and Westminster Wine Co.* (1863), 12 W. R. 6

(*g*) *City of London and Colonial Finance Association* (1866), 36 L. J.

Where the registered office had been demolished, service on the secretary and two directors at an unregistered office was held to be enough (*h*).

In cases where there was no registered office, service on the chairman and general manager (*i*), on five directors (*k*), on the subscribers to the memorandum (*l*), on the secretary and agents of the company (*m*), and on the only director and the solicitors at what was really the only known office of the company have been held to be sufficient (*n*).

Where the company was in voluntary liquidation, and service was therefore necessary on both the company and the liquidator, and there was a difficulty about serving the company, service was effected by serving the liquidator and the directors and the principal shareholders (*o*), or the liquidator and the secretary (*p*). Where the company is the petitioner and is in voluntary liquidation, it is not necessary to serve the liquidator (*q*). The cases of companies whose names have been struck off the register (*r*) and foreign companies (*s*), have been considered above.

ORDER GIVING LEAVE TO SERVE PETITION BY ADVERTISEMENT (*t*).

(*Title.*)

Upon the application by summons dated the 18th day of May 1911 of C.T.R. the petitioner named in the petition presented unto this Court in the above matter on the 18th day of May 1911 and upon hearing the solicitor for the applicant and upon reading the said petition and an affidavit of C.N. filed this day, It is ordered that the publication by advertisement on or before Tuesday the 23rd day of May 1911, in the

(CH.) 832; but in *Manchester and London Life Assurance and Loan Association* (1870), 9 Eq. 643, service at a registered office which had been disused for eight years was held to be insufficient.

(*h*) *Fortune Copper Mining Co.* (1870), 10 Eq. 390.

(*i*) *National Credit and Exchange Co.* (1863), 7 L. T. 817.

(*k*) *Unity General Assurance Association* (1863), 8 L. T. 160.

(*l*) *Velletri and Terrencina Co.* (1868), 18 L. T. 350. In this case there was an affidavit as to the failure to find the office: *Great Cwymsymtoy Silver Lead Co.* (1868), 17 L. T. 463, where there was no office and no list of shareholders.

(*m*) *Thames Mutual Club Insurance Co.* (1866), 15 L. T. 263.

(*n*) *South Essex Estuary and Reclamation Co.* (1868), 18 L. T. 178.

(*o*) *Inventors' Association* (1865), 13 W. R. 1015.

(*p*) *Petroleum Co.* (1866), 15 L. T. 169; and see also *Stewart and Brother* (1880), W. N. 15.

(*q*) *Edward Chester & Co.* (1903), 52 W. R. 189.

(*r*) See *Anglo-American Exploration and Development Co.*, [1898] 1 Ch. 100, and *supra*, p. 765.

(*s*) See *supra*, pp. 31 *et seq.*, and particularly p. 34, note (*o*), and Companies (Consolidation) Act, 1908, s. 274.

(*t*) The evidence showed that the company was not known at

form set out in the schedule hereto of the above-mentioned petition and of this order in the *London Gazette* and in *The Times* and *Daily Telegraph* Newspapers be deemed good service of the said petition upon the said Company.

THE SCHEDULE.

To the Sherbro Trading Syndicate Ltd. of in the City of London.

Take notice that on the 18th day of May 1911 a petition intituled in the Matter of the Companies (Consolidation) Act 1908 and in the Matter of the Sherbro Trading Syndicate Ltd. (00186 of 1911) was presented to His Majesty's High Court of Justice by C.T.R. of Scotland a creditor of the said Company praying that the said Sherbro Trading Syndicate Ltd. may be wound up by the Court under the provisions of the Companies (Consolidation) Act 1908 or that such other order may be made on the premises as shall be just which Petition is directed to be heard on Tuesday the 30th May 1911 before the Hon. Mr. Justice Neville Royal Courts of Justice Strand London and take notice that by an order dated the 19th day of May 1911 it was ordered that the publication by advertisement not later than Tuesday the 23rd day of May 1911 in this form of the said petition and of the said order in the *London Gazette* and *The Times* and *Daily Telegraph* newspapers should be deemed good service of the said Petition on the Sherbro Trading Syndicate Ltd. [*Sherbro Trading Syndicate Ltd.*, 00186 of 1911. Mr. Registrar HOOD, May 19th, 1911.]

ORDER FOR SUBSTITUTED SERVICE OF PETITION.

(*Title.*)

UPON the application by Summons dated the 21st April 1911 of L.W. the Petitioner named in the Petition in this Matter preferred unto this Court on the 21st April 1911 and upon hearing the Solicitor for the Applicant and upon reading the said Petition the Affidavit of L.W. filed the 25th April 1911 (verifying the said petition) and the Affidavit of H.D. filed the 24th day of April 1911. It is Ordered that service of the said Petition having the Order of the Court thereon that all parties should attend the Court on the said Petition on the 9th May 1911 by sending a sealed copy thereof together with a copy of this Order by ordinary prepaid post in an envelope addressed to the above-named Company at County of being the registered office of the above-named Company and by sending a sealed copy of the said Petition together with a copy of this Order through the registered post prepaid in an envelope addressed to A.J.P. at , be deemed good service of the said Petition upon the said Company. [*Re The Aspley Motor and Engineering Company, Ltd.*, 00447 of 1911. Mr. Registrar HOOD, April 26th, 1911.]

its registered office, that its managing director had moved from there to another office whence he had moved without leaving an address after execution had been issued against his furniture.

The Registrar of the Court and, in the District Registries of Liverpool and Manchester, the District Registrar, must keep a register of winding-up petitions, and must enter the necessary particulars as soon as each proceeding is concluded. They must also make and transmit to the Board of Trade such extracts from their books and furnish the Board of Trade with such information and returns as it requires from time to time (*x*).

EVIDENCE ON PETITION.

Every petition for the winding up of a company by the Court, or subject to the supervision of the Court, must be verified by an affidavit referring thereto. Such affidavit must be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a corporation, by some director, secretary, or other principal officer thereof, and must be sworn after and filed within four days after the petition is presented, and such affidavit will be sufficient *primâ facie* evidence of the statements in the petition (*y*).

This affidavit, though it would seem to be usually, if not always, necessary, is not always sufficient (*z*). Thus, it will not be sufficient to support a charge of fraud (*a*). Such charges must be supported by something more than a statement as to the information and belief of the deponent.

In a proper case an affidavit, in the statutory form, by an attorney or agent of the petitioner will be sufficient (*b*), though in one case the Court said that the person, other than the petitioner, who proposed to make the affidavit, must speak to his own knowledge, and not merely to his information and belief (*c*). The Attorney-General does not usually swear affidavits of this sort, and where he is petitioner

(*x*) Companies (Winding-up) Rules, 1909, r. 208, and Appendix, Form 102. The register must give the following particulars. (1) No. of Petition, (2) Name of company, (3) Address of registered office, (2) Description of Company, (5) Date of Petition, (6) Petitioner, (7) Date of winding-up order, each statement being in a separate column.

(*y*) Companies (Winding-up) Rules, 1909, r. 29. For form of affidavit, *post*, p. 848. Every affidavit bears a 2*s*. 6*d*. impressed or adhesive stamp. Order as to fees of July 31, 1908, and order as to Supreme Court fees, 1884. For taking an affidavit a fee of 1*s*. 6*d*. (with 1*s*. extra for each exhibit) is chargeable for each person making the same. These fees are payable in cash to the Commissioner for Oaths.

(*z*) *St. David's Gold Mining* (1866), 14 L. T. 539.

(*a*) *South Staffordshire Trams* (1894), 1 Mans. 292; *London and Hull Soap Works*, [1907] W. N. 254; *Ilfracombe Permanent Mutual Benefit Building Society*, [1901] 1 Ch. 102, 110.

(*b*) *African Farms*, [1906] 1 Ch. 640; 54 W. R. 490 (from the latter report it appears that the affidavit was in the statutory form, except that the deponent described himself as attorney of the petitioner), not following *Charterland Stores and Trading Co.*, [1900] 2 Ch. 870. See also *Carrara Marble Co.*, [1896] W. N. 87.

(*c*) *Fortune Copper Mining Co.* (1870), 10 Eq. 390.

an affidavit may be sworn by some other fit and proper person, *e.g.*, by the Treasury solicitor (*d*).

In cases where a corporation is petitioner the affidavit may be sworn by the manager (*e*) or the secretary (*f*), or, where the company is in liquidation, the liquidator of such company (*g*).

It has been suggested that a rule enabling a petitioner to speak to his information and belief, and not to his own knowledge, is *ultra vires*; but it was held that it was too late to raise this point in 1882, and O. 38, r. 3, R. S. C. does not interfere with or abrogate the rule (*h*).

An affidavit sworn before the petition is bad, and will have to be resworn (*i*).

Sundays are not counted in the four days for filing the affidavit (*k*). If the only evidence given by the petitioner is the statutory affidavit, he need not give notice of having filed it, but he must give notice of any further affidavit he puts in (*l*).

Where the affidavit is out of time, the proper course is to apply to the Court by summons to extend the time for filing it (*m*), but in several of the older cases orders were made though the affidavits were out of time (*n*).

Where the petition is not presented by the company itself there must also be an affidavit showing service of the petition, unless there has been an undertaking by the company's solicitors to appear at the hearing by counsel (*nn*).

After a petition has been presented, the petitioner, or his solicitor, must, on a day to be appointed by the Registrar, attend before the Registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein, and the affidavit of service (if any) have been duly filed, and that the provisions of the rules as to petitions for winding-up Companies have

(*d*) *Brandy Distillers' Co.* (1901), 17 T. L. R. 272.

(*e*) *Cakemore Causeway Green and Lower Holt, etc., Co.* (1880), 28 W. R. 299.

(*f*) *Birmingham Concert Halls*, [1890] W. N. 91.

(*g*) *Review Publishing Co.*, [1893] W. N. 5.

(*h*) *New Callao Co.* (1883), 47 L. T. 175.

(*i*) *Western Benefit Building Society* (1864), 33 Beav. 368.

(*k*) *Yeoland Consols* (1888), 58 L. T. 108.

(*l*) *British Cycle Manufacturing* (1898), 77 L. T. 683, reported under *Practice Direction*, [1898] W. N. 7, explaining *New Weighing Machine Co.*, [1896] W. N. 48.

(*m*) *Fortune Copper Mining Co.* (1870), 10 Eq. 390; *Anglo-Danish Steam Navigation Co.* (1867), 15 L. T. 407; *London and Westminster Co-operative Stores* (1868), 17 L. T. 559. The Court can extend the time under rule 216 of the Companies (Winding-up) Rules, 1909.

(*n*) *East Cambrian Gold Mining Co.* (1865), 12 L. T. 587, where the advertisements were also irregular: *Kentish Royal Hotel Co.* (1865), 13 W. R. 448; *Patent Screwed Boot and Shoe Co.* (1863), 32 Beav. 142.

(*nn*) For this form, see *infra*, pp. 848 and 849.

been duly complied with by the petitioner. No order for the winding up of a company will be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the Registrar at the time appointed, and satisfied him in manner required by this rule (*o*).

Even prior to this rule the judges declined to hear petitions unless a certificate of the Registrar showing they had been properly advertised was produced (*p*).

Affidavits in opposition to a petition that a company may be wound up under the order or subject to the supervision of the Court, must be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of every affidavit in opposition to such a petition must be given to the petitioner or the solicitor or London agent of the petitioner, on the day on which the affidavit is filed.

An affidavit in reply to an affidavit filed in opposition to a petition must be filed within three days of the date on which notice of such affidavit is received by the petitioner or the solicitor or London agent of the petitioner (*q*).

Affidavits in opposition to a compulsory order must, when made by persons connected with the company, speak to matters within the knowledge of the deponents which relate to the promotion, formation or failure of the company, and go to negative the necessity or desirability of an inquiry into these matters. Where there is a debenture-holders' action pending, persons opposing a petition should also, it would seem, show the date of issue of such debentures and the consideration for which they were issued (*r*).

The times mentioned in this rule can also be extended by the order of the Court on a summons, and a summons must also be taken out for cross-examination where it is desired ; such cross-examination is, in the absence of special circumstances, always taken before the Judge at the hearing, but the Court has power to direct it to be taken before the Registrar or an examiner.

The Court will only in the most exceptional cases make an order for discovery on a winding-up petition (*s*) ; but the party is entitled to inspect the register of mortgages and other public books of the company, and also books and documents referred to in his opponent's affidavit (*t*), and on cross-examination and for the purpose of testing

(*o*) Companies (Winding-up) Rules, 1909, r. 32.

(*p*) *Kershaw and Pole*, [1891] W. N. 202.

(*q*) Companies (Winding-up) Rules, 1909, r. 35.

(*r*) *J. H. Evans & Co.*, [1892] W. N. 126, *per* VAUGHAN WILLIAMS, J.

(*s*) *European Assurance Co* (1870), 18 W. R. 9 ; *Hoover Hill Mining* (1883), 27 Sol. J. 434 ; *West Devon Great Consols Mine* (1884), 27 C. D. 106.

(*t*) *Credit Co.* (1879), 11 C. D. 256. See also O. 31. r. 15, R. S. C.

a deponent's evidence to require such deponent to produce books and documents in his possession (*u*).

STATUTORY FORM OF AFFIDAVIT VERIFYING PETITION (*x*).

(*Title.*)

I, A.B., of &c. make oath and say (*y*), that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, &c.

AFFIDAVIT OF SERVICE OF PETITION ON MEMBERS, OFFICERS OR SERVANTS (*z*).

In the matter of a petition dated

I of make oath and say

1. [*In the case of service of a petition on a Company by leaving it with a member officer or servant at the registered office or if no registered office at the principal or last known principal place of business of the company*].

That I did on day the day of 19 serve the above-named Company with the above-mentioned petition by delivering to and leaving with [*name and description*] a member (or officer) (or servant) of the said Company a copy of the above-mentioned petition, duly sealed with the seal of the Court, at [*office or place of business as aforesaid*], before the hour of in the noon.

2. [*In the case of no member, officer, or servant of the Company being found at the registered offices or place of business.*]

That I did on day, the day of 19 , having failed to find any member, officer, or servant of the above-named Company at [*here state registered office or place of business*], leave there a copy of the above-mentioned petition, duly sealed with the seal of the Court, before the hour of in the noon [*add with whom such sealed copy was left, or where,* e.g.: *affixed to door of offices, or placed in letter box, or otherwise.*]

3. [*In the case of directions by the Court as to the member or members of the Company to be served.*]

That I did on day, the day of 19 serve [*name or names and descriptions*] with a copy of the above-mentioned

(*u*) *Emma Silver Mining Co.* (1875), 10 Ch. 194; *Lisbon Steam Trams* [1875], W. N. 54.

(*x*) Companies (Winding-up) Rules, 1909, Appendix, Form 9.

(*y*) Where a company is the petitioner the affidavit is in the same form except that it continues as follows: 1. "I am secretary," or as may be, "of the above-named company, and am duly authorized on the company's behalf to make this affidavit"; 2. "Such of the statements," etc., as in the form above.

(*z*) Companies (Winding-up) Rules, 1909, Appendix, Form 7.

petition, duly sealed with the seal of the Court, by delivering the same personally to the said at [*place*], before the hour of in the noon.

4. The said petition is now produced and shown to me, marked A.

Sworn at, &c.

AFFIDAVIT OF SERVICE OF PETITION ON LIQUIDATOR (*a*).

(*Title.*)

In the matter of a petition, dated for winding-up the above Company [by] *or* [under the supervision of] the Court [*as the case may be*].

I, , of , make oath and say :—

That I did, on day, the day of 19 , serve [*name and description*] the liquidator of the above-named Company with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said at [*place*], before the hour of in the noon.

The said petition is now produced and shown to me, marked A.

Sworn at, &c.

After presenting his petition the petitioner will have to consider the question of obtaining an order to stay or restrain actions against the company under section 140 of the Act, (a point that can be more conveniently discussed in the next chapter) (*aa*), and the question of obtaining the appointment of a provisional liquidator.

PROVISIONAL LIQUIDATOR PRIOR TO WINDING-UP ORDER BEING MADE.

Section 149 of the Companies (Consolidation) Act, 1908, provides that—

(1) For the purpose of conducting the proceedings in winding-up a Company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators.

(2) The Court may make such an appointment provisionally at any time after the presentation of a petition and (in the case of a Company registered in England) before the making of an order for winding-up, or (in the case of a Company registered in Scotland or Ireland) before the first appointment of liquidators.

(3) In the case of a Company registered in England :—

(*a*) Where a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed.

The Companies (Winding-up) Rules, 1909, contain the following provisions on this point :—

(1) After the presentation of a petition, upon the application of a creditor, or of a contributory, or of the Company, and upon proof by affidavit of sufficient grounds for the appointment of the Official Receiver as Provisional Liquidator, the Court, if it thinks fit, and upon such terms

(*a*) Companies (Winding-up) Rules, 1909, Appendix, Form 8.

(*aa*) See *infra*, pp. 889 *et seq.*

as in the opinion of the Court shall be just and necessary may make the appointment.

(2) The Order appointing the Official Receiver to be Provisional Liquidator, shall bear the number of the petition, and shall state the nature and a short description of the property of which the Official Receiver is ordered to take possession, and the duties to be performed by the Official Receiver.

(3) Subject to any Order of the Court, if no order for the winding-up of the Company is made upon the Petition, or if an order for the winding-up of the Company on the Petition is rescinded, or if all proceedings on the Petition are stayed or if an order is made continuing the voluntary winding-up of the Company subject to the supervision of the Court, the Official Receiver as Provisional Liquidator shall be entitled to be paid out of the property of the Company, all the costs, charges, and expenses properly incurred by him as Provisional Liquidator, including the fees payable to the Board of Trade under the scale of fees in force for the time being, and may retain out of such property the amounts of such costs, charges, expenses, and fees (*b*).

Although the rules are silent on the point, it would seem clear that the Court has jurisdiction to appoint some person other than the official receiver as provisional liquidator until the hearing of the petition (*c*), though this is occasionally done (*cc*), it is obviously far more convenient to appoint the official receiver, as he will necessarily become liquidator as soon as an order is made, and the practice is to appoint the official receiver (*d*). Any other person appointed will not be capable of acting as liquidator until he has notified his appointment to the Registrar of Joint Stock Companies, and given security in the prescribed manner (*e*) to the satisfaction of the Board of Trade, and the Board of Trade can fix such security before a winding-up order in the case of a provisional liquidator (*d*).

The Court would formerly not usually make an order for a provisional liquidator unless the petition (*f*) or the application (*g*) was by the company, or was unopposed, or unless the company had in some way admitted that it had no defence to the petition (*h*), and the Court is now very slow to make an order for a provisional liquidator, where the result of the petition is uncertain; however, the

(*b*) Companies (Winding-up) Rules, 1909, r. 31. See *infra*, p. 949, for remuneration of official receiver as provisional liquidator.

(*c*) *Unionist Club*, [1891] W. N. 64; *Bound & Co.*, [1893] W. N. 21; *North Wales Gunpowder*, [1892] 2 Q. B. 220; *Mercantile Bank of Australia*, [1892] 2 Ch. 204.

(*cc*) In *Law Car and General Insurance Corporation*, 00437 of 1910, December 20th, 1910, such an order was made.

(*d*) *Mercantile Bank of Australia*, [1892] 2 Ch. 204. For procedure where the Official Receiver has been appointed provisional liquidator, see Companies (Winding-up) Rules, 1909, r. 41, *post*, pp. 871 and 879.

(*e*) See Companies (Consolidation) Act, 1908, s. 149 (3) (*c*), and Companies (Winding-up) Rules, 1909, r. 57, set out, *post*, pp. 947, *et seq.*

(*f*) *Cilfoden Benefit Building Society* (1868), 3 Ch. 462.

(*g*) *Emmerson's case* (1866), 2 Eq. 231.

(*h*) *Railway Finance Co.* (1866), 14 L. T. 507. For a recent example of this, see *London Trading Bank*, *Times* newspaper, November 28, 1910.

Court will now make an order where it is shown that the assets of the company are in jeopardy, and in some of the earlier cases even, it made orders where there was evidence that there was a risk of the assets of the company being made away with between the presentation and hearing of the petition (*k*), and where there were pressing creditors and sales to be completed, and the managing director was a bankrupt (*l*). Probably the Court will not on the *ex parte* application of a contingent or prospective creditor, appoint a provisional liquidator, until security for costs has been given and a *primâ facie* case made out (*m*).

Where a liquidator is provisionally appointed by the Court the Court may limit and restrict his powers by the order appointing him (*n*). The practice would seem to be to appoint the official receiver provisional liquidator, and the order always limits the powers of the provisional liquidator. Thus, such powers are sometimes limited to making an application to the Court for the appointment of a special manager under section 161 of the Act (*o*), and the Court has limited his powers to taking possession of and protecting the assets of the company, forbidding him to part with or distribute the same except to the extent of discharging the current rent of the company's office and the current salaries of the officers, clerks, and other persons employed by the company, and such other current expenses which he might think necessary to pay, with power to serve such notices as he might be advised to determine if necessary the employment of the officers and servants of the company (*p*). In yet another case (*q*) a provisional liquidator was allowed only to carry out arrangements actually made, but was given power to borrow, the moneys borrowed to be a first charge on the undertaking, but it was intimated that he would not be allowed moneys not properly expended. In another case (*r*) a solicitor was appointed to receive some costs due to him.

A provisional liquidator is not entitled to appear on the hearing

(*k*) *Marseilles Extension Co.* [1867], W. N. 68.

(*l*) *Hammersmith Town Hall Co.* (1877), 6 C. D. 112.

(*m*) See *London and Manchester Industrial Association* (1876), 1 C. D. 466. Where policy-holders intend to petition against an assurance company, no petition can be presented, and so no provisional liquidator can be appointed till this is done. See Assurance Companies Act, 1909, s. 15, and *supra*, pp. 786 and 787.

(*n*) Companies (Consolidation) Act, 1908, s. 151 (5). See *post*, pp. 852 and 853, for forms of order and pp. 1004, *et seq.*, as to the powers of a liquidator.

(*o*) *Bound & Co.*, [1893] W. N. 21. See *post*, p. 905, as to the appointment of a special manager.

(*p*) *Mercantile Bank of Australia*, [1892] 2 Ch. 204. See also *Olathe Silver Mining Co.* (1884), 27 C. D. 278.

(*q*) *Alexandra Palace Co.* (1890), 61 L. T. 325.

(*r*) *Langham Skating Rink* (1887), 6 C. D. 102. This was before the Companies (Winding-up) Act, 1890, and after an order had been made.

of the petition (*s*). An application for a provisional liquidator should be made by summons, which should be served on the company (*t*), but orders have not infrequently been made in the past on *ex parte* motions (*u*). The application should, of course, be supported by an affidavit. After such an order it has been said that transfers of shares made without the liquidator's sanction, will be void (*x*). Where a provisional liquidator or special manager is appointed before the hearing and a winding-up order is made, such order will not contain any special directions as to his costs, or otherwise. If no order is made he will be entitled to retain his expenses out of assets which have come into his hands (*y*).

ORDER APPOINTING THE OFFICIAL RECEIVER AS PROVISIONAL LIQUIDATOR AFTER PRESENTATION OF PETITION, AND BEFORE ORDER TO WIND UP (*z*).

the day of 19 .

(*Title.*)

UPON the application, &c., and upon reading, &c., the Court doth hereby appoint [one of] the Official Receiver[s] attached to the Court to be Provisional Liquidator of the above-named Company. And the Court doth hereby limit and restrict the powers of the said Official Receiver as Provisional Liquidator to the following acts, that is to say [*describe the acts which the Provisional Liquidator is to be authorized to do and the property of which he is to take possession*].

ORDER APPOINTING PROVISIONAL LIQUIDATOR.

(*Title.*)

UPON THE APPLICATION by Summons dated this day of the above-named Company the Petitioner named in the Petition presented unto this Court on the 26th September 1911 and upon hearing the Solicitors for the Applicant and upon reading the same petition and the Affidavit of A.N. filed this day.

IT IS ORDERED that Harold de Vaux Brougham the Official Receiver attached to this Court be appointed Provisional Liquidator of the above-named Company.

(*s*) *General International Agency* (1865), 36 Beav. 1.

(*t*) See *London and Manchester Industrial Association* (1876), 1 C. D. 466. This case was under s. 21 of the Life Assurance Companies Act, 1870; it is thought that it would probably apply where a petition is presented by a contingent or prospective creditor. See Companies (Consolidation) Act, 1908, s. 137 (1) (*c*), and *supra*, p. 818, note (*o*).

(*u*) See *Bound & Co.*, [1893] W. N. 21; and also *Hoyland Silkstone Colliery* (1884), 53 L. J. (CH.) 352.

(*x*) *Emmerson's Case* (1866), 2 Eq. 231.

(*y*) *A. B. & Co.* (*No.* 2), [1900] 2 Q. B. 429, and see *supra*, p. 850. The costs will have to be taxed or allowed under Rule 187 (2) of the Companies (Winding-up) Rules, 1909.

(*z*) Companies (Winding-up) Rules, 1909. Appendix, Form 10. See *ibid.*, Form 14 (set out *post*, p. 872), for form of notification to official receiver, and Rule 37 (*post*, p. 871), as to the Registrar notifying the official receiver of the appointment of a provisional liquidator.

AND the Court doth hereby limit and restrict the powers of the said Official Receiver as such Provisional Liquidator to the following acts that is to say:—

To take possession of collect and protect the assets of the above-named Company but not to distribute or part with the same until further order with liberty to apply for the appointment of a special Manager. [*Re The Bank of Egypt, Ltd.*, 00345 of 1911. Mr. Registrar GIFFARD, September 27th, 1911.]

PERSONS ENTITLED TO APPEAR ON A PETITION.

Besides the company creditors and contributories and no one else may appear to support or oppose a petition (*a*). The note at the foot of the advertisement operates as an invitation to such persons to come and be heard (*b*). Secured creditors may appear in the same way as unsecured creditors (*c*).

The Court will not recognise an appearance by a committee of creditors or contributories, except as an appearance by the individuals constituting such committee (*d*). Persons appearing to support or oppose a petition cannot in any case be ordered to give security for costs (*e*). Every contributory or creditor of the company is entitled to be furnished by the solicitor of the petitioner with a copy of the petition within 24 hours after requiring the same on paying the rate of 4*d*. per folio of 72 words for such copy (*f*).

Every person who intends to appear on the hearing of a petition must serve on, or send by post, to the petitioner, or his solicitor or London agent, at the address stated in the advertisement of the petition, notice of his intention. The notice must be signed by such person, or his solicitor or London agent, and must be served, or, if sent by post, must be posted in such time as in ordinary course of post to reach the address not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. The notice may be in Form 11 (*g*), with such variations as circumstances may require. A person who has failed to comply with this rule will not, without the special leave of the Court, be allowed to appear on the hearing of the petition (*h*).

The notice must state distinctly whether the creditor or contributory giving it intends to oppose or to support the petition, otherwise he will not be allowed any costs (*i*). It would seem that

(*a*) *Bradford Navigation Co.* (1870), 5 Ch. 600. See also *Cumberland Black Lead Mining Co.* (1862), 6 L. T. 197, as to a creditor opposing the adoption of proceedings in a voluntary winding-up.

(*b*) *New Gas Co.* (1877), 5 C. D. 703.

(*c*) *Carmarthenshire Anthracite Co.* (1875), 45 L. J. (CH.) 200.

(*d*) *Mid Kent Fruit Factory*, [1892] W. N. 65.

(*e*) *Percy and Kelly Nickel, etc., Mining Co.* (1876), 2 C. D. 531.

(*f*) Companies (Winding-up) Rules, 1909, r. 30.

(*g*) See *post*, p. 854.

(*h*) Companies (Winding-up) Rules, 1909, r 33.

(*i*) *Green McAllan and Feilden* [1891] W. N. 127.

it must also, where the prayer of the petition asks for either a compulsory or a supervision order, show which the person giving the notice proposes to support (*l*), and, even when signed by the solicitor of the person giving the notice, it must give such person's address (*m*).

Where the same solicitor appears for a petitioner, and a person supporting the petition, no notice need be given under this rule, but such solicitor must, in preparing the list required by rule 34, include in such list the name of such person, showing that such person intends to appear and support, and also must also set out in such list the other particulars required by rule 34 and Form 12 (*n*). A person who has presented a second petition, but has given no notice of his intention to support the first petition, has been allowed to share in the costs of the persons supporting the first petition (*o*).

The petitioner, or his solicitor or London agent, must prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which must be in Form 12 (*p*). A fair copy of the list (or, if no notice of intention to appear has been given, a statement in writing to that effect) must on the day appointed for hearing the petition, be handed by the petitioner, or his solicitor or London agent, to the Court prior to the hearing of the petition (*q*).

The words in brackets are new, but even under the old rule where no person had given notice of his intention to appear on the petition, the Court required the fact to be stated on the form, which had even in this case to be handed to the Court, and if this rule was not complied with the petitioner's solicitor was disallowed his costs of attending the hearing. The Registrar is required on a petition being filed, to hand the petitioner's solicitor a notice calling attention to this rule (*r*).

NOTICE OF INTENTION TO APPEAR ON PETITION (*s*).

(*Title.*)

Take notice that A.B. of * a creditor for £ of (*or* contributory holding † shares in) the above Company intends to appear on the hearing of the petition advertised to be heard on the day of , 19 , and to support (*or* oppose) such petition.

Signed ‡ [*Name of person or firm.*]
[*Address.*]

* State full name, or if a firm the name of the firm, and address.
† State number and class of shares held.
‡ To be signed by the person or his solicitor.

(*l*) *Woodrow Hooper & Co.*, [1893] W. N. 38.

(*m*) *Descours Parry & Co.*, [1909] W. N. 50.

(*n*) *Invicta Works*, [1894] W. N. 39.

(*o*) *Sheringham Development Co.*, [1893] W. N. 5. For the Irish rule, as to costs where several petitions have been presented, see *Re Banford*, [1910] 1 Ir. 390.

(*p*) See *post*, p. 855.

(*q*) Companies (Winding-up) Rules, 1909, r. 34.

(*r*) *Practice Direction*, [1906] W. N. 127; *Australasian Alkaline Reduction and Smelting Co.*, [1891] W. N. 209.

(*s*) Companies (Winding-up) Rules, 1909, Appendix, Form 11,

LIST OF PARTIES ATTENDING THE HEARING OF A PETITION (*t*).

(*Title.*)

The following are the names of those who have given notice of their intention to attend the hearing of the petition herein, on the day of 19 .

Name.	Address.	Name and Address of Solicitor of Party who has given notice.	Creditors Amount of Debt.	Contributories. Number of shares.	Opposing.	Supporting.

POWERS OF COURT ON HEARING OF PETITION.

On hearing a petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the Court must not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default (*u*).

An order to wind up two companies cannot be made on one petition (*x*).

It would seem that where a company is shown to be insolvent, a creditor whose debt is undisputed and presently payable, is entitled as between himself and the company to a winding-up order (*y*), though even in this case the fact that the section says that the Court may make the order, and not that it must do so (*z*), may, where

Note (*a*). The address of the person or firm must be set out, even where the solicitor signs the form: *Descours Parry & Co.*, [1909] W. N. 50.

(*t*) Companies (Winding-up) Rules, 1909, for Appendix, Form 12.

(*u*) Companies (Consolidation) Act, 1908, s. 141.

(*x*) *Shields Marine Insurance* (1868), 16 W. R. 69.

(*y*) *Bowes* v. *Hope Life Insurance and Guarantee Co.* (1865), 11 H. L. C. 389; *General Company for Promotion of Land Credit* (1870), 5 Ch. 363 (affirmed *sub nom. Reuss* v. *Bose* (1871), L. R. 5 H. L. 176; *Western of Canada Oil Lands and Works* (1873), 17 Eq. 1; *Crigglestone Coal Co.*, [1906] 2 Ch. 327.

(*z*) See *Crigglestone Coal Co.*, [1906] 2 Ch. 327.

special circumstances are shown, give the Court a discretion, even in the case of unregistered companies (*a*) which can only be wound up compulsorily (*a*), and the Court can clearly in a proper case stand the petition over so as to give the company an opportunity of paying (*b*).

The cases of creditors with disputed debts and for sums under £50 have already been considered (*bb*).

It has been said (*c*) that the provision, that the Court is not to refuse to make an order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets, which first appeared in the Act of 1907, is simply declaratory of the law as it stood before that Act, and does not alter the law. As it is thought that this view is correct, it will be necessary to examine some of the earlier cases. Perhaps *Chapel House Colliery Co.* (*d*) may be taken as the earliest of these cases. There it would seem clear that the majority of the Court were prepared to dismiss the petition on the ground that there were no assets and on this ground alone, but a majority of the class of creditors to which the petitioner belonged opposed the petition.

In a later case (*e*), Pearson, J., stood a petition over for an inquiry in Chambers as to whether there were any assets, and appointed a provisional liquidator, and the same Judge in another case (*f*) dismissed a petition on the ground that the company had no assets; but here again there were several other grounds for the decision, and in *Company of Fraternity of Free Fishermen of Faversham* (*g*) the Court of Appeal seems to have dismissed the petition on this ground, Cotton, L.J., saying that the onus of showing that no good could come of an order lay on the company.

Then came the Companies (Winding-up) Act, 1890. North, J., held that though section 8 of that Act (*h*) gave wide powers of investigation, it did not enable him to make an order on the petition of

(*a*) *Second Commercial Benefit Building Society* (1879), 48 L. J. (CH.) 753.

(*b*) See *General Rolling Stock* (1865), 34 Beav. 314; *Western of Canada Oil Lands and Works* (1873), 17 Eq. 1.

(*bb*) *Supra*, pp. 793 and 823.

(*c*) *Belfast Tailors' Company Partnership*, [1909] 1 Ir. 49.

(*d*) (1883), 24 C. D. 259 There are one or two earlier cases, but none, it is thought, decided on this ground alone. These cases are mentioned below. And see in particular *St. Thomas' Dock Co.* (1876), 2 C. D. 116.

(*e*) *Olathe Silver Mining Co.* (1884), 27 C. D. 278; but see *London Health Electrical Institute* (1897), 76 L. T. 98, where the Court declined to make such an order because the petitioner had not cross-examined on his opponent's affidavits.

(*f*) *United Stock Exchange* (1885), 51 L. T. 687.

(*g*) (1887), 36 C. D. 329. In this case a large number of creditors supported the petition.

(*h*) Now represented by s. 175 of the Companies (Consolidation) Act, 1908.

a fully paid shareholder who differed from the majority of the shareholders, and did not show he would get a substantial benefit from an order or make out a *primâ facie* case for investigation (*i*).

On the other hand, Vaughan Williams, J., held that if the circumstances appearing by affidavit were sufficient to show *primâ facie* that an investigation into the formation or promotion of the company or the issuing of debentures or shares was required, that alone was a sufficient advantage to an unsecured creditor to entitle him to an order, even though the assets appeared insufficient to pay the debenture-holders (*k*), and he seems to have taken the same view on a shareholder's petition (*l*); but in another case where an unsecured creditor was petitioner, and the assets were not sufficient to pay the debenture-holders, who objected to the order, he held that he had no right to make an order as the only winding-up in such cases was a debenture-holder's action. The learned Judge went on to say how desirable investigation usually was in such cases, but presumably he did not think it specially desirable in that particular case (*m*).

In *International Commercial Co.* (*n*) the Court of Appeal, acting on confidential information given to it by an official from the official receiver's department, came to the conclusion that there would be some assets, and made an order on the petition of a debenture-holder who was opposed by the majority of his class. In *London Health Electrical Institute* (*o*) the Court of Appeal declined to make an order on the petition of an unsecured creditor, where the debentures issued by the company could not be impeached and the company's assets were not sufficient to satisfy the claims of the debenture-holders.

In 1902, Buckley, J., gave directions that even creditors' petitions must in future contain an allegation that the company had assets available for distribution in a winding-up (*p*); but in *Manchester and Liverpool Transport Co.* (*q*), Byrne, J., following *Krasnapolsky Restaurant and Winter Gardens* (*r*), made an order, as he considered that there were circumstances which required investigation, and was not prepared to say there would be nothing for the unsecured creditors.

In *Chic, Ltd.* (*s*), Warrington, J., made an order on the petition of a creditor who could clearly get nothing out of it, because it was

(*i*) *Doré Gallery*, [1893] W. N. 98.

(*k*) *Krasnapolsky Restaurant and Winter Gardens Co.*, [1892] 3 Ch. 174. Cp. *London Health Electrical Institute* (1897), 76 L. T. 98.

(*l*) *South Staffordshire Tramways* 1894), 1 Mans. 292.

(*m*) *Edgbaston Brewery Co.* (1893), 68 L. T. 341.

(*n*) (1897), 75 L. T. 639.

(*o*) (1897), 75 L. T. 659; (1897), 76 L. T. 98.

(*p*) Practice Note, [1902] W. N. 77; *sub nom.* Winding-up Petitions (1902), 18 T. L. R. 503.

(*q*) (1903), 19 T. L. R. 227.

(*r*) [1892] 3 Ch. 174.

(*s*) [1905] 2 Ch. 345.

desirable to get rid of the company, and this could not be done in any other way, and he pointed out that under the rules (*t*) where a company against which a winding-up order is made has no available assets the official receiver is not required to incur any expense in relation to the winding-up without the sanction of the Board of Trade.

In *Alfred Melson & Co.* (*u*), Buckley, J., made a similar order for very similar reasons, and said that the Court was not bound at the instance of the company to refuse an order merely because it would not be fruitful. The matter came before the Court of Appeal in *Crigglestone Coal Co.* (*x*), the Court made an order there although the winding up might entail a forfeiture of the company's lease. The reason of their decision, which does not seem quite to follow the lines of that of Buckley, J., in the Court below, was that there was a reasonable possibility of the unsecured creditors deriving some advanatge from the winding-up, and that therefore the order ought to be made in order to enable them to be heard in the winding-up.

Perhaps the matter may be summed up by saying that the absence of assets will only prevent the order going where the assets are non-existent or can give the petitioner nothing, and there is no reasonable chance of further assets being raised by misfeasance proceedings or otherwise, or of debts which have priority to that of the petitioner being so cut down as to give the petitioner something. Even in such cases it would seem that the Court can make an order if for any reason it sees fit to do so. The decision of the Court of Appeal in the last cited case does not perhaps go quite as far as this last proposition.

In a case (*y*) decided since the Act of 1907 came into force, there was a voluntary liquidation in force, and the Judge declined to make an order as the assets were small, a majority of creditors opposed, and no case for investigation or anything of that sort was made out. As already stated, the Judge there said that the Act of 1907 did not alter the law on this point.

There is another case where an unpaid creditor is not entitled to an order *ex debito justitiæ*. A winding-up order is not made for the benefit of the petitioner alone, but for the benefit of the class of which

(*t*) See Companies (Winding-up) Rules, 1909, r. 203. This rule first appeared in the Winding-up Rules of 1890.

(*u*) [1906] 1 Ch. 841.

(*x*) [1906] 2 Ch. 327.

(*y*) *Belfast Tailors' Company Partnership*, [1909] 1 Ir. 49. The fact that this society, which was an industrial and provident society, was already in voluntary winding-up, makes the case of less importance than it would otherwise be. See also *Spiers & Co. v. Central Building Co.*, [1911] S. C. 331. It is still necessary where a fully paid shareholder is petitioner for him to show that there will be assets for distribution among the shareholders: *Kaslo-Slocan Mining and Financial Corporation*, [1910] W. N. 13.

he is a member (*z*), and, in addition to the wide powers given by section 141 of the Act to the Court on the hearing of a petition, the Court may, under section 145, have regard to the wishes of creditors and contributories as proved to it by sufficient evidence, and may therefore, under section 219, on the hearing of the petition and for the purpose of ascertaining those wishes, summon meetings of the creditors or contributories to be called held and conducted in such manner as it directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court (*a*). In such case a memorandum of the directions given by the Court is written on the fold of the petition and signed by the Registrar (*aa*),

Of course, it is not always necessary to summon meetings to ascertain the wishes of creditors or contributories. That may, and often is, ascertained in other ways, and particularly by the number of those appearing to support or oppose the petition. It would seem, however, that as the interests of debenture-holders and unsecured creditors often conflict, the Court will pay little attention to the wishes of debenture-holders on the petition of an unsecured creditor (*b*). In *Brighton Hotel Co.* (*c*), an order was made to stand over a petition presented by a shareholder and debenture-holder, and opposed by all the other shareholders, and ultimately all further proceedings on the petition were stayed on payment of the petitioner's debt and costs.

In *Langley Mill Steel and Ironworks Co.* (*d*), a creditor's petition which was largely opposed by other creditors was dismissed, but there was a voluntary winding up in existence in this case.

In *Western of Canada Oil Lands and Works Co.* (*e*) the debenture-holders had got receivers appointed, had appointed a committee to

(*z*) *Crigglestone Coal Co.*, [1906] 2 Ch. 330.

(*a*) These sections enable the Court before making an order to summon meetings to ascertain their wishes as to the fate of the petition : *Brighton Hotel Co.* (1868), 6 Eq. 339 ; *Langley Mill Steel and Ironworks Co.* (1871), 12 Eq. 26 ; *Western of Canada Oil Lands and Works* (1873), 17 Eq. 1 ; *Tumacacori Mining Co.* (1874), 17 Eq. 534 ; *Uruguay Central and Hygueritas Railway Co. of Montevideo* (1879), 11 C. D. 372 ; *Chapel House Colliery* (1883), 24 C. D. 259. In *Joint Stock Coal Co.* (1869), 8 Eq. 146, the Court held that where it could not make an order it could not direct a meeting ; but it may be doubted whether this is quite consistent with *Suburban Hotel Co.* (1867), 2 Ch. 737, though the Court will often be slow to order a meeting and allow the petition to stand over pending the result, as this may paralyze a company by hanging a petition over it : *Scobie* v. *Atlas Works* (1906) 8 Fra. 1052. In *Investment Bank of London* (1910), 130 L. T. Jo.: 149. NEVILLE, J., made an order (with the consent of the petitioner) for a meeting, although a meeting under section 188 of the Act was pending, such first mentioned meeting was to be advertised in the *London Gazette* and two daily papers. At creditors, meetings regard must be had to the value of each creditors' debt ; at contributories' meetings to the number of votes conferred on each contributory by the articles : Companies (Consolidation) Act, 1908, s. 219 (2) and (3).

(*aa*) For form of such memorandum, see p. 885.

(*b*) *Crigglestone Coal Co.*, [1906] 2 Ch. 327

(*c*) (1868), 6 Eq. 339.

(*d*) (1871), 12 Eq. 26.

(*e*) (1873), 17 Eq. 1.

look after their interests, and had sent a commission to Canada to investigate matters. On one of their number, in spite of the opposition of a large majority presenting a winding-up petition, the matter was stood over for about three months in the hope that money to pay the debentures might be obtained in the meanwhile, but at the end of that time, although further time was asked for, the Court, in the absence of evidence of what had been done in the meantime, made an order.

In *St. Thomas' Dock Co.* (*f*) the petition was presented by a debenture-holder, to whom about £77 was due for arrears of interest. A vast majority of the debenture-holders and unsecured creditors opposed and asked that the petition should stand over. Jessel, M.R., after pointing out that the petitioner could get nothing out of the order as all the assets were covered by his debentures, ordered the petition to stand over for six months from the date of hearing, but put the company upon an undertaking first of all not to consent to a winding-up order on the petition of any other creditor or to a voluntary winding-up (*g*); secondly, to give notice to the petitioner of the presentation of any other petition for a winding-up; and thirdly, to consent that on the presentation of any such other petition, the present application might be renewed, notwithstanding the suspension, so that the Court might be able to deal with it as if no suspension had been made (*h*). The learned Judge, while recognising the rule that if a creditor cannot get paid it is *ex debito justitiæ* that a winding-up order shall be made, said that it only applied where the creditor could get something out of the order, and intimated that he might let the petition stand over again, if application were made at the expiration of the six months. Fry, J., in another case (*i*)

(*f*) (1876), 2 C. D. 116.

(*g*) The order was apparently drawn up "and not to wind up voluntarily" instead of in the form given in the text, which, however, was the form of undertaking required by the Master of the Rolls in this case, and was said by BUCKLEY, J., to be the correct form, as it is very doubtful whether a company can undertake not to wind up voluntarily: *St. Neots Water Co.* (1905), 93 L. T. 788; but the ordinary form now is "not to wind up voluntarily." See order in *Descours Parry & Co.*, 0052 of 1909, *infra*, pp. 877 and 878. And see as to a company agreeing not to wind up voluntarily, *Ellis* v. *Dadson* (1891), 60 L. J. (CH.) 353. It is difficult to see how a company can consent to a voluntary winding-up.

(*h*) This is the well-known order commonly called a St. Thomas' Dock Order. The order contemplates the possibility of a second petition, and a second petitioner, even though he knows of the first petition and the order thereon, need not communicate with the first petitioner, and is entitled to present his petition and will get his costs on an order being made on the first petition. VAUGHAN WILLIAMS, J., said that in making such orders he would ascertain whether the petitioner would be willing to share one set of costs with a second petitioner if there was one: *Scott and Jackson*, [1893] W. N. 184.

(*i*) *Great Western* (*Forest of Dean*) *Coal Consumers' Co.* (1882), 21 C. D. 769.

which was practically identical in its facts, required the same undertakings and also undertakings by the company to give the petitioners notice in writing of any proceedings by any mortgagee or debenture-holder to enforce his security or to obtain payment of his debt, and on such undertakings being given, ordered the petition to stand over for six months from the day of hearing or until the taking of any step by the petitioners or any other creditor to enforce payment of their debt or to realize their security, in which cases liberty to apply was given.

The learned Judge said he made this order so as if possible to prevent the petitioner enforcing his security, the company being generally believed likely to do well in the future; and he also intimated that it was proper for a Judge to go into the reasons, which induced the majority to oppose. It would seem desirable in these cases for the company to undertake to give the petitioner notice of the sending out of a notice for a voluntary winding-up resolution, and to require the company to consent to his proceeding with the petition in the event of such notice being sent out, and it is believed that such orders have sometimes been made.

In the next case (*k*) on the subject Jessel, M.R., dismissed the petition on the ground that a vast majority of the secured creditors were opposed to it; but another ground for dismissing it which would in itself have been conclusive, existed in the fact that the petitioner, who was the holder of bonds secured by a trust deed, had no individual right of action against the company, and was consequently not a creditor. In this case, too, the petitioner would have got nothing out of a winding-up.

The same point rose again in *Chapel House Colliery Co.* (*l*). That, again, was a petition of a debenture-holder, and unanimous resolutions had been passed at well-attended meetings of shareholders and debenture-holders against the petition. It was also opposed by the unsecured creditors of the company. The assets of the company were all charged by the debentures, and so the petitioner would have got nothing out of an order. The petition was dismissed: Baggallay, L.J., coming to the conclusion that this course was proper having regard to the united effect of these circumstances. The other two Lords Justices based their decision mainly on the latter ground, though they also referred to the majorities against the petition.

In *Krasnapolsky Restaurant and Winter Garden Co.* (*m*), the last-mentioned case was distinguished on the ground that there the petition was opposed not by the secured, but also by the unsecured creditors, and an order was made on the petition of an unsecured creditor, which was opposed by such of the secured creditors as put

(*k*) *Uruguay Central and Hygueritas Railway Co. of Montevideo* (1879), 11 C. D. 372.

(*l*) (1883), 24 C. D. 259.

(*m*) [1892] 3 Ch. 174, 176.

in an appearance. The other unsecured creditors took no part in the proceedings. But, in a later case (*n*), where there was a majority of both creditors and contributories against a petition presented by a judgment creditor, and the assets were not sufficient to pay the debentures, Vaughan Williams, J., declined to make an order, saying he had no choice in the matter.

In *International Commercial Co.* (*o*) the Court of Appeal made an order on the petition of debenture-holder who had obtained a judgment for arrears of interest, though the application was opposed by a majority of the debenture-holders.

Finally, in *Crigglestone Coal Co.* (*p*), an order was made on the petition of unsecured creditors, although opposed by the debenture-holders.

It would seem, then, that a debenture-holder petitioner will rarely, if ever, get an order if opposed by the majority of his class, and the same remark applies, though it is thought the rule is less stringent in the case of an unsecured creditor who is opposed by the majority of the unsecured creditors. Secured and unsecured creditors are, however, not considered together in any sense, and the wishes of unsecured creditors will sometimes be given effect to, though opposed by the majority of the secured creditors.

A contributory who presents a petition is not, it is thought in any case, entitled to an order *ex debito justitiæ* (*q*), and the principle which has already been mentioned, that the Court will not usually interfere with the internal arrangements of a company, applies where a contributory is presenting a petition against the wishes of the majority of the contributories (*r*). It follows that in such cases the Court will rarely make an order on a contributory's petition which is seriously opposed by a majority of the other members (*s*).

The same principle applies in the case of building societies (*t*). Although Vaughan Williams, J., at one time apparently thought

(*n*) *Edgbaston Brewery* (1893), 68 L. T. 341.

(*o*) (1897), 75 L. T. 639.

(*p*) [1902] 1 Ch. 327. In *Belfast Tailors' Company Partnership*, [1909] 1 Ir. 49, this seems to have formed one of the grounds for refusing an order.

(*q*) *Middlesborough Assembly Rooms* (1880), 14 C. D. 104; *Professional Commercial and Industrial Benefit Building* (1871), 6 Ch. 856.

(*r*) *Langham Skating Rink* (1877), 5 C. D. 669. See also *Bristol Joint Stock Bank* (1890), 44 C. D. 703.

(*s*) See cases cited above: *Middlesborough Assembly Rooms* (1880), 14 C. D. 104; *City and County Bank* (1875), 10 Ch. 470; *Factage Parisien* (1865), 32 L. J. (CH.) 140; 13 W. R. 214; *Petersburg and Viborg Gas Co.*, [1874] W. N. 196. See also *Brighton Hotel Co.* (1868), 6 Eq. 339.

(*t*) *Professional Commercial and Industrial Benefit Building Society* (1871), 6 Ch. 856; *Planet Building and Investment Society* (1872), 14 Eq. 441; *London and Metropolitan Counties Building Society* (1889), 1 Meg. 135.

otherwise (*u*), this principle apparently still holds good since the Companies (Winding-up) Act, 1890 (*x*).

The exceptions to this rule would appear to be the cases where the substratum of the company is gone. There, it would seem, that a majority cannot force a minority to enter upon an entirely fresh scheme (*y*), and cases where the majority are using their powers to shelter themselves from investigation (*z*), or to foist on the minority a scheme which will benefit the majority at the expense of the minority, and which is substantially unjust to such minority (*a*), or where the true facts have been concealed from the members of the company (*b*).

The Court will also apparently consider the reasons which induced a majority to come to a particular conclusion (*c*).

On the other hand, it would seem from the cases that where there is a real majority of the shareholders who wish for a compulsory winding-up though not a sufficient majority to pass a special resolution, the Court will sometimes make an order under the "just and equitable" words of section 129 of the Act, although the other circumstances of the case may not *per se* be sufficient to warrant an order (*d*). The fact that Lord Cairns said, in *Suburban Hotel Co.* (*e*), that the Vice-Chancellor was right in calling a meeting, supports this view, for as he came to the conclusion that the substratum of the company was not gone, the meeting would on any other view have been useless.

REDUCTION OF CONTRACTS OF ASSURANCE COMPANIES.

The Court, in the case of an assurance Company which has been proved to be unable to pay its debts, may, if it thinks fit, reduce the amount of the contracts of the Company upon such terms and subject to such conditions as the Court thinks just, in place of making a winding-up order (*f*).

This power is very rarely used, and, as will be seen, does not appear a very useful one having regard to section 120 of the Companies (Consolidation) Act, 1908. As the power is given in place of making a winding-up order, it would seem that it should be exercised

(*u*) See *General Phosphate Co.*, [1893] W. N. 142; *South Staffordshire Tramways* (1894), 1 Mans. 292; but see *London Health Electrical Institute* (1897), 76 L. T. 98; *Thomas Edward Brinsmead and Son*, [1897] 1 Ch. 45, at p. 50; [1897] 1 Ch. 406.

(*x*) *Doré Gallery*, [1891] W. N. 98.

(*y*) *Haven Gold Mining Co.* (1882), 20 C. D. 151; *Crown Bank* (1890), 44 C. D. 634.

(*z*) *Varieties, Ltd.*, [1893] 2 Ch. 235.

(*a*) *Consolidated South Rand Mines Deep*, [1909] 1 Ch. 491.

(*b*) *Thomas Edward Brinsmead*, [1897] 1 Ch. 45, 406.

(*c*) *Amalgamated Syndicate*, [1897] 2 Ch. 600. As the substratum of the company had gone in this case, it is difficult to see why a majority was needed.

(*d*) *Pirie* v. *Stewart* (1905), 6 Fra. 847; *Factage Parisien* (1865), 32 L. J. (CH.) 140; 13 W. R. 214; *Anglo-Mexican Mint Co.*, [1875] W. N. 168.

(*e*) (1867), 2 Ch. 737.

(*f*) Assurance Companies Act, 1909, s. 18.

on a petition to wind-up (*g*). All applications to reduce contracts have been made, so far as appears from the books, in such way (*h*). If the petitioner desires that contracts shall be reduced, he can apply for it as an alternative on his petition (*g*). If some one else desires it, it would seem that he can ask for it at the hearing without making any substantive application (*i*), though perhaps it would be desirable to have a motion asking to stay all further proceedings on the winding-up petition, and either to approve a scheme which has been prepared by the applicant, or to appoint some person to make an inquiry and report as to the terms and conditions upon and subject to which the contracts of the company should be reduced, and to settle a scheme for reducing such contracts for the approval of the Court and that such person may be at liberty to exercise and do any power or thing given or authorized by O. 36, rr. 49 to 52 (both inclusive), R. S. C. (*k*). No order can be made under the section where the company is in liquidation, it provides, as an alternative to payment by the liquidator, payment by the Court (*l*), and creditors including persons whose claims have at the date of the petition ripened into a debt, cannot have their rights altered under it (*m*); but in both these cases it would seem that section 120 of the Companies (Consolidation) Act, 1908, would apply, and under it everything that could be done under this section, and, as above indicated, more, can, it would seem, be done. Moreover, section 120 enables a scheme on these lines to be carried out by means of a sale to a new company, section 18 of the Assurance Companies Act, 1909, does not (*n*). Under section 18 there can be no release of premiums in arrear, or other debts due to the company (*m*).

The date for ascertaining the rights of the parties is the winding-up petition (*o*), and there must be equality in the reduction having regard to their rights at such date, though perhaps not absolute arithmetical equality (*p*), moreover, the holders of participating and non-participating policies, will have their policies reduced equally (*o*).

The Court will usually require the Board of Trade to be served

(*g*) Chadwyck Healey, 3rd Ed. p. 304; and see the forms there given.

(*h*) See the cases below cited.

(*i*) This was done in *Nelson & Co.*, [1905] 1 Ch. 550; and also in *British Widows' Assurance Co.*, [1905] 2 Ch. 40. But the latter case scarcely seems to come under these provisions.

(*k*) Cp. *Great Britain Mutual Life Assurance Society* (1882), 19 C. D. 39.

(*l*) *Great Britain Mutual Life Assurance Society* (1880), 16 C. D. 246.

(*m*) *Great Britain Mutual Life Assurance Society* (1882), 19 C. D. 39; 20 C. D. 351. The claim of an annuitant for arrears had ripened into a debt not so his claim for future payments of his annuity: *ibid.*

(*n*) *Nelson & Co.*, [1905] 1 Ch. 550.

(*o*) *Great Britain Mutual Life Assurance Society* (1882), 19 C. D. 39; 20 C. D. 351.

(*p*) *Nelson & Co.*, [1905] 1 Ch. 550.

on such an application, and the Board frequently has a report on the scheme prepared (*q*); and while in urgent cases the Court may proceed without waiting for such report (*r*), the petition is usually stood over to enable the Board of Trade and the parties to consider the scheme (*q*). The Court will sometimes appoint a provisional liquidator while the scheme is pending (*s*), and on occasion it will exercise the power conferred on it by sections 145 and 219 of the Companies (Consolidation) Act, 1908, and direct that meetings shall be held to see whether the persons concerned prefer a reduction of contracts to a winding-up (*t*).

Where no scheme is submitted to the Court, or even, it is thought, where there is such a scheme, the Court can refer the whole matter to an independent actuary to prepare a proper scheme (*u*).

The Court will not, of course, sanction a scheme which involves a business being carried on in an illegal manner, *e.g.* the non-separation of funds where section 3 of the Assurance Companies Act, 1909, requires them to be separated (*v*).

ORIGINAL AND SUBSTITUTED PETITIONERS.

A petitioner is *dominus litis* and can withdraw his petition or consent to its being dismissed (*x*), but if it has once been advertised (*y*) this must be done at the hearing, and the petition must come into the paper in the ordinary way, as creditors and contributories who appear have been invited to do so by the advertisement (*z*), and will usually be entitled to their costs (*a*). As a petition is dismissed if the petitioner does not appear, unless some one is substituted as petitioner, it was formerly held that it was not necessary for a petitioner who proposed to withdraw his petition or to consent to its

(*q*) See *Nelson & Co.*, [1905] 1 Ch. 550; *British Widows' Assurance Co.*, [1905] 2 Ch. 40. But it is difficult to ascertain under what jurisdiction the scheme was sanctioned in the latter case.

(*r*) *British Widows' Assurance Co.*, [1905] 2 Ch. 40.

(*s*) *Great Britain Mutual Life Assurance Society* (1882), 19 C. D. 39; 20 C. D. 351.

(*t*) *Great Britain Mutual Life Assurance Society* (1880), 16 C. D. 246; *Briton Medical and General Life Association* (1886), 54 L. T. 14.

(*u*) This was done in *Great Britain Mutual Life Assurance Society*. See the statement of facts and procedure in that case (1882), 19 C. D. 39.

(*v*) *Nelson & Co.*, [1905] 1 Ch. 550; and cp. *British Widows' Assurance Co.*, [1905] 2 Ch. 40.

(*x*) *Times Life Assurance and Guarantee Corporation* (1869), 9 Eq. 382; *Imperial Guardian Life Assurance* (1869), 9 Eq. 447; *Herefordshire and South Wales Waggon and Engineering Co.* (1874), 17 Eq. 423.

(*y*) See *United Stock Exchange Co.* (1884), 28 C. D. 183, for a case where the petition had not been advertised; but now an unadvertised petition would be removed from the file: Companies (Winding-up) Rules, 1909, r. 27. See *supra*, p. 838.

(*z*) *Mid Wales Hotel Co.* (1868), 17 L. T. 597; *Re an Insurance Co.* (1875), 33 L. T. 49; *Anglo-Virginian Freehold Land Co.*, (1880) W. N. 155.

(*a*) See *post* as to costs in such cases, p. 868.

being dismissed, to appear at the hearing, and if before the hearing he had arranged with the company to withdraw the petition on payment of his costs, his costs of appearance would not be included in such costs (*b*), but this ruling would not, it is thought, having regard to the present rule as to substituting petitioners, hold good now. Where such an arrangement is made the costs should always include the costs of creditors and contributories appearing.

When a petitioner consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or any day to which the hearing has been adjourned (*c*), or, if appearing, does not apply for an order in the terms of the prayer of his petition, the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who, in the opinion of the Court would have a right to present a petition, and who is desirous of prosecuting the petition (*d*).

It has been held (*e*) that where the original petitioner's debt was not at the date of the hearing a good petitioner's debt, a judgment under O. 14, R. S. C., having been reversed between the presentation and hearing of the petition and unconditional leave to defend given to the company, another petitioner could not be substituted, but the case turned partly on the fact that the petitioner asked for the petition to be adjourned, and not withdrawn or dismissed, not a very intelligible reason, having regard to the fact that even the old rule applied where the petitioner consented to his petition being adjourned, and, moreover, the case does not seem consistent with *Welsh Manufacturing and Woolstapling Co.* (*f*), where a petition which contained grave charges was stood over to enable any creditor or contributory who might wish to do so to apply to be substituted, although the petitioner's debt had been paid, or with the cases (*g*) where it has been laid down that where a petitioner consents to withdraw his petition the Court cannot look at such petition.

It is thought that now where a petitioner asks for a compulsory order by his petition, but at the hearing only for a supervision order, the Court can, on the application of a creditor or contributory, make a compulsory order (*h*); but if the petitioner at the hearing presses

(*b*) *Adjustable Horse Shoe Syndicate*, [1890] W. N. 157.

(*c*) This rule (which is different from the rule of 1903) seems to do away with the difficulty which occurred in *Vanguard Motor Bus Co.* (1907), 24 T. L. R. 526.

(*d*) Companies (Winding-up) Rules, 1909, r. 36.

(*e*) *Re Charles* (1906), 51 Sol. J. 101.

(*f*) 13 Reports, 55.

(*g*) *Patent Cocoa Fibre Co.* (1876), 1 C. D. 617, and the cases cited with it, *post*, p. 868, note (*z*).

(*h*) This was probably not formerly the case: *Chepstow Bobbin Mills Co.* (1887), 36 C. D. 563; *Electric and Magnetic Co.* (1881), 50 L. J. (CH.) 491.

for an order in the terms of the prayer of his petition, and is unwilling to withdraw his petition, the Court, if it finds that his case is defective, cannot take into account the fact that some person who is supporting has a better case (*i*). Where a petitioner is substituted the petition will be amended so as to set out the facts of the substituted petitioner's case as though he were the original petitioner, and a fresh statutory affidavit will be filed verifying the amended petition (*k*). It is, however, often desirable for a person who proposes to apply under the rule to come prepared with an affidavit showing his debt (*l*).

COSTS.

The usual order as to costs on a winding-up petition on which an order is made is to provide for payment out of the assets of the company of the costs of (1) the petitioner; (2) the company (if it appeared); (3) one set of costs to the creditors, and one to the contributories who support the petition. If the petition fails the petitioner will have to pay (1) the costs of the company; and (2) one set of costs to the creditors and one set of costs to the contributories who oppose the petition (*m*). But only creditors and contributories who have given notice under the rules, will be allowed to participate in any costs that may be given (*n*), and if a creditor or contributory who supports or opposes the petition appears by the solicitor who appears for the petitioner (*o*), or by the company's solicitor (*p*), he will not in the absence of a special order be entitled to participate in any costs which may be given, for his name should have been added to the brief of the petitioner or the company, as the case may be. Where creditors and contributories who support or oppose a petition appear by the same solicitor, they will, as a rule, only get one set of costs between them, but the taxing officer has in this case a discretion to allow separate costs, even if the order is silent on the point (*q*). Even when the petition contains charges of fraud against directors, they will rarely, if ever, be allowed any further costs, for the defence rests with the company, and if any creditor or contributory chooses to put in an affidavit, the Court has the fullest power of refusing to allow such affidavit to be read, though, of course, the directors will usually put in an affidavit on behalf of the company

(*i*) *Spence's Patent Cement Co.* (1869), 9 Eq. 9.

(*k*) The date of the original petition will, however, stand, and if an order is made the winding-up will commence on that date.

(*l*) See *Invicta Works*, [1893] W. N. 39; Emden, 8th Ed., p. 60.

(*m*) Cp. Buckley, 9th Ed. 244; *Criterion Gold Mining Co.* (1889), 41 C. D. 146; *Ibo Investment Co.* (1903), 72 L. J. (CH.) 661; *Anglo-Egyptian Navigation Co.* (1869), 8 Eq. 660; *European Banking Co.* (1866), 2 Eq. 521.

(*n*) *British Electric Street Tramways*, [1903] 1 Ch. 725.

(*o*) *Brighton Marine Palace and Pier Co.*, [1897] W. N. 12.

(*p*) *Ibo Investment Trust*, [1904] 1 Ch. 26.

(*q*) *Silberhutte Supply Co.*, [1910] W. N. 81.

and as part of its defence (r). The company will usually get a full set of costs (r).

Where an order is made giving a set of costs to creditors or contributories opposing or supporting a petition, the costs allowed will not include either payments for copies of evidence in support of the petition in opposition thereto or in reply, or the costs of perusal of such evidence or of providing copies of such evidence for counsel, or large fees to counsel, except, perhaps, where the petition is not full enough, or a creditor or contributory has to answer such evidence or there are other special circumstances. Counsel appearing for creditors or contributories are not expected to take a prominent part at the hearing of the petition (t).

Creditors have the same rights to costs on a contributory's petition as they have on a creditor's petition (u), but where it is clear that a creditor or contributory is simply appearing for the purpose of making costs his costs will not be allowed (x).

Where the company is in liquidation the liquidator should not appear separately, and will not be allowed a separate set of costs from the company (y). Where the petition is withdrawn or the petitioner consents to its being dismissed, the Court will not look at the petition, but will allow one set of costs to those creditors and contributories who oppose the petition and another to those who support it (z). It occasionally happens that a petition is presented for a compulsory order, and that at the hearing a supervision order is asked for and granted. It is usual in such cases to give one set of costs to creditors and one set of costs to contributories who support the supervision order, and to disregard the fact that they have given notice to support or oppose the compulsory order.

There have been cases where persons appearing on a petition which is withdrawn have not been allowed their costs, where they have consented to the withdrawal and not pressed for their costs (a), or where the petition stated on the face of

(r) *Ibo Investment Trust*, [1904] 1 Ch. 26.

(t) *Ibo Investment Trust*, [1904] 1 Ch. 26.

(u) *New Gas Co.* (1877), 5 C. D. 703; *Carnarvonshire Slate Co.* (1879), 40 L. T. 35.

(x) *Hull and County Bank* (1878), 10 C. D. 130; *North Brazilian Sugar Factories* (1886), 56 L. T. 229.

(y) *Mont de Piete of England* (1893), 37 Sol. J. 48, [1892] W. N. 166; *Hall & Co.* (1885), 53 L. T. 633. In both these cases the voluntary winding-up had commenced before the petition was presented; but it may be doubted whether this makes any difference. See, however, the last cited case.

(z) *British Electric Street Tramways*, [1903] 1 Ch. 725; *Patent Cocoa Fibre Co.* (1876), 1 C. D. 617; *Criterion Gold Mining Co.* (1889), 41 C. D. 146; *Marlborough Club* (1866), 1 Eq. 216; *Home Assurance Association* (1871), 12 Eq. 59; *Hereford and South Wales Waggon and Engineering Co.* (1874), 17 Eq. 423; *Nacupai Gold Mining Co.* (1884), 28 C. D. 65.

(a) *Jablochkoff Electric Light and Power Co.* (1884), 49 L. T. 566, so explained in *Nacupai Gold Mining Co.* (1884), 28 C. D. 65.

it that it was presented owing to a doubt whether a voluntary winding-up resolution would be passed, and such resolution was passed before the hearing of the petition (*b*). And they have also been disallowed their costs where the petition came into the paper without being advertised—a case which could scarcely occur under the existing rules (*c*); but the general rule would seem to hold even where a person appearing knows that the petition will be withdrawn or dismissed at the hearing (*d*), though in such case it might no doubt sometimes be held that he had only appeared to make costs, and costs might consequently be denied him. In some cases where a petition has been withdrawn each person appearing has been allowed a separate set of costs (*e*), but this is very unusual, and will only be done where no satisfactory reason for the withdrawal is given (*f*). Where a petitioner was paid and the petition withdrawn and one set of costs was given between two creditors who had appeared, and one of such creditors had since the petition had part of his debt paid, the other was allowed the whole of such costs, on the ground that if an order had been made the creditor who was paid after the petition would not have been in a better position than the other creditor (*g*).

Where a co-petitioner declined to proceed and revoked the authority given to the solicitor the petition was dismissed with costs (*gg*): but it submitted that in such case the Court can strike out the name of the person who is unwilling to proceed (*ggg*).

Where the company had offered to pay a petitioning creditor's debt and all costs (*h*), including any costs payable to persons appearing on the petition (*i*), or a petitioning creditor had had a sufficient offer of indemnity against his debt and costs (*k*), it would seem that he was formerly not usually allowed any costs after the offer; but it may be pointed out that in such case the petitioner may find himself in a difficult position if some one else applies to be substituted as a petitioner, for if an order is made the petitioner will only have a right of proof for his debt and costs. The withdrawal of a petition no doubt constitutes a valuable consideration (*l*), but if an order is made on the petition, it would seem that any payment that may have been made by the company to the original petitioner will be void unless sanctioned by the Court (*m*), and it is thought that

(*b*) *District Bank of London* (1887), 35 C. D. 576.

(*c*) *United Stock Exchange* (1884), 28 C. D. 183.

(*d*) *Hereford and South Wales Waggon and Engineering Co.* (1874) 17 Eq. 423. But see *Marlborough Club* (1866), 1 Eq. 216.

(*e*) *North Brazilian Sugar Factories* (1886), 56 L. T. 229; *Paper Bottle Co.* (1888), 40 C. D. 52.

(*f*) *Peckham Tramways* (1888), 57 L. J. (CH.) 462; *Criterion Gold Mining Co.* (1889), 41 C. D. 146.

(*g*) *Peckham Tramways* (1888), 57 L. J. (CH.) 462.

(*gg*) *Frederic C. Glenister & Co.*, 0063 of 1912, NEVILLE, J., March 13th, 1912.

(*ggg*) See O. 16 r. 11, R.S.C. The Court will not do this as a matter of course, even on terms of security being given. Daniell's Chancery Practice, 7th Ed., p. 224, *Re Matthews*, [1905] 2 Ch. 460.

(*h*) *Times Life Assurance and Guarantee Co.* (1869), 9 Eq. 382. See also *Cardiff Preserved Coal and Coke Co.* v. *Norton* (1866), 2 Eq. 568; (1867), 2 Ch. 405.

(*i*) *Adjustable Horse Shoe Syndicate*, [1890] W. N. 157.

(*k*) *Imperial Guardian Life Assurance* (1869), 9 Eq. 447.

(*l*) *Harris* v. *Venables L. R.* (1872), 7 Ex. 235.

(*m*) Companies (Consolidation) Act, 1908, s. 205; *Liverpool Civil Service Association* (1877), 9 Ch. 511,

nowadays a petitioner will not be precluded from proceeding with his petition by the mere fact of an offer being made. Where the petitioner appeared by the company's usual solicitor, his costs were in one case disallowed (*n*). Where more than one petition has been presented, they will, in the absence of *mala fides* or collusion, take priority according to the dates when they were presented, and not, as was decided in some of the earlier cases, according to the dates when they were advertised (*o*). A person presenting a subsequent petition may be entitled to the costs of his petition up to the date when he had notice of the presentation of a prior petition (*p*), which will now in practically all cases be the date when he presented his own petition, and he may also be entitled to share in the costs of creditors or contributories supporting the first petition if it is successful (*q*), but he will not be entitled to any further costs unless possibly he can show that the earlier petition was collusive and not *bonâ fide* (*r*). The wide power of substituting a petitioner given by rule 36 of the Companies (Winding-up) Rules, 1909, would seem to render a second petition unnecessary even in this case, and it may be doubted whether even collusion will justify a second petition, having regard to this rule, which did not exist at the time of the decisions referred to above. It is thought that the mere fact of a petition being advertised will not necessarily be notice to a second petitioner of the fact that it has been presented (*s*). The fact that a petition has been advertised for a day on which it cannot be heard, *e.g.* a legal holiday, will not justify the presentation of a second petition (*t*).

There have been cases (*u*) where a second petitioner has been

(*n*) *Lennox Publishing Co.* (1890), 61 L. T. 787.

(*o*) *Building Societies Trust* (1890) 44 C. D. 140; *Norton Iron Co.* (1877), 47 L. J. (CH.) 9; *General Financial Bank* (1879), 20 C. D. 276; *London and Australian Agency Corporation* (1873), 29 L. T. 417.

(*p*) *Building Societies Trust* (1890), 44 C. D. 140; *Norton Iron Co.* (1877), 47 L. J. (CH.) 5: *General Financial Bank* (1879), 20 C. D. 276.

(*q*) *Building Societies Trust* (1890), 44 C. D. 140; *Sheringham Development Co.*, [1893] W. N. 5; *Brooke & Co.*, [1888] W. N. 213.

(*r*) *Building Societies Trust* (1890), 44 C. D. 140; *Norton Iron Co.* (1877), 47 L. J. (CH.) 9; *General Financial Bank* (1879), 20 C. D. 276. The order made in *Bamford & Co.*, [1910] 1 Ir. 390, does not accord with the English practice. And see *Seafield Preserve Co.*, [1911] S. C. 3, for the Scotch practice.

(*s*) *Marron Bank Paper Mill* (1878), 38 L. T. 140; *Empire Assurance Co.* (1867), 16 L. T. 341. And see the cases cited *supra*, p. 838, on the question of how far the advertisement of a petition is notice of its presentation to all the world; but see *Ex parte Rasch* (1867), 36 L. J. (CH.) 75.

(*t*) *Dublin Grains Co.* (1886), 17 L. R. Ir. 512.

(*u*) See *Standard Portland Cement Co.* (1890), 59 L. J. (CH.) 408; *Russell Cordner & Co.*, [1891] 3 Ch. 171. See also *Joint Stock Coal Co.* (1869), 8 Eq. 146; *Doré Gallery*, [1891] W. N. 98.

ordered to pay the costs of the company on his petition, but it is thought that this is unusual.

Where a petition has stood over generally, *e.g.* under a St. Thomas' Dock Order, the position of a subsequent petitioner would seem to be different, though even in this case, he may have to divide one set of costs with the earlier petitioner (*x*).

The question of the priority of the petitioner's costs is dealt with later. He will be entitled to payment of such costs, even where he has neglected to pay calls made on him in the winding-up (*y*).

Even where an order for winding up has been made against a company, the company's costs are allowed out of its assets (*z*). Where a petition has been dismissed with costs, the directors cannot, at all events without the sanction of the articles of the company or of a general meeting, apply the assets of the company in paying such costs (*a*).

Where the company does not oppose the petition and no creditor or contributory has given notice of the intention to oppose in manner provided by the rules, the Court will treat the petition as unopposed, and it will consequently hear it when it is first called (*b*), the practice being not to hear opposed petitions until all the petitions in the day's paper have been called. If no one appears for any party when a petition is called on for a second time, the petition will be dismissed without costs.

At one time it was not unusual in making a winding-up order to provide that only certain proceedings, which were specified in the order, might be taken until further directions were given by the Court; but the Court will not, except in the case of an ancillary winding-up, now make orders in this form (*c*), and it will not make an order which is not to be drawn up till a future date (*d*).

When an order for the winding-up of a company or for the appointment of the official receiver as provisional liquidator prior to the making of an order for the winding-up of the company, has been pronounced in Court, the Registrar must, on the same day, send to the official receiver a notice informing him that the order has been pronounced.

The notice may be in Forms 13 and 14 in the Appendix to the Companies (Winding-up) Rules, 1909, respectively, with such variations as circumstances may require (*e*).

(*x*) *Scott and Jackson*, [1893] W.N. 184.

(*y*) *General Exchange Bank* (1867), 4 Eq. 138; and see *Equestrian and Public Buildings Co.* (1888), 1 Meg. 115.

(*z*) *Humber Ironworks Co.* (1866), 2 Eq. 521.

(*a*) *Smith* v. *Duke of Manchester* (1883), 24 C. D. 611.

(*b*) *Inman & Co.*, [1891] W. N. 202.

(*c*) Practice Note (1904), 20 T. L. R. 73. For such an order see *post*, p. 877.

(*d*) *Baker Tuckers & Co.*, [1894] W. N. 33.

(*e*) Companies (Winding-up) Rules, 1909, r. 37.

NOTIFICATION TO OFFICIAL RECEIVER OF ORDER PRONOUNCED ON PETITION FOR WINDING-UP (*f*).

(*Title.*)

To the Official Receiver of the Court.

(*Address.*)

Order pronounced this day by the Honourable Mr. Justice [*or, as the case may be*] on petition for winding-up the under-mentioned Company under the Companies (Consolidation) Act 1908.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.	Date of Presentation of Petition.

NOTIFICATION TO OFFICIAL RECEIVER OF ORDER PRONOUNCED FOR APPOINTMENT OF OFFICIAL RECEIVER AS PROVISIONAL LIQUIDATOR PRIOR TO WINDING-UP ORDER BEING MADE (*g*).

(*Title.*)

To the Official Receiver of the Court.

(*Address.*)

Order pronounced this day by the Honourable Mr. Justice [*or, as the case may be*] for the appointment of an Official Receiver as Provisional Liquidator prior to any Winding-up Order being made.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.	Date of Presentation of Petition.

It is the duty of the petitioner, or his solicitor or London agent, and of all other persons who have appeared on the hearing of the petition, at latest on the day following the day on which an order for the winding-up of a company is pronounced in Court, to leave at the Registrar's office all the documents required for the purpose of

(*f*) Companies (Winding-up) Rules, 1909, Appendix, Form 13.

(*g*) *Ibid.*, Form 14.

enabling the Registrar to complete the order forthwith (*h*). In ordinary cases no one attends at the drawing up of the order.

It is not necessary for the Registrar to make an appointment to settle the order, unless in any particular case the special circumstances make an appointment necessary (*i*).

An order to wind up a company must contain at the foot thereof a notice stating that it will be the duty of the person who is at the time secretary or chief officer of the company, and of such of the persons who are liable to make out or concur in making out the company's statement of affairs as the official receiver may require, to attend on the official receiver forthwith on the service of the order at the place mentioned therein (*k*).

The official receiver not infrequently instructs the petitioner's solicitor in cases where he requires his assistance, but he is in no way obliged to do so, and in ordinary cases and for ordinary purposes he acts in person.

FORM OF ORDER FOR COMPULSORY WINDING-UP (*l*).

day of , 19 .

(*Title.*)

Upon the petition of the above-named Company [*or A.B.* of &c., a creditor [*or* contributory] of the above-named Company], on the day of , 19 , preferred unto the Court, and upon hearing for the petitioner and for , and upon reading the said petition, an affidavit of (the said petitioner), filed, &c., verifying the said petition, an affidavit of *L.M.*, filed the day of , 19 , the *London Gazette* of the day of , 19 , the newspaper of the day of [*enter any other papers*], each containing an advertisement of the said petition [*enter any other evidence*], this Court doth order that the said Company be wound up by this Court under the provisions of the Companies (Consolidation) Act, 1908, and that [one of] the Official Receiver [s] attached to this Court be constituted Provisional Liquidator of the affairs of the Company.

* Insert the place at which attendance is required.

NOTE.—It will be the duty of the Directors and of the Secretary or other chief officer of the Company as the Official Receiver may require, to attend on the Official Receiver at * forthwith on the service of this Order.

WINDING-UP ORDER WITH PROVISION AS TO COSTS WHERE CERTAIN CREDITORS ARE REPRESENTED BY THE SAME SOLICITORS AS THE COMPANY.

(*Title.*)

UPON THE PETITION OF F.J.S. of in the County of property owner a creditor of the above-named Company on the 7th July 1911 preferred unto this Court and upon hearing Counsel for the

(*h*) Companies (Winding-up) Rules, 1909, r. 38. In *Aowin Rubber Co.*, 00348 of 1911, a party entitled to costs omitted to leave the brief of his counsel, and the order was consequently drawn up in ignorance of his right and without providing for his costs; an application to vary the order made to EADY, J., on the 16th January, 1912, was refused because the rule had not been complied with.

(*i*) *Ibid.*, r. 39.

(*k*) *Ibid.*, r. 40.

(*l*) Appendix to the Companies (Winding-up) Rules, 1909, Form 15

Petitioner for the above-named Company and A.G. the Liquidator in the voluntary winding-up thereof and for G. and G. and two others and for A.H.C. all creditors of the above-named Pall Mall Land and Finance Corporation and for H.S.W.P. a creditor and contributory of the said Company all supporting the said Petition and upon reading the said petition an Affidavit of F.J.S. filed the 10th July 1911 (verifying the said petition) the *London Gazette* and the *Daily Telegraph* newspaper both dated the 11th July 1911 and each containing an advertisement of the said petition—the affidavit of A.G. filed the 24th July 1911 and the affidavit of A.H.C. filed this day.

THIS COURT DOTH ORDER that the said Pall Mall Land and Finance Corporation be wound up by this Court under the provisions of the Companies (Consolidation) Act, 1908.

AND IT IS ORDERED that the Official Receiver attached to this Court be constituted Provisional Liquidator of the affairs of the said Company.

AND IT IS ORDERED that the costs of the Petitioner of the said Company and of the said Creditors and Contributory of the said petition be taxed and paid out of the assets of the said Company but on such taxation only one set of costs is to be allowed between the said Petitioner and G and G and two others, and one set between the remaining creditors.

Registrar.

NOTE.—It will be the duty of the person who is the Secretary or chief officer of the Company and such of the persons who are liable to make out or concur in making out the Company's statement of affairs as the Official Receiver may require him or them to attend on the Official Receiver forthwith on the service of this order.

The Official Receiver's Offices, 33, Carey Street, London, W.C., are open every week-day from ten a.m. to four p.m., except on Saturdays when they close at one p.m. [*Re The Pall Mall Land and Finance Corporation*, 00256 of 1911. NEVILLE, J., July 25th, 1911.]

WINDING-UP ORDER IN A CASE WHERE THERE HAS BEEN A SPECIAL DIRECTION AS TO SERVICE AND THE COMPANY DOES NOT APPEAR.

(*Title.*)

UPON THE PETITION OF C.T.R. of of independent means a creditor of the above-named Company on the 18th May 1911 preferred unto this Court and upon hearing Counsel for the Petitioner and no one appearing for or on behalf of the above-named Company although it has been duly served with the said petition pursuant to the order for substituted service thereof dated 19th May 1911 and the advertisements therein directed and hereinafter mentioned and upon reading the said petition an Affidavit of C.T.R. filed the 25th May 1911 (verifying the said petition) the *London Gazette* and the *Daily Telegraph* newspaper both dated the 19th May 1911 and each containing an advertisement of the said petition—the *London Gazette* of the 23rd May 1911 and *The Times* and *Daily Telegraph* newspapers of the 22nd May 1911 each containing

an advertisement of notice of the said Petition addressed to the above-named Company pursuant to the said Order of 19th May 1911.

THIS COURT DOTH ORDER that the said Sherbro Trading Syndicate Limited be wound up by this Court under the provisions of the Companies (Consolidation) Act 1908.

AND IT IS ORDERED that the Official Receiver attached to this Court be constituted Provisional Liquidator of the affairs of the said Company.

AND IT IS ORDERED that the costs of the Petitioner of the said petition be taxed and paid out of the assets of the said Company (*m*). [*Re The Sherbro Trading Syndicate, Ltd.*, 00186 of 1911. NEVILLE, J., May 30th, 1911.]

WINDING-UP ORDERS IN CASE OF UNREGISTERED COMPANIES.

Folio B 45.
No. 00213 of 1911.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. JUSTICE NEVILLE.

Tuesday the 20th day of June, 1911.

In the Matter of the Companies (Consolidation) Act, 1908.
and
In the Matter of the Birkbeck Permanent Benefit Building Society.

UPON THE PETITION OF the above-named Society and M.H.L. of in the County of H.W.N. of in the County of P.B.R. of in the County of W.J.R. of in the County of and J.S. of in the County of the Directors of and holders of "A" and "B" shares in the said Society and as to the said M.H.L. also one of its Trustees and G.B.H. of a depositor in the said Society on the 8th June 1911 preferred unto this Court and upon hearing Counsel for the Petitioners and for S. & Sons, A.G.S. and five others and A.A. all creditors and L.H. a creditor and shareholder and A.H. and six others all shareholders of the above-named Society all supporting the said petition and upon reading the said petition an Affidavit of C.F.R. filed the 8th June 1911 (verifying the said petition) the *London Gazette* dated the 13th June 1911 and the *Daily Telegraph* and *Daily Mail* newspapers both dated the 14th June 1911 and each containing an advertisement of the said petition the several orders dated respectively 8th June 1911 (appointing Provisional Liquidator) 8th June 1911, 10th June 1911, 13th June 1911, and 15th June 1911.

THIS COURT DOTH ORDER that the said Birkbeck Permanent Benefit Building Society be wound up by this Court under the provisions of the Companies (Consolidation) Act, 1908.

AND IT IS ORDERED that the Official Receiver attached to this Court be continued (*mm*) Provisional Liquidator of the affairs of the said Society.

AND IT IS ORDERED that the costs of the Petitioners and of the said Creditors of the said petition be taxed and paid out of the assets of the said Society but on such taxation only one set of costs is to be allowed between

(*m*) Here will be a note as on the last form.

(*mm*) The Official Receiver had previously been appointed Provisional Liquidator.

the said Petitioners and the said S. & Sons and one set between the remaining Creditors.

Registrar.

NOTE.—It will be the duty of the person who is the Secretary or chief officer of the Society and such of the persons who are liable to make out or concur in making out the Society's statement of affairs as the Official Receiver may require him or them to attend on the Official Receiver forthwith on the service of this order.

The Official Receiver's offices, 33, Carey Street, London, W.C., are open every week-day from ten a.m. to four p.m., except on Saturdays, when they close at one p.m.

WINDING-UP ORDER FOR LIMITED PARTNERSHIP WITH DIRECTION FOR TRANSFER OF FURTHER PROCEEDINGS TO COUNTY COURT.

Folio 187 B. 44.
No. 0076 of 1911.

IN THE HIGH COURT OF JUSTICE,
Limited Partnership (Winding-up).
MR. JUSTICE NEVILLE
Wednesday the 15th day of March, 1911.
In the Matter of the Limited Partnerships Act, 1907, and of the Companies (Consolidation) Act 1908
and
In the Matter of Cecil O. Gray.

UPON THE PETITION OF M.G. of in the County of (the wife of C.O.G.) a Creditor of the above-named Limited Partnership on the 23rd February 1911, preferred unto this Court and upon hearing Counsel for the Petitioner on the 14th March 1911 and no one appearing for or on behalf of A.E.S. the General Partner in the above-named Limited Partnership although he has been duly served with the said petition as by the Affidavit of F.N.S. filed the 10th March appears and upon reading the said petition an Affidavit of C.A.S. filed the 25th February 1911 (verifying the said petition) the *London Gazette* dated the 3rd March 1911 and the *Birmingham Daily Post* newspaper dated the 6th March, 1911 and each containing an advertisement of the said petition and the Affidavit of the Petitioner M.G. filed this day.

THIS COURT DOTH ORDER that the said Cecil O. Gray be wound-up by this Court under the provisions of the Companies (Consolidation) Act, 1908 (*n*).

AND IT IS ORDERED that the Official Receiver attached to the Court be constituted Provisional Liquidator of the affairs of the said Limited Partnership.

AND IT IS ORDERED that the costs of the Petitioner of the said petition be taxed and paid out of the assets of the said Limited Partnership.

AND IT IS ORDERED that all proceedings in this matter be transferred

(*n*) It is usual now to add here "as modified by the Limited Partnership (Winding-up) Rules, 1909." See order in *Bear Brewer and Bowman*, 00106 of 1911, NEVILLE, J., April 25, 1911.

from the High Court of Justice (Companies (Winding-up)) to the County Court of Warwickshire holden at Birmingham.

Registrar.

NOTE.—It will be the duty of the person who is the General Partner or Chief Manager, Clerk or Servant of the Limited Partnership and such of the persons who are liable to make out or concur in making out the Limited Partnership's statement of affairs as the Official Receiver may require him or them to attend on the Official Receiver forthwith on the service of this order.

The Official Receiver's Offices, 191, Corporation Street, Birmingham, are open every week-day from ten a.m. to four p.m., except on Saturdays, when they close at one p.m.

RESTRICTED WINDING-UP ORDER WHERE THERE IS A FOREIGN WINDING-UP IN PROGRESS.

(*Title.*)

UPON THE PETITION OF the City of Melbourne Bank Limited whose registered office is at in the City of Melbourne in the Colony of Victoria and who also carry on business at in the City of London on the 8th July 1895 preferred unto this Court and upon hearing Counsel for the Petitioners and upon reading the said petition an Affidavit of A.J. filed the 8th July 1895 (verifying the said petition) the *London Gazette* and *The Times* newspaper both dated the 9th July 1895 and each containing an advertisement of the said petition the Order dated the 8th July 1895 appointing one of the Official Receivers Provisional Liquidator of the said Company and the Affidavit of A.J. filed 15th July 1895.

THIS COURT DOTH ORDER that the said City of Melbourne Bank Limited be wound up by this Court under the provisions of the Companies Acts, 1862 to 1890.

AND IT IS ORDERED that Mr. Charles John Stewart one of the Official Receivers attached to this Court be continued Provisional Liquidator of the affairs of the said Company.

And no proceedings are to be taken under this order without the leave of this Court.

AND IT IS ORDERED that the costs of the Petitioners of the said petition be taxed and paid out of the assets of the above-named Company (*o*). [*Re The City of Melbourne Bank, Ltd.*, 00182 of 1895. VAUGHAN WILLIAMS, J., July 17th, 1895.]

ST. THOMAS' DOCK ORDER.

(*Title.*)

THE PETITION of W.D. & Sons preferred unto this Court, on the 1st of February 1909 coming on this day to be heard before this Court, and upon hearing Counsel for the Petitioners for the above-named Company for G.G. & Sons creditors of the above-named Company supporting the said

(*o*) Here follows a note as in the first form given.

Petition for B. & W. & T.H.H. and ten other creditors and for W.H. F.W.K. and P.R. respectively Creditors and Contributories of the above-named Company all opposing the said Petition and upon reading the said Petition the Affidavit of W.D. filed 4th February 1909, the Affidavit of F.W.K. and the joint Affidavit of W.H. T.H. H.F. W.K. and P.R. both filed the 10th February 1909, the Affidavit of A.N.D. and the Affidavit of H.Z. both filed the 13th February 1909 and the further affidavit of the said F.W.K. filed this day and the several Exhibits in the said Affidavits of some of them respectively referred to. And the said W.H., T.H.H., F.W.K. and P.R. by their respective Counsel undertaking to postpone their respective debts until the other present outside Creditors of the above-named Company have been paid. And the above-named Company by its Counsel undertaking to deal with the remittances to be received by apportioning the amount amongst the present Creditors of the above-named Company. And the above-named Company by its Counsel also undertaking not to consent to a winding-up order on any other Petition and not to wind-up voluntarily, and to give notice to the Petitioners of any other Petition for winding-up the Company which may be served upon them and in the event of any such other Petition being served upon them to consent to the Petition being restored to the paper and that the application for a winding-up order by it may be renewed in the same manner as if the Petition had not been ordered to stand over. This Court doth order that the Petition do stand over until the first petition day in June 1909. [*Re Descours Parry & Co., Ltd.*, 0052 of 1909. SWINFEN EADY, J., February 17th, 1909.]

ORDER DISMISSING PETITION.

(*Title.*)

UPON THE PETITION OF THE A.M. COMPANY, LTD., of in the City of London, a Creditor of the above-named Company on the 29th April 1911 preferred unto this Court praying that an order might be made directing that the voluntary winding-up of the above-named Company be continued but subject to the supervision of the Court or in the alternative that the above-named Company might be wound-up by the Court under the provisions of the above-mentioned Act, or that such other Order might be made in the premises as should be just and upon hearing Counsel for the Petitioner for the above-named Company and J.J.R. the Liquidator thereof and for B. & F. and thirteen others all Creditors of the above-named Company opposing the said petition and upon reading the said Petition an affidavit of J.S.B.P. filed the 2nd May 1911 (verifying the said Petition) the *London Gazette* and the *Daily Telegraph* newspaper both dated the 5th May 1911 and each containing an advertisement of the said Petition the affidavit of J.J.R. filed the 10th May 1911 the affidavit of W.S. filed the 15th May 1911 and the affidavit of J.J.R. filed the 25th April 1911 in the above matters (00146 of 1911) and the several exhibits in the said affidavits respectively referred to.

THIS COURT DOTH ORDER that the said Petition do stand dismissed out of this Court.

AND IT IS ORDERED that the Petitioner the said A.M. Company, Ltd., do pay to the said General Incandescent Company Limited and to the said B. & F. and thirteen others their costs of the said Petition such costs to be taxed. [*Re The General Incandescent Company, Ltd.*, 00164 of 1911. NEVILLE, J., May 16th, 1911.]

NOTIFICATION OF ORDER.

On the making of a winding-up order a copy of the order must forthwith be forwarded by the company to the Registrar of Joint Stock Companies, and he must make a minute thereof in his books relating to the company (*p*).

When an order that a company be wound-up, or for the appointment of the official receiver as provisional liquidator has been made :—

(*a*) Three copies of the order sealed with the seal of the Court must forthwith be sent by post or otherwise by the Registrar to the Official Receiver.

(*b*) The Official Receiver must cause a sealed copy of the order to be served upon the Secretary or other Chief Officer of the Company at the registered office of the Company (if any), or upon such other person or persons, or in such other manner as the Court may direct, and if the order is that the Company be wound-up by the Court he must forward to the Registrar of Joint Stock Companies the copy of the order which by Section 143 of the Act is directed to be so forwarded by the Company.

(*c*) The Official Receiver must forthwith give notice of the order to the Board of Trade, who must forthwith cause the notice to be gazetted.

(*d*) The Official Receiver must forthwith send notice of the order to such local paper as the Board of Trade may from time to time direct, or, in default of such direction, as he may select (*q*).

NOTICE OF ORDER TO WIND-UP FOR NEWSPAPER (*r*).

The Companies (Consolidation) Act 1908.
In the Matter of , Limited.
Winding-up Order made , 19 .
Date and place of first meetings :—
Creditors 19 , at
Contributories 19 , at
Official Receiver and Provisional Liquidator.

NOTICE OF WINDING-UP ORDER FOR GAZETTE (*s*).

Name of Company.	Address of Registered Office.	Court.	Number of Matter.	Date of Order.	Date of Presentation of Petition.

(*p*) Companies (Consolidation) Act, 1908, s. 143.

(*q*) Companies (Winding-up) Rules, 1909, r. 41, and as to the notice to be given to the Official Receiver, see *supra*, p. 871.

(*r*) Companies (Winding-up) Rules, 1909, Appendix, Form 17.

(*s*) *Ibid.*, Form 103 (1).

EFFECT OF ORDER

An order for winding-up is, until set aside, binding on the company and on all contributories of the company, and this, even though the Court had no jurisdiction to make the order (*t*). And so it has more than once been held that the question whether a winding-up order was validly made, cannot be considered on an application to enforce a call (*a*). It is thought that such an order will also be binding on creditors of the company, for they are, on giving proper notices, entitled to be heard (*b*), and an order for winding-up a company operates in favour of all creditors, and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory (*c*). But other persons are not bound by the order (*d*), and so a purchaser from the liquidator can take the objection that the order was made by a Court which had no jurisdiction to make it (*e*).

A Judge can before the order is drawn up, alter it, and can therefore, after making a winding-up order, make an order dismissing the petition at any time before the order is actually drawn up (*f*). But once an order has been drawn up the Court cannot rescind it, even though it was obtained by mistake (*g*), or where it shows on the face of it that it is bad (*h*). The remedy in such case is either by an application to stay all further proceedings in the winding-up, or by appeal. The only exceptions to this rule are where the order has been obtained by default, no one except the petitioner appearing at the hearing (*i*), or where there has been a slip in the order and it does not carry out the intention of the Court (*k*). In such cases it is

(*t*) *Padstow Total Loss and Collision Assurance Association* (1882), 20 C. D. 137; *Bowling* v. *Welby's Contract*, [1895] 1 Ch. 663.

(*a*) *Lord Londesborough's Case* (1854), 4 De G. M. & G. 411; *Underwood's Case* (1854), 5 De G. M. & G. 677; *London Marine Insurance Co.* (1869), 8 Eq. 176; *Arthur Average Association* (1875), 10 Ch. 542.

(*b*) *Bradford Navigation Co.* (1870), 5 Ch. 600; *Securities Insurance Co.*, [1894] 2 Ch. 410.

(*c*) Companies (Consolidation) Act, 1908, s. 138.

(*d*) *Bradford Navigation Co.* (1870), 5 Ch. 600.

(*e*) *Bowling and Welby's Contract*, [1895] 1 Ch. 663.

(*f*) *Crown Bank* (1890), 44 C. D. 634, following *St. Nazaire Co.* (1879), 12 C. D. 88; *Re Suffield and Watts* (1888), 20 Q. B. D. 693.

(*g*) *Lyric Syndicate* (1901), 7 T. L. R. 162; *Manchester Economic Building Society* (1883), 24 C. D. 488; see also *Baxters, Ltd.*, [1898] W. N. 60.

(*h*) *St. Nazaire Co.* (1879), 12 C. D. 88; *Charles Bright* v. *Sellar*, [1904] 1 K. B. 6; *Padstow Total Loss and Collision Assurance Association* (1882), 20 C. D. 137.

(*i*) See *Aston Hall Coal and Brick Co.* (1882), 45 L. T. 676, where the order was made by KAY, J., with much doubt. The case scarcely seems consistent with *Lyric Syndicate* (1901), 17 T. L. R. 162; or *Baxters, Ltd.*, [1898] W. N. 60; or *Re Betzold* (1893), 37 Sol. J. 65.

(*k*) *Preston Banking Co.* v. *Alsup*, [1895] 1 Ch. 141.

thought that the order might be rescinded, though the case of an order by default is not at all clear.

Where a judgment has been obtained by consent it can be set aside on any grounds on which an agreement could be set aside (*l*), and where an order has been obtained by fraud (*m*), or fresh material facts have been obtained since an order, and such facts could not have been previously obtained (*n*), the Court can, no doubt, set aside the order. In all these cases it would seem necessary to start an action to set aside the order.

STAY OF WINDING-UP.

The Court may at any time after an order for winding-up, on the application of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit (*o*).

Even where all the creditors of a company have been paid or have agreed to an application under this section the court will not make an order under this section as a matter of course, but it will consider whether it is desirable in the interest of commercial morality that the winding-up should continue, and so the fact of an investigation being desirable will influence the Court and make it slow to grant an order (*p*). The jurisdiction of rescinding a receiving order or annulling an adjudication in bankruptcy is analogous (*q*), and the winding-up Court in making an order under the section will be guided by the principles which guide the Bankruptcy Court in such cases (*p*). The Court will not usually make an order under the section unless all creditors are paid or satisfied (*r*), and it has made orders reserving liberty to any dissentient creditor to apply within three months to remove the stay (*s*).

Sometimes, too, a person making an application under the section has been put on terms to buy the interest of opposing contributories (*t*). Formerly this section provided a way of carrying out schemes under the Joint Stock Companies Arrangement Act, 1870. Section 120 of the Companies (Consolidation) Act, 1908, enables going companies to enter into arrangements, but where there

(*l*) *Huddersfield Banking Co.* v. *H. Lister and Sons*, [1895] 2 Ch. 273; *Wilding* v. *Sanderson*, [1897] 2 Ch. 534.

(*m*) *Birch* v. *Birch*, [1902] P. 130.

(*n*) *Boswell* v. *Coaks* (1884), 6 Rep. 167.

(*o*) Companies (Consolidation) Act, 1908, s. 144. For such an order, see *infra*, pp. 882 and 1324.

(*p*) *Telescriptor Syndicate*, [1903] 2 Ch. 174.

(*q*) Cp. as to this *Re Hester* (1889), 22 Q. B. D. 632; *Re Flatau*, [1893] 2 Q. B. 219; *Re Taylor*, [1901] 1 K. B. 744.

(*r*) Cp. *Lyric Syndicate* (1901), 17 T. L. R. 162.

(*s*) *Baxters, Ltd.*, [1898] W. N. 260.

(*t*) *South Barrule Slate Quarry Co.* (1869), 8 Eq. 688.

is a likelihood of creditors taking proceedings while such an arrangement is pending it may be desirable for a company to go into winding-up, and then to stay all further proceedings under the winding-up except so far as may be necessary for the purposes of the scheme. There is no objection to a partial stay of the winding-up proceedings being granted, and such an order has been made in several cases (*u*).

The practice is to make applications under this section by motion. The official receiver must be served and must appear at the hearing. They can only be made by a creditor or a contributory (*x*), and a contributory who applies must be prepared to admit himself to be a contributory (*y*). Such applications must be made in the winding-up, and must be served on the liquidator of the company.

ORDER STAYING WINDING-UP PROCEEDINGS.

(*Title.*)

UPON Motion on the 14th and 21st November and this day made unto this Court by Counsel on behalf of E.T. and E.M. respectively contributories of the above-named Company and upon hearing Counsel for Harold de Vaux Brougham the Official Receiver and Provisional Liquidator of the above-named Company, and upon reading the order to wind-up the above-named Company dated the 24th October 1911 the three several affidavits of E.T. filed respectively the 13th 21st and 28th November 1911 and the exhibits in the said affidavits or some of them respectively referred to.

THIS COURT DOTH ORDER that upon payment by the above-named applicants E.T. and E.M. to the said Harold de Vaux Brougham as such Official Receiver and Provisional Liquidator as aforesaid of the sum of five guineas for his fees and expenses as such Official Receiver and Provisional Liquidator and also £9 9*s*. his agreed Costs of this application all further proceedings under the said Order of 24th October 1911 be stayed. [*Re The British Investment Syndicate, Ltd.*, 00251 of 1911. SWINFEN EADY, J., November 28th, 1911.]

APPEALS.

The time given by the rules (*z*) for appealing from a winding-up order is, except where special leave is given, fourteen days from the time when the order is perfected, and the appeal must be entered for hearing before the day named in the notice of appeal, or, if the offices are then closed, before the next day when the Court of Appeal sits (*a*). Special leave to extend the time for appealing will not be

(*u*) See *Western of Canada Land and Oilworks Co.*, [1874] W. N. 148; *London Chartered Bank of Australia*, [1893] 3 Ch. 540; *Tea Corporation*, [1904] 1 Ch. 12.

(*x*) *Eastern Investment Co.*, [1905] 1 Ch. 352; and see the section itself which is clear on the point.

(*y*) *Continental Bank* (1867), 16 L. T. 112.

(*z*) O. 58, rr. 9 and 15, R. S. C. See also Companies (Consolidation) Act, 1908, s. 181.

(*a*) *National Funds Assurance Co.* (1876), 4 C. D. 305.

granted on an *ex parte* application (*b*), and it would seem that on an appeal against an order dismissing a winding-up petition, the Court will be slow to grant an extension of time for appealing, because such an order is not so final as most final orders, and the business of a company is paralyzed by the company having a winding-up petition pending (*c*). Special leave may, however, be granted in cases where circumstances other than the respondent's conduct make it right to grant relief (*d*), and it has been granted more than a year after the order was made, when the appellant appealed directly he heard of the order (*e*).

Appeals from a winding-up order should be entered in the interlocutory list (*f*). A fourteen days' notice of appeal is, however, necessary (*g*).

Though the Court of first instance may hear a person who is not either a creditor or a contributory as *amicus curiæ*, such a person may not appeal (*h*), and special leave will be required where a creditor, or, it is thought, a contributory who has not appeared in the Court below wishes to appeal (*i*).

Where a company appealed from a winding-up order it was formerly usual if the appeal failed, to give the respondents their costs out of the estate (*k*), but to make no order as to the appellants' costs, thus depriving the appellants, who would in effect usually be the directors, of their costs; but this was felt to be hard on the creditors of the company, as not infrequently the result was to saddle them with the respondents' costs, and the Court will now order persons appealing from a winding-up order to find security for costs (*l*),

(*b*) *Re Lawrence* (1877), 4 C. D. 139. The application must be made in the Court of Appeal, by notice of motion.

(*c*) *New Callao Co.* (1882), 22 C. D. 484. But see *Wiltshire Iron Co.* (1868), 3 Ch. 443.

(*d*) *Manchester Economic Building Society* (1883), 24 C. D. 488. In this case a supervision order had been made, and it turned out afterwards that there was no voluntary winding-up. See also *Brazilian Rubber Plantations and Estates*, [1911] W. N. 13, a case of an appeal by a liquidator from an order dismissing a misfeasance summons.

(*e*) *Padstow Total Loss and Collision Assurance Association* (1882), 20 C. D. 137. The Court had no jurisdiction to make the order, as the association was one of more than twenty members, and forbidden by the Act.

(*f*) *Naval Military and Civil Service Co-operative Society of South Africa*, [1903] W. N. 120.

(*g*) See O. 58, r. 3, R. S. C.; *Stocton Iron Furnace Co.* (1879), 10 C. D. 335.

(*h*) *Bradford Navigation Co.* (1870), 5 Ch. 600.

(*i*) *Securities Insurance*, [1894] 2 Ch. 410.

(*k*) *National Savings Bank* (1866), 1 Ch. 547; *Photographic Artists Co-operative Supply Association* (1883), 23 C. D. 370; *Diamond Fuel Co.* (1879), 13 C. D. 400.

(*l*) *Photographic Artists Co-operative Supply Association* (1883), 23 C. D. 370; *Diamond Fuel Co.* (1879), 13 C. D. 400. The application is by motion to the Court of Appeal.

and such security will have to be sufficient to indemnify the respondents from all costs (*m*).

ORDER DIRECTING SECURITY FOR THE COSTS OF AN APPEAL TO BE GIVEN.

IN THE COURT OF APPEAL. 0012 of 1909.

In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the Consolidated South Rand Mines Deep Ltd.

UPON MOTION this day made unto this Court by Counsel for the Official Receiver and Liquidator of the above-named Company and upon hearing the order dated the 3rd February 1909 and an affidavit of H.M. filed the 26th January 1909 and the exhibits therein referred to.

THIS COURT DOTH ORDER that in default of the said Company on or before the 25th March 1909 procuring some sufficient person on their behalf to give security to the satisfaction of the Judge in case the parties differ by bond to the said Official Receiver and Liquidator in the sum of £100 conditioned to answer costs in case any shall be awarded to be paid by the said Company on this appeal against the said order or instead of giving such security as aforesaid lodging within the same period the sum of £100 in Court as directed in the Lodgment Schedule hereto the said appeal do stand dismissed out of this Court without further order with costs to be taxed by the Taxing Master and paid by the said Company to the Applicant.

AND IT IS ORDERED that until such security shall have been given or such lodgment made and notice thereof given to the Official Receiver and Liquidator all proceedings on the said appeal be stayed.

The costs of the said motion including the costs of the application on the 27th February 1909 are to be costs on the appeal.

COURT OF APPEAL, LODGMENT SCHEDULE.

6th March, 1909.

Re The Consolidated South Rand Mines Deep, Limited.

Ledger Credit as above " Security for Costs of Appeal."

Particulars of Funds to be lodged to the Account of the Paymaster-General.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Cash	The Consolidated South Rand Mines Deep Limited.	100	0	0			

(*m*) *Consolidated South Rand Mines Deep*, [1909] W. N. 66. In this case security for £100 was ordered.

On an appeal from a winding-up order or an order dismissing a winding-up petition, the appellant must make up his mind whether he wishes to disturb the order with regard to any costs which may have been given to creditors or contributories who appeared in the Court below. If he decides not to appeal from that part of the order he should write to such persons informing them of the appeal and of the fact that it does not extend to the part of the order giving them their costs, and he should not serve them with the notice of appeal which will, of course, only deal with so much of the order as is being appealed from. If the appellant takes this course and persons who have received such letters choose to appear on the appeal and oppose it, they will be entitled to do so, and if the appeal fails one set of costs will be given to the creditors appearing and opposing, and one to the shareholders doing likewise. If the appellant does not take this course such persons will all get their costs (*n*).

The Court of Appeal will not hear creditors or contributories in support of the appeal (*o*).

The official receiver has no right to appear on an appeal, but sometimes the Court of Appeal ask him for information in relation to the company's affairs. He is sometimes served with the notice of appeal, but never made a respondent. As appears from the order above set out, he sometimes applies for an order for security for costs of the appeal.

No. 0097 of 1912.

In the Matter of the Companies (Consolidation) Act, 1908

and

In the Matter of Jicaro Gold Estates, Limited.

March 19th, 1912.

Memorandum.

Mr. JUSTICE NEVILLE has on the hearing of the petition presented in the above matters on the   1912, directed a meeting of shareholders of the above named company to be summoned by the above named company pursuant to section 219 of the above mentioned Act for the purpose of considering whether they desire the business of the above named company to be continued under the circumstances and if not then as a separate question whether they desire a voluntary or a compulsory liquidation. Notice of the said meeting to be sent by post at least 14 clear days before the day appointed for the meeting to each of the shareholders of the above-named company at their respective addresses appearing in the books of the said company and the form of notice and proxy for use at the said meeting are to be approved by the Registrar.

(*n*) *Ibo Investment Co.*, [1903] 2 Ch. 373. See also *New Callas Co.* (1882), 22 C. D. 484, where costs were given to the opposing creditors though they were not served; *New Gas Co.* (1877), 5 C. D. 703.

(*o*) Buckley, 9th Ed. p. 346.

The Judge has appointed A.B. chairman of the said meeting and has directed that he do report the result of the said meeting to the Court with particulars as to the votes given (by proxy or otherwise) distinguishing between shares issued subject to payment in cash and those issued as fully paid and also distinguishing as far as possible in the case of shares issued for cash between shares taken by vendors, promoters or underwriters and others.

And the further hearing of the petition is adjourned generally.

Registrar.

CHAPTER X.

Effect of Winding-up Order.

A winding-up of a company by the Court is deemed to commence at the time of the presentation of the petition for the winding-up (*a*), and an order for winding-up operates in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory (*b*).

In the case of a winding-up by or subject to the supervision of the Court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding-up will, unless the Court otherwise orders, be void (*c*).

A transaction which rests in contract only is not a disposition of property, and so section 153 of the 1862 Act did not give the Court jurisdiction to validate transactions which rested only in contract at the date of the winding-up order. Thus, if at the date of such order a company was under contract to supply goods (*d*), or had given bills (*e*), and the company subsequently supplied such goods or met the bills, the Court could not make an order validating such Act, but the creditor was entitled to prove for damages for breach of contract. The present section, however, unlike the old one, does not apply only between the date of the petition and that of the order, and it would seem that the Court has now jurisdiction to authorize or validate dispositions made after a winding-up order, but in pursuance of a contract before such order. The section does not affect the liability of a person who is liable to pay money (*f*) or to transfer property (*g*) to a company, and such a person will be bound to make the payment or transfer notwithstanding the fact that a petition has been presented.

(*a*) Companies (Consolidation) Act, 1908, s. 139; but see in the case of subsidiary assurance companies, s. 16 of the Assurance Companies Act, 1909, *supra*, p. 803.

(*b*) Companies (Consolidation) Act, 1908, s. 138.

(*c*) *Ibid.*, s. 205 (2).

(*d*) *Wiltshire Iron Co.* (1868), 3 Ch. 443.

(*e*) *Oriental Bank Corporation, Ex parte Guillemin* (1883), 28 C. D. 634, explaining *Bolognesi's Case* (1870), 5 Ch. 567.

(*f*) *Mersey Steel and Iron Co.* v. *Naylor* (1882), 9 Q. B. D. 648; 9 A. C. 434.

(*g*) *Barneds Banking Co., Ex parte Contract Corporation* (1867), 3 Ch. 105.

In deciding whether to validate an act the Court will be guided by the bankruptcy provisions as to protected transactions (*h*).

Ordinarily the Court will validate acts done by the company in the ordinary course of its business (*i*). Thus, the Court has sanctioned payments made for goods as they were supplied, while declining to sanction payments made for goods previously supplied, although the further goods were only supplied on the terms that the original goods should be paid for immediately (*k*).

Where goods had been placed on trucks for delivery, it was held that in the circumstances of the case the property in them had passed to the purchaser and the transaction, being a *bonâ fide* one, and in the ordinary course of the company's business, was sanctioned by the Court (*l*). And the same result followed where the company was about to sell its business, and gave a charge to creditors who were pressing, in order to enable the sale to go through. In this case the directors had joined in the charge as sureties, and, having been compelled to pay, got the benefit of the order of the Court (*m*).

Where a company has given a lien on property, and such lien attaches to part of such property after the petition is presented, the charge so given will be valid even without an order of the Court, and will not come within the section at all (*n*).

The Court has declined to sanction payments made to creditors who had advanced moneys with knowledge that the company was in difficulties, and on the terms that their advances should be repaid out of moneys coming from an issue of shares which was proposed at the date of the advance, but which, in fact, never took place (*o*). The section, so far as it deals with transfers, is dealt with later (*p*).

Payments made with the knowledge that there was a petition, and on the terms that if an order was made the person paying should have the payment treated as a loan or as a payment on account of calls, whichever he chose, were held to be avoided as a payment on account of calls and as involving a change in the status of the member paying (*q*). For the same reason the registration of an unregistered company pending a petition, was held invalid (*r*). Where a creditor had presented a petition and on payment of part of his debt agreed

(*h*) *Repertoire Opera Co.* (1895), 2 Mans. 314.

(*i*) *Liverpool Civil Service Association* (1874), 9 Ch. 511.

(*k*) *Civil Service and General Store* (1888), 57 L. J. (CH.) 119.

(*l*) *Wiltshire Iron Co.* (1868), 3 Ch. 443.

(*m*) *International Life Assurance Society* (1870), 10 Eq. 312.

(*n*) *Llangennech Coal Co.* (1887), 56 L. T. 475; *Northfield Iron and Steam Co.* (1866), 14 L. T. 695; but see *Wiltshire Iron Co.* v. *Great Western Railway* (1871), L. R. 6 Q. B. 776.

(*o*) *Daly & Co.* (1886), 19 L. R. Ir. 83.

(*p*) *Infra*, pp. 1135 *et seq.* See also *Emmerson's Case* (1866), 2 Eq. 331; 1 Ch. 433.

(*q*) *Barge's Case* (1868), 5 Eq. 420.

(*r*) *Hercules Insurance Co.* (1871), 11 Eq. 321.

to withdraw the petition if the rest of it were paid, he was compelled to refund what had been paid, when on the company failing to make the further payment, he proceeded with his petition, and obtained a winding-up order (*s*).

The Court can while a winding-up petition is pending, and it would seem now, even after an order has been made, authorize dispositions of property under the section (*t*). Where directors have made payments which are void under the section, they will be personally liable to make good to the company any loss it may have suffered thereby, even though the payees are perfectly solvent and no attempt has been made to recover such payments from them (*u*). A winding-up order does not, it is thought, terminate ordinary trading contracts entered into before the order was made (*x*). The position in such cases would appear to be that the liquidator can only insist on payment or delivery of goods, as the case may be, on performing his part of the agreement and making good any breaches that occurred before liquidation. The other party, if he wishes to insist on the contract, can only insist on the strict terms of the contract including any terms as to giving credit, and it will be open to the liquidator to repudiate the contract and leave the other party to prove for damages (*y*).

At any time after the presentation of a petition for winding up and before a winding-up order has been made, the company or any creditor or contributory may—

(*a*) Where any action or proceeding against the Company is pending in the High Court or Court of Appeal in England or Ireland, apply to the Court or division in which the action or proceeding is pending for a stay of proceedings therein ; and

(*b*) Where any other action or proceeding is pending against the Company, apply to the Court having jurisdiction to wind up the Company to restrain further proceedings in the action or proceeding ;

(*s*) *Liverpool Civil Service Association* (1874), 9 Ch. 511.

(*t*) *Carden* v. *Albert Palace Association* (1887), 56 L. J. (CH.) 166. CHITTY, J., remarked that the difficulty in such cases was to ascertain the parties who ought to be served.

(*u*) *Neath Harbour Smelting and Rolling Works* (1887), 56 L. T. 727.

(*x*) *Tolhurst* v. *Associated Portland Cement Manufacturers*, [1902] 2 K. B. 660; [1903] A. C. 414; *British Waggon Co.* v. *Lea* (1880), 5 Q. B. D. 149; *Llangennech Coal Co.* (1887), 56 L. T. 475; but see *Wiltshire Iron Co.* v. *Great Western Railway* (1871), L. R. 6 Q. B. 776. As to such an order operating as a notice dismissing servants, see *Chapman's Case* (1866), 1 Eq. 346; *Harding's Case* (1867), 3 Eq. 341; *MacDowall's Case* (1886), 32 C. D. 366, and *post*, pp. 1275 and 1276.

(*y*) *Ex parte Chalmers* (1873), 8 Ch. 289; *Morgan* v. *Bain* (1875), L. R. 10 C. P. 15; *Ex parte Stapleton* (1879), 10 C. D. 586; *Tolhurst* v. *Associated Portland Cement Manufacturers*, [1902] 2 K. B. 660; [1903] A. C. 14; see also *Phœnix Bessemer Co.* (1877), 4 C. D. 108,

and the Court or division to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit (*z*).

With these sections must be read sections 142 and 211 of the Act (*a*), which provide as follows :—

142. When a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

211. Where any Company being a Company registered in England or Ireland is being wound up by or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the Company after the commencement of the winding up, shall be void to all intents.

It has been held that though section 211 is very explicit in terms, it must be read with the earlier sections, and that consequently the Court can give leave to proceed with an attachment sequestration, distress, or execution, in a proper case (*b*). In Scotland, however, the Courts have taken a different view (*c*).

With regard to companies registered in Scotland section 213 of the Act contains the following special provisions :—

In the winding-up, by or subject to the supervision of the Court, of a Company registered in Scotland, the following provisions shall have effect :—

(1) The winding-up shall, in the case of a winding-up by the Court as at its commencement, and in the case of a winding up subject to supervision as at the date of the presentation of the petition on which the supervision order is pronounced, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding ; and no arrestment or poinding of the funds or effects of the Company, executed on or after the sixtieth day prior to the commencement of the winding-up by the Court, or to the presentation of the petition on which a supervision order is made, as the case may be, shall be effectual ; and those funds or effects, or the proceeds of those effects, if sold,

(*z*) Companies (Consolidation) Act, 1908, s. 140. The winding-up Judge cannot under this section stay an action pending in another division of the High Court: *Twentieth Century Equitable Friendly Society*, [1910] W. N. 236.

(*a*) See also ss. 265 and 266 (as to companies registered but not formed under the Act), and ss. 270 and 271 (as to unregistered companies) set out, *infra*, p. 900.

(*b*) *Exhall Mining Co.* (1864), 4 De G. J. & S. 377 ; *Lancashire Cotton Spinning* (1887), 35 C. D. 656.

(*c*) *Allan* v. *Cowan* (1892), 20 Rettie, 36. This was under the corresponding s. 163 of the Act of 1862. As will be seen, s. 213 of the Companies (Consolidation Act), 1908, contains special provisions as to companies registered in Scotland.

shall be made forthcoming to the liquidator: Provided that any arrester or poinder before the date of the winding-up, or of the petition, as the case may be, who is thus deprived of the benefit of his diligence, shall have preference out of those funds or effects for the expense *bonâ fide* incurred by him in such diligence:

(2) The winding up shall, as at the respective dates aforesaid, be equivalent to a decree of adjudication of the heritable estates of the Company for payment of the whole debts of the Company, principal and interest, accumulated at the said dates respectively, subject to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground herein-after provided:

(3) The provisions of sections one hundred and twelve to one hundred and seventeen, and of section one hundred and twenty, of the Bankruptcy (Scotland) Act, 1856, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding up" and "liquidator"; and the expression "the Lord Ordinary or the Court" shall mean "the Court" as defined by this Act with respect to Scotland:

(4) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the respective dates aforesaid shall, except to the extent herein-after provided, be available in any question with the liquidator: Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the respective dates aforesaid, but that poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of that term.

The cardinal principle which governs all winding-up proceedings is that there is to be equality among the various creditors of the company.

The principles which guide the Court in granting or refusing leave to proceed with a distress were laid down in the *Oak Pits Colliery Co. Case* (*d*).

With regard to rent in arrear at the commencement of a winding-up, the Court will not give leave, even where the liquidator has retained possession after the commencement of the winding-up (*e*).

(*d*) (1882), 21 C. D. 322.

(*e*) *Coal Consumers' Association* (1876), 4 C. D. 625; *Bridgewater Engineering Co.* (1879), 12 C. D. 181; *Brown, Bayley, and Dixon* (1881), 18 C. D. 649; *South Kensington Co-operative Stores* (1881), 17 C. D. 161; *North Yorkshire Iron Co.* (1878), 7 C. D. 661; *Traders' North Staffordshire Carrying Co.* (1874), 19 Eq. 60; *Thomas* v. *Patent Lionite Co.* (1881), 17

An exception to this rule is the case where the landlord is not a creditor of the company, as, *e.g.*, where the company has subleased from the original lessee or his assignee. In this case the landlord has no right of proof against the company, as he is not one of its creditors, and section 211 has therefore no application to his case. It follows that if he levies a distress the Court cannot prevent him from so doing (*f*), though it would seem to be otherwise where such a landlord is a creditor for the rent, though not under the lease—for instance, where he has received bills for the rent (*g*). A landlord who is not a creditor must, it is thought, obtain leave to distrain. The fact that the liquidator in such a case has offered to allow the landlord to come in and prove will make no difference to the latter's right of distress, at all events where such offer has not been accepted (*h*). Where the landlord had power to re-enter and stop the working of certain mines leased to the company, and he put the liquidator to his election between giving up the mines or paying the whole rent due up to date (including rent for a period prior to winding up), and the liquidator had continued to work the mines for the benefit of the company, the landlord's claim for the whole of the rent was given priority (*i*). But in a case where the facts were similar in all respects, except that the landlord had not put the liquidator to his election, the landlord was not allowed to distrain (*k*).

It is not settled whether the Court can restrain a distress which has commenced before the winding-up petition; it probably has power to do so, but in such case will usually either allow the distress to proceed (*l*) or direct the liquidator to pay the landlord the rent for which he has distrained.

Where the rent has accrued due after the winding-up, and the liquidator has retained possession for the benefit of the company, there the landlord is entitled to be paid and will be given leave to

C. D. 250. The last cited case shows that s. 10 of the Judicature Act, 1875 (now replaced by section 207 of the Companies (Consolidation) Act, 1908), does not give to a landlord where there is a winding-up the right of distress for six months' arrears of rent, which the Bankruptcy Acts confer on a landlord where there is a bankruptcy.

(*f*) *Exhall Mining Co.* (1864), 4 De G. J. & S. 377; *Lundy Granite Co.* (1871), 6 Ch. 462. See also *Trimsaran Coal, Iron, and Steel Co.* (1876), 24 W. R. 900, where a distress for arrears of rent-charge was allowed on this ground.

(*g*) See *Harpur's Cycle Fitting Co.*, [1900] 2 Ch. 731; but cp. *New City Constitutional Club* (1887), 34 C. D. 646; *Carriage Co-operative Supply Association* (1883), 23 C. D. 154.

(*h*) *Regent United Service Stores* (1878), 8 C. D. 616.

(*i*) *Silkstone and Dodworth Coal and Iron Co.* (1881), 17 C. D. 158.

(*k*) *North Yorkshire Iron Co.* (1878), 7 C. D. 661.

(*l*) *Roundwood Colliery Co.*, [1897] 1 Ch. 373 (see the judgment of STIRLING, J.). See, however, the provisions of s. 209 (4) as to the priority of preferential debts where a distress has taken place within three months of a winding-up order.

distrain for the rent which has accrued since the winding up only (*m*); but where the liquidator retains possession not for the benefit of the company only, but also for the benefit of the landlord (*n*), or where, though the liquidator has, technically speaking, retained possession of the property, he has not made use of it in any way (*o*), the landlord will only be entitled to prove, and leave to distrain will not be given. A mortgagee who is given a power of distress by his charge, is in a worse position than a landlord, on an application for leave to distrain, for he can always enforce his charge, and so the Court will be slow to give him leave to distrain (*p*).

The Court will in a proper case apportion the rent due but not payable before the winding-up, and while giving leave to distrain for rent accrued since winding-up, will decline to give leave to distrain for rent that became due before (*q*).

None of these remarks apply to distresses against the property of a company in liquidation, if such property is so charged that there can be no surplus for the liquidator after paying the persons entitled to the benefit of such charge (*r*). Turning to the question of executions as opposed to distresses, much the same principles apply as those above set out in relation to distresses. Thus, where the execution has been issued and the sheriff is in actual possession at the date of the winding-up, it is doubtful if the Court can prevent the execution being proceeded with, and it will, at all events, be exceedingly slow to do so (*s*). Section 207 of the Act (which so far as liquidations are concerned replaces section 10 of the Judicature Act, 1875) does not import the Bankruptcy Rules into a winding-up in this case (*t*),

(*m*) *South Kensington Co-operative Stores* (1881), 17 C. D. 161; *North Yorkshire Iron Co.* (1878), 7 C. D. 661. In such case the liquidator will have to pay the whole rent accrued during such period, regardless of the value of the property liable to distress; *Oak Pits Colliery Co.*, (1882), 21 C. D. 322.

(*n*) *Lancashire Cotton Spinning Co.* (1887), 35 C. D. 656; *Higginshaw Mills and Spinning Co.*, [1896] 2 Ch. 544; *Bridgewater Engineering Co.* (1879), 12 C. D. 181; *Progress Assurance Co.* (1870), 9 Eq. 370.

(*o*) *Oak Pits Colliery Co.* (1882), 21 C. D. 322; *House, and Land Investment Trust* (1894), 8 Rep. 232; 1 Mans. 148; *Gray's Trustees* v. *Benhar Coal Co.* (1881), 9 Rettie 225.

(*p*) *Lancashire Cotton Spinning Co.* (1887), 35 C. D. 656; *Higginshaw Mills Spinning Co.*, [1896] 2 Ch. 544. See, however, *Stockton Iron Furnace Co.* (1879), 10 C. D. 335.

(*q*) *South Kensington Co-operative Stores* (1881), 17 C. D. 161; *Shackell & Co.* v. *Chorlton and Sons*, [1895] 1 Ch. 378.

(*r*) *New City Constitutional Club* (1887), 34 C. D. 646; *Harpur's Cycle Fitting Co.*, [1900] 2 Ch. 731.

(*s*) *Great Ship Co.* (1863), 4 De G. J. & S. 63; *Millwood Colliery Co.* (1876), 24 W. R. 898, disapproving of *Hill Pottery Co.* (1866), 1 Eq. 649; *Plas-yn-Mhowys Coal Co.* (1867), 4 Eq. 689. See, however, the form of the orders in these last two cases; and see also the judgment of STIRLING, J., in *Roundwood Colliery Co.*, [1897] 1 Ch. 373.

(*t*) *Withernsea Brickworks Co.* (1880), 16 C. D. 337, approving of *Richards & Co.* (1879), 11 C. D. 676, on this point, and overruling *Printing and Numerical Registering Co.* (1878), 8 C. D. 535.

and leave to proceed with an execution has also been given where the sheriff would have obtained possession before the petition had not his entry been resisted (*u*).

Leave has also been given where a creditor has held his hand and refrained from issuing execution because of representations made by the company (*x*), and where the execution has been delayed by the company's taking every step to delay proceedings in an action to which it had no possible defence (*y*), and where the company has by means of trickery persuaded the creditor not to issue execution (*z*).

A question has been raised as to whether a creditor who has delivered a writ of execution to the sheriff before the commencement of the winding-up, is protected by these rules, if the sheriff has not taken possession before that time. It would seem that in this case a creditor will not be allowed to proceed with his execution (*a*), it will, however, be otherwise where a creditor has issued his writ and handed it to a sheriff who is already in possession for another execution creditor (*b*).

The reason why protection is given to execution creditors where they have issued execution before the commencement of the winding-up and to a landlord who has then issued a distress, is that by such acts they have become secured creditors (*c*).

Where a receiver has been appointed of personal property, however, this gives no charge (*d*), and consequently such appointment will not give priority even if the receiver has given security at the date of the winding-up (*e*). Apparently it would be different where a receiver has been appointed over realty (*f*).

A garnishee order will give priority if it has been served on the

(*u*) *London Cotton Co.* (1866), 2 Eq. 53.

(*x*) *Bastow & Co.* (1867), 4 Eq. 681.

(*y*) *Imperial Steam and Household Coal Co.* (1868), 37 L. J. (CH.) 517; cp. *Railway Steel and Plant Co., Taylor's and William's Cases* (1878), 8 C. D. 183. These cases were not altogether approved in *Vron Colliery Co.* (1882), 20 C. D. 442. But having regard to the case cited in the next succeeding note, it is thought that the dicta in that case are of doubtful authority.

(*z*) *Armorduct Manufacturing Co.* v. *General Incandescent Co.*, [1911] 2 K. B. 143.

(*a*) *London and Devon Biscuit Co.* (1871), 12 Eq. 190; *Vron Colliery Co.* (1882), 20 C. D. 442; *Bastow & Co.* (1867), 4 Eq. 681; but see *Dublin Exhibition Palace Co.* (1868), Ir. L. R. 2 Eq. 158, which seems to have been wrongly decided.

(*b*) *Hille India Rubber Co.*, [1897] W. N. 20.

(*c*) *Withernsea Brickworks* (1880), 16 C. D. 337.

(*d*) *Re Anglesey*, [1903] 2 Ch. 727; *Ridout* v. *Fowler*, [1904] 1 Ch. 658; [1904] 2 Ch. 93.

(*e*) *Croshaw* v. *Lyndhurst Ship Co.*, [1897] 2 Ch. 154; *Lough Neagh Ship Co.*, [1896] 1 Ir. 29.

(*f*) *Ex parte Evans* (1880), 13 C. D. 252.

garnishee before the winding-up (g), but not otherwise (h). The English Courts take the view that leave to proceed should be given in the case of a Scotch sequestration for rent (i) or an arrestment in dependence of a Scotch action obtained before winding-up and subsequently completed by decree (k), as in the former case a charge which already exists is declared, and in the latter the decree relates back (l). The Scotch courts, however, looked upon these processes as also the process of pounding the ground (m) for rent as being altogether outside section 163 of the 1862 Act which corresponded with section 211, and consequently as not avoided thereby, pounding for rates, however, apparently does not give a charge, and they therefore treated it as void, if effected after the commencement of the winding-up, and, as already stated, they took the view that the Court cannot sanction any transaction, which is within the section (n). Leave was given after a winding-up order to bring an action of furthcoming in Scotland, as this appeared to be the only means of obtaining the fruits of an arrestment made before the petition was presented (nn).

Where the sheriff is not in possession at the date of the petition, or the landlord or other creditor has not then succeeded in getting a charge, the Court will practically never give leave to proceed either with an execution or a distress or any other kind of process for recovering debts incurred at the date of the winding-up (o), and the Court will not give leave even where the sheriff is then in possession, if the execution was collusively levied (p). Where any process is avoided by the section, it is, unless sanctioned by the Court, void for all purposes, and an execution creditor whose execution is void under the section will therefore not be allowed to defend an action in the name of the company for setting aside debentures (q). Where a sheriff was in possession of a theatre at the commencement of the

(g) *National United Investment Corporation*, [1901] 1 Ch. 950; *United English and Scottish Life Insurance Co.* (1868), 5 Eq. 300; *Ex parte Hawkins* (1868), 3 Ch. 787; and cp. *Geisse* v. *Taylor*, [1905] 2 K. B. 658; *Cairney* v. *Back*, [1906] 2 K. B. 746; *Norton* v. *Yates*, [1906] 1 K. B. 112; *Galbraith* v. *Grimshaw*, [1910] 1 K. B. 339.

(h) *Stanhope Silkstone Collieries* (1879), 11 C. D. 160.

(i) *Wanzer, Ltd.*, [1891] 1 Ch. 305.

(k) *West Cumberland Iron and Steel Co.*, [1893] 1 Ch. 713.

(l) *Benhar Coal Co.* v. *Turnbull* (1883), 10 Rettie, 558; *Bigg* v. *Donaldson & Co.*, [1908] S. C. 38.

(m) *Athole Hydropathic Co.* v. *Scottish Provincial Assurance* (1886), 13 Rettie, 818.

(n) *Allan* v. *Cowan* (1892), 20 Rettie, 36.

(nn) *National Provincial Insurance Co.* (1912), 56 Sol. J., 291. It appeared that there might be some question of set-off, and the applicant was required to undertake to pay any extra costs occasioned by the Official Receiver having to go to Scotland.

(o) *Universal Disinfector Co.* (1875), 20 Eq. 162; *Dimson's Estate Fire Clay Co.* (1874), 19 Eq. 202; *Vron Colliery Co.* (1882), 20 C. D. 442; *Lancashire Cotton Spinning Co.* (1887), 35 C. D. 656; *Kingstown Royal Marine Hotel Co.* (1867), 15 W. R. 978. See also *Artistic Colour Printing Co.* (1880), 14 C. D. 502; but see the cases as to distresses and executions cited *supra*, p. 892, notes (f) and (h), p. 893, note (r).

(p) *Perkins Beach Lead Mining Co.* (1877), 7 C. D. 371.

(q) *Artistic Colour Printing Co. Ex parte Fourdrinier* (1882), 21 C. D. 510. The sheriff can even in a voluntary winding-up where an execution is restrained only look to the execution creditor for his fees: *Montague* v. *Davis, Benachi & Co.*, [1911] 2 K. B. 595.

winding-up he was not allowed to retain moneys received at the door after the winding-up (*r*).

Execution has been allowed to proceed in a voluntary winding-up, where the execution was for costs ordered to be paid in an action commenced by the liquidators (*s*). The Court cannot under the Act restrain an action against directors of a company in liquidation (*t*) or against any person who is sued as a co-defendant of such a company (*u*), or an inquiry under section 42 of the Tramways Act, 1870, against the promoters of the company (*x*), though, no doubt, in a proper case it has power to do so under its general jurisdiction (*y*). The Court will, moreover, not restrain proceedings in a winding-up, where the liquidator has himself taken steps in such proceedings. Thus, where a liquidator appealed successfully against an order made before the winding-up, the other party was entitled to appeal to the House of Lords without obtaining leave (*z*), and a counter claim may be proceeded with without leave (*a*). Moreover, the Court has declined to stay an action which was actually in the day's paper. In this case the jury had been sworn, and it was intimated that the proper course for the liquidator to have taken was to have applied beforehand to stay the proceedings (*b*).

Where leave to proceed has been given, the Court of Appeal will usually not interfere with the Judge's discretion (*c*), though it will sometimes do so when leave has been refused (*d*).

Where an action is being brought by a mortgagee to enforce his security, the Court will always give leave to proceed, for he is altogether outside the winding-up, and the sections are not meant to apply in such cases (*e*). In Ireland the Court has set aside a judgment, as having been obtained after a winding-up order (*f*).

(*r*) *Opera, Ltd.* (1890), 62 L. T. 859.

(*s*) *Bank of Hindustan, China, and Japan, Ex parte Levick* (1867), 5 Eq. 69. See also *Ex parte Smith* (1868), 3 Ch. 125, where it was doubted whether the section applied to executions where a liquidator had commenced the action.

(*t*) *New Zealand Banking Corporation* (1869), 39 L. J. (CH.) 128.

(*u*) *Wells* v. *Estates Investment Co.* (1867), 15 W. R. 762.

(*x*) *Pontypridd* v. *Rhondda Valley Tramways Co.* (1889), 58 L. J. (CH.) 536.

(*y*) See *Graham* v. *Edge* (1889), 20 Q. B. D. 683 (action against liquidator stayed).

(*z*) *Humber & Co.* v. *John Griffiths Cycle Co.* (1901), 85 L. T. 141.

(*a*) *Mersey Steel and Iron Co.* v. *Naylor* (1882), 9 Q. B. D. 648; (1884), 9 A. C. 434.

(*b*) *Henderson* v. *Peruvian Railway Co.* (1867), 16 L. T. 297.

(*c*) *Thames Plate Glass Co.* v. *Land and Sea Telegraph Construction Co.* (1871), 6 Ch. 643.

(*d*) See *Jones* v. *Swansea and Cambrian Building Society* (1881), 50 L. J. (Q.B.) 428.

(*e*) *David Lloyd & Co.* (1877), 6 C. D. 339; *Henry Pound Son and Hutchins* (1889), 42 C. D. 402; but see *Cambrian Mining Co.* (1881), 50 L. J. (CH.) 836; *St. Cuthbert Lead Smelting Co.* (1866), 35 Beav. 384.

(*f*) *Hartford* v. *Amicable Life Assurance* (1871), Ir. R. 5 C. L. 368.

With regard to proceedings in foreign Courts, the sections do not in terms apply to foreign Courts, except Scotch or Irish Courts; but, nevertheless, there are cases where the Court here will restrain such proceedings (*g*).

First of all, with regard to proceedings in Scotch and Irish Courts. Such proceedings seem to stand on precisely the same footing as English proceedings and section 180 of the Act, which enables orders to be enforced throughout the United Kingdom, enables the Court here to make an order restraining even a domiciled Scotchman or Irishman from proceeding with an action, in the country of his domicile or any other part of the United Kingdom (*h*), or it is thought elsewhere (*hh*); but the Court will apparently not use this jurisdiction so as to deprive a person of any charge he has obtained in such Courts on property locally situate there, *e.g.* a charge on debts for calls due from shareholders domiciled there (*i*), though it will stay the action on the terms that such stay shall not affect any priority the plaintiff has got by the action (*k*).

With regard to foreign Courts in the ordinary sense of the word, the Court here will not deprive a person of any charge he has obtained in such Courts on property within their jurisdiction (*i*), and the Court here will be slow to restrain an action in the Court of a foreign state against immovable property which is situate in such state, even if it has jurisdiction to do so (*l*). Moreover, the Court here cannot interfere where an order *in rem* has been obtained in a foreign Court against property locally situate there, nor will the person who has obtained such order hold the property against which such order has been made or the proceeds of sale thereof in trust for the other creditors of the company. This was held in a case where a person who by German law had a lien on a ship, started proceedings on the day such ship arrived in a German port, which was also the day of the winding-up order, and subsequently obtained an order for the sale of the ship, and sold it and took the proceeds in satisfaction of his debt (*m*). The Court can, however, restrain a domiciled Englishman from taking proceedings in a foreign Court (*n*).

Thus, in one case (*o*), proceedings taken in an American Court by the petitioners with a view to gaining priority were stayed, and in another (*p*) the Court here stayed proceedings in a Portuguese Court.

(*g*) *Belfast Shipowners Co.*, [1894] 1 Ir. 321. See also *Carron Iron Co.* v. *Maclaren* (1855), 5 H. L. C. 416.

(*h*) *International Pulp and Paper Co.* (1876), 3 C. D. 594.

(*hh*) Dicey's Conflict of Laws, 2nd Ed. p. 341: *Scotch Pacific Coast Mining Co.*, [1886] W. N. 63, and see *infra*, pp. 1026 and 1027.

(*i*) *Queensland Mercantile and Agency Co.*, [1892] 1 Ch. 219, explained in *Kelly* v. *Selwyn*, [1905] 2 Ch. 117.

(*k*) *Queensland Mercantile Agency Co.* (1888), 58 L. T. 878.

(*l*) *Moor* v. *Anglo-Italian Bank* (1879), 10 C. D. 681. This was an action by a mortgagee, and the proceedings had been going on for some years.

(*m*) *Minna Craig Steamship Co.* v. *Chartered Mercantile Bank of India*, [1897] 1 Q. B. 460.

(*n*) *North Carolina Estate Co.* (1889), 5 T. L. R. 328: *Jenkins & Co.* (1907), 51 Sol. J. 715: both cases where the petition was pending, but no order had been made.

(*o*) *Belfast Shipowners Co.*, [1894] 1 Ir. 321.

(*p*) *South Eastern of Portugal Railway Co.* (1889), 17 W. R. 982.

In *Oriental Inland Steam Co.* (q), an English company which had seized goods in India, was ordered in an English liquidation to refund the proceeds of sale of such goods. In this case the company which had seized the goods had proved in the liquidation, though the decision does not seem to turn on this. In several cases (r) actions and executions abroad have been stayed without prejudice to the rights of the persons who have brought the actions or levied the executions.

The rights of the Crown are in no way affected by these sections (s), but the sections do apply to proceedings by overseers for poor-rates (t), and to quasi-criminal proceedings for penalties (u).

Formerly, if an action was proceeded with without leave, the absence of leave was a matter for an injunction, but could not be pleaded in bar to an action (x); but section 24 (5) of the Judicature Act, 1873, would seem to have changed this (y).

Applications to stay or restrain proceedings under section 140 must, if those proceedings are pending in the Court of Appeal, or the High Court in England or Ireland, be made to the Court where they are pending (z) applications under section 140, and should be made on an *ex parte* application (a). All applications under section 140, except those above mentioned (including cases where the proceedings are pending in an inferior court), and all applications under section 142 for leave to proceed must be made to the winding-up Court (b). Applications under section 142 should not be made *ex parte* (c). Applications in the Chancery Division under section 140

(q) (1874), 9 Ch. 557.

(r) *Central Sugar Factories of Brazil, Flack's Case*, [1894] 1 Ch. 369; *Queensland Mercantile Agency Co.* (1888), 58 L. T. 878.

(s) *Henley & Co.* (1878), 9 C. D. 469; *West London Commercial Bank* (1888), 38 C. D. 364; *Oriental Bank Corporation* (1885), 28 C. D. 643.

(t) *Flint, Coal, and Cannel Co.* (1887), 56 L. J. (CH.) 232; but see now s. 209 of the Companies (Consolidation) Act, 1908.

(u) *Briton Medical and General Life Assurance Association* (1886), 32 C. D. 503.

(x) *Gray* v. *Raper* (1866), L. R. 1 C. P. 694.

(y) *Rudow* v. *Great Britain Mutual Life Assurance Society* (1881), 17 C. D. 600.

(z) See Companies (Consolidation) Act, 1908, s. 140, which but reproduces the old practice. See *Artistic Colour Printing Co.* (1880), 14 C. D. 502; *General Service Co-operative Stores*, [1891] 1 Ch. 496; *Twentieth Century Equitable Friendly Society*, [1910] W. N. 236; but see *Liverpool Household Stores Association* (1888), 1 Meg. 83. The winding-up Judge can restrain proceedings in a county-court.

(a) *Masbach* v. *Anderson* (1877), 37 L. T. 440; *Everingham* v. *Co-operative Pure Family Beer Co.*, [1880] W. N. 99; Chitty's King's Bench Forms, 13th Ed. p. 533, note (c); Annual Practice, 1912, vol. ii. p. 608; Yearly Practice, 1912, p. 1232.

(b) See Companies (Consolidation) Act, 1908, ss. 140, 142, and 285, which defines the Court as "the Court having jurisdiction to wind up the company." This also reproduces the old practice. See *Rio Grande do Sul Steamship Co.* (1877), 5 C. D. 282; *Wilson* v. *Natal Investment* (1867), 36 L. J. (CH.) 312.

(c) *Western and Brazilian Telegraph Co.* v. *Bibby* (1880), 42 L. T. 281.

are by summons or motion—all other applications whether under sections 140 or 142 are made by summons (*d*). Such summons or motion in the case of an application under section 140 to restrain proceedings in an action in the High Court or the Court of Appeal is in the action (*dd*). In the case of other actions and in the case of applications under section 142 for leave to proceed, the application is in the winding-up. In both cases the application must be supported by an affidavit setting out the facts (*e*).

Turning to the cases where the Court has and where it has not given leave to proceed with actions.

Where a landlord brings an ejectment action and the company has no defence, leave to proceed will be given almost as a matter of course (*f*), and the same remark applies where the company is a necessary party to an action against it and others (*g*), though usually in this latter case the plaintiff will be put on terms not to proceed to execution against the company without the leave of the Court (*h*). The cases where the assets of the company are completely covered with debentures have already been considered, there again leave will usually be given (*i*).

In other cases the question would seem to be largely one of what is the most convenient course to take, though usually execution will not be allowed to be levied without the leave of the Court.

It has been held that the question whether a person has a lien on a ship can most conveniently be tried on a winding-up summons (*k*), except where there are rights of other mortgagees to be considered when leave to proceed with an Admiralty action has been given (*l*).

Again, leave has been given where there were complicated questions of fact, and as to mutual dealings to be tried (*m*), and also where an injunction was sought to stop the sale of the assets of a company in voluntary winding-up to one being compulsorily wound-up (*n*).

An action to establish a lien for unpaid purchase money has been

(*d*) In Daniell's Chancery Practice, 7th Ed. at p. 1655, it is stated that applications under s. 140 are made by *ex parte* motion, but it is thought that the application can also be by summons. See Chitty's King's Bench Forms, 13th Ed. at p. 533.

(*dd*) All actions pending in the King's Bench Division can be stayed on the same application, *People's Garden Co.* (1875), 1 C. D. 42.

(*e*) *St. Cuthbert's Lead Smelting Co.*, [1866] W. N. 154.

(*f*) *General Share and Trust Co.* v. *Wetley Brick and Pottery Co.* (1882), 20 C. D. 260; *Strand Hotel*, [1868] W. N. 2.

(*g*) *Wyley* v. *Exhall Coal Mining Co.* (1864), 33 Beav. 539, an action for trespass.

(*h*) *MacEwen* v. *London, Bombay, and Mediterranean* (1866), 15 L. T. 311. See also *Hall* v. *Old Talargoch Lead Mining Co.* (1876), 3 C. D. 749.

(*i*) *Harpur's Cycle Fitting Co.*, [1900] 2 Ch. 731; *New City Constitutional Club* (1887), 34 C. D. 646.

(*k*) *Australian Direct Steamer Navigation Co.* (1875), 20 Eq. 325.

(*l*) *Rio Grande do Sul Steamship Co.* (1877), 5 C. D. 282.

(*m*) *Ex parte Bateman* (1866), 15 W. R. 118, 245.

(*n*) *Marine Investment Co.* (1868), 17 L. T. 535.

allowed to proceed (*o*). Leave will usually not be given to proceed where previous claims of the same sort have been put forward, and dismissed with costs, and such costs have not been paid (*p*), and leave has been given for a plaintiff to proceed with his action on the terms that, if successful, he should only have a right of proof for his costs (*q*); but where the liquidator has continued the action it would seem that the other party will be entitled to his full costs, and not merely to the right to prove for the same (*r*): and where a liquidator proposed to appeal from an adverse decision, an order was made in the winding-up that he should pay the costs, on an undertaking that they should be returned if the appeal succeeded (*rr*). A liquidator should apply for a stay of proceedings upon the terms that the plaintiff is to be entitled to prove for his claim (*s*). An agent employed in a winding-up to get in the assets of the company in Scotland was restrained from bringing an action for his salary and getting a charge on the assets there (*t*), and the Court of Appeal has restrained proceedings for costs awarded by it (*u*).

In a compulsory winding-up the onus is always on the person who wishes to show that the action should be continued notwithstanding the winding-up (*x*).

The provisions of the Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up, and before the making of a winding-up order, extend, in the case of a company registered under Part VII. of the Act and of an unregistered company, where the application to stay or restrain is by a creditor, to actions and proceedings against any contributory of the company (*y*).

Where the order has been made for winding-up a company registered under Part VII. of the Act or an unregistered company, no action or proceeding may be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose (*z*).

(*o*) *Blakeley* v. *Dent* (1867), 15 W. R. 663. See also *Thames Plate Glass Co.* v. *Land and Sea Telegraph Co.* (1870), 11 Eq. 248.

(*p*) *United Kingdom Electric Telegraph Co.* (1876), 34 L. T. 238; *Allans Exors* (1876), 45 L. J. (CH.) 366.

(*q*) *Joseph Peace & Co.*, [1873] W. N. 127.

(*r*) *Wenborn & Co.*, [1905] 1 Ch. 413; and see also *Thurso New Gas* (1889), 42 C. D. 486, and *post*, pp. 1010 and 1011.

(*rr*) *Thomas Free and Son* (1911), 56 Sol. J. 175.

(*s*) *Wenborn & Co.*, [1905] 1 Ch. 4 3; and see the cases discussed, *post*, p. 1277.

(*t*) *Hermann Loog* (1887), 36 C. D. 502.

(*u*) *Liverpool Household Stores Association* (1888), 1 Meg. 83.

(*x*) *Currie* v. *Consolidated Kent Collieries Corporation*, [1906] 1 K. B. 134.

(*y*) Companies (Consolidation) Act, 1908, ss. 265 and 270.

(*z*) Companies (Consolidation) Act, 1908, ss. 266 and 271. These sections only apply to actions against a contributory as such and not for instance to an action by a holder of promissory notes though they had been given as security for advances to the company: *South of France Pottery Works Syndicate* (1877), 37 L. T. 260.

SUMMONS FOR LEAVE TO TAKE PROCEEDINGS AGAINST COMPANY IN COMPULSORY LIQUIDATION.

No. 00317 of 1907.

In the High Court of Justice,
Companies (Winding-up).
Mr. Justice Neville.
In the Matter of the Companies Acts 1862 to 1907
and
In the Matter of The Brazilian Rubber Plantations and Estates Limited.

Let the Official Receiver and Liquidator of the E. and I. Syndicate, Limited, attend at the Chambers of the Registrar, Companies (Winding-up) Bankruptcy Buildings, Carey Street, London, on Tuesday the 15th day of December 1908, at 12 o'clock at noon on the hearing of an application of the Official Receiver and Liquidator of the above-named Company for an order that the said Company may be at liberty to commence proceedings against the E. and I. Syndicate Limited (00347 of 1906) notwithstanding the Winding-up Order made against the said Syndicate.

Dated the 11th day of December 1908.

This Summons was taken out by Messrs.

Solicitors for the Applicant.

To the Official Receiver and Liquidator of the E. and I. Syndicate Limited.

Note.—If you do not attend either in person or by your Solicitor at the time and place above-mentioned such order will be made and proceedings taken as the Judge (or Registrar) may think just and expedient.

Form of Order endorsed on above Summons.

In the High Court of Justice,
Companies (Winding-up).
Mr. Registrar Hood.

Tuesday, the 15th day of December, 1908.

Appeared the Solicitors for the Official Receiver and Liquidator.

Read Order to Wind-up dated 14th January, 1908.

Order Leave to commence proceedings as asked by the within Summons.

H. J. Hood,
Registrar.

Transfer of Proceedings.

Section 36 of the Judicature Act, 1873, provides that any cause or matter may at any time and at any stage thereof, and either with or without application from any of the parties thereto be transferred by such authority and in such manner as rules of Court may direct from one division or Judge of the High Court to any other division or Judge thereof, or may by the like authority be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought in the first instance to have been assigned.

Order 49, rr. 5 and 5*a* of the Rules of the Supreme Court are as follows:—

5. When an order has been made by any Judge of the Chancery Division for the winding-up of any Company (*a*), or for the administration of the assets of any testator or intestate, the judge in whose Court such winding-up or administration shall be pending shall have power, without any further consent, to order the transfer to such Judge of any cause or matter pending in any other Court or division brought or continued by or against such Company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be.

5*a*. Upon a winding-up order being made against a Company all chamber proceedings in any action against such Company at the instance or on behalf of debenture holders pending before the Judge to whom for the time being Company business is assigned shall be dealt with by the registrar in Companies winding-up.

These rules are supplemented by rule 42 (1) of the Companies (Winding-up) Rules, 1909 (*b*).

Where an order has been made in the High Court for the winding-up of a company the Judge (*c*) has power without further consent, to order the transfer to him of any action, cause or matter pending in any other Court or Division brought or continued by or against the company, and any action or proceeding by a mortgagee or debenture-holder of the company against the company, for the purpose of realising his security, or by any other person, for the purpose of enforcing a claim against the company's assets or property, which is pending in the High Court or before any Judge thereof, is without further order transferred to the Judge of the High Court (*d*).

Where any action brought by or against a company against which a winding-up order has been made is transferred to the Judge of the High Court, the Registrar (*e*) may, under the general or special

(*a*) This has been held to include a supervision order. See *post*, p. 1268.

(*b*) See *supra*, pp. 812 *et seq.*, for the practice in these cases—which is dealt with in considering the transfer of proceedings in a winding-up, and see also r. 46 of the Companies (Winding-up) Rules, 1909 (also there set out) for the procedure where winding-up proceedings are transferred. *Madras Irrigation and Canal Co.* (1881), 16 C. D. 702, was decided under the old rules—and is now no longer law. For form of order transferring proceedings in a supervision case, see *post*, pp. 1321 and 1322.

(*c*) The expression "Judge" means in the High Court the Judge who for the time being exercises the jurisdiction of the High Court to wind up companies: Companies (Winding-up) Rules, 1909, r. 2.

(*d*) This applies to a debenture holder's action commenced in the Manchester or Liverpool District Registry: *English McKenna Process, Ltd., Bowering* v. *The Company*, 1911, E. 1238, EADY J. (in Chambers).

(*e*) The expression "Registrar" means in the High Court any of the Registrars in Bankruptcy of the High Court and any person who is

directions of the Judge, hear, determine and deal with any application, matter, or proceeding which, if the action had not been transferred, would have been determined in Chambers. These provisions apply to the proceedings in any action in which by the Rules of the Supreme Court, or otherwise, the Chamber proceedings are directed to be dealt with by the Registrar (*f*).

The Judge of the High Court may at any time, for good cause shown, order the proceedings in any Court other than the High Court to be transferred to the High Court, or any proceedings in the High Court to be transferred from the High Court to any other Court (*g*).

OFFICIAL RECEIVER AS PROVISIONAL LIQUIDATOR AFTER A WINDING-UP ORDER.

On a winding-up order being made in England the official receiver by virtue of his office, becomes the provisional liquidator, and he continues to act as such until he or another person becomes liquidator, and is capable of acting as such (*h*).

The term "official receiver" is defined by section 146 of the Act.

(1) For the purposes of this Act so far as it relates to the winding-up of Companies by the Court in England, the term "official receiver" shall mean the official receiver, if any, attached to the Court for bankruptcy purposes, or if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade.

(2) Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

Judicial notice will be taken of the appointment of the official receivers appointed by the Board of Trade.

When the Board of Trade appoints any officer to act as deputy for or in the place of an official receiver, notice thereof must be given by letter to the Court to which such official receiver is or was attached. The letter must specify the duration of such acting appointment.

Any person so appointed will during his tenure of office, have all the status, rights and powers, and be subject to all the liabilities of an official receiver (*i*).

Where an official receiver is removed from his office by the Board of Trade, notice of the order removing him must be communicated by letter to the Court to which the official receiver was attached (*k*).

appointed to fill the office of registrar under the Companies (Winding-up) Rules, 1909, and where a winding-up of a company is in the district registry of Liverpool or Manchester means the district registrar: *ibid.*, r. 2.

(*f*) Companies (Winding-up) Rules, 1909, r. 42.

(*g*) *Ibid.*, r. 43.

(*h*) Companies (Consolidation) Act, 1908, s. 149 (3) (*b*).

(*i*) Companies (Winding-up) Rules, 1909, r. 198.

(*k*) *Ibid.*, r. 199.

The Board of Trade may, by general or special directions, determine what acts or duties of the official receiver in relation to the winding-up of companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control (*l*).

An assistant official receiver, appointed by the Board of Trade, will be an officer of the Court, like the official receiver to whom he is assistant, and, subject to the directions of the Board of Trade, he may represent the official receiver in all proceedings in Court, or in any administrative or other matter. Judicial notice will be taken of the appointment of an assistant official receiver, and he may be removed in the same manner as is provided in the case of an official receiver (*m*).

In the absence of the official receiver any officer of the Board of Trade duly authorised for the purpose by the Board of Trade, and any clerk of the official receiver duly authorised by him in writing, may, by leave of the Court, act on behalf of the official receiver, and take part for him in any public or other examination and in any unopposed application to the Court (*n*).

The Court cannot appoint any person except the official receiver to be liquidator, either provisionally (*o*) or otherwise (*p*), when it is making the winding-up order (*pp*).

The official receiver can while acting as provisional liquidator, after a winding-up order has been made, settle the list of contributories (*q*), and it would seem from this case (*r*) that he can while so acting exercise all the powers which an ordinary liquidator could exercise (*rr*). In another case (*s*), however, it was considered doubtful whether he could carry on the business of the company, but the Court on making the winding-up order, inserted a direction enabling the official receiver if he thought fit to carry on the business, which was one dealing in stock of a wasting nature.

Where a company against which a winding-up order has been made has no available assets, the official receiver cannot be required to incur any expense in relation to the winding-up without the

(*l*) Companies (Winding-up) Rules, 1909, r. 200.

(*m*) *Ibid.*, r. 201.

(*n*) *Ibid.*, r. 202.

(*o*) *North Wales Gunpowder Co.*, [1892] 2 Q. B. 220; see also *Mercantile Bank of Australia*, [1892] 2 Ch. 204.

(*p*) *John Reid and Sons*, [1900] 2 Q. B. 634.

(*pp*) This only applies to England; and even there there is the exception of subsidiary assurance companies, see *supra*, p. 803.

(*q*) *English Bank of the River Plate*, [1892] 1 Ch. 391.

(*r*) See also *Johannisberg Land and Gold Trust Co.*, [1892] 1 Ch. 583: see also s. 151 (5) of the Act which empowers the Court where a liquidator is provisionally appointed to limit and restrict his powers by the order appointing him.

(*rr*) This is subject to an order being made restricting his powers under s. 151 of the Act, see *infra*, p. 1006.

(*s*) *General Service Co-operative Stores* (1891), 64 L. T. 228.

express directions of the Board of Trade (*t*). In practice the official receiver in these cases usually simply performs his statutory duties, that is to say, he requires a statement of affairs, makes his report, and summons the first meetings, and does nothing further, unless creditors or contributories put up money for further proceedings.

On application to the Court to appoint a receiver on behalf of debenture-holders or other creditors, the official receiver may be appointed if the company is being wound up by the Court (*u*).

SPECIAL MANAGER.

Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may on such application appoint a special manager thereof during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

The special manager must give such security (*x*) and account in such manner as the Board of Trade direct.

The special manager will receive such remuneration as may be fixed by the Court (*y*).

Where there is a business to be carried on pending the appointment of a liquidator, the official receiver applies for the appointment of a special manager. The application is by summons. The special manager may be either an outsider or some one engaged in the business of the company, according to the circumstances of the case.

An application by the official receiver for the appointment of a special manager must be supported by a report of the official receiver, which must be placed on the file of proceedings, and in which must be stated the amount of remuneration which, in the opinion of the

(*t*) Companies (Winding-up) Rules, 1909, r. 203. The order as to fees of December 2nd, 1903, provides that if for any reason the Official Receiver satisfies the Board of Trade that the fees mentioned in such order are excessive then such reduction may be made as is sanctioned by the Lords Commissioners of His Majesty's Treasury on the application of the Board of Trade. There is some difficulty in deciding in what cases the official receiver should consult the Board of Trade and in what cases the court—usually, however, the fact that the Board of Trade has told him not to do a particular thing will, unless the statute directs him to do that thing, *e.g.* the making of a report under s. 148 protect him *New Zealand Loan and Mercantile Agency* (1895), 71 L. T. 693.

(*u*) Companies (Consolidation) Act, 1908, s. 162, and see *supra*, pp. 568 and 569.

(*x*) See *post*, pp. 947 *et seq.*, for Companies (Winding-up) Rules, 1909, rr. 57 and 58, which deal with the security to be given by a special manager and also by a liquidator.

(*y*) Companies (Consolidation) Act, 1908, s. 161.

official receiver, ought to be allowed to the special manager. No affidavit by the official receiver in support of the application will be required.

The remuneration of the special manager will, unless the Court otherwise in any special case directs, be stated in the order appointing him, but the Court may at any subsequent time for good cause shown make an order for payment to the special manager of further remuneration.

A copy of the order appointing a special manager must be transmitted to the Board of Trade by the official receiver (*z*).

Every special manager must account to the official receiver, and the special manager's accounts must be verified by affidavit, and, when approved by the official receiver, the totals of the receipts and payments must be added by the official receiver to his accounts (*a*). The practice is only to appoint a special manager for a very limited time, and if necessary application is made to extend his period of office.

REPORT OF OFFICIAL SUPPORTING APPLICATION FOR SPECIAL MANAGER.

(*Title.*)

The Official Receiver for the County Court District of   in the County of   reports to the Court as follows:—

By an Order of the Court made in the above matter on the 24th day of May 1911 he was appointed Provisional Liquidator of the Company and his powers were by the said order limited and restricted to the following acts namely to take possession of and protect the assets of the said Company and to apply for the appointment of a special manager.

He considers that the appointment of a special manager is necessary by reason of the special nature of the Company's business which is that of cotton spinning.

The Company have large transactions in hand and employ a large number of workpeople and the business cannot be carried on except by some one having special knowledge and able to devote personal care and attention to the same. He recommends Mr. S.R. of No.   Street   aforesaid Chartered Accountant should be so appointed and understands that Mr. R. has consented to accept the appointment at a remuneration of £   per week which in his opinion ought to be allowed. Mr. R. is in close touch with the Company's affairs and has full knowledge of them being the auditor of the Company.

Dated

A.B.

Official Receiver for the County Court district of   and Provisional Liquidator as aforesaid. [*Re Goy Spinning Co.*, 00191 of 1911.]

(*z*) Companies (Winding-up) Rules, 1909, r. 48.

(*a*) *Ibid.*, r. 49.

ORDER APPOINTING SPECIAL MANAGER.

(*Title.*)

Upon the application by Summons dated this day of of H. de V.B. the Official Receiver and Provisional Liquidator of the above-named Company and upon hearing the Applicant in person and upon reading the Order dated the 27th September, 1911 appointing the Applicant Provisional Liquidator of the said Company and the Report of the Assistant Official Receiver made to the Court and dated this day:—

It is Ordered that W.P. of in the City of London, Chartered Accountant be appointed Special Manager of the Estate of the above named Company until the Petition preferred unto this Court on the 26th September, 1911 shall have been heard and disposed of or until further Order for the following purposes, viz.:—Negotiating with other Banks for the disposal of the goodwill of the above-named Company bringing within the jurisdiction of this Court any assets of the above-named Company in Egypt collecting instalments of debts (including bills) due to the above-named Company taking possession of the immovable property of the above-named Company in Egypt carrying on correspondence with former customers of and other persons dealing with the above-named Company.

And it is Ordered that the said special manager be at liberty to employ such of the employees of the above-named Company as the Official Receiver may consider necessary.

And it is Ordered that the said Special Manager do forthwith give security to the satisfaction of the Board of Trade.

And it is Ordered that the said Special Manager do account to the Official Receiver as and when directed by him.

And the question of the remuneration of the Special Manager is adjourned. [*Re The Bank of Egypt, Ltd.*, 00345 of 1911. Mr. Registrar Hood, September 28th, 1911.]

ORDER EXTENDING POWERS OF SPECIAL MANAGER.

(*Title.*)

Upon the application by summons dated the 11th October, 1911 of H. de V.B. the Official Receiver and Provisional Liquidator of the above-named Company and upon hearing the applicant in person and upon reading the order dated the 27th September, 1911 (appointing Provisional Liquidator) and the order dated the 28th September, 1911 (appointing Special Manager).

It is Ordered that W.P. the Special Manager of the estate of the said Company appointed by the last-mentioned Order do in addition to the powers conferred by such last-mentioned order have power as from the 10th October, 1911 as such Special Manager to endorse any Bills of Exchange which in the course of the business of the said Company may be required to be endorsed by or on behalf of the Company or the applicant as provisional liquidator thereof. [In the Matter of the *Bank of Egypt, Ltd.*, 00345 of 1911. Mr. Registrar Hood, 12th October, 1911.]

FORM OF AFFIDAVIT BY SPECIAL MANAGER VERIFYING ACCOUNT (*b*).

(*Title.*)

I, of , make oath and say as follows :—

1. The account hereunto annexed marked with the letter A, produced and shown to me at the time of swearing this my affidavit, and purporting to be my account as special manager of the estate or business of the abovenamed Company, contains a true account of all and every sums and sum of money received by me or by any other person or persons by my order or to my knowledge or belief for my use on account or in respect of the said estate or business.

2. The several sums of money mentioned in the said account hereby verified to have been paid or allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

Sworn, &c.

STATEMENT OF AFFAIRS.

Where the Court in England has made a winding-up order there must be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

The statement must be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors, and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the Court, may require to submit and verify the same.

The statement must be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the Court may for special reasons appoint.

Any person making or concurring in making the statement and affidavit required by this section will be allowed, and will be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the

(*b*) Companies (Winding-up) Rules, 1909, Appendix, Form 20. If an official manager receives remuneration for his services as such, no payment will be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself : *ibid.*, r. 186.

statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the Court.

If any person, without reasonable excuse, makes default in complying with these requirements, he will be liable to a fine not exceeding ten pounds for every day during which the default continues.

Any person stating himself in writing to be a creditor or contributory of the company will be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee (c), to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory will be guilty of a contempt of Court, and will be punished accordingly on the application of the liquidator or of the official receiver (d). In practice a liquidator is allowed to inspect the statement of affairs without paying any fee.

This section would seem to apply to *de facto* directors, and not only to directors who have been regularly appointed, and it has been held to apply to a director whose office was vacated by bankruptcy more than a year before the winding-up, but who had acted within such year, in this case the director had actually become bankrupt within the year, but his bankruptcy related back to an act of bankruptcy committed before that period (e).

Every person who under section 147 of the Act has been required by the official receiver to submit and verify a statement as to the affairs of the company, must be furnished by the official receiver with forms and instructions for the preparation of the statement. The statement must be made out in duplicate, one copy of which must be verified by affidavit. The official receiver must cause to be filed with the Registrar the verified statement of affairs.

The official receiver may from time to time hold personal interviews with every such person for the purpose of investigating the company's affairs, and it will be the duty of every such person to attend on the official receiver at such time and place as the official receiver may appoint and give the official receiver all information that he may require (*f*).

When any person requires any extension of time for submitting the statement of affairs, he must apply to the official receiver, who may, if he thinks fit, give a written certificate extending the time,

(c) See Companies (Winding-up) Rules, 1909, r. 19. The fee for inspection is 1*s*. for each hour or part of an hour occupied, and for copies 4*d*. per folio. Directors and officers of the company or of the Board of Trade do not pay the inspection fee.

(d) Companies (Consolidation) Act, 1908, s. 147.

(e) *New Par Consols*, [1898] 1 Q. B. 573.

(*f*) Companies (Winding-up) Rules, 1909, r. 50.

which certificate must be filed with the proceedings in the winding-up, and will render an application to the Court unnecessary (*g*).

After the statement of affairs of a company has been submitted to the official receiver it will be the duty of each person who has made or concurred in making it, if and when required, to attend on the official receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the official receiver in relation to the statement of affairs (*h*).

Any default in complying with the requirements of section 147 of the Act, may be reported by the official receiver to the Court (*i*).

A person who is required to make or concur in making any statement of affairs of a company must before incurring any costs or expenses in and about the preparation and making of the statement, apply to the official receiver for his sanction, and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the Court, no person will be allowed out of the assets of the company any costs or expenses which have not before being incurred been sanctioned by the official receiver (*k*).

Where a person is liable under the section to submit and verify a statement of affairs and he has failed to do so when required, the Court can direct him on or before a named day to submit and verify a statement of affairs under the section (*l*), such an order should be made by the Judge in person, and the person on whom the order is made should have an opportunity of showing why he has omitted to comply with the requirements of the section (*m*). Such an order may be enforced by writ of attachment or committal (*mm*).

SUMMONS FOR LEAVE TO MAKE PAYMENT TO ACCOUNTANT FOR PREPARING STATEMENT OF AFFAIRS.

No. 00279 of 1910.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. JUSTICE SWINFEN EADY.

In the Matter of the Companies (Consolidation) Act 1908

and

In the Matter of D. E. Williams and Co. (Park Mills) Limited.

Let All parties concerned attend at the office of the Registrar, at the Bankruptcy Buildings, Carey Street, London, on Friday the 28th day of October, 1910, at 11.15 o'clock in the forenoon on the hearing of an application of the Official Receiver the Provisional Liquidator of the above-named Company for an order that he be at liberty to pay to Mr. G.W. of Chartered Accountant the sum of £ for preparing the statement of

(*g*) Companies (Winding-up) Rules, 1909, r. 51.

(*h*) *Ibid.*, r. 52.

(*i*) *Ibid.*, r. 53.

(*k*) *Ibid.*, r. 54.

(*l*) *New Par Consols*, [1898] 1 Q. B. 573.

(*m*) *Colombian Gold Mines* (1894), 8 Rep. 411; 42 W. R. 624.

(*mm*) O. 42, r. 7, R. S. C.

Affairs in this Winding-up or a statement in the form of a Statement of Affairs and also that he be at liberty to pay to the said G.W. a sum for his services to the said Applicant in rendering information as to the said Company's affairs and that such sum may be assessed.

Dated the 22nd day of October, 1910.

This Summons was taken out by the Official Receiver in Companies Liquidation, 33, Carey Street, Lincoln's Inn, W.C.

NOTE.—If you do not attend either in person or by your Solicitor at the time and place above-mentioned such order will be made and proceedings taken as the Judge (or Registrar) may think just and expedient.

ORDER ENDORSED ON ABOVE SUMMONS.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. REGISTRAR HOOD.

Friday the 28th day of October, 1910.

Appeared the Applicant in person.

Read Order to Wind up dated 21st September 1910.

Leave to pay to Mr. G.W. the sum of £ as asked by the within Summons and also a further sum assessed at £ for other services rendered to the Applicant.

H. J. HOOD,
Registrar.

ORDER TO SUBMIT STATEMENT OF AFFAIRS AND TO ATTEND AND GIVE THE OFFICIAL RECEIVER INFORMATION.

(*Title.*)

UPON the application by summons dated the 9th March, 1911, of Harold de Vaux Brougham, the Official Receiver and Provisional Liquidator of the above-named Company and upon hearing the applicant and the respondents A.B. and C.D. and upon reading the order to wind up the said Company, dated the 17th January, 1911, the affidavit of H.M.W. filed the 9th March, 1911, and the affidavit of A.G.M. filed the 17th March, 1911.

It is ordered that the said A.B. and C.D. do within 4 days after service of this order upon them respectively submit and verify a statement as to the affairs of the said Company pursuant to the provisions of section 147 of the above-mentioned Act and the Companies (Winding-up) Rules, 1909.

And it is ordered that the said A.B. and C.D. do, pursuant to Rule 50 (2) of the said Companies (Winding-up) Rules, 1909, respectively attend on the applicant the said Official Receiver at such time and place as he may appoint and do give to the Official Receiver all information that he may require as to the affairs of the said Company.

And it is ordered that the said A.B. and C.D. do pay to the said Official Receiver and Provisional Liquidator the sum of 15s., his ascertained expenses of the said application. [*Re New Savoy Chambers, Ltd.*, 00445 of 1910. Mr. Registrar HOOD, March 31st, 1911.]

STATEMENT OF

(*Title.*)

STATEMENT OF AFFAIRS on the day of

1.—*As regards*

Gross Liabilities.			Liabilities.				Expected to rank.		
£	s.	d.					£	s.	d.
			Debts and liabilities, viz. :—						
			(*a*) Unsecured Creditors, as per List "A" . . . . . [State number]						
				£	s.	d.			
			(*b*) Creditors fully secured (not including debenture-holders), as per List "B" . .						
			Estimated value of securities						
			Estimated surplus. .						
			Carried to List "C" .						
			Balance to contra (*d*) .						
			(*c*) Creditors partly secured, as per List "C" .						
			Less estimated value of securities . . .						
			Estimated to rank for dividend						
			(*d*) Liabilities on bills discounted other than the Company's own acceptances for value, as per List "D" . .						
			Of which it is expected will rank for dividend						
			(*e*) Other liabilities as per List "E" . .						
			Of which it is expected will rank for dividend						
			(*f*) Preferential creditors for rates, taxes, wages, etc., as per List "F," deducted contra . .						
			(*g*) Loans on debenture bonds as per List "G" deducted contra (holders) . . .						
							£		
			Estimated surplus (if any) after meeting liabilities of Company, subject to cost of liquidation .						

The nominal amount of unpaid capital liable to be called up is

debenture-holders], or

(*n*) Companies (Winding-up) Rules,

AFFAIRS (*n*).

19 , the date of the Winding-up Order.

Creditors.

Assets.				Estimated to produce.		
				£	*s.*	*d.*
(*a*) Property, as per List "H," viz. :—						
(a) Cash at bankers'						
(b) Cash in hand						
(c) Stock in trade						
(Estimated cost, £)						
(d) Machinery						
(e) Trade fixtures, fittings, utensils, etc. .						
(f) Investments in shares, etc. . . .						
(g) Loans on mortgage						
(h) Other property, viz. :—						
(*b*) Book debts (debtors), as per List "I," viz. :—	£	*s.*	*d.*			
Good						
Doubtful						
Bad						
Estimated to produce						
	£	*s.*	*d.*			
(*c*) Bills of exchange, or other similar securities on hand, as per List "J"						
Estimated to produce						
(*d*) Surplus from securities in the hands of creditors fully secured (per contra) (*b*) . . .						
(*e*) Unpaid calls (debtors), as per List "K"	£	*s.*	*d.*			
Estimated to produce . .						
Estimated total assets						
Deduct preferential creditors, as per contra (*f*)						
Estimated amount available to meet claims of debenture-holders						
Deduct loans on debenture bonds secured on the assets of the Company, as per contra (*g*)						
Estimated amount available to meet unsecured creditors, subject to cost of liquidation . .						
Estimated deficiency of assets to meet liabilities of the Company, subject to cost of liquidation .						
£						

£ which is [available to meet above deficiency] or [charged to as the case may be.

1909, Appendix, Form 26.

STATEMENT OF AFFAIRS—*continued.*

II.—*As regards Contributories.*

	£	s.	d.	£	s.	d.		£	s.	d.
Capital issued and allotted, viz. :—							Estimated Surplus as above (if any) subject to cost of liquidation .			
Founders' Shares of £ per share (Shareholders) .										
* Issued as fully paid .										
Amount called up at £ per share, as per List "L"										
Ordinary Shares of £ per share (Shareholders) .										
* Issued as fully paid .										
Amount called up at £ per share, as per List "M"										
Preference Shares of £ per share (Shareholders) . . .										
* Issued as fully paid .										
Amount called up at £ per share, as per List "N"										
†										
Amount, if any, paid in advance of call . .										
£										
Less unpaid calls estimated to be irrecoverable . .										
£										
Add deficiency to meet liabilities as above							Total deficiency as explained in Statement "O"			
£							£			

* Where capital is issued as partly paid up, the form should be altered accordingly.

† Add particulars of any other capital.

I, of make oath and say that the foregoing Statement and the several Lists hereunto annexed marked are, to the best of my knowledge and belief, a full, true, and complete statement of the affairs of the above-named Company, on the day of 19 , the date of the winding-up Order.

NOTE.—*The Commissioner is particularly requested, before swearing the Affidavit, to ascertain that the full name, address, and description of the Deponent are stated, and to initial all crossings-out or other alterations on the printed form. A deficiency in the Affidavit in any of the above respects will entail its refusal by the Court, and will necessitate its being re-sworn.*

Sworn at in the County of this day of 19 .
Before me
Signature
A Commissioner, etc.

LIST "A."—UNSECURED CREDITORS.

The names to be arranged in alphabetical order and numbered consecutively, Creditors for £10 and upwards being placed first.

NOTES.—1. When there is a contra account against the creditor, less than the amount of his claim against the Company, the amount of the creditor's claim and the amount of the contra account should be shown in the third column, and the balance only be inserted under the heading "Amount of Debt," thus:—

	£ s. d.
Total amount of claim . . .	
Less: Contra account . . .	

No such set-off should be included in List "I."

2. The particulars of any bills of exchange and promissory notes held by a creditor should be inserted immediately below the name and address of such creditor.

3. The names of any creditors who are also contributories, or alleged to be contributories, of the Company must be shown separately, and described as such at the end of the List.

No.	Name.	Address and Occupation.	Amount of Debt.			Date when contracted.		Consideration.
						Month.	Year.	
				s.	*d.*			

LIST "B."—CREDITORS FULLY SECURED (NOT INCLUDING DEBENTURE-HOLDERS).

No.	Name of Creditor.	Address and Occupation.	Amount of Debt.	Date when contracted.		Consideration.	Particulars of Security.	Date when given.	Estimated Value of Security.	Estimated Surplus from Security.
				Month.	Year.					
			£ *s.* *d.*						£ *s.* *d.*	£ *s.* *d.*

Signature

Dated 19 .

LIST "C."—CREDITORS PARTLY SECURED.

(State whether also Contributories of the Company.)

No.	Name of Creditor.	Address and Occupation.	Amount of Debt.			Date when contracted.		Consideration.	Particulars of Security.	Month and Year when given.	Estimated Value of Security.			Balance of Debt Unsecured.		
						Month.	Yaer.									
			£	s.	d.						£	s.	d.	£	s.	d.

Signature

Dated 19 .

LIST "D."—LIABILITIES OF COMPANY ON BILLS DISCOUNTED OTHER THAN THEIR OWN ACCEPTANCES FOR VALUE.

No.	Acceptor's Name, Address, and Occupation.	Whether liable as Drawer or Indorser.	Date when due.	Amount.			Holder's Name, Address, and Occupation (if known).	Amount expected to rank for Dividend.		
				£	s.	d.		£	s.	d.

Signature

Dated 19 .

LIST "E."—OTHER LIABILITIES.

Full particulars of all liabilities not otherwise scheduled to be given here.

No.	Name of Creditor or Claimant.	Address and Occupation.	Amount of Liability or Claim.			Date when Liability incurred.		Nature of Liability.	Consideration.	Amount expected to rank against Assets for Dividends.		
						Month.	Year.					
			£	s.	d.					£	s.	d.

Signature

Dated 19 .

LIST "F."—PREFERENTIAL CREDITORS FOR RATES, TAXES, SALARIES, AND WAGES (*a*).

No.	Name of Creditor.	Address and Occupation.	Nature of Claim.	Period during which Claim accrued due.	Date when due.	Amount of Claim.	Amount payable in full.	Difference ranking for Dividend.
						£ s. d.	£ s. d.	£ s. d.

Signature

Dated 19 .

LIST "G."—LIST OF DEBENTURE-HOLDERS.

The names to be arranged in alphabetical order and numbered consecutively. *Separate Lists* must be furnished of holders of each issue of Debentures, should more than one issue have been made.

No.	Name of Holder.	Address.	Amount.	Description of Assets over which Security extends.
			£ s. d.	

Signature

Dated 19 .

LIST "H."—PROPERTY.

Full particulars of every description of property not included in any other lists are to be set forth in this list.

Full Statement and Nature of Property.	Estimated Cost.	Estimated to produce.	
	£ s. d.	£ s. d.	
(*a*) Cash at Bankers'			
(*b*) Cash in hand			
(*c*) Stock in trade			
(*d*) Machinery, at			
(*e*) Trade fixtures, fittings, office furniture, utensils, etc.			
(*f*) Investments in Stocks or Shares, etc. .			[State particulars.]
(*g*) Loans for which Mortgage or other security held			[State particulars.]
(*h*) Other property, viz. :—			

Signature

Dated 19 .

(*a*) See also section 110 of the National Insurance Act, 1911, set out *infra*, pp. 1213 and 1214. This Act will come into force on 1st July, 1912, unless postponed by Order in Council: *ibid*, s. 115.

LIST "I."—DEBTS DUE TO THE COMPANY.

The names to be arranged in alphabetical order, and numbered consecutively.

NOTE.—If any debtor to the Company is also a creditor, but for a less amount than his indebtedness, the gross amount due to the Company and the amount of the contra account should be shown on the 3rd column, and the balance only be inserted under the heading "Amount of Debt," thus:—

	£ s. d.
Due to Company . . .	
Less: Contra account . .	

No such claim should be included in sheet "A."

No.	Name.	Residence and Occupation.	Amount of Debt.			Folio of Ledger or other Book where particulars to be found.	When contracted.		Estimated to produce.	Particulars of any Securities held for Debt.
			Good.	Doubtful.	Bad.		Month.	Year.		
			£ s. d.	£ s. d.	£ s. d.				£ s. d.	

Signature

Dated 19 .

LIST "J."—BILLS OF EXCHANGE, PROMISSORY NOTES, &c., ON HAND AVAILABLE AS ASSETS.

No.	Name of Acceptor of Bill or Note.	Address, etc.	Amount of Bill or Note.	Date when due.	Estimated to produce.	Particulars of any Property held as Security for Payment of Bill or Note.
			£ s. d.		£ s. d.	

Signature

Dated 19 .

LIST "K."—UNPAID CALLS.

Consecutive No.	No. in Share Register.	Name of Shareholder.	Address and Occupation.	No. of Shares held.	Amount of Call per Share unpaid.			Total Amount due.			Estimated to realize.		
					£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*

Signature

Dated 19 .

LIST "L."—LIST OF FOUNDERS' SHARES.

Consecutive No.	Register No.	Name of Shareholder.	Address.	Nominal Amount of Share.	No. of Shares held.	Amount per Share called up.			Total Amount called up.		
						£	*s.*	*d.*	£	*s.*	*d.*

Signature

Dated 19 .

LIST "M."—LIST OF ORDINARY SHARES.

Consecutive No.	Register No.	Name of Shareholder.	Address.	Nominal Amount of Share.	No. of Shares held.	Amount per Share called up.			Total Amount called up.		
						£	*s.*	*d.*	£	*s.*	*d.*

Signature

Dated 19 .

LIST "N."—LIST OF PREFERENCE SHARES.

Consecutive No.	Register No.	Name of Shareholder.	Address.	Nominal Amount of Share.	No. of Shares held.	Amount per Share called up.			Total Amount called up.		
						£	*s.*	*d.*	£	*s.*	*d.*

Signature

Dated 19 .

LIST "O" (1).—

(1) DEFICIENCY ACCOUNT WHERE WINDING-UP ORDER MADE

	£	s.	d.
I. Gross profit (if any) arising from carrying on business from date of formation of Company to date of Winding-up Order (as per Trading Account annexed)			
II. Receipts, if any, during same period from undermentioned sources :—			
Interest on Loans			
Interest on Deposits			
Transfer Fees			
Amount paid on Shares issued and subsequently forfeited (as per list annexed) .			
III. Other receipts, if any, during same period not included under any of the above headings, viz. .			
IV. Deficiency as per Statement of Affairs, Part II. .			
Total amount to be accounted for (2) £			

NOTES.—(1) Where particulars are numerous they
(2) These figures should agree.

DEFICIENCY ACCOUNT.

WITHIN THREE YEARS OF FORMATION OF COMPANY.

	Amount discharged.			Due at date of Winding-up Order.			£	s.	d.
I. Expenditure in carrying on business from date of formation of Company to date of Winding-up Order, viz. :—									
	£	s.	d.	£	s.	d.			
II. General Expenditure :—									
Salaries									
Wages not charged in Trading Account . .									
Rent									
Rates and Taxes . .									
Law Costs . . .									
Commission . . .									
Interest on Loans . .									
Interest on Debentures .									
Miscellaneous Expenditure (as per details annexed) .									
III. Directors' fees from date of formation of Company to date of Winding-up Order .									
IV. Dividends declared during same period . . .									
V. Losses and depreciation written off in Company's books (1) :—									
Bad debts									
Losses on Investments									
Depreciation on Property . . .									
Preliminary Expenses									
VI. Losses and Depreciation not written off in Company's books, now written off by the Directors (1) :—									
Bad debts									
Losses on Investments									
Depreciation on Property . . .									
Preliminary Expenses									
VII. Other Losses and Expenses									
Total amount accounted for (2) . . £									

should be inserted in a separate Schedule.

Signature

Dated 19 .

LIST "O" (2).—

(2) DEFICIENCY ACCOUNT WHERE WINDING-UP ORDER MADE

	£	s.	d.
I. Excess of Assets over Capital and Liabilities on the (1) day of 19 (if any), as per Company's Balance Sheet. (This and any previous Balance Sheets to be annexed or handed to O.R.)			
II. Gross profit (if any) arising from carrying on business from the (1) day of 19 , to date of Winding-up Order as per Trading Account annexed			
III. Receipts (if any) during same period from under-mentioned sources :—			
Interest on Loans			
Interest on Deposits			
Transfer Fees			
Amounts paid on shares issued and subsequently forfeited (as per List annexed) .			
IV. Other receipts (if any) during same period not included under any of the above headings .			
V. Deficiency as per Statement of Affairs (Part II.) .			
Total amount to be accounted for (3) . £			

NOTES.—(1) Three years before date of Winding-up Order.
(2) Where particulars are numerous they should
(3) These figures should agree.

DEFICIENCY ACCOUNT.

MORE THAN THREE YEARS AFTER FORMATION OF COMPANY.

	Amount discharged. £	s.	d.	Due at date of Winding-up Order. £	s.	d.	£	s.	d.
I. Excess of Capital and Liabilities over Assets on the (1) day of 19 (if any), as per Company's Balance Sheet. (This and any previous Balance Sheets to be annexed or handed to O.R.)									
II. Expenses of carrying on business from the (1) day of 19 , to date of Winding-up Order, viz. :—									
General Expenditure :—									
Salaries . . .									
Wages not charged in Trading Account . .									
Rent									
Rates and Taxes . .									
Law Costs . . .									
Commission . . .									
Interest on Loans . .									
Interest on Debentures .									
Miscellaneous Expenditure (as per details annexed)									
III. Directors' Fees from the (1) day of 19 to date of Winding-up Order .									
IV. Dividends declared during same period . . .									
V. Losses and Depreciation from the day of 19 (1), written off in Company's books, viz. (2) :—									
Bad Debts									
Losses on Investments									
Depreciation of Property									
Preliminary Expenses									
VI. Losses and Depreciation not written off in Company's books, now written off by Directors (2) :—									
Bad Debts									
Losses on Investments									
Depreciation of Property									
Preliminary Expenses									
VII. Other Losses and Expenses (2)									
Total amount accounted for (3) . £									

be inserted in a separate Schedule.

Signature

Dated 19 .

LIST "P."—IN SUBSTITUTION FOR SUCH OF THE LISTS NAMED "A" TO "O" AS WILL HAVE TO BE RETURNED BLANK.

List.	Particulars, as per Front Sheet.	REMARKS. *Where no particulars are entered on any one or more of the Lists named "A" to "O," the word "Nil" should be inserted in this column opposite the particular List or Lists thus left blank.*
A	Unsecured Creditors . . .	
B	Creditors fully secured (not including Debenture-holders) . . .	
C	Creditors partly secured . .	
D	Liabilities on Bills discounted other than the Company's own acceptances for value	
E	Other liabilities	
F	Preferential Creditors for rates, taxes, wages, etc.	
G	Loans on Debenture Bonds . .	
H	Property	
I	Book Debts	
J	Bills of Exchange, or other similar securities on hand . . .	
K	Unpaid Calls	
L	Founders' Shares	
M	Ordinary Shares	
N	Preference Shares	
O	Deficiency Account . . .	

Signature

Dated 19 .

REPORTS BY OFFICIAL RECEIVER.

Where the Court in England has made a winding-up order, the official receiver must as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the Court—

(*a*) As to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities ; and

(*b*) If the company has failed, as to the causes of the failure ; and

(*c*) Whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which, in his opinion, it is desirable to bring to the notice of the Court (*o*).

The report made under this section must state in narrative form

o) Companies (Consolidation) Act, 1898, s. 148.

the facts and matters which the official receiver desires to bring to the notice of the Court and his opinion as required by the section (*p*).

It is on this further report that an order for a public examination under section 175 of the Act is made (*pp*). Such an order can only be made in England. For the Court to make an order for public examination the report must show that, in the opinion of the official receiver, fraud has been committed either by a person in the promotion or formation of the company, or by a director or other officer in relation to the company since the formation thereof (*q*). Merely suggesting fraud will not be enough (*r*) to found a case for public examination. It must further show that the person whom it is proposed to publicly examine is the person who is suspected of the fraud (*s*), and that he has either been connected with the promotion or formation of the company or was a director or other officer thereof (*t*), and though it need not be quite so precisely worded as a pleading or an indictment, it must show a substantial basis for all these things (*u*). The fraud which must be alleged in such report must be fraud in some way connected with the company or its contributories, and not merely fraud committed by the company in dealings with the outside world or persons who are not contributories (*x*). The preliminary report may give a basis for a private examination under section 174 of the Act, and as the result of such examination or from further facts which have come to his knowledge, the official receiver may make a further report as to a person after the winding-up has proceeded for some time, and when he has already made one or more further reports as to other persons (*y*). No action for libel will lie against the official receiver for anything in any such report as he is absolutely privileged with regard to everything set out therein (*z*).

In the case of a limited partnership the preliminary report of the official receiver must be a report—

(*a*) As to the contributions of the partners and the estimated amount of assets and liabilities of the limited partnership; and

(*p*) Companies (Winding-up) Rules, 1909, r. 59.

(*pp*) See *infra*, pp. 1047 *et seq*, as to public examinations.

(*q*) *Great Kruger Gold Mining Co.*, [1892] 3 Ch. 307.

(*r*) *General Phosphate Corporation (No. 2)*, [1895] 1 Ch. 3; explaining *Trust and Investment Corporation of South Africa*, [1892] 3 Ch. 332, and overruling *Laxon and Co., (No. 3)* [1893] 1 Ch. 210, and *Birkdale Steam Laundry*, [1893] 2 Q. B 386.

(*s*) *Ex parte Barnes*, [1896] A. C. 146.

(*t*) *General Phosphate Corporation* (No. 2), [1895] 1 Ch. 3; *Great Kruger Gold Mining Co.* [1892] 3 Ch. 307.

(*u*) *Civil Naval and Military Outfitters*, [1899] 1 Ch. 215.

(*x*) *Medical Battery Co.*, [1894] 1 Ch. 444.

(*y*) *Ex parte Barnes*, [1896] A. C. 146.

(*z*) *Bottomley* v. *Brougham*, [1908] 1 K. B. 584; *Burr* v. *Smith*, [1909] 2 K. B. 306.

(b) If the limited partnership has failed as to the causes of the failure ; and

(c) Whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the limited partnership or the conduct of the business thereof.

The further report or reports, if any, of the official receiver must state the manner in which the limited partnership was formed, and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any partner general or limited in relation to the limited partnership since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court (a).

FIRST MEETINGS OF CREDITORS AND CONTRIBUTORIES.

When a winding-up order has been made by the Court in England the official receiver must summon separate meetings of the creditors and contributories of the company for the purpose of—

(a) Determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the official receiver ; and

(b) Determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed (b).

The rules for summoning such meetings are as follows :—

" The meetings of creditors and contributories under section 152 of the " Act hereinafter referred to as the first meetings of creditors and con- " tributories shall be held within twenty-one days, or if a special manager " has been appointed then within one month, after the date of the winding- " up order, or within such further time as the court may approve. The " dates of such meetings shall be fixed and they shall be summoned by the " Official Receiver (c).

" The Official Receiver shall forthwith give notice of the days fixed by " him for the first meetings of creditors and contributories to the Board of " Trade who shall gazette the same (d).

" The first meetings of creditors and contributories shall be summoned " as hereinafter provided (e).

" The notices of first meetings of creditors and contributories may be " in Forms 21 and 22 appended hereto (f) and the notices to creditors " shall state a time within which the creditors must lodge their proofs in " order to entitle them to vote at the first meeting (g).

(a) Limited Partnerships (Winding-up) Rules, 1909, r. 12 : the rule then proceeds to deal with the public examination of general and limited partners.

(b) Companies (Consolidation) Act, 1908, s. 152.

(c) Companies (Winding-up) Rules, 1909, r. 115.

(d) *Ibid.*, r. 116.

(e) *Ibid.*, r. 117. See *infra*, pp. 927 and 928.

(f) *I.e.* by the Companies (Winding-up) Rules, 1909. See *infra*, pp. 932 and 933 for these forms.

(g) *Ibid.*, r. 118.

"The Official Receiver shall also give to each of the Directors and "other Officers of the Company (*h*) who in his opinion ought to attend the "first meetings of creditors and contributories seven days notice of the "time and place appointed for each meeting. The notice may either be "delivered personally or sent by prepaid post letter as may be convenient. "It shall be the duty of every Director or Officer who receives notice of "such meeting to attend if so required by the Official Receiver (*i*).

"The Official Receiver shall also, as soon as practicable, send to each "creditor mentioned in the Company's statement of affairs, and to each "person appearing from the Company's books or otherwise to be a con-"tributory of the Company, a summary of the Company's statement of "affairs (*k*), including the causes of its failure, and any observations "thereon which the Official Receiver may think fit to make. The pro-"ceedings at a meeting shall not be invalidated by reason of any summary "or notice required by these rules not having been sent or received before "the meeting" (*l*).

Then come a series of rules which apply to all meetings of creditors and contributories, but as to first meetings subject and without prejudice to any express provisions of the Act (*m*).

"The Official Receiver or Liquidator shall summon all meetings of "creditors and contributories by giving not less than seven days notice of "the time and place thereof in the *London Gazette* and in a local paper (*mm*); "and shall not less than seven days before the day appointed for the "meeting send by post (*n*) to every person appearing by the Company's "books to be a creditor of the Company notice of the meeting of creditors, "and to every person appearing from the Company's books or otherwise "to be a contributory of the Company notice of the meeting of con-"tributories.

"The notice to each creditor shall be sent to the address given in his "proof, or if he has not proved to the address given in the statement of "affairs of the Company, or to such other address as may be known to the "person summoning the meeting. The notice to each contributory shall "be sent to the address mentioned in the Company's books as the address

(*h*) Under r. 15 of the Limited Partnerships (Winding-up) Rules, 1909, the Official Receiver must give to each of the limited partners the notice to attend the first meetings of creditors, and contributories to be given to general partners under r. 119 of the Companies (Winding-up) Rules, 1909, and it is the duty of every such limited partner to attend accordingly. For the purpose of the Limited Partnerships (Winding-up) Rules, "general partner" is substituted for "director" and for "secretary" and for "secretary and chief officer" in applying the Companies (Winding-up) Rules, 1909, Limited Partnerships (Winding-up) Rules, 1909, r. 1.

(*i*) Companies (Winding-up) Rules, 1909, r. 119. For form, see p. 938.

(*k*) This summary is absolutely privileged: *Burr* v. *Smith*, [1909] 2 K. B. 306.

(*l*) Companies (Winding-up) Rules, 1909, r. 120.

(*m*) *Ibid.*, r. 122.

(*mm*) For form of advertisement in Gazette, see *infra*, p. 933, and in local paper, see *supra*, p. 879.

(*n*) The Court dispensed with service by post in *Nelson & Co.* 00327 of 1904; Mr. Registrar HOOD, February 10, 1905, unreported. There were 700,000 policy-holders.

"of such contributory, or to such other address as may be known to the "person summoning the meeting (*o*).

"A certificate by the Official Receiver or other officer of the Court, or "by the clerk of any such person, or an affidavit by the Liquidator, or his "solicitor, or the clerk of either of such persons, that the notice of any "meeting has been duly posted, shall be sufficient evidence of such notice "having been duly sent to the person to whom the same was addressed (*p*).

"The meetings shall be held at such place as is in the opinion of the "Official Receiver or Liquidator most convenient for the majority of the "creditors or contributories or both. Different times or places or both "may if thought expedient be named for the meetings of creditors and "for the meetings of contributories (*q*).

"The costs of summoning a meeting of creditors or contributories at "the instance of any person other than the Official Receiver or Liquidator, "shall be paid by the person at whose instance it is summoned, who shall "before the meeting is summoned deposit with the Official Receiver or "Liquidator (as the case may be) such sum as may be required by the "Official Receiver or Liquidator as security for the payment of such "costs. The costs of summoning such meeting of creditors or contribu-"tories including all disbursements for printing, stationery, postage, and "the hire of room, shall be calculated at the following rates for each "creditor or contributory to whom notice is required to be sent, namely, "two shillings per creditor or contributory for the first 20 creditors or con-"tributories, one shilling per creditor or contributory for the next 30 "creditors or contributories, sixpence per creditor or contributory for any "number of creditors or contributories after the first 50. The said costs "shall be repaid out of the assets of the Company if the Court shall by "order, or if the creditors or contributories (as the case may be) shall by "resolution so direct (*r*).

"Where a meeting is summoned by the Official Receiver or the Liqui-"dator, he, or some one nominated by him, shall be chairman of the "meeting. At every other meeting of creditors and contributories the "chairman shall be such person as the meeting by resolution shall "appoint (*s*).

"At a meeting of creditors a resolution shall be deemed to be passed "when a majority in number and value of the creditors present, personally "or by proxy, and voting on the resolution, have voted in favour of the "resolution, and at a meeting of the contributories a resolution shall be "deemed to be passed when a majority in number and value of the con-"tributories present, personally or by proxy, and voting on the resolution, "have voted in favour of the resolution, the value of the contributories "being determined according to the number of votes conferred on each "contributory by the regulations of the Company (*t*).

"The Official Receiver, or, as the case may be, the Liquidator, shall "file with the Registrar a copy, certified by him, of every resolution of a "meeting of creditors or contributories (*u*).

(*o*) Companies (Winding-up) Rules, 1909, r. 123.

(*p*) *Ibid.*, r. 124. For forms of affidavit and certificate, see *infra*, pp. 935 and 936.

(*q*) *Ibid.*, r. 125.

(*r*) *Ibid.*, r. 126.

(*s*) *Ibid.*, r. 127. For form of authority, see *infra*, p. 936.

(*t*) *Ibid.*, r. 128.

(*u*) *Ibid.*, r. 129. For form of list of creditors to be used at all meetings, see *infra*, p. 987.

"Where a meeting of creditors or contributories is summoned by "notice, the proceedings and resolutions at the meeting shall, unless the "Court otherwise orders, be valid, notwithstanding that some creditors "or contributories may not have received the notice sent to them (*x*).

"The chairman may with the consent of the meeting adjourn it from "time to time and from place to place but the adjourned meeting shall be "held at the same place as the original place of meeting unless in the "resolutions for adjournment another place is specified or unless the "Court otherwise orders (*y*).

"A meeting may not 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 thereat, at least three creditors "entitled to vote or three contributories, or all the creditors entitled to "vote or all the contributories if the number of the creditors entitled to "vote or the contributories as the case may be shall not exceed three.

"If within half an hour from the time appointed for the meeting a "quorum of creditors or contributories is not present or represented, the "meeting shall 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, "not being less than seven or more than twenty-one days (*z*).

"In the case of a first meeting of creditors or of an adjournment thereof "a person shall not be entitled to vote as a creditor unless he has duly "lodged with the Official Receiver not later than the time mentioned for "that purpose in the notice convening the meeting or adjourned "meeting a proof of the debt which he claims to be due to him from the "Company (*a*).

"A creditor shall not vote in respect of any unliquidated or contingent "debt, or any debt the value of which is not ascertained (*b*), nor shall a "creditor vote in respect of any debt on or secured by a current bill of "exchange or promissory note held by him, unless he is willing to treat "the liability to him thereon of every person who is liable thereon ante-"cedently to the Company, and against whom a receiving order in bank-"ruptcy has not been made, as a security in his hands, and to estimate "the value thereof, and for the purposes of voting, but not for the purposes "of dividend, to deduct it from his proof (*c*).

"For the purpose of voting, a secured creditor shall, unless he surren-"ders his security, state in his proof the particulars of his security, the "date when it was given, and the value at which he assesses it, and shall "be entitled to vote only in respect of the balance (if any) due to him, "after deducting the value of his security. If he votes in respect of his "whole debt he shall be deemed to have surrendered his security, unless

(*x*) Companies (Winding-up) Rules, 1909, r. 130.

(*y*) *Ibid.*, r. 131; for forms of memorandum of adjournment, *post*, p. 936.

(*z*) *Ibid.*, r. 132. Apparently if only one creditor has proved he will form a quorum: *Re Thomas*, [1911] W. N. 123, following *Lombard Contract Corporation*, 00413 of 1900, April 3rd, 1901, an unreported decision of WRIGHT, J.

(*a*) Companies Winding-up) Rules, 1909, r. 133.

(*b*) See *Canadian Pacific Colonization Co.*, [1891] W. N. 122; *Ex parte Ruffle*, 8 Ch. 997.

(*c*) Companies (Winding-up) Rules, 1909, r. 134.

"the Court on application is satisfied that the omission to value the "security has arisen from inadvertence (*d*).

"The Official Receiver, or liquidator may within twenty-eight days "after a proof estimating the value of a security as aforesaid has been "used in voting at a meeting, require the creditor to give up the security "for the benefit of the creditors generally on payment of the value so "estimated, with an addition thereto of twenty per cent. Provided, that "where a creditor has valued his security, he may, at any time before "being required to give it up, correct the valuation by a new proof, and "deduct the new value from his debt, but in that case the said addition "of twenty per cent. shall not be made if the security is required to be "given up (*e*).

"The chairman shall have power to admit or reject a proof for the "purpose of voting, but his decision shall be subject to appeal to the "Court. If he is in doubt whether the proof of a creditor should be "admitted or rejected he shall mark it as objected to, and allow the "creditor to vote subject to the vote being declared invalid in the event "of the objection being sustained (*f*).

"The chairman shall cause minutes of the proceedings at the meeting "to be drawn up and fairly entered in a book kept for that purpose and "the minutes shall be signed by him or by the chairman of the next "ensuing meeting (*g*).

"A creditor or a contributory may vote either in person or by proxy (*h*).

"Every instrument of proxy shall be in accordance with the form in "the Appendix (*i*) and every written part thereof shall be in the hand-"writing of the person giving the proxy, or of any manager or clerk or "other person in his regular employment, or of a commissioner to administer "oaths in the Supreme Court (*k*).

"General and special forms of proxy shall be sent to the creditors and "contributories with the notice summoning the meeting, and neither the "name nor description of the Official Receiver or Liquidator or any other "person shall be printed or inserted in the body of any instrument of "proxy before it is so sent (*l*).

"A creditor or a contributory may give a general proxy to his manager "or clerk, or any other person in his regular employment. In any such "case the instrument of proxy shall state the relation in which the person "to act thereunder stands to the creditor or contributory (*m*).

"A creditor or a contributory may give a special proxy to any person "to vote at any specified meeting, or adjournment thereof :—

"(*a*) for or against the appointment or continuance in office of any "specified person as liquidator or member of the committee of "inspection, and

(*d*) Companies (Winding-up) Rules, 1909, r. 135: see *Re Rowe*, [1904] 2 K. B. 489 and cited *post*, pp. 1207 *et seq.*

(*e*) Companies (Winding-up) Rules, 1909, r. 136.

(*f*) *Ibid.*, r. 137.

(*g*) *Ibid.*, r. 138.

(*h*) *Ibid.*, r. 139.

(*i*) *I.e.*, to the Companies (Winding-up) Rules, 1909; see pp. 934 and 935 for these forms.

(*k*) Companies (Winding-up) Rules, 1909, r. 140.

(*l*) *Ibid.*, r. 141.

(*m*) *Ibid.*, r. 142.

"(b) on all questions relating to any matter other than those above "referred to and arising at the meeting or an adjournment "thereof (n).

"Where it appears to the satisfaction of the Court that any solicitation "has been used by or on behalf of a liquidator in obtaining proxies or in "procuring his appointment as liquidator, except by the direction of a "meeting of creditors or contributories, the Court, if it thinks fit, may "order that no remuneration shall be allowed to the person by whom or "on whose behalf the solicitation was exercised notwithstanding any "resolution of the Committee of Inspection or of the creditors or contribu- "tories to the contrary (o).

"A creditor or contributory may appoint the Official Receiver or "Liquidator to act as his general or special proxy (p).

"No person acting either under a general or a special proxy shall 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 Company otherwise than as a creditor rateably "with the other creditors of the Company. Provided that where any "person holds special proxies to vote for an application to the Court in "favour of the appointment of himself as liquidator he may use the said "proxies and vote accordingly (q).

"A proxy intended to be used at the first meeting of creditors or "contributories, or an adjournment thereof, shall be lodged with the "Official Receiver not later than the time mentioned for that purpose in "the notice convening the meeting or the adjourned meeting, which time "will be not earlier than twelve o'clock at noon of the day but one before "nor later than twelve o'clock at noon of the day before the day appointed "for such meeting, unless the Court otherwise directs.

"In every other case a proxy shall be lodged with the Official Receiver "or Liquidator not later than four o'clock in the afternoon of the day "before the meeting or adjourned meeting at which it is to be used.

"No person shall be appointed a general or special proxy who is a "minor.

"Where a Limited Company is a creditor, any person who is duly "authorised under the seal of the Creditor Company to act generally on "behalf of the Creditor Company at meetings of creditors and contribu- "tories and to appoint himself or any other person to be the Creditor "Company's proxy, may fill in and sign the form of proxy on the Creditor "Company's behalf and appoint himself to be the Creditor Company's "proxy, and a proxy so filled in and signed by such a person shall be "received and dealt with as the proxy of the Creditor Company (r).

"Where an Official Receiver who holds any proxies cannot attend the "meeting for which they are given, he may, in writing, depute some "person under his official control to use the proxies on his behalf, and in "such manner as he may direct (s).

(n) Companies (Winding-up) Rules, 1909, r. 143.
(o) *Ibid.*, r. 144.
(p) *Ibid.*, r. 145.
(q) *Ibid.*, r. 146.
(r) *Ibid.*, r. 147.
(s) *Ibid.*, r. 148.

"The proxy of a creditor blind or incapable of writing may be accepted, "if such creditor has attached his signature or mark thereto in the presence "of a witness, who shall add to his signature his description and residence; "provided that all insertions in the proxy are in the handwriting of the "witness, and such witness shall have certified at the foot of the proxy "that all such insertions have been made by him at the request of the "creditor and in his presence before he attached his signature or mark (*t*)."

NOTICE TO CREDITORS OF FIRST MEETING (*u*).

(*Title.*)

(Under the order for winding-up the above-named Company, dated the day of 19 .)

Notice is hereby given that the first meeting of creditors in the above matter will be held at on the day of 19 at o'clock in the noon.

To entitle you to vote thereat your proof must be lodged with me not later than o'clock on the day of 19 .

Forms of proof and of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me not later than o'clock on the day of 19 .

Official Receiver.

Address,

(The Statement of the Company's affairs (*) .)

* Here insert "has not been lodged," or "has been lodged, and summary is enclosed."

NOTE.

At the first meetings of the creditors and contributories they may amongst other things:—

1. By resolution determine whether or not an application is to be made to the Court to appoint a liquidator in place of the Official Receiver.

2. By resolution determine whether or not an application shall be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

NOTE.—If a liquidator is not appointed by the Court the Official Receiver will be the liquidator.

NOTICE TO CONTRIBUTORIES OF FIRST MEETING (*x*).

(*Title.*)

Notice is hereby given that the first meeting of the contributories in the above matter will be held at on the day of 19 , at o'clock in the noon.

Forms of general and special proxies are enclosed herewith. Proxies

(*t*) Companies (Winding-up) Rules, 1909, r. 149. For form of this certificate, *infra*, p. 935.

(*u*) *Ibid.*, Appendix Form 21.

(*x*) *Ibid.*, Form 22.

to be used at the meeting must be lodged with me not later than o'clock on the day of 19 .

Dated this day of 19 .

Official Receiver.

(The Company's statement of affairs (*a*) [*] .)

* Here insert "has not been lodged," or "has been lodged, and summary is enclosed."

NOTE.

At the first meetings of creditors and contributories they may amongst other things :—

1. By resolution determine whether or not an application shall be made to the Court to appoint a liquidator in place of the Official Receiver.

2. By resolution determine whether or not an application shall be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee of inspection, if appointed.

NOTE.—If a liquidator is not appointed by the Court the Official Receiver will be the liquidator.

NOTICE TO DIRECTORS AND OFFICERS OF COMPANY TO ATTEND FIRST MEETING OF CREDITORS OR CONTRIBUTORIES (*y*).

(*Title.*)

Take notice that the first meeting of creditors or contributories will be held on the day of 19 , at o'clock at (*) , and that you are required to attend thereat, and give such information as the meeting may require.

Dated this day of 19 .

To (†) Official Receiver.

* Here insert place where meeting will be held.

† Insert name of person required to attend.

NOTICE OF FIRST MEETINGS FOR LONDON GAZETTE (*z*).

Name of Company.	Address of Registered Office.	Court.	Number of Matter.	Date of First Meeting.	Hour.	Place.
				Creditors : 19 Contributories : 19		

(*y*) Companies (Winding-up) Rules, 1909, Appendix Form 23.

(*z*) *Ibid.*, Form 103 (2).

GENERAL PROXY (*a*).

(*Title.*)

* If a firm, write "we" instead of "I," and set out the full name of the firm.

† Here insert *either* (but not both) "Mr. of a clerk, manager, &c., in my regular employ," in which case the standing of the person appointed must be clearly set out, *or* "the Official Receiver in the above matter."

‡ "My" *or* "our."

§ If a firm, sign the firm's trading title, and add "by A.B., a partner in in the said firm."

|| The signature of the creditor or contributory appointing a proxy must not be attested as witness by the person nominated as proxy.

¶ Here state whether clerk or manager in the regular employment of the creditor or contributory or a commissioner to administer oaths in the Supreme Court (*see* Rule 140).

I * of , a creditor [or contributory] hereby appoint † to be ‡ general proxy to vote at the Meeting of Creditors or Contributories to be held in the above matter on the day of 19 , or at any adjournment thereof.

Dated this day of 19 .

Signed §

Signature of Witness ||

Address

NOTES.

1. The authorized agent of a corporation may fill up blanks, and sign for the corporation thus:—

For the Company,

J.S. (duly authorized under the seal of the Company).

2. The person appointed general proxy *must be either* the Official Receiver *or* a person in the regular employ of the Creditor [or Contributory].

CERTIFICATE TO BE SIGNED BY PERSON OTHER THAN CREDITOR [OR CONTRIBUTORY] FILLING UP THE ABOVE PROXY.

I, of , being a ¶ hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above-named and in his presence, before he attached his signature [*or* mark] thereto.

Dated this day of 19 .

Signature

The proxy must be lodged with the Official Receiver or liquidator not later than the time named for that purpose in the notice convening the meeting at which it is to be used.

SPECIAL PROXY (*b*).

(*Title.*)

* If a firm, write "we" instead of "I," and set out the full name of the firm.

† Here insert *either* "Mr. of " *or* "the Official Receiver in the above matter."

‡ "My" *or* "our."

§ Here insert the word "for" or the word "against" as the case may require, and specify the particular resolution.

|| If a firm, sign the firm's trading title, and add "by A.B., partner in the said firm."

I, * of , a creditor [or contributory], hereby appoint † as ‡ proxy at the meeting of creditors [*or* contributories] to be held on the day of 19 or at any adjournment thereof, to vote § .

Dated this day of 19 .

Signed ||

Signature of Witness

Address

(*a*) Companies (Winding-up) Rules, 1909, Appendix Form 80. In a compulsory winding-up proxies do not require a stamp: Finance Act, 1895, s. 16.

(*b*) *Ibid.*, Form 81.

NOTES.

1. A creditor (or contributory) may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters :—

(*a*) For or against the appointment or continuance in office of any specified person as liquidator or as member of the committee of inspection.

(*b*) On all questions relating to any matter, other than those above referred to, arising at a specified meeting or adjournment thereof.

2. The authorized agent of a corporation may fill up blanks and sign for the corporation, thus :—

"For the Company.
J.S. (duly authorized under the seal of the Company)."

CERTIFICATE TO BE SIGNED BY PERSON OTHER THAN CREDITOR OR CONTRIBUTORY FILLING UP THE ABOVE PROXY.

¶ Here state whether clerk or manager in the regular employment of the creditor or contributory or a commissioner to administer oaths in the Supreme Court (*see* Rule 140).

I, of , being a ¶ hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above-named and in his presence before he attached his signature (*or* mark) thereto.

Dated this day of 19 .

Signature

The proxy must be lodged with the Official Receiver or liquidator not later than the time named for that purpose in the Notice convening the meeting at which it is to be used.

AFFIDAVIT OF POSTAGE OF NOTICES OF MEETING (*c*).

(*Title.*)

* State the description of the deponent.

† Insert here "general" or "adjourned general" or "first" meeting of creditors [*or* contributories, *as the case may be*].

I, a * , make oath and say as follows :—

1. That I did on the day of 19 , send to each creditor mentioned in the Company's statement of affairs, [*or* to each contributory mentioned in the register of members of the Company] a notice of the time and the place of the † in the form hereunto annexed marked "A."

2. That the notices for creditors were addressed to the said creditors respectively, according to their respective names and addresses appearing in the statement of affairs of the Company.

3. That the notices for contributories were addressed to the contributories respectively according to their respective names and addresses appearing in the register of the Company.

4. That I sent the said notices by putting the same prepaid into the post office at before the hour of o'clock in the noon on the said day.

Sworn &c.

(*c*) Companies (Winding-up) Rules, 1909, Appendix Form 76.

CERTIFICATE OF POSTAGE OF NOTICES (GENERAL) (*d*).

(*Title.*)

I, , a clerk in the office of the Official Receiver, hereby certify :—

1. That I did on the day of 19 , send to * , a notice of the time and the place of the first meeting, or † in the form hereunto annexed marked "A."

Paragraphs 2, 3, and 4 as in last preceding form.

Signature

Dated this

* Each creditor mentioned in the statement of affairs, *or* each contributory mentioned in the Register of Members of the Company, *or as the case may be.*

† "A general meeting," *or* "adjourned general meeting," *or as the case may be.*

MEMORANDUM OF ADJOURNMENT OF MEETING (*e*).

(*Title.*)

Before at on the day of 19 , at o'clock.

Memorandum.—The * Meeting of † in the above matter was held at the time and place above mentioned ; but it appearing that ‡ the Meeting was adjourned until the day of 19 , at o'clock in the noon, then to be held at the same place.

Chairman.

* "First" *or as the case may be.*

† Insert "creditors" *or* "contributories," *as the case may be.*

‡ Here state reason for adjournment.

AUTHORITY TO DEPUTY TO ACT AS CHAIRMAN OF MEETING AND USE PROXIES (*f*).

(*Title.*)

I, , the Official Receiver of do hereby nominate Mr. of to be chairman of the meeting of creditors [*or* contributories] in the above matter, appointed to be held at on the day of 19 , and I depute him, * to attend such meeting and use, on my behalf, any proxy or proxies held by me in this matter.

Dated this day of 19 .

Official Receiver.

* Here insert "Being a person in my employment or under my official control, *or* being an officer of the Board of Trade."

MEMORANDUM OF PROCEEDINGS AT ADJOURNED FIRST MEETING (*g*).

(No quorum.)

(*Title.*)

Before at on the day of 19 , at o'clock.

Memorandum.—The adjourned meeting of * in the above matter was held at the time and place above mentioned ; but it appearing that there was not a quorum of * qualified to vote present or represented, no resolution was passed and the meeting was not further adjourned.

Chairman.

* Insert "creditors" or "contributories," *as the case may be.*

(*d*) Companies (Winding-up) Rules, 1909, Appendix Form 77.

(*e*) *Ibid.*, Form 78

(*f*) *Ibid.*, Form 79.

(*g*) *Ibid.*, Form 24.

LIST OF CREDITORS * ASSEMBLED TO BE USED AT EVERY MEETING (*h*).

(*Title.*)

Meeting held at this day of 19 .

* Or "contributories."

† In case of contributories insert "number of shares."

Number.	Names of Creditors * present or represented.	Amount of Proof.†
		£ s. d.
1		
2		
3		
4		
5		
6		
7		
7	Total number of creditors * present or represented.	

LIQUIDATOR AND COMMITTEE OF INSPECTION.

As soon as possible after the first meetings of creditors and contributories have been held the official receiver or the chairman of the meeting, as the case may be, must report the result of each meeting to the Court (*i*).

The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the earlier provisions of the section (*k*), the Court decides the difference and makes such order thereon as the Court thinks fit (*l*). In practice a summons, asking that the report of the result of the meetings of creditors and contributories may be considered and such appointment made thereon as may be deemed expedient, is taken out in any case, but if the official receiver is to be continued no order is made, except if there is to be a committee of inspection, as to such committee.

Upon the result of the meetings of creditors and contributories being reported to the Court, the Court may, if the meeting of creditors and the meeting of contributories have each passed the same resolutions, or if the resolutions passed at the two meetings are identical in effect, upon the application of the official receiver, forthwith make the appointments necessary for giving effect to such resolutions. In any other case the Court must, on the application of the official

(*h*) Companies (Winding-up) Rules, 1909, Appendix Form 25.

(*i*) *Ibid.*, r. 55 (1). The official receiver rarely rejects proofs for voting purposes: but where he has done so, he will refer to the fact in the report and the Court can then deal with the matter.

(*k*) *I.e.* determining whether or no an application is to be made for the appointment of a liquidator in place of the Official Receiver and for the appointment of a committee of inspection and who are to be the members of it.

(*l*) Companies (Consolidation) Act, 1908, s. 152 (2).

receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences (if any), and making such order as shall be necessary.

When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place must be advertised by the official receiver in such manner as the Court directs, but so that the first or only advertisement must be published not less than seven days before the time so fixed.

Upon the consideration of the resolutions and determinations of the meetings the Court will hear the official receiver and any creditor or contributory (*m*). Creditors or contributories appearing on such a summons are sometimes given their costs.

The Court will usually at such meetings also hear persons who claim to be creditors, but whose claims have been disallowed by the official receiver, at all events on the question of whether they are creditors: and persons whose proofs have been rejected at the first meeting will receive notice of the appointment before the Court. As a general rule the Court will endeavour to give effect to the wishes of all parties if it is satisfied that those wishes have been formed honestly and intelligently; but it has a discretion, and if the interest of either creditors or contributories is overriding, or if it is not satisfied that the support given to a nominee has been fairly obtained, it will endeavour to further the actual business interest of everybody. Creditors will be mainly considered by the Court where there is likely to be a substantial deficiency, contributories where there is likely to be a substantial surplus. And it must be borne in mind that even where the official receiver is not appointed, the Board of Trade will, through its official receiver, see that there is a proper investigation of the conduct of the company's affairs (*n*). It is thought that in a case like *Johannisburg Land and Gold Trust Co.* (*o*), where there is nothing remaining to be done in the liquidation and the official receiver's fees are payable in any case, the Court can decline to make an appointment, even though both meetings have passed resolutions in favour of it. It will be observed, however, that at the time when this case was decided the rule required both meetings to be unanimous, and they were not so, although they passed identical resolutions. No doubt the case turned on this. Where the meetings of creditors and contributories came to different conclusions, the latter being in favour of the official receiver being continued as liquidator, the Court, having regard to the fact that there would be a surplus for division among the contributories, and

(*m*) Companies (Winding-up) Rules, 1909, r. 55 (2), (3) and (4).

(*n*) See the remarks of Mr. Registrar HOOD on *The Law Car and General Insurance Corporation*, *Times* Newspaper, February 14, 1911; the learned registrar goes on to deal with the duties of the Official Receiver and of the liquidator. As to the latter he says that it is his duty to ascertain whether there is a reasonable chance of obtaining recoupment from delinquent directors and others: but that having regard to the powers and duties of the official receiver, it is no part of a liquidator's duty to embark on expensive inquiries to gratify persons who have probably no interest in the assets.

(*o*) [1892] 1 Ch. 583.

that consequently they were the persons most interested in the liquidation, continued the official receiver as liquidator (*p*). In another case (*q*), where the contributories were unanimously in favour of the official receiver being continued as liquidator, and a majority in value, including certain directors who were also creditors, but a minority in number of the creditors came to the same conclusion, the Court, having regard to the fact that the debts due to the directors were not questioned, continued the official receiver as liquidator. In another case (*r*), Kekewich, J., disregarded the wishes of a large majority of creditors who were in favour of continuing a person who had been liquidator in a previous voluntary liquidation, and appointed instead an accountant who had acted as chairman of the meeting of creditors. In case a liquidator is not appointed by the Court, the official receiver will in England be the liquidator (*s*).

If more than one liquidator is appointed by the Court, the Court must declare whether any act by the Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed (*t*).

Where a person other than the official receiver is appointed liquidator he will receive such salary or remuneration by way of percentage or otherwise as the Court directs, and if more such persons than one are appointed liquidators their remuneration will be distributed among them in such proportions as the Court directs (*u*).

The remuneration of a liquidator, unless the Court orders otherwise, will be fixed by the committee of inspection, and will be in the nature of a commission or percentage, of which one part will be payable on the amount realized after deducting the sums, if any, paid to secured creditors (other than debenture-holders) out of the proceeds of their securities, and the other part on the amount distributed in dividend (*x*). In *Orange River Irrigation, Ltd.* (*xx*). the Court "allowed" the liquidators remuneration at a certain sum, there being no committee of inspection and the Board of Trade having declined to fix such remunertion. Sometimes an order is made fixing such remuneration.

If the Board of Trade is of opinion that the remuneration of a

(*p*) *Bank of South Australia* (1895), 13 Rep. 343; 2 Mans. 148.

(*q*) *Bloxwich Iron and Steel Co.* (1894), 8 Rep. 442; 1 Mans. 350.

(*r*) *Land Development Association*, [1892] W. N. 23.

(*s*) Companies (Consolidation) Act, 1908, s. 152 (3).

(*t*) *Ibid.*, s. 149 (4). One of several liquidators can at his own expense employ an expert to inspect the books: *Gold Coast Finance Syndicate*, [1904] W. N. 73.

(*u*) Companies (Consolidation) Act, 1908, s. 149 (8).

(*x*) Companies (Winding-up) Rules, 1909, R. 154 (1). The expression "the amount realised" means the amount realised by the liquidator, and the expression "the amount distributed in dividend" probably means the amount distributed in dividend out of assets realised by the liquidator. Creditors cannot pass resolutions altering the mode of remuneration: *Re Christie*, [1900] 1 Q. B. 5.

(*xx*) Unreported 00169 of 1905, Mr. Registrar HOOD, June 16, 1911.

liquidator as fixed by the committee of inspection is unnecessarily large, the Board of Trade may apply to the Court, and thereupon the Court must fix the amount of the remuneration of the liquidator.

If there is no committee of inspection the remuneration of the liquidator will, unless the Court otherwise orders, be fixed by the scale of fees and percentages for the time being payable on realisations and distributions by the official receiver as liquidator (*y*). If there is no committee of inspection and the Board of Trade declines to fix the liquidator's remuneration, the Court will do so (*z*).

Where a liquidator in a winding-up by the Court receives remuneration for his services as such, no payment will be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

Where a liquidator is a solicitor he may contract that the remuneration for his services as liquidator shall include all professional services (*a*).

Except as provided by the Acts or Rules, a liquidator may not under any circumstances whatever, make any arrangements for, or accept from any solicitor, auctioneer, or any other person connected with the company of which he is liquidator, or who is employed in or in connection with the winding-up of the company, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Acts and Rules he is entitled as liquidator, nor may he make any arrangement for giving up, or give up any part of such remuneration to any such solicitor, auctioneer, or other person (*b*).

Neither the liquidator nor any member of the committee of inspection of a company may, while acting as liquidator or member of such committee, except by leave of the Court, either directly or indirectly, by himself or any partner (*c*), clerk, agent, or servant, become purchaser of any part of the company's assets. Any such purchase made contrary to the provisions of this Rule may be set aside by the Court on the application of the Board of Trade or any creditor or contributory, and the Court may make such order as to costs as the Court thinks fit (*d*).

Where the liquidator carries on the business of the company, he may not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with the liquidator is of such a nature as would result in the liquidator

(*y*) Companies (Winding-up) Rules, 1909, r. 154 (2) and (3).

(*z*) *Orange River Irrigation, Ltd.*, 00169 of 1905. Mr. Registrar HOOD, June 16, 1911.

(*a*) Companies (Winding-up) Rules, 1909, r. 186.

(*b*) *Ibid.*, r. 155.

(*c*) This rule forbids transactions like the one which was held to be good in *Re Gallard, Ex parte Gallard*, [1897] 2 Q. B. 8 (a bankruptcy case).

(*d*) Companies (Winding-up) Rules, 1909, r. 156.

obtaining any portion of the profit (if any) arising out of the transaction (e).

In any case in which the sanction of the Court is obtained under the last preceding rule, the cost of obtaining such sanction must be borne by the person in whose interest such sanction is obtained, and will not be payable out of the company's assets (f).

A committee of inspection appointed (g) in pursuance of the Act consists of creditors (h) and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.

The committee meets at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

The committee may act by a majority of their members present at a meeting, but may not act unless a majority of the committee are present.

Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office thereupon becomes vacant.

Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories) of which seven days notice has been given, stating the object of the meeting.

On a vacancy occurring in the committee the liquidator must forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

If there is no committee of inspection, any act or thing or any direction or permission by the Act authorized or required to be done

(e) Companies (Winding-up) Rules, 1909, r. 157

(f) *Ibid.*, r. 159.

(g) The Court usually objects on the ground of expense to appointing a committee of inspection who are widely scattered: *The Law Car and General Insurance Corporation*, *Times* Newspaper, February 14, 1911.

(h) In *South American and Mexican Co.*, 00214 of 1893 (unreported), VAUGHAN WILLIAMS, J., held on November 16, 1893, that a debenture-holder who had not proved was a creditor for this purpose.

or given by the committee may be done or given by the Board of Trade on the application of the liquidator (*i*). Usually, however, the Board of Trade declines to act in this capacity, leaving the parties to go to the Court for any sanction required (*k*).

The functions of the committee of inspection which under such circumstances devolve on the Board of Trade may, subject to the directions of the Board be exercised by the official receiver (*l*). Any defect or irregularity in the appointment or election of a member of a committee of inspection will not vitiate any act which is done by him in good faith (*m*).

No member of a committee of inspection will, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding-up, or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company. If it appears to the Board of Trade that any profit or payment has been made contrary to the provisions of this rule, they may disallow such payment or recover such profit, as the case may be, on the audit of the liquidator's accounts (*n*).

Where the sanction of the Court to a payment to a member of a committee of inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the Court must specify the nature of the services, and such sanction may only be given where the service performed is of a special nature. Except by the express sanction of the Court no remuneration may under any circumstances by paid to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee (*o*). Not

(*i*) Companies (Consolidation) Act, 1908, s. 160.

(*k*) See, for instance, *Orange River Irrigation Co., Ltd.*, unreported 00169, of 1905, Mr. Registrar HOOD, June 16, 1909, where there was no committee of inspection, and the Court fixed the liquidator's remuneration the Board of Trade have declined to do so.

(*l*) Companies (Winding-up) Rules, 1909, r. 205, and see *infra*, p. 1004 note (*f*).

(*m*) *Ibid.*, r. 217 (2).

(*n*) Companies (Winding-up) Rules, 1909, r. 158. The sanction of the Court must be given before the services were rendered, and a solicitor who or whose clerk is a member of a committee will, if employed, only be allowed his out-of-pocket disbursements, without any allowance for office expenses: *Re Gallard, Ex parte Gallard*, [1896] 1 Q. B. 68, it will be noted that the rule is wider than the bankruptcy rule there under consideration. The cost of obtaining the sanction of the court under this rule must, in all cases, be borne by the person in whose interest the sanction is sought and is not payable out of the company's assets: Companies (Winding-up) Rules, 1909, r. 159, and see *ibid.*, r. 156, *supra*, p. 940, as to purchases of the company's assets, by a member of a committee.

(*o*) Companies (Winding-up) Rules, 1909, r. 160. For order sanctioning payment, see *post*, pp. 946 and 947.

infrequently the Court makes orders for payment to a member of a committee of inspection for journeys and other expenses of a like nature, and the Board of Trade can in a proper case allow them (*p*).

A liquidator is to be described as follows (that is to say) :—

(*a*) In a winding-up in England, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, and

(*b*) In a winding-up in Scotland or Ireland, by the style of the official liquidator,

of the particular company in respect of which he is appointed, and not by his individual name (*q*).

The acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification, and no act done by him in good faith will be vitiated by a defect or irregularity in his appointment or election (*r*).

The Court can in a proper case re-summon the first meetings of creditors and contributories even after it has made an appointment in pursuance of resolutions passed by them (*s*). Thus, where the largest creditor was a foreigner who had not been present or represented at the first meetings, the Court, on an application by summons, in the first instance resummoned a meeting of the creditors to see if they would remove one of their representatives on the committee of inspection and appoint a representative of the foreign creditor instead (*t*). The meeting was not willing to remove any one from the committee of inspection, but was willing to add a representative of the foreign creditor. The Court then resummoned the first meetings so as to give effect to this view (*u*).

REPORT OF RESULT OF MEETING OF CREDITORS OR CONTRIBUTORIES (*x*).

In the matter, &c.

I, A.B., the Official Receiver of the Court [*or as the case may be*] Chairman of a meeting of the creditors [*or* contributories] of the above-named Company, summoned by advertisement [*or* notice] dated the day of , 19 , and held on the day of 19 , at

(*p*) Companies (Winding-up) Rules, 1909, r. 187 (1).

(*q*) Companies (Consolidation) Act, 1908, s. 149 (9), and Companies (Winding-up) Rules, 1909, r. 56.

(*r*) Companies (Consolidation) Act, 1908, s. 149 (10), and Companies (Winding-up) Rules, 1909, r. 217 (2).

(*s*) *Radford and Bright* (*No.* 2), [1901] 1 Ch. 735, but see *Charles Reynolds & Co.*, [1895] W. N. 31.

(*t*) *Radford and Bright* (*No.* 1), [1901] 1 Ch. 272.

(*u*) *Radford and Bright* (*No.* 2), [1901] 1 Ch. 735.

(*x*) Companies (Winding-up) Rules, 1909, Appendix Form 27.

in the county of , do hereby report to the Court the result of such meeting as follows :—

The said meeting was attended, either personally or by proxy, by creditors whose proofs of debt against the said Company were admitted for voting purposes, amounting in the whole to the value of £ [*or* by contributories, holding in the whole shares in the said Company, and entitled respectively by the regulations of the Company to the number of votes hereinafter mentioned].

The question submitted to the said meeting was, whether the creditors [*or* contributories] of the said Company wished that [*here state proposal submitted to the meeting*].

The said meeting was unanimously of opinion that the said proposal should [*or* should not] be adopted ; [*or* the result of the voting upon such question was as follows :] *—

* Here set out the majorities by which the respective resolutions were carried.

Resolutions at Meetings.	Voting on Resolutions.					
	For.			Against.		
	No.	Amount.		No.	Amount.	
(State the substance of any Resolutions passed and give names of Committee of Inspection (if any), and amount of their proofs if Creditors or shares if Contributories.) CREDITORS						
	No.	Shares.	Votes.	No.	Shares.	Votes.
CONTRIBUTORIES						

Dated this day of 19 .

(Signed) H.T.
Chairman.

If a liquidator is appointed a copy of the order appointing him must be transmitted to the Board of Trade by the official receiver, and the Board of Trade must, as soon as the liquidator has given security, cause notice of the appointment to be gazetted. The expense of gazetting the notice of the appointment must be paid by the liquidator, but may be charged by him on the assets of the company.

Every appointment of a liquidator or committee of inspection must be advertised by the liquidator in such manner as the Court directs immediately after the appointment has been made, and the liquidator has given the required security (*y*).

(*y*) Companies (Winding-up) Rules, 1909, r. 55 (5) and (6).

ORDER APPOINTING LIQUIDATOR (z).

(*Title.*)

the day of 19 .

Upon the application of the Official Receiver and Provisional Liquidator of the above-named Company, by summons dated and upon hearing the applicant in person and reading the order to wind-up the said Company dated 19 , and the reports of the Official Receiver of the results of the meetings of creditors and contributories made to the Court and respectively dated the and upon reading the affidavit of as to the fitness of the Liquidator hereinafter named filed.

It is ordered that

of

be appointed Liquidator of the above-named Company.

* To be struck out if no Committee of Inspection appointed.

* It is also ordered that the following persons be appointed a Committee of Inspection to act with the said Liquidator, namely :—

And it is ordered that the said Liquidator do within 7 days from the date of this order give security to the satisfaction of the Board of Trade as provided by the Companies (Winding-up) Rules, 1909.

And notice of this order is to be gazetted and advertised in the

By the Court.

ORDER APPOINTING LIQUIDATOR WITH COMMITTEE OF INSPECTION IN COMPULSORY WINDING-UP.

(*Title.*)

Upon the application by summons dated the 1st May, 1911 of H. de V.B. the Official Receiver and Provisional Liquidator of the above-named Company and upon hearing the applicant in person and upon reading the Order to Wind-up the said Company dated the 14th February, 1911 and the two reports of the Senior Assistant Official Receiver of the results of the Meetings of Creditors and Contributories made to the Court and both dated the 28th April, 1911 and upon reading the affidavit of J.H.D. as to the fitness of the Liquidator hereinafter named filed this day.

It is Ordered that J.D.P. of in the City of London Chartered Accountant be appointed Liquidator of the above-named Company.

And it is Ordered that the following persons be appointed a Committee of Inspection to act with the said Liquidator, namely : A.G.N. of L.L. of and W.P.C. of .

And it is Ordered that the said Liquidator do, within 7 days from the date of this Order, give security to the satisfaction of the Board of Trade as provided by the Companies (Winding-up) Rules, 1909.

And notice of this Order is to be gazetted and advertised in *The Times* newspaper once. [*Re Huinac Copper Mines*, 0040 of 1911. Mr. Registrar Hood, May 18th, 1911.]

ORDER WHERE OFFICIAL RECEIVER CONTINUED AS LIQUIDATOR AND COMMITTEE OF INSPECTION APPOINTED.

Upon the application by summons dated the 24th March 1911 of H. de V.B. the Official Receiver and Provisional Liquidator of the above-named

(z) Companies (Winding-up) Rules, 1909, Appendix Form 28.

Company and upon hearing the applicant in person and upon reading the Order to wind-up the said Company dated the 24th January 1911 and the two reports of the Assistant Official Receiver of the results of the Meetings of Creditors and Contributories made to the Court and both dated the 23rd March 1911.

IT IS ORDERED that the following persons be appointed a Committee of Inspection to act with the said Official Receiver and Liquidator, namely: E.W.F. (carrying on business as The B.P.I. Company), of in the county of and T.A.P. of in the county of .

AND notice of this Order is to be gazetted and advertised in *The Times* newspaper once. [*Re Catholic Press, Ltd.*, 006 of 1911. Mr. Registrar HOOD, January 24th, 1911.]

ADVERTISEMENT OF APPOINTMENT OF LIQUIDATOR FOR NEWSPAPER (*a*).

In the Matter of , Limited.

By order of the , dated the day of 19 , Mr. of has been appointed Liquidator of the above-named Company with [*or* without] a committee of inspection.

Dated this day of 19 .

NOTICE OF APPOINTMENT OF LIQUIDATOR FOR GAZETTING (*b*).

Name of Company.	Address of Registered Office.	Court.	Number of Matter.	Liquidator's Name.	Address.	Date of appointment.

ORDER SANCTIONING PAYMENT TO MEMBER OF COMMITTEE OF INSPECTION.

(*Title.*)

UPON the application by summons dated the 23rd October 1905 of A.E.B. a member of the Committee of Inspection in the above matter appointed by Order dated the 13th March 1903 and upon hearing the Solicitors for the Applicant and Harold de Vaux Brougham the Official Receiver and Liquidator of the above-named Company appearing in person and upon reading the winding-up Order dated the 27th January 1903 the said Order dated the 13th March 1903 and an Affidavit of A.E.B. filed the 4th November 1905.

IT IS ORDERED that the said Harold de Vaux Brougham as such Official Receiver and Liquidator as aforesaid do out of the assets of the said Company pay to the said A.E.B. notwithstanding that he is a member of the

(*a*) Companies (Winding-up) Rules, 1909, Appendix Form 30.

(*b*) *Ibid.*, Form 103 (7).

Committee of Inspection the sum of £100 as remuneration for services of a special nature rendered by him in connection with the administration of the Company's assets relating to the claim and action against F.J.C. and certain claims in respect of returned premiums and other matters particulars of which are set out in the said Affidavit of the Applicant. [*Re Cornbrook Steamship Co., Ltd.*, 00327 of 1902. Mr. Registrar HOOD, November 24th, 1905.]

SECURITY BY LIQUIDATOR OR SPECIAL MANAGER FOR A WINDING-UP BY THE COURT.

When a person other than the official receiver is appointed liquidator he is not capable of acting as liquidator until he has notified his appointment to the Registrar of Joint Stock Companies, and given security in the prescribed manner to the satisfaction of the Board of Trade (*c*).

In a winding-up in Scotland or Ireland the Court may determine whether any and what security is to be given by a liquidator on his appointment (*d*).

In the case of a special manager or a liquidator other than the official receiver, the following provisions as to security take effect, namely :—

(1) The security must be given to such officers or persons, and in such manner as the Board of Trade may from time to time direct.

(2) It will not be necessary that security shall be given in each separate winding-up; but security may be given either specially in a particular winding-up, or generally, to be available for any winding-up in which the person giving security may be appointed, either as Liquidator or Special Manager.

(3) The Board of Trade must fix the amount and nature of such security, and may from time to time, as they think fit, either increase or diminish the amount of special or general security which any person has given.

(4) The certificate of the Board of Trade that a Liquidator or Special Manager has given security to their satisfaction must be filed with the Registrar (*e*).

(*c*) Companies (Consolidation) Act, 1908, s. 149 (3) (*c*): see also Companies (Winding-up) Rules, 1909, r. 55 (5), *supra*, p. 944. Under a bond conditioned to be void on the surety making good any loss or damage occasioned by the default of the liquidator in his duties as liquidator, the surety will not be liable if the only failure of the liquidator is failure to pay penal interest under s. 154 (2) of the Act: *Board of Trade* v. *Employers' Liability Assurance Corporation*, [1910] 2 K. B. 649. Before this decision the form of bond sanctioned by the Board was so conditioned, it has now been altered to meet the point. It is thought that the remuneration which a liquidator would, but for his default, have received and which he had forfeited by his default cannot be set off against any sums claimed from the surety: cp. *Board of Trade* v. *Guarantee Society*, [1910] 1 K. B. 408, n.; *Board of Trade* v. *Employers' Liability Assurance Corporation*, [1910] 1 K. B. 401; the point was not decided on appeal, [1910] 2 K. B. 649.

(*d*) Companies (Consolidation) Act, 1908, s. 149 (5).

(*e*) See Companies (Winding-up) Rules, 1909, r. 2. For definition of Registrar, *supra*, p. 837.

(5) The cost of furnishing the required security by a Liquidator or Special Manager, including any premiums which he may pay to a Guarantee Society, must be borne by him personally, and may not be charged against the assets of the Company, as an expense incurred in the winding-up (*f*).

If a liquidator or special manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the official receiver must report such failure to the Court, who may thereupon rescind the order appointing the liquidator or special manager.

If a liquidator or special manager fails to keep up his security, the official receiver must report such failure to the Court, who may thereupon remove the liquidator or special manager, and make such order as to costs as the Court thinks fit.

Where an order is made under this rule rescinding an order for the appointment of or removing a liquidator, the Court may direct that another liquidator is to be appointed, and thereupon the same meetings shall be summoned and the same proceedings may be taken as in the case of a first appointment of a liquidator (*g*). The practice on a liquidator or special manager giving security is as follows. The Board of Trade in the first instance ascertain what is the largest sum that the liquidator or special manager is likely to have in his hands at any one time. They then write and inform the liquidator or special manager that he must give security for that amount. The liquidator or special manager is not in the first instance seen on the matter, but when he receives the letter from the Board of Trade it is open to him to point out that the amount so fixed is excessive. Security is always by bond in a form which has been approved by the Board with one or other of certain societies, which have been similarly approved; when the security has been completed the Board send their certificate to the Registrar Companies (Winding-up), and he files it as above stated.

CERTIFICATE THAT LIQUIDATOR OR SPECIAL MANAGER HAS GIVEN SECURITY (*h*).

(*Title.*)

This is to certify that A.B., of , who was on the day of , 19 , appointed liquidator [*or* special manager] of the above-named Company, has duly given security to the satisfaction of the Board of Trade.

Dated this day of 19 .

By the Board of Trade,
Signed J.S.

(*f*) Companies (Winding-up) Rules, 1909, r. 57. A bond with sureties must bear the same stamp as a mortgage. See order as to fees of July 31, 1908.

(*g*) Companies (Winding-up) Rules, 1909, r. 58.

(*h*) *Ibid.*, Form 29.

FEES ALLOWED TO OFFICIAL RECEIVER.

The fees allowed to the official receiver are set out in Table B of the order as to fees of December 2, 1903, and are payable in cash. They are as follows :—

I. On the audit of the Official Receiver's or Liquidator's accounts by the Board of Trade a fee according to the following scale on the amount brought to credit including the produce of calls on contributories but after deducting (1) money received and spent in carrying on the business of the Company and (2) amounts paid by the Official Receiver or Liquidator to secured creditors other than debenture-holders.

On the first £5000 or fraction thereof			1	per cent.
On the next £95,000	,,	,,	$\frac{1}{2}$	,,
On the next £400,000	,,	,,	$\frac{1}{4}$	,,
On the next £500,000	,,	,,	$\frac{1}{8}$	,,
Above £1,000,000	,,	,,	$\frac{1}{16}$	,,

II. *Where the Official Receiver acts as provisional liquidator only :—*

(*a*) Where no winding-up order is made upon the petition, or where a winding-up order is rescinded, or all further proceedings are stayed prior to the summoning of the statutory meetings of creditors and contributories :—

Such amount as the Court may consider reasonable to be paid by the petitioner, or by the Company as the Court may direct, in respect of the services of the Official Receiver as provisional liquidator.

(*b*) Where a winding-up order is made but the Official Receiver is not continued as liquidator after the statutory meetings of creditors and contributories :—

	£	*s.*	*d.*
(1) In respect of every 10 members, creditors and debtors, and every fraction of 10 up to 1000 .	0	10	0
For every 10 or fraction of 10 above 1000 .	0	5	0

Provided that where the net assets of the Company, including uncalled capital, are estimated in the statement of affairs not to exceed £500, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and inland postages.)

(2) On the value of the Company's property as estimated in the statement of affairs, after deducting (in cases where a person other than the Official Receiver has, prior to the making of a winding-up order, been appointed Receiver for debenture-holders) the amount due to debenture-holders :—

On the first £5000 or fraction thereof			1	per cent.
On the next £20,000	,,	,,	$\frac{1}{2}$	,,
On the next £75,000	,,	,,	$\frac{1}{4}$	,,
Above £100,000	,,	,,	$\frac{1}{8}$	,,

III. *Where the Official Receiver acts as liquidator of the Company (including his services as provisional liquidator) :—*

	£	s.	d.
(1) In respect of every 10 members, creditors, and debtors, and every fraction of 10	1	0	0

Provided that where the net assets of the Company, including uncalled capital, do not exceed £500, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and inland postages.)

(2) Upon the total assets, including produce of calls on contributories, realized or brought to credit by the Official Receiver, after deducting sums on which fees are chargeable under No. IV. of this Table, and not being moneys received and spent in carrying on the business of the company :—

On the first £1,000	or fraction	thereof	5	per cent.
On the next £1,500	,,	,,	4	,,
On the next £2,500	,,	,,	3	,,
On the next £5,000	,,	,,	2	,,
On the next £90,000	,,	,,	1	,,
Above £100,000	,,	,,	½	,,

(3) On the amount distributed in dividend or paid to contributories, preferential creditors, and debenture-holders by the Official Receiver . Half the above percentages

IV. *Where the Official Receiver collects calls or realizes property for debenture-holders, or other secured creditors :—*

The same fees as under No. III. (2) and (3) of this Table, to be paid out of the proceeds of such calls or property.

V. Where the Official Receiver performs any special duties not provided for in the foregoing Tables :—

Such amount as the Court, on the application of the Official Receiver, with the sanction of the Board of Trade, may consider reasonable.

VI. Travelling, keeping possession, law costs, and other reasonable expenses of the Official Receiver, the amount disbursed.

VII. On every payment under Section 15 (*i*) of money out of the Companies Liquidation Account, threepence on each pound or fraction of a pound to be charged as follows :—

Where the money consists of unclaimed dividends, on each dividend paid out.

Where the money consists of undistributed funds or balances, on the amount paid out.

DUTIES OF OFFICIAL RECEIVER ON APPOINTMENT OF LIQUIDATOR.

Where a liquidator is appointed by the Court, and has notified his appointment to the Registrar of Joint Stock Companies, and given security to the Board of Trade, the official receiver must forthwith put the liquidator into possession of all the property of the company of which the official receiver may have custody, if such liquidator has, before the assets are handed over to him by the official receiver, discharged any balance due to the official receiver, on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the

(*i*) Now s. 224 of the Companies (Consolidation) Act, 1908

company, together with interest on such advances at the rate of four pounds per centum per annum; and the liquidator must pay all fees, costs, and charges of the official receiver which may not have been discharged by the liquidator before being put into possession of the property of the company, and whether incurred before or after he has been put into such possession.

The official receiver will be deemed to have a lien upon the company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

It will be the duty of the official receiver, if so requested by the liquidator, to communicate to the liquidator all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the liquidator (*k*).

The official receiver cannot under this rule be required to hand over notes or memoranda which he has made in the course of interviews with the officers of the company, except possibly in cases where it can be shown that such documents are necessary or conducive to the discharge of his duties of liquidator; for such documents are not the property of the company (*l*).

Where a liquidator is appointed by the Court, in a winding-up by the Court, the official receiver must account to the liquidator.

If the liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who must take such action (if any) thereon as it may deem expedient.

The provisions of the Companies (Winding-up) Rules as to liquidators and their accounts do not apply to the official receiver when he is liquidator, but he must account in such manner as the Board of Trade may from time to time direct (*m*).

Resignation and Removal of Liquidator.

A liquidator appointed by the Court may resign or on cause shown be removed by the Court (*n*); in all other cases, except, of course, his death, he will hold office until he obtains his release under section 157 of the Act (*o*).

A vacancy in the office of a liquidator appointed by the Court must be filled by the Court, and in a winding-up by the Court in England the official receiver is by virtue of his office liquidator during the vacancy (*p*).

A liquidator who desires to resign his office must summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted. If the creditors and contributories by ordinary resolutions both agree to accept the resignation of the liquidator, he must file with the Registrar

(*k*) Companies (Winding-up) Rules, 1909, r. 161.

(*l*) *Lake George Mines*, [1904] 1 Ch. 803.

(*m*) Companies (Winding-up) Rules, 1909, r. 204.

(*n*) Companies (Consolidation) Act, 1908, s. 149 (6).

(*o*) See *post*, pp. 987 *et seq.*, as to this.

(*p*) Companies (Consolidation) Act, 1908, s. 149 (7).

a memorandum of his resignation, and must send notice thereof to the official receiver, and the resignation will thereupon take effect. In any other case the liquidator must report to the Court the result of the meetings and must send a report to the official receiver, and thereupon the Court may, upon the application of the liquidator or the official receiver, determine whether or not the resignation of the liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the Court are necessary (*q*).

If a receiving order in bankruptcy is made against a liquidator, he thereby vacates his office, and for the purposes of the application of the Act and Rules is deemed to have been removed (*r*); but if the receiving order is rescinded before a new liquidator is appointed the result is as if no order had been made, and the liquidator will continue in his office (*s*).

In voluntary liquidation as well as in compulsory liquidation a liquidator can be removed on cause shown (*t*), and it is thought that the authorities under the Act of 1862, which required "due" cause to be shown are still applicable (*u*). The sections do not give an absolute discretion to the Judge who hears the application (*x*), but once some cause is shown, and he has consequently jurisdiction, the Court of Appeal will be very slow to interfere with his discretion (*y*). The Court can remove one of several joint liquidators, and may appoint another in his place (*x*), and can, it is thought, appoint an additional liquidator both in a compulsory (*z*) and a voluntary winding-up (*a*).

The reasons for removing a liquidator are usually his personal unfitness, using unfitness in the wide sense of the word, and so as to include cases of bad character, his connection with other parties and the matters in which he is mixed up (*b*), but in a proper case the Court will remove a liquidator and appoint a new one in his place without there being anything against the liquidator removed, and merely because it is thought that the new liquidator will be in a better position for satisfactorily carrying on the winding-up (*c*), or because all the people really interested in the winding-up (*e.g.* the

(*q*) Companies (Winding-up) Rules, 1909, r. 162.

(*r*) *Ibid.*, r. 163.

(*s*) See *Re Newman*, [1899] 2 Q. B. 587 (a bankruptcy case).

(*t*) See Companies (Consolidation) Act, 1908, s. 186 (9), and see also ss. 188 and 202 as to supervision orders and *United Merthyr Collieries* (1867), 16 L. T. 170.

(*u*) *Charterland Goldfields* (1909), 26 T. L. R. 132.

(*x*) *Ex parte Newitt* (1885), 14 Q. B. D. 177.

(*y*) *Urmston Grange Steamship Co.* (1901), 17 T. L. R. 553; *Ex parte Sheard* (1880), 16 C. D. 107; *Ex parte Newitt* (1885), 14 Q. B. D. 177.

(*z*) See Companies (Consolidation) Act, 1908, s. 149 (1).

(*a*) *Sunlight Incandescent Co.*, [1900] 2 Ch. 728.

(*b*) *Sir John Moore Gold Mining Co.* (1879), 12 C. D. 325.

(*c*) *Adam Eyton, Ltd.* (1887), 36 C. D. 299.

creditors, where there will be nothing for the contributories) desire it (*d*). A liquidator has been removed where he had practically completed the winding-up, but there were certain claims against the directors and himself as a former secretary of the company about which he took a strong view, and which he declined to proceed with (*e*), and also where he was intimately connected with the directors whose conduct it was his duty to investigate, and with other companies whose affairs were interwoven with the company in winding-up, and that although the main business of the liquidation was to carry out a somewhat unsatisfactory reconstruction (*f*). Liquidators have also been removed on the ground of absence abroad coupled with delegating their authority (*g*), of insanity (*h*), of prosecuting claims against the wish of the majority of the creditors (*i*), and of quarrels with their co-liquidators (*k*).

On the other hand, the Court of Appeal would not interfere with the discretion of a Judge of first instance where he declined to remove a liquidator who was shown to be personally immoral, and who as a discharged servant had a strong bias against a firm against whom serious charges had been made (*l*). On the analogous question of removing a trustee in bankruptcy the Court would not interfere with the discretion of the Registrar who had removed a trustee who he had held to be a mere tool of the bankrupt, and who had described himself as an accountant when he was really a clerk in the office of a newspaper of which the bankrupt's son who had asked him to be trustee was editor (*m*).

These are all cases of personal unfitness, but where one of the largest creditors who was also intimately connected with the company agreed to pay all creditors except one other who was also intimately connected with the company, and there would in any case be nothing for the contributories, the Court appointed the nominee of the person making the offer in place of an admittedly proper person, and this although the debt of such creditor was to a certain extent disputed; the other creditors would not have been paid in full if the debt of the creditor making the offer had ranked for dividend to its full extent (*n*).

(*d*) *Marseilles Extension Railway and Land Co.* (1867), 4 Eq. 692; *Association of Land Financiers* (1878), 10 C. D. 269; *Oxford Building and Investment Society* (1883), 49 L. T. 495.

(*e*) *Sir John Moore Gold Mining Co.* (1879), 12 C. D. 325.

(*f*) *Charterland Goldfields* (1909), 26 T. L. R. 132.

(*g*) *Scotch Granite Co.* (1867), 18 L. T. 533.

(*h*) *North Molton Mining Co.* (1886), 54 L. T. 602.

(*i*) *Tavistock Ironworks Co.* (1871), 24 L. T. 605.

(*k*) *Montrotier Asphalte and Cement Paving Co.* (1874), 22 W. R. 895; see also *Re Newitt* (1885), 14 Q. B. D. 177.

(*l*) *Urmston Grange Steamship Co.* (1901), 17 T. L. R. 553.

(*m*) *Ex parte Sheard* (1880), 16 C. D. 107.

(*n*) *Adam Eyton, Ltd.* (1887), 36 C. D. 299.

The Court has declined to remove a liquidator against the wishes of the majority of the contributories in a voluntary winding-up, though it considered that it would have been more convenient to appoint the liquidator of another company whose affairs were mixed up with that of the company in voluntary liquidation (*o*); and this in spite of the fact that the liquidator of such other company would under the practice prevailing at the time undoubtedly have been appointed had the liquidation been compulsory (*p*).

The application is by summons (*q*), and only creditors or contributories can apply to remove a liquidator in a voluntary winding-up (*r*); the same persons may apply in a compulsory liquidation (*s*). The liquidator of a company which has purchased the assets of another company will usually not be a creditor of such other company (*r*). A contributory who had declined to pay calls because he distrusted the liquidator and who did not admit himself a contributory was not allowed to proceed with an application to remove the liquidator (*t*). On applications to remove a liquidator the Court would not under the old practice hear creditors or contributories in support of or in opposition to the application (*u*), and it is not usual to do so now.

The Court has in dismissing a petition for compulsory winding-up removed a voluntary liquidator and appointed another person in his place (*x*).

A liquidator must be served with an application to remove him (*y*), and may appeal from an order removing him (*z*).

If a liquidator in a winding-up by the Court dies, or resigns, or is removed, another liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the official receiver must, on the request of not less than one-tenth in value of the creditors and contributories summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this rule apply where the liquidator is released

(*o*) *British Nation Life Assurance Association* (1872), 14 Eq. 492.

(*p*) See *Western Life Assurance Co.* (1870), 5 Ch. 396.

(*q*) Companies (Winding-up) Rules, 1909, rr. 5, 6 and 8 (2).

(*r*) *New de Kaap, Ltd.*, [1908] 1 Ch. 589: but cp. *Bank of South Australia (No. 2)*, [1895] 1 Ch. 598.

(*s*) In *British Pure Ices Syndicate, Ltd.* (unreported), 00143 of 1903, before WARRINGTON, J., November 24, 1904, the official receiver had reported that the liquidator on a compulsory winding-up had not paid in certain moneys and the Judge directed a summons to be issued to show cause why the liquidator should not be removed having regard to the official receiver's report, a copy of which was served on the liquidator.

(*t*) *Norwich Provident Insurance* (1880), 49 L. J. (CH.) 187.

(*u*) *British Nation Life Assurance Association* (1872), 14 Eq. 492.

(*x*) *Ex parte Pulbrook* (1864), 2 De G. J. & S. 348.

(*y*) *Oxford Building and Investment Society* (1883), 49 L. T. 495.

(*z*) *Adam Eyton, Ltd.* (1887), 36 C. D. 299.

under section 157 of the Act, in which case the official receiver remains liquidator (*a*).

It is thought that before an order appointing a liquidator is drawn up the Court can in a proper case stay the drawing-up and re-hear the matter (*b*). Where the liquidator fails to give security the official receiver may report him to the Court who may rescind the order appointing him (*c*). It is not thought that the Court would do this if the reason for his failure was an application to remove him (*d*).

Where an application to remove a liquidator is pending, it is not a contempt of Court for the person making such application to issue to the shareholders a circular repeating in substance the allegations contained in the affidavit in support of the summons (*e*). The circular may, of course, be a libel.

ORDER APPOINTING LIQUIDATOR IN PLACE OF ONE WHO DIED AND ADDITIONAL MEMBER OF COMMITTEE OF INSPECTION.

(*Title.*)

UPON the application by Summons dated the 25th June 1906 of Harold de Vaux Brougham the Official Receiver and Provisional Liquidator of the above-named Company. And upon hearing the Applicant in person. And upon reading the Order to wind-up the said Company dated the 31st March 1903 the order dated 26th May 1903 appointing J.R.W. Liquidator and the 2 Reports of the Assistant Official Receiver of the results of the Meetings of Creditors and Contributories made to the Court and both dated the 21st June 1906 and the Affidavit of E.C.E.L. as to the fitness of the Liquidator hereinafter named filed this day.

And it appearing that the said J.R.W. died on the 24th day of February, 1906.

IT IS ORDERED that O.W.W. of in the City of London Chartered Accountant be appointed Liquidator of the above-named Company.

AND IT IS ORDERED that W.D. of in the County of London be appointed an additional Member of the Committee of Inspection to act with the said Liquidator.

AND IT IS ORDERED that the said Liquidator do within 7 days from the date of this Order give Security to the satisfaction of The Board of Trade as provided by The Companies (Winding-up) Rules 1903.

And Notice of this Order is to be gazetted and advertised in *The Times* newspaper once.

(*a*) Companies (Winding-up) Rules, 1909, r. 55 (7).

(*b*) See *Adam Eyton, Ltd.* (1887), 36 C. D. 299, where COTTON and FRY, L.JJ., differed on this point: *Crown Bank* (1890), 44 C. D. 634, at p. 648. *Suffield and Watts* (1888), 20 Q. B. D. 693; *Preston Banking Co.* v. *Allsup and Sons*, [1895] 1 Ch. 141.

(*c*) Companies (Winding-up) Rules, 1909, r. 58 (1).

(*d*) *Adam Eyton, Ltd.* (1887), 36 C. D. 299.

(*e*) *New Gold Coast Exploration Co.*, [1901] 1 Ch. 860.

AND IT IS ORDERED that the costs of convening the Meetings referred to in the said Reports and of the said Application be included in the Costs of the Winding-up and be paid out of the assets of the above-named Company. [*Dover Coalfield Extension, Ltd.*, 0070 of 1903. Mr. Registrar HOOD, July 20th, 1906.]

NOTICE OF REMOVAL OF LIQUIDATOR FOR GAZETTING (*f*).

Name of Company.	Address of Registered Office.	Court.	Number of Matter.	Liquidator's Name.	Liquidator's Address.	Date of Removal.

FURTHER MEETINGS OF CREDITORS AND CONTRIBUTORIES.

Subject to the provisions of the Act, the liquidator of a company which is being wound up by the Court in England must, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting will in case of conflict be deemed to override any directions given by the committee of inspection.

The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it will be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding-up.

Subject to the provisions of this Act, the liquidator must use his own discretion in the management of the estate and its distribution among the creditors.

If any person is aggrieved by any act or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just (*g*).

Where by the Act the court is authorized, in relation to winding-up, to have regard to the wishes of creditors or contributories, as

(*f*) Companies (Winding-up) Rules, 1909, Appendix Form 103 (8).

(*g*) Companies (Consolidation) Act, s. 158.

proved to it by any sufficient evidence, the Court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

In the case of creditors, regard will be had to the value of each creditor's debt.

In the case of contributories, regard will be had to the number of votes conferred on each contributory by the articles (*h*).

In addition to the first meetings of creditors and contributories, and in addition also to meetings of creditors and contributories directed to be held by the Court under section 219 of the Act (which are in the rules called Court meetings of creditors and contributories) the liquidator may himself from time to time subject to the provisions of the Act and the control of the Court summon hold and conduct meetings of the creditors or contributories (in the rules referred to as liquidators' meetings of creditors and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding-up (*i*).

Except where and so far as the nature of the subject matter or the context may otherwise require, the rules above set out (*k*) apply not only to first meetings of creditors and contributories but also to Court meetings and liquidators' meetings of creditors and contributories, but in the case of Court meetings subject and without prejudice to any express directions of the Court (*l*) ; in the case of both Court meetings (other than those held prior to the first meetings of creditors and contributories) and liquidators' meetings of creditors, a person will not be entitled to vote as a creditor unless he has lodged with the official receiver or liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held (*m*).

At Court meetings prior to the first meetings of creditors and contributories, not only rule 133, but also rules 134 (*n*), 135 (*o*), 136 (*p*), and 137 (*q*), of the Companies (Winding-up) Rules, 1909, do not apply (*r*). Creditors and contributories may vote by proxy ;

(*h*) Companies (Consolidation) Act, s. 219.

(*i*) Companies (Winding-up) Rules, 1909, r. 121.

(*k*) *Ibid.*, rr. 123 to 138 (both inclusive), *supra*, pp. 927 *et seq.*

(*l*) *Ibid.*, r. 122.

(*m*) *Ibid.*, r. 133.

(*n*) As to cases in which creditors may not vote, *supra*, p. 929.

(*o*) As to votes of secured creditors, *supra*, pp. 929, 930.

(*p*) As to creditors being required to give up their security, *supra*, p. 930.

(*q*) As to admission and rejection of proofs for purpose of voting, *supra*, p. 930

(*r*) Companies (Winding-up) Rules, 1909, r. 133.

but the rules as to proxies (*s*) do not unless otherwise directed by the Court apply to Court meetings of creditors and contributories prior to the first meeting (*t*).

NOTICE OF MEETING [GENERAL FORM] (*u*).

(*Title.*)

Take notice that a meeting of creditors [*or* contributories] in the above matter will be held at on the day of 19 , at o'clock in the noon.

AGENDA.

*

Dated this day of 19 ,

(Signed) †

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged not later than o'clock on the day of 19 .

* [Here insert purpose for which meeting called.]

† "Liquidator" or "Official Receiver."

POWERS OF THE BOARD OF TRADE.

The Board of Trade takes cognizance of the conduct of liquidators of companies which are being wound up by the Court in England, and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board must inquire into the matter, and take such action thereon as they may think expedient (*x*).

The Board may at any time require any liquidator of a company which is being wound-up by the Court in England to answer any inquiry in relation to any winding-up in which he is engaged, and may, if the Board think fit, apply to the Court to examine him or any other person on oath concerning the winding-up.

The Board may also direct a local investigation to be made of the books and vouchers of the liquidator (*y*).

Applications by the Board of Trade to the Court to examine on oath the liquidator or any other person pursuant to section 159 of the Act will be made *ex parte*, and will be supported by a report to the Court filed with the Registrar, stating the circumstances in which the application is made.

The report may be signed by any person duly authorized to sign

(*s*) Companies (Winding-up) Rules, 1909, rr. 139 to 149 (both inclusive), *supra*, pp. 930, 931.

(*t*) *Ibid.*, r. 139.

(*u*) *Ibid.*, Appendix, Form 75.

(*x*) The effect of this provision is, generally speaking, that the Board of Trade makes inquiries, etc., only in cases where complaints are made to them.

(*y*) Companies (Consolidation) Act, 1908, s. 159.

documents on behalf of the Board of Trade; and will, for the purposes of such application, be *primâ facie* evidence of the statements therein contained (z).

All notices subsequent to the making by the Court of a winding-up order in pursuance of the Acts or the Rules requiring publication in the *London Gazette* must be gazetted by the Board of Trade.

Where any winding-up order is amended, and also in any case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade must re-gazette such order or matter with the necessary amendments and alterations in the prescribed form, at the expense of the company's assets, or otherwise as the Board of Trade may direct (a).

The Board of Trade may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or Rules which are of an administrative and not of a judicial nature (b).

Appeals in the High Court against a decision of the Board of Trade, or Appeals to the Court from an act or decision of the official receiver acting otherwise than as liquidator of a company, must be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced or made (c).

The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of Part IV. (d) of the Act, and may remove any person so appointed.

The Board of Trade, with the concurrence of the Treasury, directs whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under Part IV. of the Act in relation to the winding-up of companies in England, and may vary, increase, or diminish that remuneration as they think fit.

The Lord Chancellor, with the concurrence of the Treasury, directs whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under the Act in relation to the winding up of companies in

(z) Companies (Winding-up) Rules, 1909, r. 207.

(a) *Ibid.*, r. 209. The charge to be made by the *London Gazette* for the insertion of each notice authorised by the Act or rules is 5*s*. Order as to fees of December 2, 1903.

(b) *Ibid.*, r. 215. Judicial notice will be taken of these if printed by the King's printers and purporting to be issued under the authority of the Board of Trade: *ibid.* Regulations have been issued under this rule. They are referred to in their appropriate places, and see *infra*, pp. 1503 *et seq.*

(c) Companies (Winding-up) Rules, 1909, r. 206. Such appeals must be heard in open Court: *ibid.*, rr. 5 and 6.

(d) Part IV. of the Act deals exclusively with winding-up.

England, and may vary, increase, or diminish that remuneration as he thinks fit (e).

Under the corresponding section of the Act of 1890 (f) the Board of Trade, with the concurrence of the Treasury, assigned the matters arising in the execution of that Act by the Board of Trade to a new department of the said Board, to be called the Companies Department, and appointed a comptroller (g) of that department. The duties of the comptroller included the general direction under the control of the Board of Trade of the department as regards the matters so assigned to it, and he also acted under the same control for the Board of Trade in regard to the duties and powers conferred on the Board by the Companies Acts, 1862 to 1890, and by the Newspaper Libel and Registration Act, 1881, and also in relation to matters connected with charters and chartered companies. The official receivers throughout the country were to report to and correspond with the comptroller of the Companies Department in regard to all matters relating to the winding-up of companies (h). Section 289 (4) of the existing Act continues this order, and renders it effective notwithstanding the repeal of the earlier Acts.

The Board of Trade must cause a general annual report of matters within the Act to be prepared and laid before both Houses of Parliament (i).

The officers of the Courts acting in the winding up of companies in England must make to the Board of Trade such returns of the business of their respective Courts and offices, at such times and in such manner and form as may be prescribed, and from those returns the Board is required to cause books to be prepared which are, under the regulations of the Board, open for public information and searches (k).

All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of the Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorized in that

(e) Companies (Consolidation) Act, 1908, s. 233.

(f) S. 27.

(g) Now Mr. Heron Maxwell.

(h) Order of the Board of Trade, October 31, 1904.

(i) Companies (Consolidation) Act, 1908, s. 283. No action for libel will lie against an officer appointed by the Board of Trade for statements to the Board for the purpose of enabling them to perform their duty under this section: *Burr* v. *Smith*, [1909] 2 K. B. 306.

(k) Companies (Consolidation) Act, 1908, s. 235. See Companies (Winding-up) Rules, 1909, r. 208, and Appendix, Forms 101 and 102, as to books to be kept. The rule provides that the officers of the Court, whose duty it is to keep the books prescribed by the rules, must make and transmit to the Board of Trade such extracts from their books, and must furnish the Board of Trade with such information and returns as the Board of Trade may from time to time require.

behalf by the President of the Board, will be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, will be conclusive evidence of the fact so certified (*l*).

Any approval sanction or licence or revocation of licence which under the Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board or of any person authorised in that behalf by the President of the Board (*m*).

COLLECTION AND DISTRIBUTION OF ASSETS.

The Court must (1) cause the assets of the company to be collected and applied in discharge of its liabilities (*n*) and (2) adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto (*o*).

By general rules made under section 173 of the Act it is provided that—

The duties imposed on the Court by section 163 (1) of the Act, in a winding-up by the Court with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities are to be discharged by the liquidator as an officer of the Court subject to the control of the Court.

For the purpose of the discharge by the liquidator of the duties imposed by section 163 (1) of the Act, and the last preceding provision, the liquidator in a winding-up by the Court will for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the High Court, and the Court may, on his application, enforce such acquisition or retention accordingly (*p*).

Where in the winding-up of a company by the Court in England a person other than the official receiver is appointed liquidator, he must give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under the Act (*q*).

PAYMENTS INTO AND OUT OF BANK.

Every liquidator of a company which is being wound-up by the Court in England must, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board must furnish him with a certificate of receipt of the money so paid (*r*); but, if the committee of

(*l*) Companies (Consolidation) Act, 1908, s. 236.

(*m*) *Ibid.*, s. 284.

(*n*) *Ibid.*, s. 163 (1).

(*o*) *Ibid.*, s. 170.

(*p*) Companies (Winding-up) Rules, 1909, r. 75.

(*q*) Companies (Consolidation) Act, 1908, s. 153.

(*r*) Except where a special bank

inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board must, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments must be made in the prescribed manner (*t*).

The regulations of the Board of Trade provide that current Bills of Exchange shall also be remitted to the Companies Liquidation Account.

If any such liquidator at any time retains for more than ten days a sum exceeding £50 or such other amount as the Board of Trade in any particular case authorize him to retain, then, unless he explains the retention to the satisfaction of the Board, he must pay interest on the amount so retained in excess at the rate of twenty per cent. per annum (*s*), and will be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and will be liable to pay any expenses occasioned by reason of his default.

A liquidator of a company which is being wound up by the Court in England may not pay any sums received by him as liquidator into his private banking account (*t*). The Board of Trade require a special case (*e.g.* convenience in carrying on a business) to be made before allowing an account with any bank other than the Bank of England.

An account, called the Companies Liquidation Account, must be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under the Act in connection with the winding up of companies in England must be paid to that account.

All payments out of money standing to the credit of the Board

account is authorized, all moneys received by a liquidator of a company in compulsory liquidation must be paid without deduction to the companies liquidation account. Remittances are to be made once a week or forthwith if a sum of £200 or more has been received. Remittances may be made direct to the Bank of England, Law Courts Branch, London, by cheques, crossed "Bank of England Credit of Companies Liquidation Account." Remittances must be accompanied by a receivable order, and the counterpart or advice letter should be transmitted by the same post to the Accountant-General to the Board of Trade. (For these forms, *infra*, pp. 967 and 968.) Halfpence should not be included in remittances. The Comptroller of the Companies Department, Board of Trade, will supply forms of receivable order: Regulations of Board of Trade.

(*s*) Although this interest is penal, the estate is entitled to the benefit of it: *Re Sims*, [1907] 2 K. B. 36. It is not thought that this decision is affected by *Board of Trade* v. *Employers' Liability Assurance Corporation*, [1910] 2 K. B. 649.

(*t*) Companies (Consolidation) Act, 1908, s. 154. See *infra*, pp. 965 and 966, for forms for application and order for special bank account.

of Trade in the Companies Liquidation Account must be made by the Bank of England in the prescribed manner (*u*).

All necessary disbursements made by a liquidator on account of a company to the date of his application for release will be repaid to him out of any moneys standing to the credit of the company in the Companies Liquidation Account on application to the Comptroller of Companies. Any expenses properly incurred by the liquidator after applying for but before obtaining his discharge will be repaid to him by the official receiver out of any funds available for the purpose. Cheques to the order of the payee for sums which become payable on account of the company may be obtained by the liquidator on application on Form C, No. 6, for delivery by him to the parties entitled. The Board of Trade will under no circumstances hold themselves responsible for payments made on the requisition of the liquidator (*x*).

Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board must notify the excess to the Treasury, and must pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board must notify to the Treasury the amount so required, and the Treasury will thereupon repay to the Board such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

The dividends on investments under this section will be paid to such account as the Treasury may direct, and regard must be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding-up of companies in England (*y*).

An account must be kept by the Board of Trade of the receipts and payments in the winding-up of each company in England (*z*),

(*u*) Companies (Consolidation) Act, 1908, s. 229.

(*x*) Regulations of Board of Trade. For forms of application, *infra*, p. 969. All applications for the cancellation of cheques and money orders should be addressed to the Comptroller, and should state the ground upon which the cancellation is required: *ibid*. And see the regulations as to payment of dividends and return to contributories: *post*, pp. 1244 and 1245, and p. 1259.

(*y*) Companies (Consolidation) Act, 1908, s. 230.

(*z*) The Comptroller of the Companies Department Board of Trade will be prepared to certify the balance standing to the credit of a company in the companies liquidation account on receiving from the liquidator a statement of the balance shown by the bank columns of the cash-book: Regulations of the Board of Trade.

and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board will, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade must, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

The dividends on investments under this section will be paid to the credit of the company.

When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company will be entitled to interest on the excess at the rate of two per cent. per annum (*a*).

The Treasury may issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising in respect of the winding-up of companies in England from fees, fee stamps, and dividends on investments by the Treasury under the Act, any sums which may be necessary to meet the charges estimated by the Board in respect of salaries and expenses under the Act in relation to the winding-up of companies in England (*b*).

The Treasury must annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under the Act in relation to the winding up of companies in England, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, apply to the account as if the account had been required by that section.

The accounts of the Board of Trade under the Act in relation to the winding-up of companies in England must be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board of Trade must make such returns and give such information as the Treasury direct (*c*).

All payments out of the Companies Liquidation Account must be made in such manner as the Board of Trade may from time to time direct (*d*).

(*a*) Companies (Consolidation) Act, 1908, s. 231.
(*b*) *Ibid.*, s. 232.
(*c*) *Ibid.*, s. 234.

(*d*) Companies (Winding-up) Rules, 1909, r. 164; see also Companies (Consolidation) Act, 1908, s. 167 (2), *post*, p. 997, which provides

Where the liquidator in a winding-up by the Court is authorized to have a special bank account, he must forthwith pay all moneys received by him into that account to the credit of the liquidator of the company. All payments out must be made by cheque payable to order, and every cheque must have marked or written on the face of it the name of the company, and must be signed by the liquidator and must be countersigned by at least one member of the committee of inspection, and by such other person, if any, as the committee of inspection may appoint.

Where application is made to the Board of Trade to authorize the liquidator in a winding-up by the Court to make his payments into and out of a special bank account, the Board of Trade may grant such authorization for such time and on such terms as they may think fit, and may at any time order the account to be closed if they are of opinion that the account is no longer required for the purposes mentioned in the application (*e*). Where a special bank account is sanctioned by the Board of Trade under the provisions of section 154 (1) of the Act *all* moneys received must be paid into the appointed bank. The pass book with the special bank should be forwarded at each audit (*f*). It would appear to be doubtful whether a special bank account can be authorized where there is no committee of inspection, as it would be impossible to comply with the rules as to signing cheques.

APPLICATION TO BOARD OF TRADE TO AUTHORIZE A SPECIAL BANK ACCOUNT (*g*).

(*Title.*)

We, the Committee of Inspection, being of opinion that Mr. of , the liquidator in the above matter, should have a special bank account for the purpose of (*a*) hereby apply to the Board of Trade to authorize him to make his payments into, and out of, the bank.

* Here insert grounds for application.

All cheques to be countersigned by , a member of the Committee of Inspection, and by for .

Dated this day of 19 .

____
________________ } Committee of Inspection.
____

ORDER OF BOARD OF TRADE FOR SPECIAL BANK ACCOUNT (*h*).

(*Title.*)

You are hereby authorized to make your payments in the above matter into, and out of, the bank.

[*Here insert any special terms.*]

that all moneys and securities paid or delivered into the Bank of England or any branch thereof are in the event of a winding-up by the Court to be subject in all respects to the orders of the Court.

(*e*) Companies (Winding-up) Rules, 1909, r. 165.

(*f*) Regulation of the Board of Trade.

(*g*) Companies (Winding-up) Rules, 1909, Appendix, Form 82.

(*h*) *Ibid.*, Form 83.

All cheques to be countersigned by , a member of the Committee of Inspection, and by for .

Dated this day of 19 .

By Order of the Board of Trade.

To

Liquidator.

Where the committee of inspection are of opinion that any part of the cash balance standing to the credit of the account of a company should be invested, they must sign a certificate and request, and the liquidator must transmit such certificate and request to the Board of Trade.

Where the committee of inspection are of opinion that it is advisable to sell any of the securities in which the moneys of the company's assets are invested they must sign a certificate and request to that effect, and the liquidator must transmit such certificate and request to the Board of Trade.

Where in a winding-up by the Court there is no committee of inspection, or where in a voluntary winding-up, or winding-up under the supervision of the Court, a case has in the opinion of the liquidator arisen under section 231 of the Act for an investment of funds of the company or a sale of securities in which the company's funds have been invested, the liquidator must sign and transmit to the Board of Trade a certificate of the facts on which his opinion is founded, and a request to the Board of Trade to make the investment mentioned in the certificate, and the Board of Trade may thereupon, if it thinks fit, invest or sell the whole or any part of the said funds or securities, as provided in the said section, and the said certificate and request will be a sufficient authority to the Board of Trade for the said investment or sale (*i*).

CERTIFICATE AND REQUEST BY COMMITTEE OF INSPECTION AS TO INVESTMENT OF FUNDS (*k*).

(*Title.*)

We, the Committee of Inspection in the above matter, hereby certify that in our opinion the cash balance standing to the credit of the above named Company is in excess of the amount which is required for the time being to answer demands in respect of such Company's estate, and request that the Board of Trade will invest the sum of £ in Government Securities to be placed to the credit of the said account for the benefit of the said Company.

Dated this day of 19 .

____
____________________ } Committee of Inspection.
____

(*i*) Companies (Winding-up) Rules, 1909, r. 168.

(*k*) *Ibid.*, Appendix, Form 84.

REQUEST BY COMMITTEE OF INSPECTION TO BOARD OF TRADE TO SELL SECURITIES (l).

(*Title.*)

We, the Committee of Inspection in the above matter, hereby certify that a sum of £ , forming part of the assets of the above-named Company, has been invested in Government Securities, and that the sum of £ is now required to answer demands in respect of the said Company. And we request that so much of the said securities as may be necessary for the purpose of answering such demands may be realized by the Board of Trade, and that the amount realized may be placed to the credit of the said Company.

Dated this day of 19 .

____
____________________ } Committee of Inspection.
____

FORM OF RECEIVABLE ORDER ISSUED BY THE BOARD OF TRADE.

To be enclosed with Remittance to Bank of England.

COMPANIES (CONSOLIDATION) ACT, 1908.

Receivable Order.

19 .

	Amounts.		
Cheques drawn on			
Total of Cheques			
Bank of England Notes .			
Other Notes .			
Gold .			
Total .			

Sir,

Mr. Liquidator at is authorized to pay to the Credit of the Companies Liquidation Account the sum of Pounds shillings, and pence, the particulars of which are stated below, and I am to request you to receive the same accordingly.

I am, Sir,
Your obedient Servant,
GEORGE S. FRY,
Accountant General.

The Agent of the Bank of England,
Law Courts Branch,
Temple Bar,
London, W.C.

Address to which Certificate of Receipt should be forwarded. } ____________________

It is particularly requested that the Liquidator will write his Name and Address clearly and legibly.

Letters addressed to the Bank of England must be prepaid.

(l) Companies (Winding-up) Rules, 1909, Appendix, Form 85.

Court.	No. of Case.	Companies on account of which Remittance is made.	Amount.		

Board of Trade.

I hereby certify that the above-mentioned sum has been credited to the Companies Liquidation Account at the Bank of England.

{ *Accountant General,*
Board of Trade.

19 .

FORM OF COUNTERPART OR ADVICE LETTER ISSUED BY THE BOARD OF TRADE TO ACCOMPANY RECEIVABLE ORDER.

To be posted unsealed.

C. No. 7. 19 .

COMPANIES (CONSOLIDATION) ACT, 1908.

	Amounts.		
*Cheques drawn on			
Total of Cheques			
Bank of England Notes .			
Other Notes .			
Gold .			
Total			

* Distinguishing between your own cheques and those received on account of the Company but not realized by you.

Sir,

I have to acquaint you that I have remitted to the Bank of England (Law Courts Branch), the sum of Pounds shillings, and pence (as detailed in the margin) to be placed to the Credit of the "Companies Liquidation Account."

Particulars of the Companies and respective amounts to be credited are stated below.

I am, Sir,

Your obedient Servant,

Signature

Liquidator.

Address in full

The Accountant General,
Finance Department,
Board of Trade, London, S.W.

Court.	No. of Case.	Companies on account of which Remittance is made.	Board of Trade Ledger Folio.	Amount.		
		Total remittance, as stated above				

It is particularly requested that remittances may be made direct to the Bank of England, Law Courts Branch, London, by cheque crossed "Bank of England, credit of Companies Liquidation Account."

FORM OF APPLICATION BY LIQUIDATOR FOR REPAYMENT OF ADVANCES ISSUED BY THE BOARD OF TRADE.

C. No. 5.

Notice to Board of Trade by a Liquidator that a cheque is required.

COMPANIES (CONSOLIDATION) ACT, 1908.

FOR REPAYMENT OF ADVANCES. | Ledger Folio

Court No. 19 .

Re

Sir, Date 19 .

I hereby certify that the undermentioned payments, amounting to £ on account of the above Company have been made by me out of my own moneys, and such payments are now chargeable against the said Company and I have to request the same may be repaid to me.

The balance shown by my books as standing to the credit of the Company in the Companies Liquidation Account at the Bank of England is £ .

Yours obediently,

(*Signature of Liquidator*)

The Comptroller of the Companies Department,
27, Great George Street,
Westminster,
London, S.W.

[Address to which Cheques should be forwarded.]

* Name of Person to whom Payment has been made.	Consideration.	No. of Voucher.	Date of Payment.	Amount.

(NOTE.—This Form should not be accompanied by vouchers, and it must be distinctly understood that any payments made on this application are made on the sole responsibility of the Liquidator, and are in no way to be taken as sanctioning the same or precluding disallowance should they be found to be irregular on the audit of the Liquidator's Accounts.)

FORM OF APPLICATION BY LIQUIDATOR FOR CHEQUE FOR SUMS PAYABLE ON ACCOUNT OF THE COMPANY ISSUED BY THE BOARD OF TRADE.

C. No. 6.

Notice to Board of Trade by a Liquidator that cheques are required.

COMPANIES (CONSOLIDATION) ACT, 1908. | Ledger Folio

Court No. 19 .

Re

Date 19 .

Sir,

I beg to inform you that it appears by my Books that the sum

of £ stands to the credit of the above Company with the Companies Liquidation Account at the Bank of England, and that the sum of £ is required as set forth below.

Yours obediently,
(*Signature of Liquidator.*)

The Comptroller of the Companies Department,
27, Great George Street,
Westminster,
London, S.W. ———— } [Address to which Cheques should be forwarded.]

* Name, Occupation, and Address of Person to whom due.	State general nature of Consideration.	Amount.

In all cases of Payment to Executors, Trustees, Representative Officials, &c., the name or names should be inserted in the application.

(NOTE.—This Form should be sent direct to the Board of Trade, Companies Department. *It must not be accompanied by vouchers*, and it must be distinctly understood that any payments made in accordance therewith are made on the sole responsibility of the Liquidator, and are in no way to be taken as sanctioning the same or precluding disallowance should they be found to be irregular on the audit of the Liquidator's Accounts.)

INFORMATION AS TO PENDING LIQUIDATIONS IN ENGLAND.

Where a company is being wound up in England, if the winding-up is not concluded within one year after its commencement, the liquidator must, at such intervals as may be prescribed, until the winding-up is concluded, send to the Registrar of Companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

Any person stating himself in writing to be a creditor or contributory of the company will be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee (*m*), to inspect the statement and to receive a copy thereof or extract therefrom ; but any person untruthfully so stating himself to be a creditor or contributory will be guilty of a contempt of Court, and will be punishable accordingly on the application of the liquidator or of the official receiver.

If a liquidator fails to comply with the requirements of this section he will be liable to a fine not exceeding fifty pounds for each day during which the default continues.

If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing

(*m*) The fee for inspection is 1*s*. for every hour or part of an hour occupied. The fee for a copy or extract is 4*d*. per folio of 72 words or figures : Companies (Winding-up) Rules, 1909, r. 19. Directors and officers of the company or the Board of Trade need not pay the inspection fee.

unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator must forthwith pay the same to the Companies Liquidation Account at the Bank of England, and will be entitled to the prescribed certificate of receipt for the money so paid, and that certificate will be an effectual discharge to him in respect thereof.

For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exerciseable under section 162 of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due. The order as to fees of December 2, 1903, provides that every such application, as also every application for the re-issue of a lapsed cheque or money order in respect of money standing to the credit of the Companies Liquidation Account, must have a 1*s.* stamp where the amount applied for does not exceed £1, and in other cases, a 2*s.* 6*d.* stamp. This would appear not to be affected by the order of July 31, 1908, as such fees are not fees to be taken in respect of proceedings in the High Court of Justice.

Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of the section may appeal to the High Court (*n*).

Where any legal event, *e.g.* a duly sanctioned scheme of arrangement, has made the moneys of a company applicable otherwise than for purposes of distribution, the Court will not order them to be paid into a bank (*o*). A garnishee order cannot be made against sums which have been set aside to meet a dividend which has been declared, even where the person who is entitled to such dividend has received notice that the sum has been set aside for him, for under these provisions there is no debt and no debtor, the funds being under the control of the Board of Trade, who act in a judicial capacity, and the remedy is by way of appeal under the section (*p*). Where, however, a garnishee order has been made, the Court will allow execution to issue on it (*q*).

(*n*) Companies (Consolidation) Act, 1908, s. 224. Appeals under this section must be made by motion in open Court: Companies (Winding-up) Rules, 1909, rr. 5, 6, and 8.

(*o*) *Land Mortgage Bank of Florida*, [1898] 1 Ch. 444.

(*p*) *Spence* v. *Coleman*, [1901] 2 K. B. 199.

(*q*) *Klauber* v. *Weill* (1901), 17 T. L. R. 344.

Under section 162 of the Bankruptcy Act, 1883 (*r*), the Board of Trade may at any time order any such trustee or any other person (*s*) to submit to them an account verified by affidavit of the sums received and paid under any such petition, resolution, deed, or other proceeding, and may direct and enforce an audit of such account. The Board of Trade may, with the concurrence of the Treasury, from time to time appoint a person to collect and get in all such unclaimed or undistributed funds or dividends, and, for the purposes of this section, any Court having jurisdiction in bankruptcy (*t*) has, and, at the instance of the person so appointed or of the Board of Trade, may exercise all the powers conferred by the Bankruptcy Act, 1883, with respect to the discovery and realization of the property of a debtor, and the provisions of Part I. of the Bankruptcy Act, 1883, with respect thereto apply, with any necessary modifications, to proceedings under the section (*u*). Except where expressly so declared these powers do not deprive any person of any larger or other right or remedy he may be entitled to against such trustee or other person.

A trustee in bankruptcy is not relieved from his duty to give such verified account by the fact that he has got his release (*x*), nor is it necessary to show that he has ever had unclaimed or undistributed funds or dividends in hand since the section came into force (*y*), or that he has moneys of the bankrupt in his hands when he is required to render such account (*z*).

The rules made for the purposes of this section, which applies in a voluntary winding-up (*a*), as well as in other winding-ups, are as follows :—

The winding-up of a Company shall, for the purpose of section 224 of the Act, be deemed to be concluded :—

(*a*) In the case of a Company wound-up by order of the Court, at the date on which the order dissolving the Company has been reported by the Liquidator to the Registrar of Companies, or at the date of the order of the Board of Trade releasing the Liquidator pursuant to section 157 of the Act.

(*b*) In the case of a Company wound up voluntarily, or under the

(*r*) Sub-ss. 2 (*b*) and (*c*).

(*s*) *I.e.* any trustee under any bankruptcy composition or scheme pursuant to the Act or any trustee or other person empowered to receive, collect, or distribute any funds under any Act of Parliament mentioned in the Fourth Schedule to the Bankruptcy Act, 1883, or any petition, resolution, deed, or other proceeding under or in pursuance of any such Act.

(*t*) See Companies (Winding-up) Rules, 1909, r. 194, *post*, p. 976.

(*u*) See *ibid.*, r. 193 (2), *post*, p. 975, as to this.

(*x*) *Re Chudley* (1885), 14 Q. B. D. 402, a case of a trustee discharged under the Bankruptcy Act, 1869, which seems applicable to a liquidator.

(*y*) *Re Cornish*, [1896] 1 Q. B. 99.

(*z*) *Re Calderwood* (1889), 6 Mor. 104.

(*a*) *Stock and Share Auction and Banking Co.*, [1894] 1 Ch. 736.

supervision of the Court, at the date of the dissolution of the Company, unless at such date any funds or assets of the Company remain unclaimed or undistributed in the hands or under the control of the Liquidator, or any person who has acted as Liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account at the Bank of England (*b*).

The statements with respect to the proceedings in and position of a liquidation of a Company, the winding-up of which is not concluded within a year after its commencement, shall be sent to the Registrar of Companies twice in every year as follows :—

(1) The first statement, commencing at the date when a Liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding-up, shall be sent within 30 days from the expiration of such twelve months, or within such extended period as the Board of Trade may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half-year for which it is sent.

(2) Subject to the next succeeding Rule, Form No. 92, with such variations as circumstances may require, shall be used, and the directions specified in the Form shall (unless the Board of Trade otherwise direct) be observed in reference to every statement.

(3) Every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 93, with such variations as circumstances may require (*c*).

Where a Liquidator has not during any period for which a statement has to be sent received or paid any money on account of the Company, he shall at the period when he is required to transmit his statement, send to the Registrar of Companies the prescribed statement in the Form No. 92, in duplicate, containing the particulars therein required with respect to the proceedings in and position of the Liquidation, and with such statement shall also send an affidavit of no receipts or payments in the Form No. 93 (*d*).

All money in the hands or under the control of a Liquidator of a Company representing unclaimed dividends (*e*), which for six months from the date when the dividend became payable have remained in the hands or under the control of the Liquidator, shall forthwith, on the expiration of the six months, be paid into the Companies Liquidation Account.

All other money in the hands or under the control of a Liquidator

(*b*) Companies (Winding-up Rules, 1909, r. 188.

(*c*) *Ibid.*, r. 189. For these forms see *infra*, pp. 976 *et seq.*, and 986 *et seq.*

(*d*) *Ibid.*, r. 190.

(*e*) The expression "unclaimed dividend" presupposes an existing debtor, and means a dividend which has been declared upon admitted and existing proofs, which the persons who are entitled thereto have neglected to claim. It does not include a debt to a non-existent person such as a dissolved corporation: *Re Higginson and Dean*, [1899] 1 Q. B. 325.

of a Company, representing unclaimed or undistributed assets, which under sub-section 4 of section 224 of the Act, the Liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the Registrar of Companies is brought down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the Liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Board of Trade may authorize him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the Companies Liquidation Account within fourteen days from the date to which the statement of account is brought down.

Notwithstanding anything in this Rule, any moneys representing unclaimed or undistributed assets or dividends in the hands of the Liquidator at the date of the dissolution of the Company shall forthwith be paid by him into the Companies Liquidation Account.

A Liquidator whose duty it is to pay into the Companies Liquidation Account at the Bank of England, money representing unclaimed or undistributed assets of the Company shall apply in such manner as the Board of Trade shall direct to the Board of Trade for a paying-in order, which paying-in order shall be an authority to the Bank of England to receive the payment.

Money at the credit of the account of the Official Liquidator of a Company with the Bank of England shall be deemed to be money under the control of such Official Liquidator, and when such money has remained unclaimed or undistributed for six months after the date of receipt it shall be transferred to the Companies Liquidation Account, and the Official Liquidator and Master of the Chancery Division of the High Court attached to the Judge in whose chambers the winding-up is proceeding (*f*) shall draw and sign such cheques or orders as may be necessary for the transfer of the money. An application to the Board of Trade for payment out of moneys so transferred shall be signed by the Official Liquidator and countersigned by the said Master.

Money invested or deposited at interest by a Liquidator shall be deemed to be money under his control, and when such money forms part of the minimum balance payable into the Companies Liquidation Account pursuant to clause (2) of this Rule, the Liquidator shall realize the investment or withdraw the deposit, and shall pay the proceeds into the Companies Liquidation Account, provided that where the money is invested in Government securities, such securities may, with the permission of the Board of Trade, be transferred to the control of the Board of Trade instead of being forthwith realized and the proceeds thereof paid into the Companies Liquidation Account. In the latter case, if and when the money represented by the securities is required wholly or in part for the purposes of the Liquidation, the Board of Trade may realize the securities wholly

(*f*) This would appear to apply only to cases under the old practice before the 1890 Act came into force, and to liquidations retained by the Chancery Judges between January 1st, 1891, and May 6th, 1892. Masters of the Chancery Division have now nothing to do with liquidation proceedings, and in England there is no such thing as an official liquidator.

or in part and pay the proceeds of realization into the Companies Liquidation Account and deal with the same in the same way as other moneys paid into the said Account may be dealt with (*g*).

Every person who has acted as Liquidator of any Company, whether the Liquidation has been concluded or not, shall furnish to the Board of Trade particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the Company and such other particulars as the Board of Trade may require for the purpose of ascertaining or getting in any money payable into the Companies Liquidation Account at the Bank of England. The Board of Trade may require such particulars to be verified by affidavit (*h*).

The Board of Trade may at any time order any such person to submit to them an account verified by affidavit of the sums received and paid by him as Liquidator of the Company and may direct and enforce an audit of the account (*i*).

For the purposes of section 224 of the Act, and the Rules, the Court shall have, and, at the instance of the Board of Trade, may exercise all the powers conferred by the Bankruptcy Act, 1883, with respect to the discovery and realization of the property of a debtor, and the provisions of Part I. of that Act with respect thereto shall, with any necessary modification, apply to proceedings under section 224 of the Act (*k*).

Section 27 of the Bankruptcy Act, 1883, contains the most important if not the only provisions of Part I. of that Act, which are incorporated by this rule and the section.

That section runs as follows :—

The Court may on the application of the Official Receiver or Trustee at any time after a receiving order has been made against a debtor summon before it 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 and the Court may require any such person to produce any documents in his custody or power relating to the debtor his dealings or property.

If any person so summoned after having been tendered a reasonable sum refuses to come before the Court at the time appointed or refuses to produce any such document having no lawful impediment made known to the Court at the time of the sitting and allowed by it the Court may by warrant cause him to be apprehended and brought up for examination.

The Court may examine on oath either by word of mouth or by written interrogatories any person so brought before it concerning the debtor his dealings or property.

If any person on examination before the Court admits that he is indebted to the debtor the Court may on the application of the Official Receiver or trustee order him to pay to the receiver or trustee at such time

(*g*) Companies (Winding-up) Rules, 1909, r. 191.

(*h*) *Ibid.*, r. 192; and see Form 97, *post*, p. 982.

(*i*) See Forms 92 and 93, *post*, pp. 976 *et seq.*

(*k*) Companies (Winding-up) Rules, 1909, r. 193.

and in such manner as to the Court seems expedient the amount admitted or any part thereof either in full discharge of the whole amount in question or not as the Court thinks fit with or without costs of the examination.

If any person on examination before the Court admits that he has in his possession any property belonging to the debtor the Court may on the application of the Official Receiver or trustee order him to deliver to the Official Receiver or trustee such property or any part thereof at such time and in such manner and on such terms as to the Court may seem just.

The Court may if it think fit order that any person who if in England would be liable to be brought before it under this section shall be examined in Scotland or Ireland or in any other place out of England."

An application by the Board of Trade for the purpose of ascertaining and getting in money payable into the Bank of England pursuant to section 224 of the Act, shall be made by motion, and where the winding-up is by or under the supervision of the Court shall be made to and dealt with by the Judge, and in voluntary winding-up shall be made to and dealt with by the Judge of the High Court (*l*).

An application by a person claiming to be entitled to any money paid into the Bank of England in pursuance of section 224 of the Act, shall be made in such form and manner as the Board of Trade may from time to time direct, and shall, unless the Board of Trade otherwise directs, be accompanied by the certificate of the Liquidator that the person claiming is entitled and such further evidence as the Board of Trade may direct (*m*).

A Liquidator who requires to make payments out of money paid into the Bank of England in pursuance of section 224 of the Act, either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Board of Trade may direct, and the Board of Trade may thereupon either make an order for payment to the Liquidator of the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the Liquidator for transmission to the persons to whom the payments are to be made (*n*).

LIQUIDATOR'S STATEMENT OF ACCOUNT UNDER SECTION 224 OF THE ACT (*o*).

[*Re*

This is the Exhibit marked B. referred to in the affidavit of ; sworn to before me this day of 19 .

No. of Company .

A Commissioner for Oaths.]

(*l*) Companies (Winding-up) Rules, 1909, r. 194.

(*m*) *Ibid.*, r. 195. A claimant should in the first instance write to the Board of Trade a letter setting out the particulars of his claim. Such claim will ultimately have to be verified by affidavit, but until the requirements of the Board are known the affidavit should not be prepared. The Board will in a proper case forward the requisite form of application.

(*n*) Companies (Winding-up) Rules, 1909, r. 196.

(*o*) *Ibid.*, Appendix, Form 92.

Statement of Receipts and Payments and General Directions as to Statements.

(*Name of Company.*)

Size of sheets.

(1) Every statement must be on sheets 13 inches by 16 inches.

Form and contents of statement.

(2) Every statement must contain a detailed account of all the liquidator's realizations and disbursements in respect of the Company. The statement of realizations should contain a record of all receipts derived from assets existing at the date of the winding-up order or resolution and subsequently realized, including balance in bank, book debts and calls collected, property sold, &c.; and the account of disbursements should contain all payments for costs and charges, or to creditors, or contributories. Where property has been realized, the gross proceeds of sale must be entered under realizations, and the necessary payments incidental to sales must be entered as disbursements. These accounts should not contain payments into the Companies Liquidation Account (except unclaimed dividends, *see* par. 5) or payments into or out of bank, or temporary investments by the Liquidator, or the proceeds of such investments when realized, which should be shewn separately:—

(*a*) by means of the bank pass book;

(*b*) by a separate detailed statement of moneys invested by the liquidator, and investments realized.

Interest allowed or charged by the bank, bank commission, &c., and profit or loss upon the realization of temporary investments, should, however, be inserted in the accounts of realizations or disbursements, as the case may be. Each receipt and payment must be entered in the account in such a manner as sufficiently to explain its nature. The receipts and payments must severally be added up at the foot of each sheet, *and the totals carried forward from one account to another without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the liquidator respectively.*

Trading account.

(3) When the Liquidator carries on a business, a trading account must be forwarded as a distinct account, and the totals of receipts and payments on the trading account must alone be set out in the statement (*p*).

Dividends, etc.

(4) When dividends or instalments of compositions are paid to creditors, or a return of surplus assets is made to contributories, the total amount of each dividend, or instalment of composition, or return to contributories, actually paid, must be entered in the statement of disbursements as one sum; and the Liquidator must forward separate accounts showing in lists the amount of the claim of each creditor, and the amount of dividend or composition payable to each creditor (*q*), and of surplus assets payable to each contributory (*r*), distinguishing in each list the dividends or instalments of composition and shares of surplus assets actually paid and those remaining unclaimed. Each list must be on sheets 13 inches by 8 inches.

(5) When unclaimed dividends, instalments of compositions or returns of surplus assets are paid into the Companies Liquidation Account, the

(*p*) See *post*, p. 980, Form 94.

(*q*) See Form 95, *post*, p. 981.

(*r*) See Form 96, *post*, pp. 981 and 982.

total amount so paid in should be entered in the statement of disbursements as one sum.

(6) Credit should not be taken in the statement of disbursements for any amount in respect of liquidator's remuneration unless it has been duly allowed by resolution of the Company in general meeting, or by order of Court.

LIQUIDATOR'S STATEMENT OF ACCOUNT

PURSUANT TO SECTION 224 OF THE COMPANIES (CONSOLIDATION) ACT, 1908.

Name of Company.

Nature of proceedings (whether wound up by the Court, or under the supervision of the Court, or voluntarily).

Date of commencement of winding-up.

Date to which statement is brought down.

Name and address of liquidator.

This statement is required in duplicate.

LIQUIDATOR'S STATEMENT OF ACCOUNT PURSUANT TO SECTION 224 OF THE COMPANIES (CONSOLIDATION) ACT, 1908.

Realizations.						Disbursements.					
Date.	Of whom received.	Nature of Assets Realized.	Amount.			Date.	To whom paid.	Nature of Disbursements.	Amount.		
			£	s.	d.				£	s.	d.
		Brought forward ..						Brought forward .			
		Carried forward * ..						Carried forward * .			

*NOTE.—No balance should be shown on this Account, but only the total Realizations and Disbursements, which should be carried forward to the next Account.

ANALYSIS OF BALANCE.

	£ s. d.
Total Realizations	– – –
Total Disbursements	– – –
Balance	– – –

The Balance is made up as follows :—

	£ s. d.	£ s. d.
1. Cash in hands of liquidator		– – –
2. Total payments into Bank, including balance at date of commencement of winding-up (*as per Bank Book*) . .	– – –	
Total withdrawals from Bank . .	– – –	
Balance at Bank		– – –

	£ s. d.	£ s. d.
3. Amount in Companies Liquidation account		– – –
4. * Amounts invested by liquidator . .	– – –	
Less Amounts realized from same . .	– – –	
Balance .		– – –
Total balance as shown above		£ – – –

NOTE.—Full details of Stocks purchased for investment and of realization thereof should be given in a separate statement.

* The investment or deposit of money by the liquidator does not withdraw it from the operation of section 224 of the Companies (Consolidation) Act 1908 and any such investments representing money held for six months or upwards must be realized and paid into the Companies Liquidation Account, except in the case of investments in Government Securities, the transfer of which to the control of the Board of Trade will be accepted as a sufficient compliance with the terms of the section.

NOTE.—The liquidator should also state :—

(1.) The amount of the estimated assets and liabilities at the date of the commencement of the winding-up.	Assets (after deducting amounts charged to secured creditors and debenture holders)	£
	Liabilities: Secured creditors	£
	Liabilities: Debenture-holders	£
	Liabilities: Unsecured creditors	£
(2.) The total amount of the capital paid up at the date of the commencement of the winding-up.	Paid up in cash	£
	Issued as paid up otherwise than for cash	£
(3.) The general description and estimated value of outstanding assets (if any).		
(4.) The causes which delay the termination of the winding-up.		
(5.) The period within which the winding-up may probably be completed.		

No. of Company.

AFFIDAVIT VERIFYING STATEMENT OF LIQUIDATOR'S ACCOUNT UNDER SECTION 224 (s).

(*Name of Company.*)

I, of ,

the liquidator of the above-named Company, make oath and say: That **the account hereunto annexed marked B. contains a full and true account of*

(s) Companies (Winding-up) Rules, 1909, Appendix, Form 93.

my receipts and payments in the winding-up of the above-named Company, from the day of 19 , to the day of 19 , inclusive, **and that* I have not, nor has any other person by my order or for my use during such period, received or paid any moneys on account of the said Company* *other than and except the items mentioned and specified in the said account.*

I further say that the particulars given in the annexed Form 92, marked B., with respect to the proceedings in and position of the liquidation, are true to the best of my knowledge and belief.

Sworn at }

*NOTE.—If no receipts or payments, strike out the words in italics. The Affidavit is *not* required in duplicate, but it must in every case be accompanied by a statement on Form 92 in duplicate.

ORDER DIRECTING LIQUIDATOR TO PAY MONEY INTO THE COMPANIES LIQUIDATION ACCOUNT UNDER SECTION 224 OF THE ACT.

(*Title.*)

UPON motion this day made unto this Court by Counsel on behalf of the Board of Trade. And no one appearing for the Respondent E.J.L. although he has been duly served with notice of the said motion as by the Affidavit of A.B. appears, and upon reading the Affidavit of H.A.P. filed the 21st July 1911 and the exhibits thereto (exhibit H.A.P. being the account of the said E.J.L. as to the position of the liquidation of the above-named Company brought down to the 29th November 1910 hereinafter mentioned).

NOTE.—Affidavit of A.B. as to service filed 1st August, 1911.

THIS COURT DOTH ORDER that the said E.J.L. the Liquidator of the above-named Company do within four days after service upon him of this Order pay into the Bank of England to the credit of the Companies Liquidation Account the sum of £ being the amount of money representing unclaimed or undistributed assets of the said Company shown by the said account furnished by the said E.J.L. to be in his hands or under his control and which have remained unclaimed or undistributed for six months after the date of their receipt.

AND it is ordered that the Respondent the said E.J.L. do pay to the Board of Trade their costs of the said motion such costs to be taxed. [*Re The Bexley Heath Coal Co.*, 00284 of 1911. Mr. Justice NEVILLE, July 25th, 1911.]

No. of Company

LIQUIDATOR'S TRADING ACCOUNT UNDER SECTION 224 (*t*).

(*Name of Company.*)

†

the Liquidator of the above-named Company in account with the Estate.

This Account is required in Duplicate in addition to Form No. 92.

* Insert here the name of the Company.

† Insert here the name of the Liquidator.

(*t*) Companies (Winding-up) Rules 1909, Appendix, Form 94.

RECEIPTS. *Dr.*				PAYMENTS. *Cr.*			
Date.				Date.			

Date. *Liquidator.*

No. of Company.

LIST OF DIVIDENDS OR COMPOSITION (*u*).

(*Name of Company.*)

I hereby certify that a Dividend (or Composition) of in the £ was declared payable on and after the day of 19 , and that the Creditors whose names are set forth below are entitled to the amounts set opposite their respective names, and have been paid such amounts except in the cases specified as unclaimed.

Liquidator.

Dated the day of 19 .

To the Board of Trade.

Surname.	Christian Name.	Amount of Proof.			Amount of Dividend (or Composition).					
					Paid.			Unclaimed.		
		£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*

This list is required in duplicate.

No. of Company.

LIST OF AMOUNTS PAID OR PAYABLE TO CONTRIBUTORIES (*x*).

(*Name of Company.*)

I hereby certify that a Return of Surplus Assets was declared payable to Contributories on and after the day of 19 , at the rate of per Share, and that the Contributories whose names are set forth below are entitled to the Amounts set opposite their respective

(*u*) Companies (Winding-up) Rules, 1909, Appendix, Form 95.

(*x*) *Ibid.*, Appendix, Form 96.

names, and have been paid such amounts except in the cases specified as unclaimed.

Liquidator.

Dated the day of 19 .

To the Board of Trade.

Surname.	Christian Name.	No. of Shares.	Amount returned on Shares.					
			Paid.			Unclaimed.		
			£	s.	d.	£	s.	d.

The List is required in duplicate.

AFFIDAVIT VERIFYING ACCOUNT OF UNCLAIMED AND UNDISTRIBUTED FUNDS (*y*).

(*Title.*)

I, of make oath and say that the particulars entered in the statement hereunto annexed, marked A., are correct, and truly set forth all money in my hands or under my control, representing unclaimed or undistributed assets of the above Company, and that the amount due by me to the Companies Liquidation Account in respect of unclaimed dividends and undistributed funds is £ .

Signature.

Sworn, etc.

BOOKS TO BE KEPT BY LIQUIDATOR.

Every liquidator of a company which is being wound up by the Court in England must keep, in manner prescribed, proper books in which he must cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally, or by his agent, inspect any such books (*z*).

The official receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, must keep a book to be called the "Record Book," in which he must record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs, but he is not bound to insert in the "Record Book" any document of a confidential nature (such as the opinion

(*y*) Companies (Winding-up) Rules, 1909, Appendix, Form 97.

(*z*) Companies (Consolidation) Act, 1908, s. 156.

of counsel or any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the committee of inspection, or the official receiver, or the Board of Trade (*a*).

The official receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, must keep a book to be called the "Cash Book" (which must be in such form as the Board of Trade may from time to time direct) in which he must (subject to the provisions of the rules as to trading accounts (*b*)) enter from day to day the receipts and payments made by him.

The liquidator must submit the Record Book and Cash Book together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every three months (*c*). The regulations of the Board of Trade provide that moneys withdrawn from the Bank should not be treated as receipts from realization, but should appear only in the "Drawn from Bank" column of the Cash Book, the application of the money being entered in the "Payments" column, and that the payments into the Bank should appear only in the "Paid into Bank" column of the Cash Book.

Every liquidator of a company which is being wound-up by the Court in England must at such times as may be prescribed (*d*), but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.

The account must be in a prescribed form (*e*), must be made in duplicate, and must be verified by a statutory declaration in the prescribed form (*e*).

The Board must cause the account to be audited, and, for the purpose of the audit, the liquidator must furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

When the account has been audited, one copy thereof must be filed and kept by the Board, and the other copy must be filed with the Court, and each copy must be open to the inspection of any creditor, or of any person interested.

The Board must cause the account when audited, or a summary

(*a*) Companies (Winding-up) Rules, 1909, r. 166.

(*b*) The liquidator must keep a trading account where he carries on the business of the company: Companies (Winding-up) Rules, 1909, r. 171, *post*, p. 984.

(*c*) Companies (Winding-up) Rules, 1909, r. 167.

(*d*) Section 285 of the Act provides that the words prescribed means in relation to winding-up prescribed by general rules: see *post*, p. 984.

(*e*) See *post*, pp. 986 and 987 for these forms.

thereof, to be printed, and must send a printed copy of the account or summary by post to every creditor and contributory (*f*).

The committee of inspection must not less than once every three months audit the liquidator's cash book and certify therein under their hands the day on which such book was audited (*g*).

The liquidator must, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the Cash Book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the committee of inspection (*h*). He must also forward with the first accounts a summary of the company's statement of affairs, showing thereon in red ink the amounts realized, and explaining the cause of the non-realization of such assets as may be unrealized. The liquidator must also at the end of every six months forward to the Board of Trade, with his accounts, a report upon the position of the liquidation of the company in such form as the Board of Trade may direct.

When the assets of the company have been fully realized and distributed, the liquidator must forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

The accounts sent in by the liquidator must be verified by him by affidavit (*i*).

Where the liquidator carries on the business of the company, he must keep a distinct account of the trading, and must incorporate in the Cash Book the total weekly amount of the receipts and payments on such trading account.

The trading account must from time to time, and not less than once in every month, be verified by affidavit, and the liquidator must thereupon submit such account to the committee of inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who must examine and certify the same (*k*).

When the liquidator's account has been audited, the Board of Trade must certify the fact upon the account, and thereupon the duplicate copy, bearing a like certificate, must be filed with the Registrar (*l*).

The liquidator must transmit to the Board of Trade with his accounts a summary of such accounts in such form as the Board of Trade may from time to time direct, and, on the approval of such summary by the Board of Trade, must forthwith obtain, prepare,

(*f*) Companies (Consolidation) Act, 1908, s. 155.

(*g*) Companies (Winding-up) Rules, 1909, r. 169.

(*h*) Where a special bank account has been authorized the pass book with the special bank must also be forwarded: Regulations of the Board of Trade.

(*i*) Companies (Winding-up) Rules, 1909, r. 170.

(*k*) *Ibid.*, r. 171.

(*l*) *Ibid.*, r. 172.

and transmit to the Board of Trade so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to each creditor and contributory.

The cost of printing and posting such copies will be a charge upon the assets of the company (*m*).

Where a liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he must at the time when he is required to transmit his accounts to the Board of Trade, forward to the Board of Trade an affidavit of no receipts or payments (*n*).

Upon a liquidator resigning, or being released or removed from his office, he must deliver over to the official receiver, or, as the case may be, to the new liquidator, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of liquidator. The release of a liquidator will not take effect unless and until he has delivered over to the official receiver, or, as the case may be, to the new liquidator, all the books, papers, documents, and accounts which he is by this rule required to deliver on his release.

The Board of Trade may, at any time during the progress of the liquidation, on the application of the liquidator or the official receiver direct that such of the books, papers, and documents of the company or of the liquidator as are no longer required for the purpose of the liquidation, may be sold, destroyed, or otherwise disposed of (*o*).

Where property forming part of a company's assets is sold by the liquidator through an auctioneer or other agent, the gross proceeds of the sale must be paid over by such auctioneer or agent, and the charges and expenses connected with the sale must afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every liquidator by whom such auctioneer or agent is employed, will, unless the Court otherwise orders, be accountable for the proceeds of every such sale (*p*).

CERTIFICATE BY COMMITTEE OF INSPECTION AS TO AUDIT OF LIQUIDATOR'S ACCOUNTS (*q*).

(*Title.*)

We, the undersigned, members of the Committee of Inspection in the winding-up of the above-named Company, hereby certify that we have examined the foregoing account with the vouchers, and that to the best

(*m*) Companies (Winding-up) Rules, 1909, r. 173.
(*n*) *Ibid.*, r. 174.
(*o*) *Ibid.*, r. 175.
(*p*) *Ibid.*, r. 176.
(*q*) *Ibid.*, Appendix, Form 86.

of our knowledge and belief the said account contains a full, true, and complete account of the Liquidator's receipts and payments.

Dated this day of 19 .

Committee of Inspection.

AFFIDAVIT VERIFYING LIQUIDATOR'S ACCOUNT UNDER SECTION 155 (r).

(*Title.*)

I, G.H., of , the Liquidator of the above-named Company, make oath and say:—

That **the account hereunto annexed marked B. contains a full and true account of my receipts and payments in the winding-up of the above-named Company* from the day of 19 , to the day of 19 , inclusive **and that* I have not, nor has any other person by my order or for my use, during such period received any moneys on account of the said Company * *other than and except the items mentioned and specified in the said account.*

Sworn at, &c.

* NOTE.—If no receipts or payments, strike out the words in italics.

LIQUIDATOR'S TRADING ACCOUNT UNDER SECTION 155 (s).

(*Title.*)

G.H., the Liquidator of the above-named Company in account with the estate.

RECEIPTS. PAYMENTS.

Dr. *Cr.*

Date.					Date.			

Liquidator.

Date

We have examined this account with the vouchers and find the same correct, and we are of opinion the expenditure has been proper.

Dated this day of 19 .

Committee of Inspection
[*or* member of the Committee of Inspection.]

(r) Companies (Winding-up) Rules, 1909, Appendix, Form 87.

(s) *Ibid.*, Form 88.

AFFIDAVIT VERIFYING LIQUIDATOR'S TRADING ACCOUNT UNDER SECTION 155 (*t*).

(*Title.*)

I, the Liquidator of the above-named Company, make oath and say that the account hereto annexed is a full, true, and complete account of all money received and paid by me or by any person on my behalf in respect of the carrying on of the trade or business of the Company, and that the sums paid by me as set out in such account have, as I believe, been necessarily expended in carrying on such trade or business.

Sworn, &c.

Liquidator.

RELEASE OF LIQUIDATOR.

When the liquidator of a company which is being wound-up by the Court in England has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade must, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, must take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and must either grant or withhold the release accordingly, subject, nevertheless, to an appeal to the High Court (*u*).

Where the release of a liquidator is withheld the Court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

An order of the Board of Trade releasing the liquidator discharges him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

Where the liquidator has not previously resigned or been removed, his release operates as a removal of him from his office (*x*).

A liquidator in a winding-up by the Court before making application to the Board of Trade for his release, must give notice of his

(*t*) Companies (Winding-up) Rules, 1909, Appendix, Form 88*a*.

(*u*) In practice the Board require an affidavit that the requisite notices and summaries have been sent to all the creditors and contributories, and if the accounts are satisfactory and this affidavit is made they usually grant the release as a matter of course.

(*x*) Companies (Consolidation) Act, 1908 s. 157.

intention so to do to all the creditors who have proved their debts, and to all the contributories, and must send with the notice a summary of his receipts and payments as liquidator.

When the Board of Trade have granted to a liquidator his release, a notice of the order granting the release must be gazetted. The liquidator must provide the requisite stamp fee for the *Gazette*, which he may charge against the company's assets (*y*).

Where a liquidator is released under this section, the official receiver becomes and remains liquidator (*z*).

An appeal from the Board of Trade under the section will be made by motion (*a*): such motion must be served on the Board of Trade.

NOTICE TO CREDITORS AND CONTRIBUTORIES OF INTENTION TO APPLY FOR RELEASE (*b*).

(*Title.*)

Take notice that I, the undersigned Liquidator of the above-named Company, intend to apply to the Board of Trade for my release, and further take notice that any objection you may have to the granting of my release must be notified to the Board of Trade within twenty-one days of the date hereof.

A summary of my receipts and payments as Liquidator is hereto annexed.

Dated this day of 19 .

Liquidator.

To

NOTE.—Section 157 (3) of the Companies (Consolidation) Act, 1908, enacts that "An order of the Board releasing the Liquidator shall discharge "him from all liability in respect of any act done or default made by him "in the administration of the affairs of the Company, or otherwise in relation to his conduct as Liquidator, but any such order may be revoked "on proof that it was obtained by fraud or by suppression or concealment "of any material fact."

APPLICATION BY LIQUIDATOR TO BOARD OF TRADE FOR RELEASE (*c*).

(*Title.*)

I, the Liquidator of the above-named Company, do hereby report to the Board of Trade as follows:—

1. That the whole of the property of the Company has been realized

(*y*) Companies (Winding-up) Rules, 1909, r. 197.

(*z*) *Ibid.*, r. 55 (7). Where the liquidator has resigned or been removed under s. 149 (6) of the Act and then gets a release under this section, the Official Receiver becomes liquidator in England under s. 149 (7) of the Act.

(*a*) Companies (Winding-up) Rules, 1909, rr. 5 (*b*), 6 (*c*) and 8.

(*b*) *Ibid.*, Appendix, Form 98.

(*c*) *Ibid.*, Appendix, Form 99

for the benefit of the creditors and contributories [and a dividend to the amount of shillings in the pound has been paid as shown by the statement hereunto annexed, and a return of per share has been made to the contributories of the Company]; [*or* That so much of the property of the Company as can, according to the joint opinion of myself and the Committee of Inspection, hereunto annexed in writing under our hands, be realized without needlessly protracting the liquidation, has been realized, as shown by the statement hereunto annexed, and a dividend to the amount of shillings has been paid, together with a return of per share to the contributories of the Company];*

2. I therefore request the Board of Trade to cause a report on my accounts to be prepared, and to grant a certificate of release.

Dated this day of 19 .

Liquidator.

* Add if necessary, "That the "rights of "the contributories "between "themselves "have been "adjusted."

FORM OF RELEASE TO LIQUIDATOR.

IN THE HIGH COURT OF JUSTICE.

No. 00 of 19 .

In the Matter of the Companies (Consolidation) Act, 1908
and
In the Matter of the A.B. Company, Limited.

WHEREAS by an Order of the Court made on the day of 19 , the above-named company was ordered to be wound-up by the Court.

And whereas by a further Order of the Court made on the day of 19 , X.Y. was appointed liquidator of the said company, and whereas the said X.Y. has made application to the Board of Trade in pursuance of section 157 of the Companies (Consolidation) Act, 1908, and the Board of Trade have, in accordance with the provisions of such section, caused a report on his accounts to be prepared. Now the Board of Trade having taken into consideration the said report do hereby order that the release of the said X.Y. as such liquidator be and the same is hereby granted.

Dated this day of 19 .

By the Board of Trade.

M.N.

Duly authorised in that behalf by the President of the Board of Trade.

STATEMENT TO ACCOMPANY NOTICE

(*Title.*)

Statement showing position of Company

Dr.

	Estimated to produce as per Company's Statement of Affairs.			Receipts.		
	£	*s.*	*d.*	£	*s.*	*d.*
To total receipts from date of winding-up order, viz :—						
(*State particulars under the several headings specified in the Statement of Affairs.*)						
Receipts per trading account .						
Other receipts						
Total						
Less :—						
Payments to redeem securities .						
Cost of execution						
Payments per trading account .						
Net realizations						
Amounts received from calls on contributories made by the Liquidator . . . . £						
£						

Assets not yet realized, including

(*Add here any special remarks*

Creditors can obtain any further information by

Dated this day

(*d*) Companies (Winding-up

OF APPLICATION FOR RELEASE (*d*).

at date of application for release.

Cr.

	£	s.	d.	Payments. £	s.	d.
By Board of Trade and Court fees (including Stationery, Printing and Postages, in respect of Contributories, Creditors, and Debtors, and fee for audit)						
Law costs of petition						
Law costs of Solicitor to liquidator .						
Other law costs						
Liquidator's remuneration, viz. :— per cent. on £ assets realized . per cent. on £ assets distributed in dividend						
Shorthand writer's charges						
Special manager's charges						
Person appointed to assist in preparation of Statement of Affairs						
Auctioneer's charges as taxed						
Other taxed costs						
Costs of possession and maintenance of estate .						
Costs of notices in *Gazette* and local papers . .						
Incidental outlay						
Total costs and charges . . . . . £						
Creditors, viz. :—						
* Preferential . . .						
* Unsecured: dividend of *s. d.* in the £ on £ . . . *The estimate of amount expected to rank for dividend was £*						
Amount returned to contributories .						
Balance						
£						

* State number of creditors.

calls, estimated to produce £

the Liquidator thinks desirable.)

inquiry at the office of the Liquidator.

of 19 .

(Signature of Liquidator.)

(Address.)

Rules, 1909, Appendix, Form 100.

NOTICE OF RELEASE OF LIQUIDATOR FOR GAZETTING (e).

Name of Company.	Address of Registered Office.	Court.	Number of Matter.	Liquidator's Name.	Liquidator's Address.	Date of Release.

DISSOLUTION OF COMPANY.

When a company has been wound-up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows (that is to say) :—

(a) In the case of a winding-up by or subject to the supervision of the Court in such way as the Court directs ;

(b) In the case of a voluntary winding-up in such way as the company by extraordinary resolution directs.

But after five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein (f). These provisions apply to a limited partnership where it has been wound-up by the Court whether on the ground of the previous dissolution of the limited partnership or on any other ground (g).

Books of the company which are in the possession of a liquidator after dissolution, and as to which he has received no direction, are in his absolute control, and he can therefore not claim protection on an application for discovery on the ground that he holds them on behalf of some one else (h).

When the affairs of a company have been completely wound-up in a compulsory liquidation, the Court must make an order that the company be dissolved from the date of the order, and the company will be dissolved accordingly.

The order must be reported by the liquidator to the Registrar of Joint Stock Companies, who must make in his books a minute of the dissolution of the company. In practice, however, orders dissolving companies are not often made now.

If the liquidator makes default in complying with the require-

(e) Companies (Winding-up) Rules, 1909, Appendix, Form 103 (9).

(f) Companies (Consolidation) Act, 1908, s. 222.

(g) Limited Partnerships (Winding-up) Rules, 1909, r. 19.

(h) *London and Yorkshire Bank* v *Cooper* (1885), 15 Q. B. D. 473.

ments of this section he will be liable to a fine not exceeding five pounds for every day during which he is in default (*i*).

These provisions only apply to a limited partnership where the affairs of such partnership have been completely wound up by the Court under an order for winding up not made on the ground that the limited partnership has been dissolved (*k*).

After dissolution the Crown is entitled to assets which are held in trust for the company, such as assets to which the company would have been entitled if it had not been dissolved in a bankruptcy in which it has proved (*l*).

Blackstone says (*m*) that hereditaments to which a dissolved corporation was before dissolution entitled revert to the grantor, on the ground that every grant to a corporation is for its life only, and it has been held that a lease to a company terminates on its dissolution, and that therefore sureties for the lessee are released from their liability (*n*). This view seems to be quite untenable having regard to the winding-up provisions of the Act; if right it would follow that every grant or assignment or lease to a company would on its dissolution become void, and that even though it has parted with all interest therein years before the dissolution. Joyce, J., in another case (*o*) assumed that the company's interest vested in the Crown in such cases, and said that the Crown would on payment of certain fees convey it to a purchaser, who was entitled.

Where a dissolved company at its dissolution holds property on trust for another, *e.g.* a purchaser (*p*) or debenture-holders, the Court will appoint new trustees of the property, and will vest the property in them under the powers conferred by the Trustee Act, 1893, or it is thought in spite of the decision of Buckley, J., in *Taylor's Agreements Trusts* (*q*), will vest the property in the *cestui que trust* (*r*) on the ground that the trustee, *i.e.* the company, cannot

(*i*) Companies (Consolidation) Act, 1908, s. 172.

(*k*) Limited Partnerships (Winding-up) Rules, 1909, r. 18.

(*l*) *Re Higginson and Dean*, [1899] 1 Q. B. 325.

(*m*) Blackstone, 1st Ed. vol. i. p. 484.

(*n*) *Hastings Corporation* v. *Letton*, [1908] 1 K. B. 378.

(*o*) *Pryce Jones* v. *Williams*, [1902] 2 Ch. 517.

(*p*) *No. 9, Bomore Road*, [1906] 1 Ch. 359; *Trusts of Land at Farnborough*, [1906] 1 Ch. 361, n.; *King of Hannover* v. *Bank of England* (1869), 8 Eq. 350.

(*q*) [1904] 2 Ch. 737, the case of a patent; the learned Judge held that it could not be said that the trustee could not be found, because that presupposed that he existed. He also declined to appoint a new trustee and to make an order vesting the property in him.

(*r*) *General Accident Assurance Corporation*, [1904] 1 Ch. 147; *Richard Mills & Co. (Brierley Hill)*, [1905] W. N. 36, and see *Ruddington Land*, [1909] 1 Ch. 701, which, however, only shows that the dissolution of an Industrial and Provident Society is simply an alternative way of winding it up, and is not a dissolution in the sense in which that word is used in s. 172 of the Companies (Consolidation) Act, 1908.

be found, and that the case is therefore covered by sections 26 and 35 of the Trustee Act, 1893, if these cases or any of them are law it is submitted that *Hastings Corporation* v. *Letton* (s) cannot be so.

Blackstone also takes the view (t) that debts due to or from a corporation die with its dissolution. Unless the debts have been assigned (u) or any trust has been created this would perhaps be the case, but it is submitted that it is at all events arguable that in such cases a debt due to a corporation would go to the Crown as *bona vacantia*. A surety for the debts of a company will usually be liable in spite of the dissolution of the company (x). Where a company holds property as a joint tenant, such property will on its dissolution devolve on the other joint tenant (y).

Where a company has been dissolved, a solicitor who continues an action commenced before dissolution will be liable to pay to the other side the costs as between solicitor and client of all proceedings after dissolution, even though he does not know of the dissolution, and such lack of knowledge does not arise through any fault of his, and the name of the company will be struck out (z), the only exception to this rule being where the proceedings have been ready for hearing before dissolution and have been delayed solely by the state of business of the Court (a). This exception holds good even where the proceedings have been assigned to the wrong Judge, and have subsequently by consent been transferred to the right Judge (b).

Though a liquidator may in some cases be entitled to take steps for a dissolution without having satisfied all claims (c), it will usually be a dereliction of duty for him to do so (d), and as such may be restrained by injunction (e).

POWER OF COURT TO DECLARE DISSOLUTION VOID.

If the dissolution is once completed, the proper course will be to proceed under section 223 of the Act, which makes the following provision :—

Where a Company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application (f)

(s) [1908] 1 K. B. 378.

(t) Blackstone, 1st Ed. vol. i. p. 484; see also *Popular Life Assurance Co.*, [1909] 1 Ch. 80.

(u) See *Tolhurst* v. *Associated Portland Cement Manufacturers*, [1903] A. C. 414.

(x) *Re Fitzgeorge*, [1905] 1 K. B. 462.

(y) Bodies Corporate (Joint Tenancy) Act, 1899, s. 1 (2).

(z) *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, overruling *Salton* v. *New Beeston*, [1900] 1 Ch. 43; *Westbourne Grove Drapery Co.* (1879), 39 L. T. 30. See also *Pinto Silver Mining Co.* (1878), 8 C. D. 273; *London and Caledonian Marine Insurance Co.* (1879), 11 C. D. 140.

(a) *Crookhaven Mining Co.* (1866), 3 Eq. 69; *Whiteley Exerciser* v. *Gamage*, [1898] 2 Ch. 405.

(b) *Watchmakers' Alliance and Ernest Goode's Stores* (1905), 5 Tax Cases, 117.

(c) *Haytor Granite Co.* (1865), 1 Ch. 77.

(d) *Gooch* v. *London Banking Co.* (1886), 32 C. D. 41.

(e) *Elphinstone* v. *Monkland Iron and Coal Co.* (1886), 11 A. C. 332.

(f) The application must be

being made for the purpose by the Liquidator of the Company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the Company had not been dissolved.

It is the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the Registrar of Joint Stock Companies an office copy of the order, and if that person fails so to do he will be liable to a fine not exceeding five pounds for every day during which the default continues (*g*). The Court will make such an order on the application of a creditor of the dissolved Company who cannot get paid otherwise, and who applies with reasonable promptitude (*gg*).

Before this section or the corresponding provision of the Act of 1907 came into force it was held that a voluntary liquidator who had without fraud, but with full knowledge that debts had not been paid, distributed the assets of the company among its contributories, was, after the dissolution of the company personally liable to the creditors (*h*).

This decision may still have its importance, even in a compulsory winding up, for the dissolution can only be declared void within two years, while the release of the liquidator can be revoked at any time, though only where there has been fraud or suppression or concealment of a material fact (*i*). The last-mentioned case was a case where the facts would, it is thought, have supported a finding of fraud, and had it proceeded on this ground, it would have been easy enough to support, for there would have been a tort, and, whatever the position of the liquidator, persons who were injured and were bound to be injured by his act would have their redress against him (*k*). Unfortunately, the case proceeded on dicta in earlier cases (*l*), which suggest that a liquidator is a trustee for creditors, and that consequently he is liable to them for breach of trust or

before the Judge in open Court; Companies (Winding-up) Rules, 1909, rr. 5 and 6. In *Henderson's Nigel* (1911), 105 L.T. 370, where the order was sought because there were undistributed assets, NEVILLE, J., required the Crown to be served as such assets were apparently *bona vacantia*. Ultimately, it was not considered necessary to resuscitate the company as the Crown made no claim and the liquidator gave an undertaking to pay the costs of the Crown and his own costs to be taxed out of the fund and to distribute the residue among the shareholders subject to his reasonable costs of distribution and to submit his account to the Board of Trade. For orders see *infra*, pp. 1322 *et seq.*

(*g*) Companies (Consolidation) Act, 1908, s. 223. The offence may be prosecuted under the Summary Jurisdiction Acts: all prosecutions in Scotland under the section must be instituded by the Lord Advocate or a procurator fiscal, as the Lord Advocate directs: Companies (Consolidation) Act, 1908, s. 276.

(*gg*) *Spotiswoode, Dixon, and Hunting*, [1912] 1 Ch. 410. In this case the creditor had not heard of the winding-up till after the dissolution: a new company who had agreed to pay the dissolved company's debts was held not to be a proper party.

(*h*) *Pulsford* v. *Devenish*, [1903] 2 Ch. 625.

(*i*) See Companies (Consolidation) Act, 1908, s. 157 (3).

(*k*) See, however, *Schooner Pond Coal Co.*, [1888] W. N. 70.

(*l*) See *Oriental Inland Steam Co.* (1874), 9 Ch. 557; *Black & Co.'s Case* (1872), 8 Ch. 254; *London and Caledonian Marine Insurance Co.* (1879), 11 C. D. 140.

negligence. This view seems to be consistent with neither *Coxon* v. *Gorst* (*m*) nor *Knowles* v. *Scott* (*n*); and it is thought that the latter case was not sufficiently distinguished by saying that as the company was there not dissolved there was a remedy by misfeasance proceedings. That was very true, but on an application under that section money or property recovered must be repaid or restored to the coffers of the company, and there can usually be no order for payment to an individual creditor (*o*). No doubt the liquidator is bound under the Act to distribute the assets of the company equally among the creditors, but it is submitted that the cases above cited (*p*) establish that this is not a duty owed to any individual creditor. If this is the case during winding up it is difficult to see why it should be otherwise after dissolution.

(*m*) [1891] 2 Ch. 73.

(*n*) [1891] 1 Ch. 717. In *Hill's Waterfall Estate and Gold Mining Co.*, [1896] 1 Ch. 947, it was said that while a liquidator is not a trustee of surplus assets for contributories during winding-up, he may possibly be liable as an officer of the Court to creditors in a compulsory winding-up. It is, however, submitted that the fact that he is an officer of the Court cannot make a difference.

(*o*) For an exception to this rule, see *Watchmakers' Alliance and Ernest Goode's Stores* (1905), 5 Tax Cases, 117, and *New Zealand Join Stock and General Corporation* (1907), 23 T. L. R. 238, but there the Crown claimed and got payment through the company, and because it was entitled to priority over the other creditors of the company.

(*p*) *I.e. Coxon* v. *Gorst*, [1891] 2 Ch. 73; *Knowles* v. *Scott*, [1891] 1 Ch. 717.

CHAPTER XI.

Powers of Court and Liquidator.

Delivery of Property to Liquidator.

In a winding-up by the Court the liquidator takes into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

In a winding-up by the Court in Scotland or Ireland, if and so long as there is no liquidator, all the property of the company is deemed to be in the custody of the Court (*a*).

The Court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer (*b*) of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to the liquidator, any money, property, or books and papers in his hands to which the company is *primâ facie* entitled (*c*).

If any director, officer, or contributory of any company being wound-up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he will be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding two years, with or without hard labour (*d*).

Section 173 of the Act provides that general rules may be made for enabling the powers of the Court for requiring delivery of property or documents to the liquidator to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the

(*a*) Companies (Consolidation) Act, 1908, s. 150.

(*b*) An auditor has been held not to be an officer within the meaning of this section: *Findlay* v. *Waddell*, [1910] S. C. 670.

(*c*) Companies (Consolidation) Act, 1908, s. 164. The Court may also order any contributory purchaser or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator. All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding-up by the Court will be subject in all respects to the order of the Court: *ibid.*, s. 167.

(*d*) Companies (Consolidation) Act, 1908, s. 216.

Court. The Companies (Winding-up) Rules, 1909, accordingly contain the following provision :—

The powers conferred on the Court by Section 164 of the Act, shall be exercised by the Liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a Company which is being wound up under order of the Court shall, on notice from the Liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the Liquidator any sum of money or balance, books, papers, estate or effects which happen to be in his hands for the time being and to which the Company is *primâ facie* entitled (*e*).

Under this section an order has been made on a director and contributory of a company, requiring him to give the liquidator possession of property which he was under contract to sell to the company, and which the company had either wholly or partly paid for (*f*). The Court has also, apparently on a summons in a debenture-holder's action, required books and documents, which were subject to the debenture-holder's charge, but not part of his title-deeds, and were in the hands of a receiver appointed in the action to be handed over to the liquidator on his undertaking to produce them to the plaintiff in the action or the receiver (*g*). This case turned on the statutory duties of the liquidator. Apparently, however, the books belonged to the debenture-holders until they were satisfied, and not to the company at all.

The Court can, under section 164 only make an order on the persons named in the section, and the Court or the liquidator cannot under the section get an order against a creditor. It would seem, moreover, that a constructive trust will usually not be within the section (*h*). Where a large sum of money was paid by a promoter of a company to a banker in order to induce him to allow the company to open an account with him, it was held that though the money so paid was misapplied, and obviously came out of the promotion money, the Court could make no order as the money had not been paid directly by the company, and so could not be said to be part of its property (*i*). Applications to the Court under this section should be made by summons or motion (*k*), preferably by summons.

If an application is made to commit a Member of Parliament for

(*e*) Companies (Winding-up) Rules, 1909, r. 76. For form of notice see *infra*, pp. 999 and 1000.

(*f*) *Oakwell Collieries Co.*, [1879] W. N. 65.

(*g*) *Engel and South Metropolitan Brewing and Bottling Co.*, [1891] 1 Ch. 442 ; cf. also *Chyne Tin Plate Co.* (1883), 47 L. T. 439.

(*h*) *Ex parte Hawkins* (1868), 3 Ch. 787; *Hollinsworth's Case* (1849), 3 De G. & Sm. 102 ; *Cox's Case* (1849), 3 De G. & Sm. 180 ; and see *post*, p. 1056, as to who is an officer.

(*i*) *Imperial Land Co. of Marseilles, Re National Bank* (1870), 10 Eq. 298.

(*k*) The Court will not make an *Ex parte* order : *Commercial Union Wine Co.* (1865), 35 Beav. 35. For form of order see *infra*, p. 1000.

failing to comply with an order under this section, he may claim privilege during the sitting of Parliament, and for forty days before and after. The application may, however, be renewed when the privilege is gone (*l*).

INSPECTION OF BOOKS.

After an order for a winding-up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise (*m*).

On a winding-up this section supersedes the various sections of the Act giving rights of inspection while the company is a going concern (*n*), and also any rights given by the articles (*o*). No absolute right of inspection is given by it, but the Court has a discretion, and will only allow inspection where the person seeking it wants it for the general purposes of the liquidation, and not for the purpose of prosecuting any claims he may have against the directors or promoters (*p*), or of helping him in any claim he may have as a dissentient shareholder on a reconstruction (*q*). Under the section the Court cannot decide any question as to who is entitled to any of the books of a company (*p*), but perhaps this point is not very important as it would seem that the liquidator is entitled to all books required for the purposes of the liquidation (*r*). A person entitled to inspect is *primâ facie* entitled to employ an agent or an expert to inspect at his own expense (*s*), and it is thought that there is nothing in this section to rebut this presumption (*t*). A person inspecting under the section may take copies (*u*).

NOTICE BY LIQUIDATOR REQUIRING PAYMENT OF MONEY OR DELIVERY OF BOOKS, ETC., TO LIQUIDATOR (*x*).

(*Title.*)

* Name of liquidator.

Take notice that I, the undersigned *   , have been appointed Liquidator of the above-named Company, and that you,

(*l*) *Anglo-French Co-operative Society* (1880), 14 C. D. 533.

(*m*) Companies (Consolidation) Act, 1908, s. 221. For forms of orders see *infra*, pp. 1001 and 1002.

(*n*) *Kent Coalfields Syndicate*, [1898] 1 Q. B. 754; *Somerset* v. *Land Securities*, [1897] W. N. 29.

(*o*) *Yorkshire Fibre Co.* (1870), 9 Eq. 650; but see *Ex parte Brinsley* (1866), 36 L. J. (CH.) 150, as to Secrecy Clauses in the articles.

(*p*) *North Brazilian Sugar Factories* (1887), 37 C. D. 83.

(*q*) *Morgan's Case* (1884), 28 C. D. 620.

(*r*) *Engel* v. *South Metropolitan Brewing and Bottling Co.*, [1892] 1 Ch. 442; but see *National Financial Corporation* (1867), 15 W. R. 499.

(*s*) *Bevan* v. *Webb*, [1901] 2 Ch. 59; *Norey* v. *Keep*, [1909] 1 Ch. 561; *Gold Coast Finance Syndicate* [1904] W. N. 73; but see the dicta of COTTON, L.J., in *West Devon Great Consols Mine* (1884), 27 C. D. 106.

(*t*) See *Ex parte Buchanan* (1866), 15 L. T. 261.

(*u*) *Arauco Co.*, [1899] W. N. 134.

(*x*) Companies (Winding-up) Rules, 1909, Appendix, Form 41.

† Name of person to whom notice is addressed.

‡ Address of liquidator's office.

the under-mentioned † , are required, within days after service hereof, to pay me [or deliver, convey, surrender, or transfer to or into my hands] as Liquidator of the said Company at my office, situate at ‡ &c. the sum of £ , being the amount of debt appearing to be due from you on your account with the said Company [or any sum or balance, books, papers, estate or effects], [or specifically describe the property] now being in your hands to which the said Company is entitled [or otherwise as the case may be].

Dated this day of 19 .

(Signed)

Liquidator.

To †

Address.

ORDER UNDER SECTION 164 FOR PAYMENT OF MONEY TO OFFICIAL RECEIVER AND LIQUIDATOR.

(*Title.*)

UPON Motion this day made unto this Court by Counsel on behalf of Harold de Vaux Brougham of 33 Carey Street in the County of London the Official Receiver and Provisional Liquidator of the above-named Company and upon hearing Counsel for F. B. Limited and H.B. And upon reading the Order to wind-up the above-named Company dated the 22nd July 1908 the two several Affidavits of G.A.E. filed the 27th and 28th July 1908 the Affidavit of G.H.B. filed the 28th July 1908 and the several Exhibits in the said Affidavits or some of them respectively referred to. And upon hearing the evidence of G.C.P. taken orally before this Court this day.

THIS COURT DOTH ORDER that the said F. B. Limited do on or before 4 o'clock in the afternoon of this day pay to the said Harold de Vaux Brougham the Official Receiver and Provisional Liquidator of the said International Securities Corporation Limited the sum of £ in the possession of the said F. B. Limited and to which sum the said International Securities Corporation Limited is *prima facie* entitled.

AND IT IS ORDERED that the said H.B. do on or before 4 o'clock in the afternoon of this day pay to the said Harold de Vaux Brougham as the Official Receiver and Provisional Liquidator of the said International Securities Corporation Limited the three several sums of £ , £ and £ making together £ in the possession of the said H.B. and to which sum the said Corporation is *prima facie* entitled.

AND IT IS ORDERED that the remainder of the said Motion against the said F. B. Limited and the said H.B. do stand over until Friday next the 31st July instant. [*Re International Securities Corporation, Ltd.*, 00196 of 1908. SWINFEN EADY, J., July 29th, 1908.]

SUMMONS FOR INSPECTION OF BOOKS.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. JUSTICE SWINFEN EADY.

No. 00317 of 1907.

In the Matter of the Companies Acts 1862 to 1900
and
In the Matter of The Brazilian Rubber Plantations and Estates Limited
and
In the Matter of the Estates and Industrial Syndicate Limited.

Let the Official Receiver under the Companies (Winding-up) Act 1890 in the above-named Matters attend at the Chambers of the Registrar Companies (Winding-up) Bankruptcy Buildings, Carey Street, London, on Friday the 2nd day of April 1909 at 12 o'clock at noon on the hearing of an application of E.B. at one time a Director of the Brazilian Rubber Plantations and Estates Limited for an order that he may be at liberty by his Solicitor to inspect and take copies of the Books and papers of the Brazilian Rubber Plantations and Estates Limited and of the Estates and Industrial Syndicate Limited in the possession of the Official Receiver.

Dated the 30th day of March 1909.

This Summons was taken out by G.M. & W. of in the City of London.

Solicitor for the Applicant.

To the Official Receiver,
Companies (Winding-up).

NOTE.—If you do not attend either in person or by your Solicitor at the time and place above-mentioned such order will be made and proceedings taken as the Judge (or Registrar) may think just and expedient.

ORDER ENDORSED ON ABOVE SUMMONS.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. REGISTRAR HOOD.

Friday the 2nd day of April 1909.

Appeared the Solicitors for the Applicant and the Official Receiver and Liquidator of the Company in person.

Read Order to Wind-up dated 14th January 1908.

Order giving liberty to the Applicant to inspect the Minute Book and such other documents of the Company in the possession or power of the Official Receiver and Liquidator of the Company as relate to or concern the Applicant and to take copies and abstracts therefrom as the Applicant may be advised at his expense.

Liberty to apply.

H. J. HOOD,
Registrar.

ANOTHER SUMMONS FOR INSPECTION OF BOOKS.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).

No. 00277 of 1901.

MR. JUSTICE BUCKLEY.

In the Matter of the Companies Acts 1862 to 1890
and
In the Matter of the London and Globe Finance Corporation Limited.

Let George Stapylton Barnes Esq. the Official Receiver and Liquidator of the above-named Company attend at the Office of the Registrar, at the Bankruptcy Buildings Carey Street London on Tuesday the 3rd day of June 1902 at 11.30 o'clock in the forenoon on the hearing of an application of A.R. of   in the County of   for an order that the said George Stapylton Barnes do at all reasonable times upon reasonable notice produce to the Applicant or his Solicitors at the Office of the Official Receiver in Companies Liquidation situate at 33 Carey Street Lincolns Inn all books and documents in his possession or power relating to the above-named Company and that the Applicant and his Solicitors be at liberty to inspect and peruse the documents so produced and to take copies and abstracts thereof and extracts therefrom as the Applicant may be advised at his own expense.

Dated the 16th day of May 1902.

This Summons was taken out by N.G. & G. of
London E.C.

Solicitors for the Applicant.

NOTE.—If you do not attend either in person or by your Solicitor at the time and place above-mentioned such order will be made and proceedings taken as the Judge (or Registrar) may think just and expedient.

ORDER ENDORSED ON ABOVE SUMMONS.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).

MR. REGISTRAR HOOD.

Tuesday the 3rd day of June 1902.

Appeared N.G. & G. for the Applicant. The Official Receiver and Liquidator in person.

Read Order to Wind-up dated 30th October 1901.

Order Liberty to the Applicant to inspect such of the Books and other documents of the Company as are material to the Applicant's Case.

Liberty to apply.

H. J. HOOD,
Registrar.

VESTING OF PROPERTY OF UNREGISTERED COMPANIES.

If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the winding-up order, or by any subsequent order, direct that all or any part of the property, real and personal (including things in action) belonging to the company, or to trustees on its

behalf, is to vest in the liquidator by his official name, and thereupon the property or the part thereof specified in the order will vest accordingly; and the liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any action or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property (*y*).

In spite of the fact that a company had registered pending a winding-up petition, Malins, V.-C., in one case made an order under this section (*z*). His decision proceeded on the ground that registration after the commencement of the winding-up was a mere nullity. No doubt there should be no such registration, but if ever the case should occur again it will be well to remember that the section of the present Act (*a*), which deals with the effect of the certificate of the Registrar on the incorporation of the company is somewhat stronger than section 192 of the Companies Act, 1862. Where an order has been made under this section vesting property in all the liquidators of a company, some of such liquidators will not have power to convey the whole legal estate, even if the Court has authorized the liquidators who have joined in the conveyance to do acts which the Act authorizes all the liquidators to do (*b*). Property which vests in the liquidator under this section vests in him in his official character, and not personally, and he will therefore not be personally liable for arrears of rent-charge, which have accrued after the property vested in him. If an action is brought against him personally to recover such arrears, the Court will, acting under its general jurisdiction, stay the action (*c*).

Orders under the section will usually not be made *ex parte*, but the summons should be served on the trustees or other persons in whom the legal estate was vested prior to the order (*d*). It has been held (*e*) that the application should be made in the name of the company, and not of the liquidator, but this is not the practice now (*ee*). The Court will not make a general order authorizing a liquidator to exercise the powers conferred by the section (*e*).

(*y*) Companies (Consolidation) Act, 1908, s. 272.

(*z*) *Hercules Insurance Co.* (1871), 11 Eq. 321.

(*a*) Companies (Consolidation) Act, 1908, s. 17. There is, perhaps, not much difference on this point, but the decision was perhaps a somewhat doubtful one. See also Companies (Converted Societies) Act, 1910.

(*b*) *Ebsworth and Tidy's Contract* (1889), 42 C. D. 23. There were in this case six liquidators, and a conveyance by two was held only to pass two-sixths of the legal estate.

(*c*) *Graham* v. *Edge* (1888), 20 Q. B. D. 683.

(*d*) *Albion Mutual Permanent Building Society* (1888), 57 L. J. (CH.) 248, not following *Albert Life Assurance Co.* (1869), 18 W. R. 91.

(*e*) *Britannia Permanent Benefit Building Society* (1891), 63 L. T. 304.

(*ee*) See order in *Birkbeck Permanent Benefit Building Society*, 00213 of 1911, set out *infra*, p. 1004.

ORDER VESTING PROPERTY OF UNREGISTERED COMPANY IN LIQUIDATOR UNDER SECTION 272 OF THE ACT.

(*Title.*)

UPON the application by summons dated the 6th day of October, 1911, of H. de V.B. the Official Receiver and Liquidator of the above-named Society and upon hearing Counsel for the Applicant and for W.J.R. and H.W.N., and upon reading the Order to Wind-up dated the 20th June, 1911, and the Affidavit of G.B.H. filed the 12th day of October, 1911, and the several Exhibits therein referred to :—

IT IS ORDERED that all the property real and personal (including things in action) belonging to the above-named Society or to any trustees or trustee on its behalf do vest in the said H. de V.B. the Official Receiver and Liquidator of the above-named Society by his Official name.

AND IT IS ORDERED that the costs of the said W.J.R. and H.W.N. of this Application be taxed and paid by the said Official Receiver and Liquidator out of the assets of the said Society. [*Re The Birkbeck Permanent Benefit Building Society*, 00213 of 1911. Mr. Registrar HOOD, October 17th, 1911.] (*eee*)

POWERS OF A LIQUIDATOR.

The liquidator in a winding-up by the Court has power, in the case of a winding-up in England, with the sanction either of the Court or of the Committee of Inspection (*f*), and, in the case of a winding-up in Scotland or Ireland, with the sanction of the Court—

(*a*) To bring or defend any action or other legal proceeding in the name and on behalf of the company;

(*b*) To carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof;

(*c*) In the case of a winding-up in England, to employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction;

(*d*) In the case of a winding-up in Scotland or Ireland, to appoint a solicitor or law agent to assist him in the performance of his duties.

The liquidator in a winding-up by the Court has power, but (subject to the provisions of the section) in the case of a winding-up in Scotland or Ireland, only with the sanction of the Court—

(*a*) To sell the real and personal property, and things in action of the company by public auction or private contract, with

(*eee*) Another very sweeping order was made in this liquidation by Mr. Registrar Hood on 11th January, 1912.

(*f*) See s. 160 (9) of the Act as to the Board of Trade's powers where there is no committee of inspection, and Companies (Winding-up) Rules, 1909, r. 205, as to the official receiver exercising such powers. The rule will not apply where the official receiver is the liquidator: *Re Duncan*, [1892] 1 Q. B. 331, 879. And see *supra*, pp. 941 and 942.

power to transfer the whole thereof to any person or company, or to sell the same in parcels ;

(*b*) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal ;

(*c*) To prove, rank, and claim in the bankruptcy, insolvency or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors (*g*) ;

(*d*) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business ;

(*e*) To raise on the security of the assets of the company any money requisite ;

(*f*) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company ; and in all such cases the money due will, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself ;

(*g*) To do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

The exercise by a liquidator in a winding-up by the Court in England of the powers conferred by this section is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

In the case of a winding-up in Scotland or Ireland the Court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent without the sanction or intervention of the Court.

(*g*) See r. 17 of the Limited Partnerships (Winding-up) Rules, 1909, *post*, p. 1151, as to the rights of the liquidator of a limited partnership where the rights of separate creditors of a partner are preserved in the event of such partner having been adjudged bankrupt, or having entered into an arrangement to pay his creditors less than 20*s*. in the £, or dying in insolvent circumstances, and of an order being made for the administration of his estate according to the law of bankruptcy.

Where a liquidator is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him.

In a winding-up by the Court in Scotland the liquidator is subject to rules made under the Act to have the same powers as a trustee on a bankrupt estate (*h*).

PROCEEDINGS BY OR ON BEHALF OF A COMPANY.

A question which frequently occurs in practice is whether proceedings ought to be brought by or against the company or by or against its liquidator. It would seem that the company's name should be used where the object of the action is to recover a debt or to recover or protect property the title to which is in the company (*i*), and it should also be used where it sought to put in force some statutory remedy or right which is given to the company and not to its liquidator (*k*). On the other hand, where such remedy or right is given to the liquidator (*l*), or where the liquidator is setting up some right which the company when a going concern had not got, but which he as liquidator has got, there the liquidator will be the proper plaintiff (*m*). At one time there seems to have been some doubt as to whether a liquidator's rights were ever higher than those of the company which he represented (*n*), and it was pointed out that though no doubt he represented the creditors of the company, he only did so because he represented the company (*o*); but it would seem clear that there are cases where a liquidator has higher rights against the members of a company than the company had, and the Act expressly gives him certain rights which while the company was a going concern it had not, thus he can in many cases resist a claim for rescission of a contract to take shares where the company could not have done so (*p*), and he is entitled to take proceedings to impeach some act or deed of the company which is made voidable in the interest of the creditors and contributories (*q*), (*e.g.* proceedings on the ground of fraudulent preference), which were not open to the company. A liquidator will, however, be bound by admissions made by the company to the same extent as the company itself was

(*h*) Companies (Consolidation) Act, 1908, s. 151.

(*i*) *Turquand* v. *Kirby* (1867), 4 Eq. 123; *Kent* v. *La Communauté des Sœurs de Charité*, [1903] A. C. 220, which, though decided under the Canadian statute, seems in point.

(*k*) *Kintrea's Case* (1869), 5 Ch. 95.

(*l*) *E.g.* misfeasance proceedings. As to the cases where leave to use the liquidator's name will be given, see *supra*, p. 575.

(*m*) *Kent* v. *La Communauté des Sœurs de Charité*, [1903] A. C. 220.

(*n*) *Waterhouse* v. *Jamieson* (1870), L. R. 2 H. L. Sc. 29.

(*o*) *Re Duckworth* (1867), 2 Ch. 578.

(*p*) *London Celluloid Co.* (1888), 39 C. D. 190.

(*q*) *Kent* v. *La Communauté des Sœurs de Charité*, [1903] A. C. 220.

bound (*r*). A bankruptcy notice founded on a judgment obtained by the company, must be given in the name of the company (*s*).

With regard to proceedings against the liquidator personally and not against the company, it would seem that such actions would lie (1) where the application is in the winding-up, and is with a view to enforcing some right or escaping some liability in the winding-up; (2) where the liquidator has entered into a contract under which he pledges his personal credit, or possibly where the title to the property which is the subject of the action is vested in him; (3) where the liquidator has personally been guilty of some wrongful act or default. Cases coming under class (1) need probably not be further dealt with here. An example of this class of case is, however, afforded by an application by a person to have his name removed from the list of contributories. Turning to class (2) it would seem that in the usual case a liquidator simply contracts as agent for the company, and it will be the company or its assets, and not the liquidator who will be personally liable (*t*); but a liquidator will, of course, be personally liable where he has pledged his own credit, *e.g.* by personally guaranteeing wages of persons employed by him (*u*). A liquidator will not, however, be personally liable for a rent-charge over land occupied by him as liquidator, even though such land has been vested in him under section 272 of the Act (*x*), or for rates on property he has occupied as liquidator (*y*).

Turning to class (3) a liquidator will sometimes be liable where he has distributed the assets, without making provision for debts he knew or ought to have known of. It would seem that in a compulsory liquidation a liquidator cannot be made personally liable at the suit of a third party, *e.g.* a creditor, for mere negligence his liability will be limited to cases where he has been guilty of bad faith or gross personal misconduct (*z*). It has been held that a voluntary liquidator who knows of certain debts and yet deliberately distributes the assets of the company without regard to them, and without providing for them will be personally liable at the suit of creditors after the company has been dissolved (*a*). And before dissolution a liquidator who has distributed the assets of a company without

(*r*) *Waterhouse* v. *Jamieson* (1870), L. R. 2 H. L. Sc. 29, as explained in *Almada and Tirito Co.* (1888), 38 C. D. 415, and *London Celluloid Co.* (1888), 39 C. D. 190.

(*s*) *Re Winterbottom* (1868), 18 Q. B. D. 446.

(*t*) *Anglo-Moravian Hungarian Junction Railway* (1875), 1 C. D. 130.

(*u*) See *Original Hartlepool Collieries* (1882), 51 L. J. (CH.) 508.

(*x*) *Graham* v. *Edge* (1888), 20 Q. B. D. 683.

(*y*) *Reg.* v. *Curzon* (1882), 46 L. T. 159.

(*z*) *Knowles* v. *Scott*, [1891] 1 Ch. 717.

(*a*) *Pulsford* v. *Devinish*, [1903] 2 Ch. 625; *London and Caledonian Marine Insurance Co.* (1879), 11 C. D. 140; see also *Thames Steam Ferry Co.* (1879), 40 L. T. 422.

providing for debts of the company, such as, for instance, the Crown's claim for income tax, will be liable on a claim for misfeasance (*b*).

In *Pulsford* v. *Devinish* (*c*) a good deal of emphasis is laid on the fact that the winding-up was concluded, and that a voluntary liquidator does not like a liquidator in a compulsory liquidation at the conclusion of the winding-up get a release. But the case proceeds on dicta, made in cases (*d*) where the liquidation was compulsory, which say that the liquidator is liable as a trustee for the creditors of the company. Apart from fraud it is submitted that this case is not reconcilable with *Knowles* v. *Scott* (*e*).

Where proceedings are taken by a liquidator in the name of the company the Court has no power to order the liquidator to pay the costs personally (*f*), but in a proper case an order can be obtained for the company, if a limited company, to give security for costs (*g*).

Where proceedings are brought by a liquidator personally he can be ordered to pay the costs (*h*), but he cannot be ordered to give security for costs (*i*).

With regard to the cases where a liquidator will be ordered to pay the costs personally. Where he is in the position of a defendant he will usually not be ordered to do so unless he has been in some way to blame or guilty of misconduct of some sort (*k*), though where he is substantially in the position of a plaintiff, as on an application to stay all further proceedings on a misfeasance summons issued by him (*l*), or to discharge an order for public examination obtained by him, there he will be in the same position as an ordinary litigant, and will usually have to pay the costs personally if he fails (*m*). No

(*b*) *Watchmakers' Alliance* v. *Ernest Goode's Stores* (1905), 5 Tax Cases, 117; *New Zealand Joint Stock and General Corporation* (1907), 23 T. L. R. 238.

(*c*) [1903] 2 Ch. 625.

(*d*) Cp. *Oriental Inland Steam Co.* (1874), 9 Ch. 557; *Black and Co.'s Case* (1872), 8 Ch. 254.

(*e*) [1891] 1 Ch. 717; see also *Coxon* v. *Gorst*, [1891] 2 Ch. 73, and *supra*, pp. 995 and 996.

(*f*) *Fraser* v. *Province of Brescia Tramways* (1887), 56 L. T. 771.

(*g*) See Companies (Consolidation) Act, 1908, s. 278; and see *Pretoria Pietersberg Railway*, [1904] 2 Ch. 359, as to the rule that security for costs will be ordered against a person out of the jurisdiction who comes forward as an actor in a winding-up, and *supra*, pp. 829 and 830, as to other cases where such security will be ordered. See *infra*, pp. 1011 and 1012 for orders.

(*h*) Cp. *Pitts* v. *La Fontaine* (1881), 6 A. C. 482; *Ex parte Angerstein* (1874), 9 Ch. 479; *Official Manager of Grand Trunk, etc., Railway* v. *Brodie* (1853), 3 De G. M. & G. 146; *W. Powell and Sons*, [1896] 1 Ch. 681.

(*i*) *Strand Wood Co.*, [1904] 2 Ch. 1, overruling *Seventh East Central Building Society* (1885), 51 L. T. 109.

(*k*) *Salisbury Jones and Dale's Case*, [1895] 1 Ch. 333; *Smallpage's and Brandon's Cases* (1885), 30 Ch. 598.

(*l*) *Western Counties Steam Bakeries and Milling Co.*, [1897] 1 Ch. 617.

(*m*) *Hounslow Brewery Co.*, [1896] W. N. 45.

appeal will lie from an order directing a liquidator who is in the position of a defendant, to pay the costs of the other party (*n*). These orders are, of course, without prejudice to the question, whether he can get recouped out of the assets.

Where the liquidator is the applicant, and is not successful, the rule would seem to be to order the liquidator to pay the costs (*o*), leaving him to get the costs out of the assets if he can. Not infrequently, however, an order is made for the costs to be paid out of the assets (*p*). Such an order does not create any charge on the assets, it simply limits the right of the person who is to get the costs, as he may only look to the assets for them (*q*). He will, however, be entitled to be paid out of those assets in priority to the liquidator in cases where the liquidator may recoup himself out of the assets (*r*), and though his costs will be postponed to the costs of realization (*s*), he will not be bound to wait for payment till the estate is fully realized, but will, on obtaining the order, be entitled to go to the liquidator and demand payment of his costs out of the assets he then has in hand after paying or setting aside such sum as is sufficient to meet all costs of realization, which are presently payable at the date of such demand (*t*).

Sometimes the order is for the liquidator to pay the other party his costs and to be at liberty to retain such costs out of the assets. In such cases it would seem that the liquidator will have the same priority after payment as the other party had before, and that he will be entitled to payment in priority to a solicitor he had discharged before the payment (*u*). Where persons have started an action on

(*n*) *John Tweddle & Co.*, [1910] 2 K. B. 697, overruling *Raynes Park Golf Club*, [1899] 1 Q. B. 961.

(*o*) *Ferrao's Case* (1874), 9 Ch. 355; *Ex parte Cambrian Steam Packet* (1868), 4 Ch. 112; *Wescomb's Case* (1874), 9 Ch. 553; *Robinson's Case* (1869), 4 Ch. 322; *Sichell's Case* (1867), 3 Ch. 119; *Campbell's Case* (1876), 4 C. D. 470; *Ex parte Littledale* (1874), 9 Ch. 257; *Beck's Case* (1874), 9 Ch. 392; *W. Powell and Sons*, [1896] 1 Ch. 681; *Strand Wood Co.*, [1904] 2 Ch. 1; *South Kensington Co-operative Stores* (1881), 17 C. D. 161. See also *Brazilian Rubber Plantation and Estates*, [1911] 1 Ch. 425, where, though it does not appear from the report, the point was discussed.

(*p*) *Kingston Cotton Mill (No. 2)*, [1896] 1 Ch. 331, 350; *Ex parte Bentley* (1879), 12 C. D. 850; *National Wholemeal Bread and Biscuit Co.*, [1892] 2 Ch. 457.

(*q*) *Cape Breton Co.* v. *Fenn* (1881), 17 C. D. 198.

(*r*) *Home Investment Society* (1880), 14 C. D. 167; *Dominion of Canada Plumbago Society* (1884), 27 C. D. 33; *Re Blundell* (1890), 44 C. D. 1; *London Metallurgical Co.*, [1895] 1 Ch. 758; *Dronfield Silkstone Co. (No. 2)* (1883), 23 C. D. 511, would appear not to be law; and cp. the order in *Dimson's Estate Fireclay Co.* (1874), 19 Eq. 202.

(*s*) *Staffordshire Gas and Coke Co.*, [1893] 3 Ch. 523.

(*t*) *London Metallurgical Co.*, [1895] 1 Ch. 758, not following *Ex parte Clitheroe* (1885), 15 L. R. Ir. 15; or *Ex parte Percival* (1868), 6 Eq. 519.

(*u*) *Dominion of Canada Plumbago Co.* (1884), 27 C. D. 33.

behalf of themselves and other shareholders they cannot get their costs out of the assets of the company in a winding-up, unless they have obtained leave in the winding-up to continue the action on behalf of the company (*x*).

In representative proceedings in a winding-up it was formerly not the practice to give the parties solicitor and client costs (*y*) ; but it is very usual now to give costs on this scale in these cases (*z*). The liquidator of a company on bringing or defending any legal proceedings was in former days always well advised to go to the Court (*a*) for directions as to what course he is to take in relation to the matter, otherwise he might become personally liable for costs, and might find that the Court would not allow him to recoup himself for such costs out of the assets of the company, as it did not approve of his conduct. In such matters it would seem that a liquidator was not in quite such a favourable position as a trustee, and if he had not shown reasonable care and skill, he was not allowed his costs (*b*). A liquidator who had been refused his costs out of the assets (*c*), could appeal against such refusal. Of course, in cases where creditors or contributories agree to indemnify a liquidator, such an application as is above mentioned was always unnecessary, but the costs of such an application were almost always allowed (*d*). Nowadays in compulsory cases the sanction of the committee of inspection is enough to protect the liquidator, but where heavy costs are likely to be incurred it is still desirable to go to the Court for leave to take proceedings (*dd*).

It would seem that where leave is given to bring or defend an action in the name of a company the assets are in effect pledged to meet the costs of the action, and the person litigating with the company will be entitled to payment of his costs immediately and in full (*e*). It has been doubted whether section 211 of the Act applies at all in these cases, but, assuming that it does, leave to proceed with

(*x*) *Hull Central Drapery Co.* (1880), 15 C. D. 326 ; cp. *Imperial Hydropathic Hotel Co., Blackpool* v. *Hampson* (1883), 23 C. D. 1.

(*y*) *Grimwade* v. *Mutual Society* (1881), 18 C. D. 530.

(*z*) A member of a class who was not a party to the record in the Court below will have to apply by *Ex parte* motion to the Court of Appeal for leave to appeal. The Court will usually require security for costs, and will not give leave if the person who represented the class in the Court below is willing to appeal : *Birkbeck Permanent Benefit Building Society, Times* Newspaper, December 2 and 5, 1911.

(*a*) S. 158 (3) of the Act empowers the liquidator to apply in manner prescribed for directions in relation to any particular matter arising under the winding-up.

(*b*) *Silver Valley Mines* (1882), 21 C. D. 381.

(*c*) *Ibid.*

(*d*) *Ibid.*

(*dd*) For such orders, see *infra*, p. 1070.

(*e*) *Bailey and Leetham's Case* (1869), 8 Eq. 94 ; *Madrid Bank* v. *Pelly* (1869), 7 Eq. 442 : *London Drapery Stores*, [1898] 2 Ch. 684 ; *Wenborn & Co.*, [1905] 1 Ch. 413 ; but see *Thurso New Gas Co.* (1889), 42 C. D. 486 ; *Snyder Dynamite Projectile Co.*, [1893] W. N. 37 ; *Thomas Free and Son* (1911), 56 S. J. 175, where a liquidator who proposed to appeal was ordered to pay the costs immediately, on an undertaking that they should be returned if the appeal succeeded ; and see *supra*, p. 900.

the execution will almost always be given (*f*). The fact that leave to bring an action has been given need not be pleaded (*g*). The Court has no power on an application under this section to decide what defence the company's opponent can put in (*h*).

ORDER FOR SECURITY FOR COSTS.

(*Title.*)

UPON THE APPLICATION (by summons dated the 12th day of October 1908) of A. C. the Liquidator in the voluntary winding-up of the above-named Company and upon hearing the solicitors for the Applicant and for The M. C. E. Limited (a Company in compulsory liquidation) the Respondent to the said summons and upon reading the originating summons issued by the said Respondent in the above matter and dated the 9th May 1908 and an affidavit of H.T.P. filed this day—

IT IS ORDERED that the Respondent Company the said M. C. E. Limited do procure some fit and proper person on their behalf to give security by bond to the Applicant in the penal sum of Fifteen pounds conditioned to answer costs in case any costs shall be ordered to be paid by the said Respondent Company but in lieu of procuring such bond the said Respondent Company is to be at liberty forthwith to lodge the sum of Fifteen pounds in Court as directed in the Lodgment Schedule hereto.

AND IT IS ORDERED that until such bond is procured or lodgment made and notice thereof given to the solicitors for the said Applicant all further proceedings in the matter of the said originating summons be stayed.

And the Applicant is to be at liberty to apply hereafter for further security as he may be advised.

LODGMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).

2nd February 1910.

Re The Companies Acts, 1862 *to* 1907. *And Re De Dion Bouton Limited*, 00202 *of* 1908.

Ledger Credit as above. "Security for Costs of Liquidator."

Particulars of Funds to be lodged to the Account of the Paymaster-General.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Cash . . .	The M.C.E. Limited (Respondent)	15	0	0			

[*Re De Dion Bouton, Ltd.*, 00202 of 1908. Mr. Registrar HOOD, February 2nd, 1910.]

Bank of Hindustan, China, and Japan, Ex parte Smith (1868), 3 Ch. 125; *Levick's Case* (1867), 5 Eq. 69; but see *Poole Firebrick and Blue Clay* (1873), 17 Eq. 268 (which was, however, a case of voluntary winding-up), and *Ship's Case* (1865), 13 W. R. 1016.

(*g*) *Turquand* v. *Kirby* (1867), 4 Eq. 123.

(*h*) *Albert Insurance Co., Parlby's Case* (1871), 40 L. J. (CH.) 340.

ORDER FOR FURTHER SECURITY FOR COSTS.

(*Title.*)

UPON THE FURTHER APPLICATION (by summons dated the 17th January 1911) of H.J.C. of number in the city of London chartered accountant the liquidator of the above-named Society and upon hearing Counsel for the Applicant and for W.H. the Respondent to the said summons and upon reading the order to wind-up the said Society dated the 22nd March 1910 the order dated the 2nd May 1910 (appointing liquidator) the order dated the 16th December 1910 and the summons issued in the above matter by the said W.H. (as the attorney of C.M.) and dated the 9th November 1910—

IT IS ORDERED that the said W.H. as such attorney as aforesaid do forthwith give further security in the further sum of Ten pounds to answer costs in case any costs shall be ordered to be paid by him the said W.H. and for that purpose he be at liberty to lodge the said further sum of Ten pounds in Court as directed in the Lodgment Schedule hereto.

AND IT IS ORDERED that until such further lodgment be made and notice thereof given to the solicitors for the said liquidator all further proceedings in the matter of the said summons dated the 9th November 1910 be stayed.

And the liquidator is to be at liberty to apply for such further security hereafter as he may be advised.

LODGMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).

20th January 1911.

Re The Building Societies Acts, 1874 *to* 1894. *And Re The Companies (Consolidation) Act*, 1908. *And Re The Metropolis and Counties Permanent Investment Building Society.*

Ledger Credit as above. "Security for Costs of Liquidator."

Particulars of Funds to be lodged to the Account of the Paymaster-General.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Cash . . .	W.H. . . .	10	0	0			

[*Re The Metropolis and Counties Permanent Investment Building Society*, 0099 of 1910. Mr. Registrar HOOD, January 20th, 1911.]

It is the duty of a liquidator in a compulsory winding-up to afford the other party access to all books and papers for which some special privilege cannot be claimed, and to give him every facility for inspecting them, but in the absence of special circumstances he will

not be ordered to make an affidavit of documents (*i*). Where some person seeks to get leave to sue in the name of the company (*k*), it is the duty of the liquidator to see that a proper case is made out (*l*). Such leave will not be given to a stranger to the winding-up (*m*).

PROCEEDINGS IN WINDING-UP MATTERS.

It will be convenient at this stage to give the rules for applications in a winding-up (*mm*) :—

All proceedings in the winding-up of Companies in the High Court shall from time to time be attached to one or more of the Registrars, who shall, together with the necessary clerks and officers, and subject to the Acts and Rules, act under the general or special directions of the Judge.

Every other Registrar may act for and in place of such Registrar as above-mentioned in all proceedings under the Acts and Rules, including the holding of public examinations, and when so acting such other Registrar shall be deemed to be the Registrar for the purposes of the Act and Rules.

In every cause or matter within the jurisdiction of the Judge, whether by virtue of the Act, or by transfer, or otherwise, the Registrar shall, in addition to his powers and duties under the Rules, have all the powers and duties of a Master, Registrar, or Taxing Master (*n*).

The following matters, and applications in the High Court shall be heard before the Judge in open Court :—

(*a*) Petitions.

(*b*) Appeals to the High Court from the Board of Trade and from the Official Receiver when acting as Official Receiver and not as Liquidator (*o*).

(*c*) Applications under section 223 of the Act.

(*d*) Applications by the Board of Trade under section 224 of the Act.

(*e*) Applications for the committal of any person to prison for contempt.

(*f*) Such matters and applications as the Judge may from time to time by any general or special orders direct to be heard before him in open Court (*p*).

(*i*) *Gooch's Case* (1871), 7 Ch. 207; *Mutual Society* (1883), 22 C. D. 714; and cp. *Ex parte Contract Corporation* (1866), 2 Ch. 350, where the liquidator had refused to produce certain papers: see also *Alexandra Palace Co.* (1880), 16 C. D. 58, where a liquidator on a proof in a winding-up obtained an order requiring the other party to make an affidavit of documents.

(*k*) For examples of this, *Bank of Gibraltar and Malta* (1865), 1 Ch. 69 (misfeasance proceedings); *Imperial Bank of China, India, and Japan* (1866), 1 Ch. 339 (action to impeach amalgamation); see also *supra*, p. 575.

(*l*) *Piccadilly Chambers* (1894), 8 Rep. 617.

(*m*) *Cape Breton Co.* (1881), 19 C. D. 77.

(*mm*) See also the Practice Directions, *supra*, pp. 816 and 817.

(*n*) Companies (Winding-up) Rules, 1909, r. 4.

(*o*) Cp. *National Wholemeal Bread and Biscuit Co.*, [1892] 2 Ch. 457.

(*p*) A general direction was given that a person wishing to discharge the order of a registrar must move before the Judge in Court to discharge such order: *Bryndu and Port Talbot Collieries Co.*, [1904] W. N. 136. This is the proper course on an appeal from a Registrar, as the appeal does not lie straight to the Court of Appeal: *Pretoria Pietersburg Railway*, [1904] 2 Ch. 170. Where there is a big sale the matter is usually brought before the Judge in person.

Examinations of persons summoned before the High Court under section 174 of the Act, shall be held in Court or in Chambers as the Court shall direct.

Every other matter or application in the High Court under the Act to which the Rules apply may be heard and determined in Chambers (*q*).

In Courts other than the High Court the following matters and applications to the Court shall be heard in open Court :—

(*a*) Petitions.

(*b*) Public Examinations.

(*c*) Applications under sub-section (1) of section 217 of the Act.

(*d*) Applications to rectify the Register.

(*e*) Appeals from the Official Receiver and Board of Trade.

(*f*) Appeals from any decision or act of the Liquidator.

(*g*) Applications relating to the admission or rejection of proofs.

(*h*) Proceedings under section 215 of the Act.

(*i*) Applications under section 223 of the Act.

(*j*) Applications for the committal of any person to prison for contempt.

(*k*) Such matters and applications as the Judge may from time to time by any general or special orders direct to be heard before him in open Court.

Any other matter or application may be heard and determined in Chambers (*r*).

Subject to the provisions of the Act and Rules in every Court :—

(1) The Registrar may under the general or special directions of the Judge hear and determine any application or matter which under the Acts and Rules may be heard and determined in Chambers.

(2) Any matter or application before the Registrar may at any time be adjourned by him to be heard before the Judge either in Chambers or in Court.

(3) Any matter or application may, if the Judge or as the case may be the Registrar, thinks fit be adjourned from Chambers to Court or from Court to Chambers (*s*).

Every application in Court other than a petition, shall be made by motion, notice of which shall be served on every person against whom an order is sought, not less than two clear days before the day named in the notice for hearing the motion, which day must be one of the days appointed for the Sittings of the Court.

Every application in Chambers shall be made by summons, which, unless otherwise ordered shall be served on every person against whom an order is sought, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons (*t*).

(*q*) Companies (Winding-up) Rules, 1909, r. 5.

(*r*) *Ibid.*, r. 6.

(*s*) *Ibid.*, r. 7. Every order made in Court (except an order on a petition for winding-up and an order appointing a shorthand-writer) must bear a £1 impressed stamp : Order as to fees of July 31, 1908.

(*t*) Companies (Winding-up) Rules, 1909, r. 8. Every summons, except an originating summons, must bear a 3*s.* impressed stamp,

Subject to the orders of the Lord Chancellor the place of Sitting of each County Court having jurisdiction under the Acts shall for the purposes of such jurisdiction, be the town and place in which the Court holds its Sittings for the general business of the Court, under the County Courts Acts (*u*).

Subject to the provisions of the Acts, the times of the Sitting of each Court, other than the High Court in matters of the winding-up of Companies shall be those which are appointed for the transactions of the general business of the Court unless the Judge of any such Court shall otherwise order (*x*).

In the High Court the Registrar and in the District Registries of the High Court at Liverpool and Manchester respectively the District Registrars of the High Court, and in a Court other than the High Court the Registrar shall keep books according to the Forms in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

The Officers of the Courts whose duty it is to keep the books prescribed by these Rules shall make and transmit to the Board of Trade such extracts from their books, and shall furnish the Board of Trade with such information and returns as the Board of Trade may from time to time require (*y*).

Whenever the *London Gazette* contains any advertisement relating to any winding-up proceedings the Official Receiver or Liquidator as the case may be shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

In the case of an advertisement in a local paper the Official Receiver or Liquidator as the case may be shall keep a copy of the paper and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the Court is inserted, shall be left with the Official Receiver or Liquidator as the case may be by the person who inserts the advertisement.

A memorandum under this Rule shall be *primâ facie* evidence that the advertisement to which it refers was duly inserted in the issue of the *London Gazette* or newspaper mentioned in it (*z*).

Every proceeding in a winding-up matter shall be dated, and shall with any necessary additions, be intituled as follows :—

IN THE COURT,

Companies (Winding-up).

In the Matter of the Companies (Consolidation) Act 1908 with the name of the matter to which it relates. Numbers and dates may be denoted by figures.

The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the office of the Registrar, and all proceedings in

and every order made in chambers except on an originating summons, a 5*s*. impressed stamp: Order as to fees of July 31, 1908. An originating summons and an order made on such a summons each bear a 10*s*. impressed stamp.

(*u*) Companies (Winding-up) Rules, 1909, r. 9.

(*x*) *Ibid.*, r. 10.

(*y*) *Ibid.*, r. 208.

(*z*) *Ibid.*, r. 210.

any matter subsequent to the first proceeding shall bear the same number as the first proceeding (*a*).

All proceedings shall be written or printed, or partly written or partly printed on paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts, and must have a stitching margin ; but no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size (*b*).

All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the Court) and office copies in any winding-up matter shall be sealed (*c*).

Every summons in a winding-up matter in the High Court shall be prepared by the Applicant or his Solicitor, and issued from the office of the Registrar. A summons, when sealed, shall be deemed to be issued. The person obtaining the summons shall leave in the Registrar's office a duplicate which shall be stamped with the prescribed stamp and filed (*d*).

Every order, whether made in Court or in Chambers in the winding-up of a Company shall be drawn up by the Registrar, unless in any proceedings or classes of proceedings the Judge or Registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the Judge or the Registrar making the order, shall be sufficient evidence of the order having been made (*e*).

All petitions, affidavits, summonses, orders, proofs, notices, depositions, bills of costs and other proceedings in the High Court in a winding-up matter shall be kept and remain of record in the office of the Registrar, and, subject to the directions of the Court, shall be placed in one continuous file, and no proceeding in any winding-up matter shall be filed in the Central Office (*f*).

In Courts other than the High Court a file of proceedings in every winding-up matter shall be kept on which, subject to the directions of the Court, all petitions, affidavits, summonses, orders, proofs, notices, depositions and other proceedings in the matter shall be placed and remain of record as far as possible in continuous order (*g*).

In every Court all office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the official receiver or any liquidator, contributory, creditor, officer of a Company, or other person entitled thereto, shall be provided by the Registrar and shall, except as to figures, be fairly written out at length, and be sealed and delivered

(*a*) Companies (Winding-up) Rules, 1909, r. 11.

(*b*) *Ibid.*, r. 12.

(*c*) *Ibid.*, r. 13. Every order in Court (except an order on a winding-up petition) must bear a £1 impressed stamp : Order as to fees of July 31, 1908.

(*d*) *Ibid.*, r. 14.

(*e*) *Ibid*, r. 15.

(*f*) *Ibid.*, r. 16. Every affidavit filed except on proof of debts must bear a 2*s.* 6*d.* impressed or adhesive stamp : Order as to fees of July 31, 1908. In addition there is the Commissioner of Oaths' fee, 1*s.* 6*d.* for taking the oath and 1*s.* for each exhibit.

(*g*) Companies (Winding-up) Rules, 1909, r. 17.

out without any unnecessary delay, and in the order in which they shall have been bespoken (*h*).

Every person who has been a director or officer of a Company which is being wound up, and every duly authorized officer of the Board of Trade, shall be entitled, free of charge, and every contributory and every creditor whose claim or proof has been admitted, shall be entitled on payment of a fee of one shilling for each hour or part of an hour occupied, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any documents therein, or to be furnished with such copies or extracts at a rate not exceeding fourpence per folio of seventy-two words (*i*).

Where, in the exercise of their functions under the Act or Rules, the Board of Trade or the Official Receiver requires to inspect or use the file of proceedings the Registrar shall (unless the file is at the time required for use in Court or by him) on request, transmit the file of proceedings to the Board of Trade or Official Receiver, as the case may be (*k*).

Every officer of a Court who shall receive any document to which an adhesive stamp shall be affixed, shall immediately upon receipt of the document deface the stamp thereon, in the High Court in such manner as the Commissioners of Inland Revenue may from time to time direct and in any other Court by writing partly on the stamp and partly on the document the name of the matter, or in such other manner as the Commissioners of Inland Revenue may from time to time direct, and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid; and it shall be the duty of the party presenting or receiving such document to see that the defacement hereby prescribed has been duly made (*l*).

Any affidavit required to be sworn under the provisions or for the purposes of Part IV. of the Act may be sworn in Great Britain or Ireland, or elsewhere within the dominions of His Majesty, before any Court, Judge, or person lawfully authorized to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

All courts, judges, justices, commissioners, and persons acting judicially must take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of Part IV. of the Act (*m*).

It shall be the duty of a High Bailiff of a County Court to serve such orders, summonses, petitions, and notices as the Court may require him to

(*h*) Companies (Winding-up) Rules, 1909, r. 18.

(*i*) *Ibid.*, r. 19. Rule 16 of the Limited Partnership (Winding-up) Rules, 1909, provides that "every "person who is or has been a "partner whether general or limited "of a limited partnership which is "being wound-up shall be entitled "free of charge to inspect the file "of proceedings and to take copies "or extracts under Rule 19 of the "Companies (Winding-up) Rules "1909 as applied by these rules "and shall be entitled to be "furnished with such copies or "extracts at the rate therein "mentioned."

(*k*) Companies (Winding-up) Rules, 1909, r. 20.

(*l*) *Ibid.*, r. 21.

(*m*) Companies (Consolidation) Act, 1908, s. 228. Part IV. of the Act contains the winding-up provisions, and is headed "Winding-up."

serve to execute warrants and other process; to attend any sittings of the Court (but not sittings in Chambers) and to do and perform all such things as may be required of him by the Court.

But this rule shall not be construed to require any order, summons, petition, or notice to be served by a bailiff or officer of the Court which is not specially by the Act or Rules required to be so served, unless the Court in any particular proceeding by order specially so directs (*n*).

All notices, summonses, and other documents other than those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith; and the notice, summons, or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post office, and notwithstanding the same may be returned by the post office.

No service shall be deemed invalid by reason that the name, or any of the names, other than the surname of the person to be served, has been omitted from the document containing the person's name, provided that the Court is satisfied that in other respects the service of the document has been sufficient (*o*).

Every order of a Court having jurisdiction to wind-up a Company, made in the exercise of the powers conferred by the Acts and Rules, may be enforced by such Court as if it were a judgment or order of the Court made in the exercise of its ordinary jurisdiction.

Every such order of a County Court, and every process issued therein may be enforced, executed and dealt with, not only by such Court, but by any County Court, whether such County Court has or has not jurisdiction to wind-up a Company, as if such order or process were made or issued for the enforcement of a judgment or order made by such last-mentioned Court in the exercise of its ordinary jurisdiction (*p*).

Orders made by the High Court in England or Ireland under the Act may be enforced in the same manner as orders made in any action pending therein.

For the purposes of Part IV. of the Act the Court exercising the stannaries jurisdiction, in addition to its ordinary powers, has the same power of enforcing any orders made by it as the High Court in England has in relation to matters within its jurisdiction; and for the last-mentioned purposes, the jurisdiction of the Judge of the Court exercising the stannaries jurisdiction shall be deemed to be coextensive in local limits with the jurisdiction of the High Court in England (*q*).

Where an order, interlocutor, or decree has been made in Scotland for winding-up a Company by the Court, it is competent to the Court, on production by the Liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the same became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution,

(*n*) Companies (Winding-up) Rules, 1909, r. 22.
(*o*) *Ibid.*, r. 23.
(*p*) *Ibid.*, r. 24.
(*q*) Companies (Consolidation) Act, 1908, s. 178.

on a charge of six days, of a legal obligation to pay those calls and interest; and the decree may be extracted immediately, and no suspension thereof will be competent, except on caution or consignation, unless with special leave of the Court (*r*).

The Court may, in any case in which it shall see fit, extend or abridge the time appointed by the Rules or fixed by any order of the Court for doing any act or taking any proceeding (*s*).

No proceedings under the Acts or the Rules shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court (*t*).

In all proceedings in or before the Court, or any Judge, Registrar or Officer thereof, or over which the Court has jurisdiction under the Act and Rules, where no other provision is made by the Act or Rules, the practice, procedure and regulations shall, unless the Court otherwise in any special case directs, in the High Court be in accordance with the Rules of the Supreme Court and practice of the High Court, and in a Palatine Court and County Court in accordance, as far as practicable, with the existing Rules and practice of the Court in proceedings for the administration of assets by the Court (*u*).

The following fees are payable in money under the order as to fees of December 30th, 1911. Table C:—

	£	s.	d.
High bailiff for attending sittings of the Court, under each winding-up order per case	0	6	0
Serving every petition or subpœna or winding-up or other order (not serviceable by post) within two miles, including affidavit of service	0	3	6
If serviceable by post	0	1	0
Executing every warrant of seizure, or search warrant, or warrant of apprehension, or order of commitment	0	10	0
Keeping possession under a warrant, for each day the man is actually in possession; including affidavit of possession being actually kept	0	4	6
(Not less than 3*s.* 6*d.* of the above sum is to be paid to the man in possession, and his receipt produced.)			
High bailiff's or (in the London district) officer's man, travelling to place of possession, or to execute a warrant of or order of committment, or to serve a summons or subpœna, or for any other purpose specially directed by the Court, the amount actually and reasonably expended in travelling.			
His time, per day, where distance exceeds 10 miles	0	4	6
His expenses, per day	0	4	6
If high bailiff of a County Court or officer of Supreme Court directed by the Court personally to travel, the amount actually and reasonably expended in travelling.			
His time, per day	0	10	0
His expenses, per day	0	10	0

(*r*) Companies (Consolidation) Act, 1909, s. 179.

(*s*) Companies (Winding-up) Rules, 1909, r. 216.

(*t*) *Ibid.*, r. 217 (1).

(*u*) *Ibid.*, r. 218.

Every person for the time being on the list of contributories of the Company and every person whose proof has been admitted shall be at liberty at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of ; but if the Court shall be of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the Company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person ; and such person shall not be entitled to attend any further proceedings until he has paid the same.

The Court may from time to time appoint any one or more of the creditors or contributories to represent before the Court, at the expense of the Company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the Court, and may remove the person so appointed. If more than one person is appointed under this Rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

No creditor or contributory shall be entitled to attend any proceedings in Chambers unless and until he has entered in a book, to be kept by the Registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor (*x*).

Where the attendance of the Liquidator's solicitor is required on any proceeding in Court or Chambers, the Liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend (*y*).

ORDER GIVING LEAVE TO ATTEND PROCEEDINGS.

(*Title.*)

UPON the application by Summons dated this day of the L. and S.W.B. Limited whose registered office is situate at   in the City of London claiming as a creditor of the above-named Company. And upon hearing the Solicitors for the applicant and for C.F.S. the Liquidator of the above-named Company the Respondent to the said Summons. And upon reading the Order to wind-up the said Company dated the 20th December 1910 the Order dated the 20th February 1911 (appointing Liquidator) and the Order dated this day.

IT IS ORDERED that the applicant the said L. and S.W.B. Limited be at liberty at its own expense in the first instance to attend the proceedings in the winding-up of the above-named Company subject to the provisions of Rule 152 of the Companies (Winding-up) Rules 1909.

AND IT IS ORDERED that the costs of the said Liquidator of the said application be included in the Costs of the winding-up of the said Company. [*Re Law Car and General Insurance Corporation,* 00437 of 1910. Mr. Registrar HOOD, August 15th, 1911.]

(*x*) Companies (Winding-up) Rules, 1909, r. 152.

(*y*) *Ibid.*, r. 153.

REPRESENTATION ORDER.

(*Title.*)

Upon the application by Summons dated the 1st July, 1911 of H. de V.B. the Official Receiver and Provisional Liquidator of the above-named Society and upon hearing Counsel for the applicant and for F.A.S., J.B., A.H. and C.F.R. and the Solicitor for J.R.C. and J.S. respectively, respondents to the said summons and upon reading the order to wind-up the said Society dated the 20th June, 1911 the two several affidavits of the applicant filed the 1st and 4th July, 1911 and the exhibits therein referred to and the summons herein dated the 30th June, 1911.

It is Ordered that the said respondent J.R.C. (a creditor of the above-named Society) for the purposes of the said Summons dated 30th June, 1911 do represent all the creditors of the said Society not being customers of the Society on deposit or current Banking accounts.

And it is Ordered that the said respondent J.S. (a creditor of the Society in respect of deposit and/or current Banking accounts) for the purposes of the said Summons dated 30th June 1911 do represent all the customers of the said Society on deposit and/or current Banking accounts.

And it is Ordered that the said respondent A.H. (a holder of completed or fully paid "A" shares in this Society) for the purposes of the said Summons dated 30th June, 1911 do represent all the said holders of completed or fully paid "A" shares.

And it is Ordered that the said respondent F.A.S. (a holder of uncompleted or partly paid "A" shares of the said Society) for the purpose of the said Summons dated 30th June, 1911 do represent all the said holders of uncompleted or partly paid "A" shares.

And it is Ordered that the said respondent J.B. (a borrower on Mortgage from the said Society entered on the register of the said Society as a holder of shares) for the purposes of the said Summons dated 30th June, 1911 do represent all the Borrowers on mortgage from the said Society entered on the Register as holders of shares.

And it is Ordered that the said respondent C.F.R. (a holder of "B" shares) for the purposes of the said Summons dated 30th June, 1911 do represent all the holders of "B" shares in the said Society. [*Re The Birkbeck Permanent Benefit Building Society*, 00213 of 1911. Mr. Registrar Hood, July 4th, 1911.]

REGISTER OF WINDING-UP ORDERS TO BE KEPT IN THE COURTS (z).

Number of Winding-up Order.	Number of Petition.	Date of Petition.	Date of Winding-up Order.	Dates of Public Examinations (if any).	Liquidator.

(z) Companies (Winding-up) Rules, 1909, Appendix, Form 101.

REGISTER OF PETITIONS, TO BE KEPT IN THE COURTS (*a*).

No. of Petition.	Name of Company.	Address of Registered Office.	Description of Company.	Date of Petition.	Petitioner.	Date of Winding-up Order.

MEMORANDUM OF ADVERTISEMENT OR GAZETTING (*b*).

(*Title.*)

Name of Paper.	Date of Issue.	Date of Filing.	Nature of Order, etc.

ENFORCEMENT OF ORDERS THROUGHOUT THE UNITED KINGDOM.

The Act also contains provisions enabling orders to be enforced throughout the United Kingdom.

Any order made by the Court in England for or in the course of winding-up a company must be enforced in Scotland and Ireland in the Courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Ireland, and in the same manner in all respects as if the order had been made by those Courts.

In like manner orders, interlocutors, and decrees made by the Court in Scotland for or in the course of winding-up a company must be enforced in England and Ireland, and orders made by the Court in Ireland for or in the course of winding-up a company must be enforced in England and Scotland, by the Courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those Courts.

Where any order, interlocutor, or decree made by one Court is required to be enforced by another Court, an office copy of the order, interlocutor, or decree must be produced to the proper officer of the Court required to enforce the same, and the production of an office copy will be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned Court must take the requisite

(*a*) Companies (Winding-up) Rules, 1909, Appendix, Form 102.

(*b*) *Ibid.*, Form 104.

steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that Court (c).

The form of order made by the English Courts under this section was settled in *Hollyford Copper Mining Co.* (d).

FORM OF ORDER FOR ENFORCING AN ORDER FOR CALLS MADE BY THE IRISH COURT.

(*Title.*)

[Recital of Order of Irish Court.]

It is ordered that the said Order of the said Court of Bankruptcy and Insolvency dated the 13th day of June 1869 be made an Order of the Court as against such of the persons named in the first part of the Schedule hereto as are named in the second column of Part II. of the said Schedule hereto.

[Part I. of the Schedule was a copy of the Schedule to the Irish Order —the second column of Part II. of the Schedule contained the names and addresses of the Contributories resident in England.]

East Hollyford Copper Mining Co. (1870), 5 Ch. 93.

FORM OF ORDER FOR ENFORCING AN ORDER FOR CALLS IN A COMPULSORY WINDING-UP IN SCOTLAND.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. REGISTRAR HOOD.

00141 of 1897.
Friday the 28th day of May 1897.

In the Matter of The Companies Acts 1862 to 1890
and
In the Matter of The Columba Steam Ship Company Limited.

Upon the application by Originating Summons dated the 28th May 1897 of J.M.B. the Official Liquidator of the above-named Company. And upon hearing the Solicitors for the applicant and upon reading the said Originating Summons a certified copy of an Interim Decree of the Edinburgh Court of Session made in the matter of the above-named Company and dated the 3rd March 1897 of which the following is a copy:—

" *Interim*
" Decree
" For
" payment of Call
" J.M.B.
" Official Liquidator of the Columba
" Steam ship Company Limited.
v.
J.W.L.

" R.McC. 3rd March 1897.

" At Edinburgh the third day of March in the year One thousand

(c) Companies (Consolidation) Act, 1908, s. 180.

(d) (1870), 5 Ch. 93.

"eight hundred and ninety-seven Sitting in Judgment the Lords of "Council and Session having considered the Note Number Three hundred "and sixteen of process for J.M.B. Chartered Accountant
" Official Liquidator of The Columba "Steamship Company Limited. Which Note lodged in the liquidation "proceedings of the said Company sets forth that by interlocutor dated "Fifteenth January One thousand eight hundred and ninety-seven Lord "Stormouth Darling settled the List of Contributories of the said Columba "Steamship Company Limited in conformity with the list appended to "the Note for the Liquidator Number Seventeen of process as regards the "persons numbered, Two, Eleven, Twelve, Thirteen, Fourteen, Thirty-"four, Thirty-nine, and Forty-eight in said List and made a call of Two "pounds ten shillings per share on each of the said Contributories and "ordered payment of said call on the sixth day of February One thousand "eight hundred and ninety-seven that the Liquidator thereafter intimated "the said call to each of the said persons and demanded payment thereof "on or before the said date that the Contributories named in the List "appended to the Note under recital produced and certified by the Liqui-"dator had failed to make payment of the said calls due and payable "on Sixth February One thousand eight hundred and ninety-seven as "aforesaid; and that in these circumstances the Liquidator craved the "Court to pronounce forthwith a decree against said defaulting contri-"butories for payment to the Liquidator of said calls with interest at the "rate of Five per centum per annum from the date or dates when the "same became due until payment in terms of the One hundred and twenty-"first and one hundred and twenty-second sections of the Companies Act "One thousand eight hundred and sixty-two Twenty-fifth and twenty-"sixth of Victoria Chapter Eighty-nine and which Note under recital "prays their Lordships to pronounce forthwith a decree against contri-"butories named in the said List. And to which Note under recital "there is appended a List of Contributories of the Company certified by "the Liquidator from which List the following is an Excerpt viz.:—

Number on Settled List.	Name.	Amount due.	Date when Amount became due.
39	J.W.L., London.	£250	6th February, 1897

"Decerned and Ordained and hereby Decern and Ordain the Contri-"butory J.W.L. named in the Certified List annexed to the Note "Number three hundred and sixteen of process to make payment to the "Official Liquidator J.M.B. at his office Number
" of the sum certified in said List to be due by the said "Contributory with interest thereon from sixth February One thousand "eight hundred and ninety-seven being the date therein specified when "the said sum became due till payment at the rate of Five pounds per

"centum per annum and granted and hereby Grant Warrant for extracting "the Decree immediately. And the said Lords Grant Warrant to Messengers-at-Arms in Her Majesty's name and authority to charge the "said J. W. Link Contributory aforesaid personally or at the said Contributory's dwelling place if within Scotland and if further thereof by "delivering a copy of charge at the office of the Keeper of the Record of "Edictal Citations at Edinburgh to make payment of the aforesaid sum "of money and interest decerned for against the said Contributory as "aforesaid all in terms and to the effect contained in the Decree and "Extract above written and here referred to and held as repeated "*brevitatis causa*. And that to the said J.M.B. Official Liquidator "foresaid at his office within "six days next after the said Contributory is charged to that effect under "the pain of poinding. And also Grant Warrant to arrest the said Contributory's readiest goods, gear debts and sums of money in payment "and satisfaction of the said sum and interest. And if the said Contributory fail to obey the said charge then to poind the said Contributory's readiest goods, gear and other effects and if needful for effecting "the said poinding Grant-Warrant to open all shut and lock fast places "in form as effeirs. all if and in so far as competent Extracted upon seven "pages by me.

"*Interim* Principal Extractor in the Court of Session at Edinburgh "this twenty-seventh day of March One thousand eight hundred and "ninety-seven years.

"D. K. B. WHYTE."

IT IS ORDERED that the said Interim Decree of the Edinburgh Court of Session dated the 3rd March 1897 be made an Order of this Court against J.W.L. of in the City of London therein named.

HERBERT J. HOPE,
Registrar.

FORM OF ORDER ENFORCING ORDER FOR CALLS IN WINDING-UP SUBJECT TO SUPERVISION IN SCOTLAND.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. REGISTRAR HOOD.

No. 0057 of 1903.

Thursday the 19th day of February 1903.

In the Matter of the Companies Acts 1862 to 1900
and
In the Matter of the Star Fire and Burglary Insurance Company Limited.

Upon the Application by Originating Summons dated the 16th February 1903 of C.Y. the Liquidator acting in the Voluntary Winding-up under the Supervision of the Court of Session in Scotland of the above-named Company and upon hearing the Solicitor for the Applicant and upon reading the said Originating Summons and the Decree of the Edinburgh Court of Session in Scotland made in the matter of the above-named Company and dated the 20th December 1902 of which the following is a true copy:—

"20th December 1902 Lord Stormouth Darling Act Graham Stewart "the Lord Ordinary having considered the Note of the Liquidator No. 91 "of process decerns against the several Contributories No. 93 of process "for payment to the Liquidator forthwith the sum of £1 each with interest "at the rate of 5 per cent. per annum from the date specified in the said "List when the said Call became due (namely the 7th day of February "1902) till payment grants Warrant for immediate extract of the above "decree authorizes the Extractor to issue separate extracts as the Liqui- "dator may desire finds the said Contributories liable each in the expense "of such extracts including a fee of 11*s.* 6*d.* as the expense of ordering "the same and decerns Moir S. Stormouth Darling."

It is Ordered that the said Decree dated the 20th December 1902 be and the same is hereby made an Order of this Court as against each of the several Contributories named in the Schedule hereto.

H. J. HOOD,
Registrar.

THE SCHEDULE BEFORE REFERRED TO.

No. of Contributory.	Name, Address, and Designation of Contributory.	Amount of Call made.
51	W.H.	£1
55	G.A.W.	£1

The practice in England, though not, it would seem, in Ireland (*e*), is to make the order of the Scotch or Irish Court an order of the English Court (*f*). The application is by *ex parte* originating summons entituled, "In the Matter of the Companies (Consolidation) Act, 1908, and In the Matter of the" particular company. The summons must be supported by an office copy of the order to be enforced (*g*). Under this section orders for payment of calls (*h*), and orders of Scotch Courts restraining an English domiciled subject from taking proceedings in San Francisco, have been enforced (*h*). In Ireland the registration of an order on a contributory to pay has been vacated on proof that he has already paid (*i*), and the English Court has restrained actions by an Irishman in Ireland, against a company being wound up in England (*k*). It would seem that by reason of

(*e*) *Hercules Insurance Co.* (1871), 6 Ir. Eq. Rep. 207.

(*f*) *Hollyford Copper Mining Co.* (1870), 5 Ch. 93; *City of Glasgow Bank* (1880), 14 C. D. 628.

(*g*) See Daniell's Chancery Forms, 5th Ed., at p. 405; Daniell's Chancery Practice, 7th Ed., at p. 674.

(*h*) *Scottish Pacific Coast Mining Co.* (1886), W. N. 63.

(*i*) *Alexandra Palace Co.* (1871), Ir. Rep. 5 Eq. 351.

(*k*) *International Pulp and Paper Co.* (1876), 3 C. D. 594; *Hermann Loog Ltd.* (1887), 36 C. D. 502; see also *Middlesborough Firebrick Co.* (1885), 52 L. T. 98, where Scotch

this section a person domiciled and resident in Scotland or Ireland, will not be required to give security on taking proceedings in an English liquidation (*l*).

There remains the question of serving a person out of the jurisdiction. It would seem that notices which are not intended to found process, *e.g.* notice of an intention to settle the list of contributories (*m*), or notice of an intended call (*n*), can be served out of the jurisdiction, and the rule was extended in one case to an application for payment of a fund to one of two persons, who had been found to be entitled to it (*o*).

With regard to service of documents which are intended to found process. It was held in an early case that leave to serve process in Scotland could be given (*p*), and a similar order was made without prejudice in the case of process to be served in Ireland (*q*). These cases did not turn on the place where the process was to be served being Scotland or Ireland and not some other foreign part, but, having regard to the cases below cited and the rules as to service out of the jurisdiction then in force, it is thought that they can only be defended on this ground. It is thought, however, that having regard to Sir George Jessel's view in *International Pulp and Paper Co.* (*r*), viz. that, having regard to the frame of the Act, companies are established in the United Kingdom and not in one part of it, these cases can be defended on this ground (*rr*). Section 173 of the Act gives powers to make rules as to powers, etc., conferred and imposed on the Court in England, and section 237 gives powers for carrying into effect the objects of the Act so far as relates to the winding-up of companies in England, and presumably service can be effected in Scotland or Ireland in manner prescribed by the Companies (Winding-up) Rules 1909 (*s*). In other cases documents for founding proceedings could not be served out of England (*t*); but now O. 11, r. 8A, R. S. C. provides that—

"The Court or a Judge may direct that any summons order or notice "shall be served on any party or person in a foreign country (*u*) and the "procedure prescribed by Order 11 Rule 8 with reference to serving

actions were stayed on an *Ex parte* application made on the hearing of the petition.

(*l*) *Queensland Mercantile Agency* (1892), 61 L. J. (CH.) 48, explaining *Howe Machine Co.* (1889), 41 C. D. 118.

(*m*) *Nathan Newman & Co.* (1887), 35 C. D. 1.

(*n*) *General International Agency* (1867), 16 L. T. 725.

(*o*) *Baron Liebig's Cocoa and Chocolate Works*, [1888] W. N. 120.

(*p*) *British Imperial Corporation* (1877), 5 C. D. 749.

(*q*) *Land Credit Co. of Ireland* (1869), 39 L. J. (CH.) 389.

(*r*) (1876), 3 C. D. 594.

(*rr*) The point was not argued in *George T. Wake* (1911), 45 Ir. L. T. 276, and is only important in the cases where personal service is necessary.

(*s*) See Companies (Winding-up) Rules, 1909, r. 23, for mode of service.

(*t*) *Anglo-African Steamship Co.* (1886), 32 C. D. 348.

(*u*) According to a case of *Re Park*, before EADY, J., on December 7, 1908, referred to an article on this rule in 54 Sol. J. 158, the colonies are included in the expression "foreign country."

"notice of a writ of summons shall apply to the service of any summons "order or notice so directed to be served" (x).

ORDER FOR SERVICE OF NOTICE OF ORIGINATING SUMMONS OUT OF JURISDICTION.

UPON the Application by Summons dated the 14th December 1910 of L.M. of . in the City of London the Liquidator in the voluntary winding-up of the above-named Company and upon hearing the Solicitors for the Applicant and upon reading the Originating Summons issued in the above-matter by the said Liquidator and dated the 7th December 1910 and the Affidavit of V.N. filed the 14th December 1910.

AND it appearing from the said Affidavit that *R.* v. *S.* of in the Empire of Austria and Dr. R.S.H. of in the said Empire of Austria the Respondents to the said Originating Summons are not British Subjects, and are resident or may probably be found as to the said *R.* v. *S.* at in the Empire of Austria and as to the said Dr. R.S.H. at in the said Empire of Austria.

IT IS ORDERED that the Liquidator of the above-named Company be at liberty to serve Notice of the said Originating Summons together with a copy of this Order on each of the Respondents as to the said *R.* v. *S.* at and as to the said Dr. R.S.H. at respectively in the said Empire of Austria or elsewhere, in the said Empire and the time within which the said Respondents are to cause appearance to be entered to the said Originating Summons is to be sixteen days from such service. [*Re The Domains Company of Siberia, Ltd.*, 00433 of 1910. Mr. Registrar HOOD, December 16th, 1910.]

Subject to rules of Court, an appeal from any order or decision made or given in the winding-up of a company by the Court under the Act lies in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its ordinary jurisdiction.

In regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the Bills in vacation—

(i) No order or judgment under the provisions of the Act specified in the First Part of the Fourth Schedule to the Act will be subject to review, reduction, suspension, or stay of execution; and

(ii) Every other order or judgment (except as hereinafter mentioned) will be subject to review only by reclaiming note,

(x) The effect of this rule is to assimilate the procedure on the service of a summons order, or notice to the procedure prevailing under O. 11, R. S. C., on the service of a writ. Thus in countries where O. 11, r. 8, R. S. C., applies (at present Germany and Russia), the procedure prescribed by that rule may be made use of. In other cases leave will only be given in cases which can be brought within one of the headings in O. 11, r. 1: *Aktiebolaget Robertsfors et La Société Anonymé des Papeteries de l'AA.*, [1910] 2 K. B. 727; cp. also *Charles Duval & Co.* v. *Gans*, [1904] 2 K. B. 685. Under the Irish Rules leave has been given to serve a summons to enforce payment of a call out of the jurisdiction: *George T. Wake* (1911), 45 Ir., L. T. 276.

in common form, presented within fourteen days from the date of the order or judgment, but orders or judgments under the provisions of the Act specified in the Second Part of the Fourth Schedule to the Act will from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the Court.

In regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding-up has been remitted, any such order or judgment will be subject to review only by reclaiming note in common form presented within fourteen days from the date of the order or judgment, but should a reclaiming note not be presented and moved during sessions, the provisions of the section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation will apply to the order or judgment.

Nothing in the section affects the provisions of the Act in reference to decrees in Scotland for payment of calls in the winding-up of companies, whether voluntarily or by or subject to the supervision of the Court (*y*).

The provisions of the Fourth Schedule are as follows :—

PART I.—ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO BE FINAL.

Orders :—

As to time for proving claims (section 169).

As to the attendance of, and production of documents by, persons indebted to, or having property of, or information as to the affairs or property of, a Company (section 174).

As to meetings for ascertaining wishes of creditors or contributories (section 219).

As to summoning meetings of creditors or contributories where a compromise is proposed (section 120).

As to the examination of witnesses in regard to the property or affairs of a Company (section 227).

PART II.—ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO TAKE EFFECT UNTIL RECLAIMING NOTE DISPOSED OF.

Orders :—

Restraining or permitting commencement or continuance of legal proceedings (sections 140, 142, 144, 266, 270, 271).

Appointing an Official Liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the Court) a liquidator for a winding-up voluntarily or under supervision (sections 149, 186, 202).

(*y*) Companies (Consolidation) Act, 1908, s. 181.

Sanctioning the exercise of any power by an official liquidator other than the power to appoint a law agent or to sell property (section 151).

Requiring the delivery of property or documents to the official liquidator (section 164).

As to the arrest and detention of an absconding contributory and his property (section 176).

Limiting the powers of provisional official liquidators (section 151 (5)).

For continuance of winding-up under supervision (section 199).

APPEALS.

In England the time for bringing an appeal from any order or decision made or given in the matter of the winding-up of a company is fourteen days (*z*). Where the Registrar has made an order in Chambers a person objecting to the order must move before the Judge in Court to discharge it (*a*). The appeal from a Registrar does not lie direct to the Court of Appeal (*b*). There is not any definite time mentioned in the rules within which it is necessary to move to discharge the Registrar's order, but the Court usually adopts the analogy of appeals, and will not entertain such a motion after fourteen days have elapsed (*c*).

It would seem that a fourteen days' notice of appeal is requisite (*d*). In an Irish case it was said that a creditor could appeal from an order omitting a name from the list of contributories without any leave, and that the Court would not give leave to appeal or allow the creditor to use the liquidator's name (*e*). In *Ship's Case* (*f*), a director was given leave to intervene on an appeal, but the House of Lords (*g*) said they could not see why such leave was given. In other cases the Court has declined to hear contributories supporting an appeal where the liquidator was appealing (*h*). Probably the true rule was that creditors or contributories who had appeared in the Court below could usually appeal without leave, but other persons

(*z*) O. 58, rr. 9 and 15, R. S. C. This time was extended in *Brazilian Rubber Estates Co.*, [1911] W. N. 13, where the Judge of first instance had declined to make an order on a misfeasance summons, and the liquidator had then tried to raise money for an appeal.

(*a*) *Bryndu and Port Talbot Collieries*, [1904] W. N. 136.

(*b*) *Pretoria-Pietersberg Railway*, [1904] 2 Ch. 170.

(*c*) See *National Stores*, [1900] 1 Ch. 27. This analogy will, however, not be rigidly followed: *ibid.* In the case of an order in Chambers the time will run from the date when the order is made or when notice of it is given, whichever is the later: O. 58, r. 15, R. S. C., *Harry & Co.* (1906), 121 L. T. Jo. 63.

(*d*) See *Stockton Iron Furnace Co.* (1879), 10 C. D. 335, O. 58, r. 3, R. S. C.; but cp. Buckley, 9th Ed., p. 418. See *Little's Case* (1878), 8 C. D. 806, where an informal notice of appeal was held to be good.

(*e*) *Re Etna Insurance Co.* (1873), Ir. R. 7 Eq. 362.

(*f*) (1848), 2 De G. J. & S. 544.

(*g*) *Sub nom. Downes* v. *Ship* (1868), L. R. 3 H. L. 343.

(*h*) See *Norwich Yarn Co.* (1850), 13 Beav. 426; *Bodmin United Mines Co.* (1857), 23 Beav. 373, 385.

could not do so (*i*). Section 1 (6) of the Judicature Act, 1894, however, provides that no appeal shall lie without the leave of the Judge or the Court of Appeal from any interlocutory judgment or interlocutory order made or given by a Judge except in the case (amongst others) of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the Companies Acts, 1862 to 1890, in respect of misfeasance or otherwise (*ii*).

POWER OF LIQUIDATOR TO CARRY ON BUSINESS.

Under section 151 (1) (*b*) of the Companies (Consolidation) Act, the liquidator has only power to carry on the business of the company so far as may be necessary for the beneficial winding-up thereof (*k*). The necessity required would seem to be a mercantile rather than an absolute necessity, but a scheme by which a shareholder in a company formed for recovering wrecks, was to continue the recovery of wrecks, with the help of assistants paid by the liquidator, was held to be bad, because it was not required for the beneficial winding-up of the company, but was put forward for the purpose of increasing the value of the company's shares (*l*). Moreover, under this section, an indefinite carrying on of the business of the company cannot be sanctioned (*m*), though, no doubt, a liquidator would in a proper case have a wide power of entering into contracts with a view to a sale of the whole property as a going concern (*n*). Having regard to the provisions of this section, a winding-up will not necessarily terminate an ordinary trade contract entered into before the winding-up (*o*), but where a contract was carried out after the winding-up and payments became due after that date to the company, it was held that a debt from the company due before the winding-up could not be set off against such payments (*p*). It has also been held that where two contracts with the same person have been entered into before the winding-up, the liquidator may perform one and leave the other party to his remedy in damages in respect of the other, and that such damages cannot be set off against moneys due to the company under the contract which has been performed (*q*). With regard to

(*i*) *Securities Insurance Co.*, [1894] 2 Ch. 410.

(*ii*) Appeals from County Courts are to the Divisional Court, and cannot be taken further without the leave of the Court or the Court of Appeal Judicature Act, 1894, s. 1 (5): leave to appeal from a Divisional Court can be given where leave to appeal to that Court is necessary and has been obtained: *Moore, Nettlefold & Co.* v. *Singer Manufacturing Co.*, [1904] 1 K. B. 820.

(*k*) See Companies (Winding-up) Rules, 1909, r. 171, as to the liquidator's trading account.

(*l*) *Wreck Recovery and Salvage Co.* (1880), 15 C. D. 353.

(*m*) *Ex parte Emmanuel* (1881), 17 C. D. 35; and see *Ex parte Cocks* (1882), 21 C. D. 397.

(*n*) *Wreck Recovery and Salvage Co.* (1880), 15 C. D. 353; but see *East of England Banking Co.* (1868), 4 Ch. 14, where it seems to have been laid down that a liquidator could not enter into a fresh contract, which seems inconsistent alike with the last cited case and those cited below.

(*o*) *Hire Purchase Furnishing Co.* v. *Richens* (1887), 20 Q. B. D. 387.

(*p*) *Ince Hall Rolling Mines* v. *Douglas Forge Co.* (1882), 8 Q. B. D. 179. The whole question of set-off is discussed elsewhere, and it is there submitted that this case is of very doubtful authority, see pp. 1235, *et seq.*

(*q*) *Asphaltic Limestone Corporation* v. *Glasgow*, [1907] S. C. 463.

contracts made after the winding-up under the section, it has been held that it is no defence to an action by the company, to say that the contract was not necessary for the beneficial winding-up (r), and whether this case was or was not properly decided it would seem that the onus of making out a case of this kind will always be on the defendant (s). The sub-section does not enable a liquidator to lend moneys of the company which are in his hands out at interest (t).

EMPLOYMENT OF A SOLICITOR.

Turning to the question of the employment of a solicitor, the mere fact that the sanction of the Court to bringing or defending proceedings has been given, will not authorize the employment of a solicitor in any particular proceedings. Separate leave from the Court or the committee of inspection must be obtained for this. The sanction required by section 151 should not be a general sanction to employ a solicitor in all proceedings, as this is contrary to the practice. Such sanction may be given as regards future proceedings in an action, even though it has not been given before the commencement of the action, but the Court will not usually give its sanction to the employment of a solicitor in proceedings which have already been taken except in cases of urgency. The costs of unsanctioned proceedings will not be allowed (u).

It would seem that a member of the committee of inspection cannot be employed as solicitor unless the sanction of the Court is obtained before his employment, and solicitors who have a clerk who is a member of such committee are in the same position. In these cases actual out-of-pocket expenses, not including charges for clerk's time, etc., will alone be allowed (x). Where the liquidator is a solicitor his partner will never be employed, except in cases where he is willing to act without remuneration (y). The sanction need not be given in writing (z), though, of course, it is always desirable to have it in writing. In giving their consent the Court or the committee of inspection may fix the amount of costs which may be incurred (a).

A solicitor so employed is the agent of the company and not of the liquidator, and his only claim for remuneration is against the assets of the company (b).

The costs of a solicitor so employed are payable in priority to the

(r) *Bateman* v. *Ball* (1887), 56 L. J. (Q.B.) 291.

(s) *British Waggon Co.* v. *Lea* (1880), 5 Q. B. D. 149.

(t) *Anon.* (1866), 15 L. T. 170.

(u) *London Metallurgical Co.*, [1897] 2 Ch. 262.

(x) *Re Gallard*, [1896] 1 Q. B 68; see also Companies (Winding-up) Rules, 1909, r. 158, *supra*, p. 942.

(y) *Universal Private Telegraph Co.* (1871), 23 L. T. 884, but see Companies (Winding-up) Rules, 1909, r. 186, as to a liquidator who is a solicitor, *supra*, p. 940.

(z) *Re Vavasour*, [1900] 2 Q. B. 309.

(a) *Re Duncan*, [1892] 1 Q. B. 879.

(b) *Anglo-Moravian-Hungarian Junction Railway, Ex parte Watkin* (1875), 1 C. D. 130, following *Re Trueman's Estate* (1872), 14 Eq. 278, a voluntary winding-up case.

liquidator's remuneration (*c*), and where two solicitors have been employed their respective costs are payable *pari passu* (*d*), except where the first solicitor has given up the papers to the second solicitor on an undertaking that the costs of the first solicitor should be paid out of the estate, in such case the first solicitor will have priority (*e*). The costs of a successful litigant if payable out of the assets will have priority over those of any solicitor of the liquidator (*f*). Where a person has obtained an order for payment of costs out of the assets of the company, his solicitors, being neither creditors nor contributories of the company, cannot obtain an order to take proceedings in the name of the company, *e.g.* misfeasance proceedings to increase the assets (*g*).

Where a solicitor elects to be remunerated under Schedule II. and not under Schedule I. of the General Order made under the Solicitors' Remuneration Act, 1881, the liquidator should before employing him on these terms bring the matter before the Court or the committee of inspection (*h*).

With regard to the lien of a solicitor employed in a winding-up. Such lien cannot extend to documents which have to be filed under rules 16 and 17 of the Companies (Winding-up) Rules, 1909 (*i*), and the same rule holds good with regard to documents which by the Act or the articles of the particular company are required to be kept at the offices of the company (*k*).

With regard to other documents the broad general rule, which applies in all cases of such liens, viz. that the liquidator cannot give any higher right than he himself has (*l*), must be borne in mind.

Thus a solicitor employed before a winding-up and who has not discharged himself cannot be required to deliver up documents which have come into his hands before the winding-up (*m*). With

(*c*) *Re Massey* (1870), 9 Eq. 367; *New York Exchange*, [1893] 1 Ch. 371; and see also Companies (Winding-up) Rules, 1909, r. 187, and see this rule also as to taxation and allowance of costs, *post*, pp. 1189, *et seq.*

(*d*) *Audley Hall Cotton Spinning Co.* (1868), 6 Eq. 245; and cp. *Cormack* v. *Beisly* (1853), 3 De G. & J. 157; *Re Wadsworth* (1887), 34 C. D. 155; *Re Knight*, [1892] 2 Ch. 368.

(*e*) *Audley Hall Cotton Spinning Co.* (1868), 6 Eq. 245.

(*f*) *Dominion of Canada Plumbago Co.* (1884), 27 C. D. 33.

(*g*) *Cape Breton Co.* v. *Fenn* (1881), 17 C. D. 198.

(*h*) *United Kingdom Land and Building Association* (1889), 40 C. D. 471; and see *Re Evans*, [1905] 1 Ch. 290.

(*i*) *Union Cement and Brick Co., Ex parte Pulbrook* (1869), 4 Ch. 627.

(*k*) *E.g.* the company's register and in some cases its minute-book: *Capital Fire Insurance Association* (1883), 24 C. D. 408; *Anglo-Maltese Dock Co.* (1885), 54 L. J. (CH.) 730.

(*l*) Cp. *Re Hawkes*, [1898] 2 Ch. 1, and the cases there referred to.

(*m*) *Capital Fire Insurance Association* (1883), 24 C. D. 408; *Anglo-Maltese Dock Co.* (1885), 54 L. J. (CH.) 730; *Rapid Road Transit*, [1909] 1 Ch. 96.

regard to documents which have come into his hands after the winding-up (*n*), these he can be required to deliver up subject to his lien, and none the less, it would seem, where he has actually been retained by the liquidator to continue an action, and the papers have come into his hands in such action, and while he was so retained (*o*). This decision is apparently based on *Capital Fire Insurance Association* (*p*), it goes, however, far beyond that case, and, whatever may be the rule in administration actions, it must be borne in mind that, as is above stated, a solicitor employed by the liquidator is the solicitor of the company, and not of the liquidator, and it is difficult to see why creditors who claim through the company should be in a better position than the company itself. In any case, however, the Court can, under section 174 of the Companies (Consolidation) Act, 1908, require the solicitor to produce any books and papers in his custody or power, such production to be without prejudice to his lien (*q*).

A solicitor can under the particular lien given to him by the common law, retain and set off against sums due to him for costs any moneys which have been recovered by his exertions whether as solicitor to a liquidator or to the company, including the costs of a summons to establish his right to such retainer (*r*). The Court will, moreover, make a charging order under the Solicitors Act, 1860, on a fund recovered by a solicitor's exertions in respect of costs owing to such solicitor for services rendered prior to the winding-up, in recovering the fund (*s*).

ORDER DECLARING RIGHTS OF SOLICITOR OVER FUND RECOVERED BY HIS EXERTIONS.

(*Title.*)

The application by Summons dated the 8th June 1911 of G.E.C. one of the Liquidators of the above-named Company and J.C.L. one of the members of the Committee of Inspection which upon hearing Counsel for the Applicants and for F.M. the other Liquidator of the above-named Company and W.W. hereinafter named the Respondents to the said Summons in Chambers was (so far as it relates to the Bills of Costs hereinafter referred to) adjourned to be heard in Court coming on on the 25th October 1911 to be heard accordingly and upon hearing Counsel for the Applicants and for the said Respondents and upon reading the Order dated the 21st April 1910 the Affidavit of J.C.L. filed the 13th June 1911 the Affidavit

(*n*) *Capital Fire Insurance Association* (1883), 24 C. D. 408; *Anglo-Maltese Dock Co.* (1885), 54 L. J. (CH.) 730.

(*o*) *Rapid Road Transit Co.*, [1909] 1 Ch. 96.

(*p*) (1883), 24 C. D. 408.

(*q*) *South Essex Estuary and Reclamation Co.* (1869), 4 Ch. 215.

(*r*) *Meter Cab Co.*, [1911] 2 Ch. 557; *Re Massey* (1870), 9 Eq. 367; *Union Cement and Brick Co.* (1872), 26 L. T. 240, is not, it is submitted, good law.

(*s*) *Re Born*, [1900] 2 Ch. 433.

of F.M. and W.W. filed the 21st June 1911 the further Affidavit of the said W.W. and F.M. filed the 7th July 1911 and the Affidavit of G.E.C. filed the 13th July 1911 and the several exhibits in the said Affidavits respectively referred to (the exhibit "J.C.L." to the said Affidavit of J.C.L. being the bill of costs hereinafter mentioned) and upon hearing the evidence of the said G.E.C. and W.W. upon their cross-examination and the evidence of F.M. upon his cross-examination and re-examination taken orally before this Court on the 25th October 1911. This Court did order that the said application should stand for Judgment. And the said application standing this day in the paper for Judgment in the presence of Counsel for the applicants and for the Respondents. This Court doth declare that the Respondent the said W.W. is entitled to be paid his bill of costs for £ and his costs of the said application (subject to taxation thereof) out of the fund recovered in the proceedings by the above-named Company against the I.I. Company Limited.

And it is Ordered that the said Bill of Costs be taxed. And in the event of the said fund being insufficient for payment in full of the amount of the said Bill of Costs and the Costs of the said W.W. of the said application when taxed.

It is Ordered that any balance be paid out of the assets of the above-named Company. And it is Ordered that the costs of the applicants the said G.E.C. and J.C.L. and of the Respondents the said W.W. and F.M. of the said application be taxed and that the Costs of the Applicants be paid out of the assets of the above-named Company and that the Costs of the said Respondents be paid in accordance with the above directions for payment of the Costs of the said W.W. and on such taxation only one Set of Costs is to be allowed between the said Respondents. [*Re Meter Cabs, Ltd.*, 0073 of 1910. Mr. Justice SWINFEN EADY, October 26th, 1911, [1911] 2 Ch. 557.]

Where the same person is liquidator of different companies, separate solicitors may be appointed (*t*).

SALE OF PROPERTY OF COMPANY.

Turning to the subsection which empowers the liquidator to sell the real and personal property and things in action of the company. Where property forming part of a company's assets is sold by the liquidator through an auctioneer or other agent, the gross proceeds of the sale must be paid over by such auctioneer or agent, and the charges and expenses connected with the sale must afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every liquidator by whom such auctioneer or agent is employed will, unless the Court otherwise orders, be accountable for the proceeds of every such sale (*u*). Under this provision of the Act misfeasance claims may be sold (*x*), and an order for selling such claims by public auction has been made in a debenture-holder's action (*y*) by virtue of this power a liquidator can

(*t*) *Western Life Assurance Society* (1870), 5 Ch. 396.

(*u*) Companies (Winding-up) Rules, 1909, r. 176.

(*x*) *Park Gate Waggon Works Co.* (1881), 17 C. D. 234.

(*y*) *Wood* v. *Woodhouse and Rawson*, [1896] W. N. 4; and see

carry out a reconstruction scheme (z). The Court or the committee of inspection can also under this sub-section either alone or coupled with the powers conferred by section 214 of the Act, sanction the sale of the uncalled capital of the company (a).

The provisions of section 214 are as follows :—

(1) The liquidator may, with the sanction following (that is to say) :—

(a) In the case of a winding-up by the Court in England with the sanction either of the Court or of the committee of inspection ;

(b) In the case of a winding-up by the Court in Scotland or Ireland, and in the case of any winding-up subject to supervision, with the sanction of the Court ; and

(c) In the case of a voluntary winding-up, with the sanction of an extraordinary resolution of the Company,

do the following things or any of them :—

(i) Pay any classes of creditors in full ;

(ii) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the Company or whereby the Company may be rendered liable.

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

(2) In the case of a winding-up by the Court in England the exercise by the Liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers (b).

Under section 151 (2) (a) and this section a company which had a *primâ facie* case for setting aside a sale of a mine to it, but no funds to prosecute its claim, has been allowed to sell its assets to a new company upon the terms of the new company, carrying on the action and working the mine in the meanwhile, and giving the original company an option of repurchasing (c).

Anglo-Austrian Printing and Publishing Union, [1895] 2 Ch. 891, as to the power of a company to charge such claims.

(z) *Agra and Masterman's Bank* (1866), 12 Eq. 509 n. On such a scheme the sanction of a special resolution is not necessary, as it would be under s. 192 of the Act. See also s. 120 of the Act, which is generally made use of on these occasions.

(a) *Paraguassu Steam Tramroad* (1873), 42 L. J. (ch.) 442.

(b) Companies (Consolidation) Act, 1908, s. 214.

(c) *Cambrian Mining Co.* (1883), 48 L. T. 114.

It would seem, moreover, that the powers conferred by section 214 will enable a compromise to be entered into with a class of alleged contributories, where it is doubtful whether they are in fact contributories, and whether, if they are, they can meet their liabilities (*d*), and also an arrangement by which contributories who paid £20 before a certain day were relieved from a liability of £25 (*e*). The Court has also sanctioned an arrangement which involved the release of all claims against two contributories, and this though the holder of a large number of shares objected (*f*). And another, though there were objecting creditors and contributories, by which an action was stayed on terms and certain creditors were paid (*g*).

On an application, made with a view to a compromise, for leave to exercise all the powers conferred by section 151 (2) (*a*) without any further leave, the Court declined to make any order, as it did not consider that the evidence before it justified an order (*h*), and it took the same course where the parties asking for the sanction of a compromise, refused to furnish the data which had led them to consider the compromise a desirable one (*i*).

A compromise will as between the liquidator and the other party to the compromise be binding even where the necessary sanction has not been obtained, at all events where such other party does not know of this (*k*). Section 214 does not, however, enable a majority to bind a dissentient minority (*l*). This is remedied by section 120 of the Act, which, as it extends to going companies as well as to companies in winding-up, has already been considered.

In a winding-up by the Court, if application is made to the Court to sanction any compromise or arrangement, the Court may, before giving its sanction thereto, hear a report by the official receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the company, and as to any other matters which, in the opinion of the official receiver or the Board of Trade, ought to be brought to the attention of the Court. The report must not be placed upon the file, unless and until the Court directs it to be

(*d*) *Bank of Hindustan, China, and Japan* v. *Eastern Financial Association* (1869), L. R. 2 P. C. 489; and see *Ex parte Totty* (1860), 29 L. J. (CH.) 702.

(*e*) *Smith, Knight & Co.* (1868), 37 L. J. (CH.) 864.

(*f*) *Risca Coal and Iron Co.* (1861), 30 Beav. 528.

(*g*) *Commercial Bank Corporation of India and the East* (1869), 8 Eq. 241.

(*h*) *South Eastern Railway of Portugal* (1870), 21 L. T. 220.

(*i*) *Ex parte Totty* (1860), 29 L. J. (CH.) 702.

(*k*) *Cyclemakers' Co-operative Supply Co.* v. *Sims*, [1903] 1 K. B. 477; *English and Scottish Marine Insurance Co.* (1871), 23 L. T. 685; *Wright's Case* (1870), 5 Ch. 437. In *James* v. *May* (1873), L. R. 6 H. L. 328, the compromise was bad because the directors and not the liquidator entered into it.

(*l*) *Albert Life Assurance Co.* (1871), 6 Ch. 381.

filed (*m*). Any report under this rule as applied by the Limited Partnerships (Winding-up) Rules, 1909, may extend to the conduct of the limited, as well as of the general partners (*n*).

The principles on which the Court will give leave to endorse bills in a winding-up were discussed in *Smith, Fleming & Co.'s* Case (*o*), and the remarks there made have probably an application to all powers exerciseable by a liquidator in a winding-up. The main principle applicable and to be borne in mind in these cases, is that the object of a winding-up is to put all creditors of the same company on an equal footing, and the Court will not sanction any step which is likely to have a contrary effect or to give some creditors a preference, by giving them a right of set-off, or otherwise.

On every application to the Court to approve a reconstruction or other scheme by which the affairs of the company are to be wound-up otherwise than by the realization and distribution of the assets, there must be a £5 impressed stamp (*p*).

PRIVATE EXAMINATION.

The Court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs, or property of the company.

The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

The Court may require him to produce any books and papers in his custody or power relating to the company; but where he claims any lien on books or papers produced by him, the production must be without prejudice to that lien, and the Court has jurisdiction in the winding-up to determine all questions relating to that lien.

If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it) the Court may cause him to be apprehended, and brought before the Court for examination (*q*).

(*m*) Companies (Winding-up) Rules, 1909, r. 74.

(*n*) Limited Partnerships (Winding-up) Rules, 1909, r. 14.

(*o*) (1866), 1 Ch. 538.

(*p*) Order as to fees of July 31, 1908.

(*q*) Companies (Consolidation) Act, 1908, s. 174.

Under this section the witness is not summoned by *subpœna*, the practice being for an *ex parte* application to be made for liberty to examine the person named (*r*) and to issue a summons under section 174. An order is then made giving liberty to examine, and ordering that a summons for that purpose do issue accordingly (*rr*). A summons is then issued ordering the witness to attend, and naming a day (*s*). This practice holds good where the application is for a person to produce all books and papers in his custody or power in any way relating to the company (*t*). Where an order is obtained it will not, it is thought, be necessary to serve it personally on the person to be examined (*u*). The application and conduct of the proceedings will usually be made by and given to the liquidator, but a creditor or contributory may apply on giving notice to the liquidator, the liquidator will then have the option of taking over and conducting the whole matter, but he will not be entitled to take any other part on the application or to oppose it (*x*). The Court has also jurisdiction to order an examination on its own motion (*y*). Where a contributory obtains an order the Court will sometimes limit the examination (*z*). The summons is not supported by affidavit, for an affidavit, being a public document and on the file, would, by telling the person proposed to be examined why he is to be examined, often defeat the whole object of the application. It is, however, supported by a statement in writing made to the Court and giving the reasons why an examination is considered desirable (*a*).

To obtain an order on a summons under the section a liquidator need not show a *prima facie* case, it will be enough if he shows a

(*r*) A fee of 10*s*. is payable for each witness sworn and examined for each hour or part of an hour: Order as to Supreme Court Fees, 1884. Fee 49.

(*rr*) For form of summons and order, *infra*, pp. 1066 and 1067.

(*s*) *Westmoreland Green and Blue Slate Co.* (1887), 56 L. T. 52; *English Joint Stock Bank* (1866), 3 Eq. 203. For form of summons, *infra*, p. 1067.

(*t*) *Credit Co.* v. *Webster* (1885), 53 L. T. 419.

(*u*) Cf. *Re Weinburg* (1907), 96 L. T. 790. The conduct money should be sent in money or postal orders with the letter serving such order. See also this case as to the power of detaining a witness who has been arrested for non-attendance. Such detention may be for a reasonable time so as to allow the examination to take place.

(*x*) *Silkstone and Dodsworth Coal and Iron Co.* (1882), 19 C. D. 118; *London and Lancashire Paper Mills Co.* (1888), 57 L. J. (CH.) 766; *Re Nicholson* (1880), 14 C. D. 243.

(*y*) *Land Securities Co.*, [1894] W. N. 91.

(*z*) *Penysflog Mining Co.* (1874), 30 L. T. 861; *Silkstone and Dodsworth Coal and Iron Co.* (1882), 19 C. D. 118.

(*a*) *English Joint Stock Bank* (1866), 3 Eq. 203; *Gold Co.* (1879), 12 C. D 77; *Silkstone and Dodsworth Coal Co.* (1882), 19 C. D. 118. In *Imperial Continental Water Corporation* (1886), 33 C. D. 314, it was said that in the circumstances the liquidator had been right in requiring a contributory who applied for an order to make an affidavit.

reasonable suspicion or a probable case (*b*). A creditor or contributory will perhaps have to show something rather more (*c*). A private examination can by the joint operation of sections 174 and 193 be ordered in a voluntary winding up (*d*). In such case it will be necessary to show that such an examination will be just and beneficial, as these words occur in section 193 (*e*). Probably, however, this does not limit the jurisdiction to any extent, as even in a compulsory winding-up the Court must be satisfied that the examination is likely to benefit the winding-up (*f*). Under a reconstruction in a voluntary winding-up the Court has declined to order an examination upon the application of a dissentient member, who wished to use it for the purpose of ascertaining whether or no he should accept an offer made by the liquidator to purchase his interest (*g*). Under the section the Court has ordered the examination of the mother-in-law of a contributory who declined to give his address (*h*), and also in like case of the sister and nephew of a contributory (*i*). It has also ordered the examination of a person from whom a contributory claimed an indemnity which he had assigned to the liquidator (*k*), and of the managing clerk of a bank where a contributory had had an account (*l*), and of a broker employed on a transfer where it was considered possible that the transferor might be made liable for calls made on the transferee (*m*), and of a person indebted to a contributory (*n*). The Court has also on the application of a contributory made an order on a person whom that contributory alleged ought to be on the list of contributories in his place (*o*),

(*b*) *Gold Co.* (1879), 12 C. D. 77.

(*c*) See *Re Nicholson* (1880), 14 C. D. 243, a bankruptcy case where it was said that a creditor seeking an examination must show a *primâ facie* or reasonable probability.

(*d*) *Sir John Moore Mining Co.* (1878), 37 L. T. 242, where an order was made on the evidence on a petition for a compulsory winding-up which had failed.

(*e*) *Heiron's Case* (1880), 15 C. D. 139.

(*f*) *London and Lancashire Paper Mills Co.* (1888), 57 L. J. (CH.) 766; *Imperial Continental Water Corporation* (1886), 33 C. D. 314, where an order was refused to a contributory who was bringing an action to enforce a charge on calls and to get his name taken off the list of contributories, and who wished for an examination so as to help him in his action.

(*g*) *British Building Stone Co.*, [1908] 2 Ch. 450. This case was decided partly on the ground that the member was trying to get an option to sell his shares while s. 192 gives the option (to purchase) to the liquidator.

(*h*) *Fricker's Case* (1871) 13 Eq. 178.

(*i*) *Swan's Case* (1870), 10 Eq. 675.

(*k*) *Massey* v. *Allen* (1878), 9 C. D. 164.

(*l*) *Druitt's Case* (1872), 14 Eq. 6; *Financial Insurance Co.* (1867), 36 L. J. (CH.) 687.

(*m*) *Clement's Case* (1872), 13 Eq. 179 n.

(*n*) *Trower and Lawson's Case* (1872), 14 Eq. 8.

(*o*) *Ex parte Musgrave* (1867), 16 L. T. 379.

but this case would, it is thought, only be followed where the liquidator is anxious for the change on the list of contributories to take place, as in other cases it would seem that the examination would not tend to benefit the winding-up. Under the section the brokers of a company or of its liquidator can be summoned (*p*), and its solicitors can be required to produce papers without prejudice to their lien (*q*), but such saving will not give a solicitor any higher right in respect of his lien (*r*) than he would have had without it (*q*). It will, however, apparently be necessary to show that the books do in some way relate to the company (*s*). The solicitor can, however, in a proper case set up privilege (*t*). A servant of the company can, even where he has parted with the books and papers wrongfully, be required to produce them (*u*). It would seem to be doubtful whether a liquidator can require inspection of documents before requiring them to be produced (*x*). A mere creditor of the company can, it would seem, not be summoned (*y*); but the mere fact of a man being a creditor is no reason why he should not be summoned (*z*). The power of ordering an examination can be exercised even after action brought, for the liquidator may rightly require to know not merely whether he should begin, but also whether he should continue an action (*a*). But the Court has declined to make an order which would give a party to an action more information than he could obtain or has obtained by discovery (*b*), and it has also refused an order where, after an affidavit of documents had been made in an action, the Court had postponed making an order for production of documents or for interrogatories (*c*).

An order to examine a person has been made without prejudice

(*p*) *Carver's Case* (1878), 47 L. J. (CH.) 702 n.

(*q*) *South Essex Estuary and Reclamation Co.* (1869), 4 Ch. 215; *Capital Fire Insurance Association* (1883), 24 C. D. 408.

(*r*) *Rorie* v. *Stevenson*, [1908] S. C. 559. A solicitor or other person claiming a lien is not entitled to have the question of whether he is or is not entitled to such lien decided before production: *Findlay* v. *Waddell*, [1910] S. C. 670.

(*s*) See *Ex parte Smith* (1882), 45 L. T. 447 (a bankruptcy case).

(*t*) *Hoyle's Case*, [1902] 2 Ch. 73.

(*u*) *London and Northern Bank* (1902), 85 L. T. 698; but see *Massey* v. *Allen* (1878), 9 C. D. 164.

(*x*) *Findlay* v. *Waddell*, [1910] S. C. 670.

(*y*) *Tyne Chemical Co.* (1874), 43 L. J. (CH.) 354.

(*z*) *Ex parte Carver* (1878), 47 L. J. (CH.) 702 n.

(*a*) *North Australian Territory Co.* v. *Goldsborough Mort & Co.*, [1893] 2 Ch. 381; *London and Northern Bank* (1902), 85 L. T. 698; *Carver's Case* (1878), 47 L. J. (CH.) 702 n.; *Ex parte Bateman* (1866), 15 W. R. 118, 245; *Metropolitan* (*Brush*) *Electric Light and Power Co., Ex parte Leaver* (1884), 51 L. T. 817.

(*b*) *Heiron's Case* (1880), 15 C. D. 139; *Re Franks*, [1892] 1 Q. B. 646.

(*c*) *North Australian Territory Co.* (1890), 45 C. D. 87.

to any objection he may make (*d*), and in any case the order will not prejudice any objection that may be raised to answering questions (*e*). Where a Judge has made an order to examine a person or has allowed a particular question to be put, or has refused to do either of these things, the Court of Appeal will be extremely slow to reverse its decision (*f*); but it would seem clear that it will in some cases do so (*g*), and it would certainly seem that it can do so where there was no jurisdiction to make the order made in the Court below, where such order is vexatious and oppressive, where it is an abuse of the process of the Court, or where the Court below has made a mistake in a matter of principle (*h*). It is thought that much the same principles govern a judge, when a motion is made to discharge the order of a Registrar; but as parties are *primâ facie* entitled to get the opinion of the Judge in person, they would probably not be applied with quite the same strictness (*h*). At the same time a Registrar can always decline to allow questions he considers irrelevant or otherwise improper (*i*). Examinations of persons summoned before the High Court under section 174 are held in Court or in Chambers as the Court directs (*k*).

This rule, so far as the High Court is concerned, does away with the old cases (*l*), which deal with the questions of the appointment of special examiners and their powers. As already stated, the liquidator is usually the proper person to conduct an examination under the section. There may be cases where a creditor or contributory will be entitled to take part in the proceedings in addition to the liquidator (*m*), but notwithstanding rule 152 of the Companies Winding-up Rules, 1909, creditors and contributories will not usually be allowed to attend at a private examination (*n*). The official

(*d*) *Contract Corporation* (1871), 6 Ch. 145.

(*e*) *Smith, Knight & Co.* (1869), 4 Ch. 421.

(*f*) *Gold Co.* (1879), 12 C. D. 77; *Silkstone and Dodsworth Coal and Iron Co.* (1882), 19 C. D. 118. These cases probably go too far, having regard to the cases cited in the next notes. See also *Ex parte Nicholson* (1880), 14 C. D. 243.

(*g*) *Joseph Hargreaves & Co.*, [1900] 1 Ch. 347; *North Australian Territory Co.* (1890), 45 C. D. 87; *Clement's Case* (1872), 13 Eq. 179 n.; *Heiron's Case* (1880), 15 C. D. 139.

(*h*) *London and Lancashire Paper Mills Co.* (1888), 57 L. J. (CH.) 766.

(*i*) *Re Pennington* (1888), 5 Mor. 268; *Re Tillett* (1890), 7 Mor. 286.

(*k*) Companies (Winding-up) Rules, 1909, r. 5 (2).

(*l*) See *Smith, Knight & Co.* (1869), 8 Eq. 23; *Lisbon Steam Tramways* (1876), 2 C. D. 575; *Contract Corporation* (1872), 13 Eq. 27; *Metropolitan Brush Electric Light Co.* (1888), 57 L. J. (CH.) 253.

(*m*) *London and Lancashire Paper Mills Co.* (1888), 57 L. J. (CH.) 766.

(*n*) *Norwich Equitable Fire Insurance Co.* (1884), 27 C. D. 515; *London and Lancashire Paper Mills Co.* (1888), 57 L. J. (CH.) 766; *Grey's Brewery Co.* (1883), 25 C. D. 400. In the last cited case *Empire Assurance Corporation* (1868), 17 L. T. 488, is explained as a case where attendance was allowed owing to special circumstances.

receiver may attend in person or by an assistant official receiver any examination of a witness under the section on whosesoever's application the same has been ordered, and may take notes of the examination for his own use and put such questions to the person examined as the Court may allow (*o*). The person examined is entitled to be represented by solicitor and counsel (*p*), but he is not entitled to have any particular solicitor (*q*), and though it is not usual to exclude a solicitor chosen by the person examined, if there is reason to believe that he may use the information obtained for purposes other than the examination (*e.g.* where he is acting in an action against the company in which such information may be useful), the Court will require him to give an undertaking only to use the information for re-examination, and not to disclose the same without leave, and to destroy any notes he may take (*r*). The Court will also usually allow the presence of persons who may be useful to the persons carrying on the examination, *e.g.* clerks who are attending to take notes or who took part in the matters with which the examination is concerned (*s*), but it will not allow the presence of any person where it considers that such person's presence is undesirable, *e.g.* where he may be examined himself at a later stage (*t*).

The solicitor or counsel of the person examined can re-examine him for the purpose of explaining any answers he has given, and can take notes for the purpose of such re-examination (*u*), and though the Court can refuse to allow him to take such notes away (*x*), he may, apart from any such order, do so (*u*).

Questions cannot be asked which may incriminate the witness, or the answers to which would involve a breach of professional privilege (*y*). If, however, a witness gives reasons why an answer is likely to incriminate him and such reasons are insufficient, he will be ordered to answer (*z*), and unless a question is obviously likely to incriminate the witness the Court must in some way be satisfied that there is a danger of its doing so (*a*). A witness may be ordered to

(*o*) Companies (Winding-up) Rules, 1909, r. 73 (1).

(*p*) *Breech-loading Armoury Co. and Merchants Co.* (1867), 4 Eq. 453; *Cambrian Mining Co.* (1883), 23 C. D. 376.

(*q*) *Re Towsey* (1864), 9 L. T. 613.

(*r*) *Haddock's Case*, [1902] 2 Ch. 73; for order, see p. 1069.

(*s*) *W. Hesseltine and Son*, [1891] W. N. 25.

(*t*) *Western of Canada Oil Lands and Works Co.* (1877), 6 C. D. 109.

(*u*) *Merchants Co.* (1867), 4 Eq. 453; *Cambrian Mining Co.* (1883), 23 C. D. 376; *Grey's Brewery Co.* (1883), 25 C. D. 400, explaining *Empire Assurance Corporation* (1868), 17 L. T. 488; and see also *Re Walker* (1909), 100 L. T. 860 (a bankruptcy case).

(*x*) *W. Hesseltine and Son*, [1891] W. N. 25; *Grey's Brewery Co.* (1883), 25 C. D. 400; and see also the undertaking required in *Haddock's Case*, [1902] 2 Ch. 73.

(*y*) *Gold Co.* (1879), 12 C. D. 77; *Hoyle's Case*, [1902] 2 Ch. 73.

(*z*) *Ashton's Case* (1859), 4 De G. & J. 320.

(*a*) *Ex parte Schofield* (1877), 6 C. D. 230; *Lamb* v. *Munster*

answer questions, where his answer will only amount to hearsay evidence, at all events where there is no action pending against him (*b*), and questions have been allowed to be asked of a bankrupt contributory, which could not lead to anything in the winding-up, though they might give a ground for proceedings in the bankruptcy (*c*). A professional witness cannot be required to answer questions until he has been tendered the fee which he is entitled to, and also his travelling expenses (*d*), and where it was sought to examine an officer of the Inland Revenue as to the Income Tax returns of the company, the Court declined to go behind a certificate of the Inland Revenue Commissioners, stating that in the public interest it was undesirable that answers should be made (*e*). The fact that a person examined is a defendant to an action brought by the company will be a reason why the Court should carefully scrutinize questions put to him, but will not prevent his being questioned on other matters (*f*).

Where an order has been made for a private examination, the proper course is usually for the person whom it is proposed to examine not to seek to set aside the order where he objects to it, but to attend and object to answer questions (*g*).

If a person examined before a Registrar or other officer of the Court who has no power to commit for contempt of Court, refuses to answer to the satisfaction of the Registrar or officer any question which he may allow to be put, the Registrar or officer must report such refusal to the Judge, and upon such report being made the person in default will be in the same position, and be dealt with in the same manner as if he had made default in answering before the Judge.

The report must be in writing, but without affidavit, and must set forth the question put, and the answer (if any) given by the person examined.

The Registrar or other officer must before the conclusion of the examination at which the default in answering is made, name the

(1883), 10 Q. B. D. 110; *Ex parte Gilbert* (1886), 3 Mor. 223.

(*b*) *Ottoman Co.* (1867), 15 W. R. 1069.

(*c*) *London Gas Meter Co.* (1871), 41 L. J. (CH.) 145.

(*d*) *Working Men's Mutual Society* (1882), 21 C. D. 831. The fare will be first class, and the witness in this case (an auctioneer) was entitled to one guinea as his fee; see also *Re Weinburg* (1907), 96 L. T. 790; *Re Batson* (1894), 70 L. T. 382. In *Re Weinburg, supra*, BIGHAM, J., held in bankruptcy that a witness was only entitled to conduct money varying with the distance he had to come before he came into Court, such money to be sent in cash or postal orders.

(*e*) *Joseph Hargreaves & Co.*, [1900] 1 Ch. 347.

(*f*) *London and Northern Bank* (1902), 18 T. L. R. 537, 637.

(*g*) *London Gas Meter* (1871), 41 L. J. (CH.) 145; *Contract Corporation* (1871), 6 Ch. 145; *Smith, Knight & Co.* (1869), 4 Ch. 421.

time, when, and the place where the default will be reported to the Judge, and upon receiving the report the Judge may take such action thereon as he thinks fit. If the Judge is sitting at the time when the default in answering is made, such default may be reported immediately (*h*).

During the sitting of Parliament, and for forty days before its meeting and after its prorogation or dissolution, a member of Parliament is privileged from being committed for contempt under these provisions. An application to commit a privileged person will be no bar to a subsequent application after the privilege has ceased (*i*).

Sometimes the person conducting an examination applies for an order on the person examined to attend before the Registrar at his own expense and answer a question which such person has refused to answer (*k*).

Where the examination is intended to lead up to litigation, the person obtaining the order for the examination may be ordered to pay the costs of the person examined, as it is a proceeding within the meaning of section 5 of the Judicature Act, 1890 (*l*); but such costs will not include the costs of the solicitor or counsel of the person examined (*m*). The later cases seem to point to examinations being in all cases proceedings (*n*), though this was certainly not the view taken at one time (*o*).

Proceedings on private examinations when held in chambers are, as appears from the foregoing, essentially of a private nature, and it will be a contempt of Court to publish an account of them (*p*). They are intended to put the liquidator in the same position as if he were making inquiries from a person willing to give information or from the solicitor of such a person (*q*).

A liquidator can, on an application for discovery, plead privilege with regard to depositions taken at a private examination (*r*), and the mere fact that he has asked a witness, "Did you not say this in

(*h*) Companies (Winding-up) Rules, 1909, r. 72. For form of report, see p. 1066.

(*i*) *Re Armstrong*, [1892] 1 Q. B. 327; *Anglo-French Co-operative Society* (1880), 14 C. D. 533.

(*k*) *Trower and Lawson's Case* (1872), 14 Eq. 8; *Haddock's Case*, [1902] 2 Ch. 73.

(*l*) *Appleton, French, and Scratton*, [1905] 1 Ch. 749; but see *Re Leighton and Benett* (1866), 1 Ch. 331.

(*m*) *Ex parte Waddell* (1877), 6 C. D. 328.

(*n*) See *Standard Gold Mining Co.*, [1895] 2 Ch. 545; *Re Beall*, [1894] 2 Q. B. 135.

(*o*) *Gold Co.* (1879), 12 C. D. 77; *Silkstone and Dodsworth Coal and Iron Co.* (1882), 19 C. D. 118; *Grey's Brewery Co.* (1883), 25 C. D. 400; *Norwich Equitable Fire Insurance Co.* (1884), 27 C. D. 515; *London and Lancashire Paper Mills Co.* (1888), 57 L. J. (CH.) 766.

(*p*) *American Exchange in Europe* v. *Gillig* (1889), 58 L. J. (CH.) 706; *Sir John Moore Mining Co.* (1878), 37 L. T. 242.

(*q*) *Norwich Equitable Fire Insurance Co.* (1884), 27 C. D. 515.

(*r*) *Learoyd* v. *Halifax Joint Stock Banking Co.*, [1893] 1 Ch. 686.

your private examination ?" will not, if the witness admits he did say it and the proceedings at which the question was put were not proceedings open to the public, amount to a waiver of privilege (*s*), nor can the witness himself demand to see the depositions before answering; the Court can, however, apparently require them to be produced at the trial (*t*). Where the witness denies having made the statement, and the transcript of the proceedings is used to contradict him, then the whole transcript will have to be put in (*t*). Notice of an intention to read the evidence of a witness will not make it evidence against any other person (*u*), but such evidence can, at all events after such notice has been given, be used against the witness himself (*x*). The liquidator may, it would seem, make such depositions evidence for all purposes by exhibiting them to an affidavit or by simply putting them in as evidence, but in such cases he must be prepared to produce the witness for cross-examination if required (*y*).

The notes of the depositions of a person examined under section 174 of the Act, or under any order of the Court before the Court, or before any officer of the Court, or person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 175 of the Act) will not be filed, or be open to the inspection of any creditor, contributory, or other person, except the official receiver or liquidator, unless and until the Court so directs, and the Court may from time to time give such general or special directions as it thinks expedient as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom (*z*).

Where a person who has put in his defence to an action, is interrogated on his depositions, he will usually be allowed to inspect them if his defence is not a mere blank defence (*a*). The fee for examining a witness under section 174 is 10*s*. for each witness sworn per hour (*aa*).

(*s*) *Goldstone* v. *Williams, Deacon & Co.*, [1899] 1 Ch. 47; *North Australian Territory Co.* v. *Goldsborough Mort & Co.*, [1893] 2 Ch. 381.

(*t*) *North Australian Territory Co.* v. *Goldsborough Mort & Co.*, [1893] 2 Ch. 381.

(*u*) *Great Western Forest of Dean Coal Consumers' Co., Carter and Crawshay's Cases* (1885), 54 L. J. (CH.) 506.

(*x*) *Pugh and Sharman's Case* (1872), 13 Eq. 566.

(*y*) See *Norwich Equitable Fire Insurance Co.* (1884), 27 C. D. 515; and *London and General Bank* (*No.* 1) (1894), 63 L. J. (CH.) 853, which, however, was the case of a public examination and turned mainly no doubt on the old rule corresponding to r. 70 of the Companies (Winding-up) Rules, 1909. The decision was, however, that that rule was not *ultra vires*.

(*z*) Companies (Winding-up) Rules, 1909, r. 73 (2). This rule does away with *Standard Gold Mining Co.*, [1895] 2 Ch. 545.

(*a*) *Merchants' Fire Office*, [1899] 1 Ch. 432; *Ex parte Pratt* (1882), 21 C. D. 439.

(*aa*) Order as to Supreme Court Fees, 1884, Fee 47. In a County Court it is 7*s*. per hour after the first hour, and also travelling expenses where the examination is not held at the place where the Court usually sits. Order as to Fees of December 2nd, 1903.

PUBLIC EXAMINATION.

When an order has been made in England for winding-up a company by the Court, and the official receiver has made a further report (*aaa*) under the Act showing that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by a director or officer of the company in relation to the company since its formation, the Court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company or has been a director or officer, of the company shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation, or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

The official receiver must take part in the examination, and for that purpose may, if specially authorized by the Board of Trade in that behalf, employ a solicitor with or without counsel.

The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

The Court may put such questions to the person examined as the Court thinks fit.

The person examined will be examined on oath, and must answer all such questions as the Court may put or allow to be put to him.

A person ordered to be examined under this section is entitled at his own cost, before his examination, to be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor, with or without counsel, who will be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him. If he is in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit. It cannot, however, under this provision order the official receiver to pay the costs of the examination personally (*b*).

Notes of the examination must be taken down in writing, and must be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and will be open to the inspection of any creditor or contributory at all reasonable times.

The Court may, if it thinks fit, adjourn the examination from time to time.

An examination under this section may, if the Court so directs, and subject to general rules, be held before any Judge of county courts, or before any officer of the Supreme Court, being an official referee, Master, or Registrar in Bankruptcy, or before any District

(*aaa*) As to such further report, see *supra*, pp. 924 *et seq.*
(*b*) *John Tweddle & Co.*, [1910] 2 K. B. 697.

Registrar of the High Court named for the purpose by the Lord Chancellor or, in the case of companies being wound-up by a Palatine Court, before a Registrar of that Court, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held (*c*).

In the case of a limited partnership the Court may, on the consideration of a further report stating that in the opinion of the official receiver a fraud has been committed by any person in the promotion or formation of the limited partnership or by any general or limited partner in relation to the limited partnership since its formation, direct that any person who has taken part in the promotion or formation of the limited partnership or has been a partner general or limited shall attend before the Court on a day appointed by the Court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the limited partnership or as to his conduct and dealing as a partner (*d*).

What must be contained in a further report of an official receiver in order to justify an order for a public examination has already been considered (*dd*).

The practice where a further report has been made is as follows :—

The official receiver may apply to the Court to consider the further report. Such summons is made returnable before the Judge, and the report is left with the Judge for consideration. On such application the Court fixes a day on which the report is to be considered (*e*).

The consideration of the report is before the Judge of the Court personally in Chambers, and the official receiver must personally, or by counsel or solicitor, attend the consideration of the report, and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require (*f*), and the Judge makes the order asked (*ff*), or deals with the matter in such other way as he thinks fit.

The application for the consideration of the report is made by *ex parte* summons. Formerly such summons also asked that the persons, if any, whom it was desired to examine might be directed to attend to be publicly examined (*g*). If an order is made nowadays, the official receiver gives informal notice to the persons who are to be examined informing them that an order has been made and that they

(*c*) Companies (Consolidation) Act, 1908, s. 175. For order directing examination before a District Registrar, *post*, pp. 1062 and 1063.

(*d*) Limited Partnerships (Winding-up) Rules, 1909, r. 12.

(*dd*) *Supra*, pp. 924 *et seq.*

(*e*) Companies (Winding-up) Rules, 1910, r. 60.

(*f*) *Ibid.*, r. 61. In practice the official receiver invariably attends personally.

(*ff*) For form of order, see *infra*, p. 1062.

(*g*) *Trust and Investment Corporation of South Africa*, [1892] 3 Ch. 322; see also Form 32 in the appendix to the Companies (Winding-up) Rules, 1909, but this does not apply at all events in London cases now.

will receive notice of the time and place appointed for the holding of the examination when the same are fixed (*h*). The official receiver then gets a day fixed for the examination without any further order, and serves the person to be examined with a notice in the form of Form 33 in the Appendix to the Companies (Winding-up) Rules, 1909 (*hh*).

A summons to discharge an order for a public examination can be taken out as soon as the person to be examined knows of the order (*i*). As a rule such summons should not be supported by affidavit usually, all the Court has to consider is does the report show sufficient to authorize an order? And the Court will not go into matters which tend to show that the report or the opinion of the official receiver as expressed therein is wrong or inaccurate, unless, of course, *mala fides* is in some way made out (*k*). It is submitted, however, that the view expressed by Wright, J., in *National Stores, Ltd.* (*l*), *i.e.* that the Court will not go behind the finding of the official receiver as to whether a person has taken part in the promotion or formation of the company, or has been a director or officer thereof, is wrong, for the section expressly says that these are the persons who can be examined on the report of the official receiver, and not that persons who are found by the further report to come within this category can be so examined. In such cases it is thought affidavit evidence may be used to show that the person whom it is sought to examine never occupied a position which would bring him within the category of persons who can be examined under the section. The question of who is an officer of the company can be more conveniently dealt with under the misfeasance section (*ll*). The practice in the Chancery Division is to require an application to discharge an order in Chambers to be made within fourteen days of the order sought to be discharged, but, where it is sought to discharge an order for a public examination, there must either be reasonable diligence or some explanation of the delay. It is thought that in considering whether there has or has not been reasonable diligence the practice of the Chancery Division, referred to above, will be borne in mind, time running from the time when the person proposed to be examined was served with the order (*m*). It is thought that unless lack of jurisdiction is shown, the Court of Appeal will be very slow to upset an order made or refused by a Judge in these matters, for to do so would be to interfere with his discretion (*n*).

(*h*) Cp. *National Stores, Ltd.*, [1899] 2 Ch. 773; [1900] 1 Ch. 27. For form of notice, see *infra*, p. 1063.

(*hh*) For this form, see *infra*, p. 1063.

(*i*) *Trust and Investment Corporation of South Africa*, [1892] 3 Ch. 332. For form of order, see *infra*, pp. 1063 and 1064.

(*k*) *New Travellers' Chambers*, [1895] 1 Ch. 395.

(*l*) [1899] 2 Ch. 773. The point was not dealt with by the Court of Appeal, [1900] 1 Ch. 27.

(*ll*) See *infra*, p. 1056.

(*m*) *National Stores Co.*, [1899] 2 Ch. 773; [1900] 1 Ch. 27; *Civil, Naval, and Military Outfitters*, [1899] 1 Ch. 215.

(*n*) *Civil, Naval, and Military Outfitters*, [1899] 1 Ch. 215.

Where the Judge makes an order under section 175 of the Act, directing any person or persons to attend for public examination :—

(*a*) The examination will be held before the Judge. But in the High Court the Judge may direct that the whole or any part of the examination of any such person or persons be held before the Registrar, or before any of the persons mentioned in sub-section (9) of section 175.

(*b*) The Judge may, if he thinks fit, either in the order for examination or by any subsequent orders, give directions as to the special matters on which any such person is to be examined.

(*c*) Where on an examination held before the Registrar or one of the persons mentioned in sub-section (9) of section 175 he is of opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person, or any part of the examination to be held before the Judge (*o*).

Upon an order directing a person to attend for public examination being made, the official receiver must apply for the appointment of a day on which the public examination is to be held (*p*).

A day and place must be appointed for holding the public examination, and notice of the day and place so appointed must be given by the official receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address (*q*).

The official receiver must give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such newspapers as the Board of Trade from time to time direct, or, in default of any such direction as the official receiver thinks fit, and must also forward notice of the appointment to the Board of Trade to be gazetted.

Where an adjournment of the public examination has been directed, notice of the adjournment will not, unless otherwise directed by the Court, be advertised in any newspaper, but it will be sufficient to publish in the *London Gazette* a notice of the time and place fixed for the adjourned examination (*r*).

Rule 72 of the Companies (Winding-up) Rules, 1909, applies to a public as well as to a private examination, and so provides a means of dealing with a witness who declines to answer questions (*rr*). Where questions are put to a witness on his examination, the Court has a wide discretion as to what questions it will allow, and may disallow questions, even though they relate to the promotion or formation or to the conduct of the business of the company or to the conduct or dealings of the person examined as director or officer of the

(*o*) Companies (Winding-up) Rules, 1909, r. 62.

(*p*) *Ibid.*, r. 63.

(*q*) *Ibid.*, r. 64.

(*r*) *Ibid.*, r. 65. For notice for Gazette, *infra*, p. 1064.

(*rr*) See *supra*, pp. 1044 and 1045.

company. The fact that litigation is pending will not necessarily be a reason for refusing to allow a question to be put, but the Court will not allow a question where it is put not in the interest of the company or its creditors or contributories, but of persons litigant with the company (s). In the case just considered the official receiver opposed the question being put, and the Registrar had upheld this objection, and the matter was brought before the Judge on motion for an order that the witness might answer the questions: according to the report in *Weekly Notes*, there was some difficulty as to this procedure, but the point was waived (t).

The official receiver in making a further report and attending a public examination is performing a statutory duty, and he will in no case, except, no doubt, where *mala fides* is shown (u), be personally liable to pay the costs of the examination, the rights of the person examined being against the assets only (x). Where, however, the official receiver makes himself a litigant, as, for instance, where he opposes an application by the person examined for an order exculpating him from the charges made or suggested against him, or where he opposes an application to discharge an order made on a report which does not contain sufficient material to warrant the order (y), there he can be ordered to pay the costs personally.

If any person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the official receiver satisfies the Court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it will be lawful for the Court, upon its being proved to the satisfaction of the Court that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the Court shall think just.

A warrant of arrest issued by the High Court under this rule must be issued in the Central Office of the Supreme Court pursuant to an

(s) *London and Globe Finance Co.* (1902), 50 W. R. 253; [1902] W. N. 16.

(t) But see as to this form of application *Ex parte Tilly* (1888), 20 Q. B. D. 518. The form of application would appear to have been right.

(u) Cp. *Raynes Park Golf Club*, [1899] 1 Q. B. 961.

(x) *John Tweddle & Co.*, [1910] 2 K. B. 697. It would seem from this case that an application for an order exculpating the person examined need not be served on the official receiver, at all events where he is not liquidator also.

(y) *Hounslow Brewery Co.*, [1896] W. N. 45; *Great Kruger Gold Mining Co.*, [1892] 3 Ch. 307; *John Tweddle & Co.*, [1910] 2 K. B. 697.

order of the Court directing such issue (z). The Registrar makes this order, the application being by summons (a).

The notes of every public examination must, after being signed as required by section 175 (7) of the Act, be filed with the Registrar (b).

SPECIAL COMMISSION FOR RECEIVING EVIDENCE.

The Judges of the County Courts in England who sit at places more than twenty miles from the General Post Office, and the Judge exercising the bankruptcy jurisdiction of the High Court in Ireland, and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland are commissioners for the purpose of taking evidence under the Act, where a company is wound-up in any part of the United Kingdom, and the Court may refer the whole or any part of the examination of any witnesses under the Act to any person by this provision appointed commissioner, although he is out of the jurisdiction of the Court that made the winding-up order.

Every commissioner must, in addition to any powers which he might lawfully exercise as a Judge of a County Court, Judge of the High Court, assistant barrister or recorder, or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the Court which made the winding-up order.

The examination so taken must be returned or reported to the Court which made the order in such manner as that Court directs (c).

ORDER FOR EXAMINATION IN SCOTLAND.

The Court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs, or property of any company in course of being wound-up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory; and the order or commission to take the examination must be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and the sheriff must summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

The sheriff may take the examination either orally or on written interrogatories, and must report the same in writing in the usual form to the Court; and must transmit with the report the books and papers produced, if the originals thereof are required and

(z) Companies (Winding-up) Rules, 1909, r. 66. See *infra*, p. 1068, for form of order.

(a) This practice traces back to an order made by VAUGHAN WILLIAMS, J., on July 13, 1893.

(b) Companies (Winding-up) Rules, 1909, r. 67.

(c) Companies (Consolidation) Act, 1908, s. 226, and see also s. 228 of the Act as to the persons before whom affidavits may be sworn in the United Kingdom and elsewhere, *supra*, p. 1017.

specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff must proceed against him as a witness or haver duly cited, and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

The sheriff will be entitled to such and the like fees, and the witness will be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session, and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the Court, and suspend the examination of the witness until it has been disposed of by the Court (*d*).

Where an order had been made under this section and the witness raised objections, a further order was made on him directing him to attend before the sheriff of the county at his own expense (*e*).

DEPOSITIONS.

If the Court or the officer of the Court before whom any examination under the Acts and Rules is directed to be held is in any case, and at any stage of the proceedings, of opinion that it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined in shorthand or otherwise, it is competent for the Court or officer aforesaid to make such appointment. The person at whose instance the examination is taken will nominate a person for the purpose, and the person so nominated will be appointed, unless the Court or officer holding the examination otherwise orders. Every person so appointed will be paid a sum not exceeding one guinea a day, and a sum not exceeding 8*d*. per folio of 90 words for any transcript of the evidence that may be required, and such sums will be paid by the party at whose instance the appointment was made, or out of the assets of the company as may be directed by the Court (*f*).

If any person on examination on oath authorized under the Act or in any affidavit or deposition in or about the winding-up of a company or otherwise in or about any matter arising under the Act wilfully and

(*d*) Companies (Consolidation) Act, 1908, s. 227. For summons under this section, *infra*, pp. 1067 and 1068.

(*e*) *Tyne Chemical Co.* (1874), 43 L. J. (CH.) 354.

(*f*) Companies (Winding-up) Rules, 1909, r. 71. See *post*, pp. 1065 and 1066, for form of application for and declaration and notes by a shorthand-writer; an order appointing a shorthand-writer bears a 5*s*. impressed stamp. Order as to fees of July 31, 1908. For form of notes where no shorthand-writer, *infra*, p. 1066.

corruptly gives false evidence, he will be liable to the penalties for wilful perjury (*g*).

MISFEASANCE PROCEEDINGS.

Where in the course of winding-up a company it appears that any person who has taken part in the formation or promotion of a company or any past or present director, manager or liquidator or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

These provisions apply notwithstanding that the offence is one for which the offender may be criminally responsible.

Where, in the case of a winding-up in England, an order for payment of money is made under these provisions, the order is to be deemed to be a final judgment within the meaning of paragraph (*g*) of sub-section (1) of section 4 of the Bankruptcy Act, 1883.

So much of these provisions as refer to promoters, and to property of a company other than money, do not apply to a winding-up in Scotland or Ireland (*h*).

This section does not give any new cause of action, except, perhaps, for interest (*i*), it simply gives a summary remedy against the persons named in the section, where the company would apart from the section have been entitled to bring an action (*k*). It has been said that it does not apply in cases where there has been nonfeasance as opposed to misfeasance (*l*), but this appears to mean nonfeasance which does not amount to a breach of trust (*m*), and so limited it would seem that in all cases where the company would be entitled to bring an action, an application under the section can be made, provided that the person against whom the application is made comes within the category of persons mentioned in the section (*n*).

(*g*) See Perjury Act, 1911, s. 1, which would appear on this point but to re-enact the repealed s. 218, of the Companies (Consolidation) Act, 1908.

(*h*) *Ibid.*, s. 215.

(*i*) *Flitcroft's Case* (1882), 21 C. D. 519.

(*k*) *Coventry and Dixon's Case* (1880), 14 C. D. 660; *Cavendish-Bentinck* v. *Fenn* (1887), 12 A. C. 652; *Liverpool Household Stores Association* (1890), 59 L. J. (CH.) 616; *Forest of Dean Coal Mining Co.* (1878), 10 C. D. 450; *National Funds Assurance Co.* (1878), 10 C. D. 118.

(*l*) *Wedgwood Coal and Iron Co.* (1882), 47 L. T. 612.

(*m*) *Liverpool Household Stores Association* (1890), 59 L. J. (CH.) 616.

(*n*) *Archer's Case*, [1892] 1 Ch. 322: but cp. *Sale Hotel and Botanical Gardens*, 46 W. R. 617, per RIGBY, L.J.

There are, however, exceptions to the rule above set out that an application can only successfully be made under the section where an action could have been brought by the company, for proceedings can be taken under the section where the liquidator has higher rights than the company itself had before winding-up, such are cases of fraudulent preference and of dispositions pending a petition for winding-up, and there may also be other cases, where fresh and independent rights are given to the liquidator by the Act, it is thought, however, that even in these cases the liquidator could usually sue in the name of the company, and that in most of the cases (*o*) under section 215 of the Act where remarks are to be found on the liquidator having fresh and independent rights, it will be found that the rights sought to be enforced were, after all, rights the company itself could have enforced (*p*). The fact that an application involves difficult questions of fact or law is no reason why the Court should decline to deal with it under the section (*q*), though, no doubt, the Court has a discretion as to whether it will make an order under the section, and it has, for instance, refused to make one where the contributories who were the only persons interested were practically unanimous in not desiring it (*r*), and the Court will not, it would seem, having regard to section 193 of the Act, make an order in a voluntary winding-up, unless it is satisfied that so to do is just and beneficial (*s*) ; but it may be doubted whether the Court would now decline to make an order under the section while encouraging and helping the applicant to start an action, as was done in *Bank of Gibraltar and Malta* (*t*). The section does not, however, apply to cases where mere nominal damages could be recovered in an action, as it is aimed not at misfeasance in the abstract, but at misfeasance followed by damage (*u*). Further, the section cannot be called in aid where it sought to enforce not a right of the company, but the right of a private individual, whether he is a creditor or contributory (*x*).

(*o*) See *National Funds Assurance Co.* (1878), 10 C. D. 118; *Flitcroft's Case* (1882), 21 C. D. 519; *National Bank of Wales*, [1899] 2 Ch. 629.

(*p*) See also *Waterhouse* v. *Jamieson* (1870), L. R. H. L. Sc. 29. Of course there are cases which have already been considered (see, *e.g.*, *supra*, pp. 233 and 234, and pp. 997 *et seq.*) where a liquidator will have higher rights against a contributory in his character of contributory than the company had.

(*q*) *Stringer's Case* (1869), 4 Ch. 475, approving *Cardiff Preserved Coal and Coke Co.* v. *Norton* (1866), 2 Eq. 559; (1867), 2 Ch. 405, and disapproving *Royal Hotel Co. of Great Yarmouth* (1867), 4 Eq. 244.

(*r*) *Sunlight Incandescent Co.* (1900), 16 T. L. R. 535.

(*s*) *Rance's Case* (1870), 6 Ch. 104.

(*t*) (1865), 1 Ch. 69.

(*u*) *Cavendish Bentinck* v. *Fenn* (1887), 12 A. C. 652.

(*x*) *Hill's Waterfall Estate and Gold Mining Co.*, [1896] 1 Ch. 947.

Proceedings under the section can be brought not only against directors, but also against *de facto* directors (*y*).

It is thought that the section in speaking of a person who has taken part in the formation or promotion of a company means exactly the same thing as if it had spoken of a promoter, and does not include solicitors and others who, if they have not acted otherwise than in their professional capacity, are not promoters (*z*).

The question who is an officer of a company is one which has occasioned more difficulty. A solicitor employed on the usual terms of charging for the work he does will not be an officer (*a*); but a solicitor employed for a fixed time, and with a fixed salary, or, indeed, it is thought, with a general retainer of any sort, will be an officer (*b*). An auditor, like a solicitor, may or may not be an officer of a company. An auditor employed and remunerated under section 112 of the Act, will, it is thought, always be an officer (*c*), but an auditor called in to do one or more special pieces of work and paid by the job, will not be an officer (*d*).

The bankers of a company will very rarely, if ever, be officers of the company (*e*).

De facto officers are within the section, but the fact that an auditor or solicitor may be an officer of a company will not necessarily make a person who has acted as solicitor or auditor an officer, even though the articles or the Act contain provisions as to solicitors or auditors, which would make the solicitors or auditors of the company officers if duly appointed (*f*). The secretary of a company has been held liable as an officer of the company for moneys given to his private clerk with his knowledge and consent, and to a certain extent by his direction (*g*).

The personal representatives of a director or other person liable under the section, are not liable under the section, and if any relief

(*y*) *Coventry and Dixon's Case* (1880), 14 C. D. 660.

(*z*) See *Great Wheat Polgooth Co.* (1883), 53 L. J. (CH.) 42; and *supra*, pp. 151 and 152, as to the meaning of the expression "a promoter."

(*a*) *Carter's Case* (1886), 31 C. D. 496; *Great Wheal Polgooth Co.* (1883), 53 L. J. (CH.) 42; and see *Carpenter and Bristol Corporation*, [1907] 2 K. B. 617; *Ex parte Valpy and Chaplin* (1872), 7 Ch. 289, would certainly not be followed.

(*b*) *Liberator Permanent Benefit Building Society* (1894), 71 L. T. 406.

(*c*) *Kingston Cotton Mills*, [1896] 1 Ch. 6; *London and General Bank*, [1895] 2 Ch. 166. In *Findlay* v. *Waddell*, [1910] S. C. 670, it was said that an auditor was not an officer within the meaning of s. 164 of the Act.

(*d*) *Western Counties Steam Bakeries and Milling Co.*, [1897] 1 Ch. 617.

(*e*) *Imperial Land Co. of Marseilles* (1870), 10 Eq. 298.

(*f*) *Western Counties Steam Bakeries and Milling Co.*, [1897] 1 Ch. 617.

(*g*) *Mutual Aid Permanent Benefit Building Society* (1883), 49 L. T. 530.

is sought against them it must be obtained in an action (*h*). The official receiver or the liquidator or any creditor or contributory may apply under the section. The official receiver should, when there is a question as to whether he should or should not take proceedings, take the opinion of the Court, for the matter is of a judicial and not of a departmental nature (*i*).

A policy-holder will be a creditor who can apply under the section (*k*), but the Court will not make an order on the application of a fully paid shareholder, or, it is thought, of any other person, where it is clear that such person will not be entitled to participate in any money or other property which may be recovered (*l*). A contributory who has become bankrupt cannot, even though his name is still on the list of contributories, apply under the section, for he has ceased to be a contributory (*m*), and the solicitors of a person to whom the company has been ordered to pay costs cannot apply under the section (*n*).

Claims under this section can be sold or mortgaged (*o*), and where they have been sold or the company has no interest in the equity of redemption the liquidator will not be entitled to proceed under the section without the consent of the purchaser or the mortgagee (*p*). Except in the case of a perfectly solvent company, Vaughan Williams, J., would usually not sanction a scheme of arrangement unless the new company undertook to obey the order of the Court as to any proceedings which the Court might think it right to have taken against officers of the old company (*q*). But this is not the practice now (*qq*). Where misfeasance claims were reserved to the liquidator, and the purchasing company opposed an application for leave to proceed with such claims, the same Judge, being satisfied that there was no desire to screen any one, dismissed the summons (*r*). He would not allow a liquidator to lend his name for proceedings unless the liquidator was satisfied that proceedings should be taken or was acting on the decision of the committee of inspection (*s*). No debt

(*h*) *British Guardian Life Assurance Co.* (1880), 14 C. D. 335; *Felton's Executor's Case* (1865), 1 Eq. 219.

(*i*) *New Zealand Loan and Agency Co.* (1895), 71 L. T. 693.

(*k*) *British Guardian Life Assurance Co.* (1880), 14 C. D. 335.

(*l*) *Cavendish Bentinck* v. *Fenn* (1887), 12 A. C. 652; and see *National Bank of Wales*, [1899] 2 Ch. 629, at p. 678, explaining certain remarks of COTTON, L.J., in *Flitcroft's Case* (1883), 21 C. D. 519.

(*m*) *Cape Breton Co.* (1881), 19 C. D. 77.

(*n*) *Cape Breton Co.* v. *Fenn* (1881), 17 C. D. 198.

(*o*) *Park Gate Waggon Works Co.* (1881), 17 C. D. 234; *Anglo-Austrian Printing and Publishing Union*, [1895] 2 Ch. 891.

(*p*) *Park Gate Waggon Works Co.* (1881), 17 C. D. 234.

(*q*) Practice Note, [1894] W. N. 166. Where such an order is made, moneys recovered in such proceedings will be divisible among members whether they have or have not come into the scheme: *Re Olympia* (1900), 16 T. L. R. 564.

(*qq*) See, however, the order in *Vanguard Motorbus Co.*, 008 of 1909. *infra*, pp. 1316 and 1317.

(*r*) *New Zealand Loan and Agency Co.* (1895), 71 L. T. 693.

(*s*) *Piccadilly Chambers Co.* (1894), 8 Rep. 617; *Anglo-Sardinian Antimony Co.*, [1894] W. N. 156.

will arise on an application under this section till an order for payment has been made, and the assignee of a debt due by the company to a person who is liable to the company under the section will, if the assignment took place before the order to pay, take a clean title to the debt (*t*).

An application under section 215 of the Act must in any Court other than the High Court be made by motion to the Court (*u*). In the High Court the application must be made by a summons returnable in the first instance in Chambers (*x*). Such summons must state the nature of the declaration or order for which application is made, and the grounds of the application, and, unless otherwise ordered by the Court, must be served, in the manner in which an originating summons is required by the Rules of the Supreme Court to be served, on every person against whom an order is sought, not less than eight days before the day named in the summons for hearing the application. Where the application is made by the official receiver or liquidator he may make a report to the Court stating any facts and information on which he proceeds which are verified by affidavit or derived from sworn evidence in the proceedings. Where the application is made by any other person it must be supported by affidavit to be filed by him.

On the return of the summons the Court may give such directions as it thinks fit for the hearing of the summons before the Judge in Court, the taking of evidence wholly or in part by affidavit or orally, and the cross-examination either before the Judge on the hearing in Court or in Chambers of any deponents to affidavits in support of or in opposition to the application (*y*).

Where the application is made by motion, notice of the intended motion must be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion must be served on every person to whom notice of motion is given not less than four days before the hearing of the motion (*z*).

The summons must state distinctly the grounds upon which it is said that the respondent ought to be ordered to pay the money claimed, and why the payments which it is sought to impeach are wrongful or acts of misfeasance for which the directors are responsible (*a*). Claims for misfeasance and for a declaration that the

(*t*) *Ex parte Theys* (1884), 25 C. D. 587; see also *Rhodesia Goldfields*, [1910] 1 Ch. 239, at p. 242; and *Leeds and Hanley Theatre of Varieties*, [1904] 2 Ch. 45.

(*u*) Companies (Winding-up) Rules, 1909, rr. 68 (1).

(*x*) *Ibid.*, rr. 68 (1) and 6 (1) (*h*).

(*y*) *Ibid.*, r. 68.

(*z*) *Ibid.*, r. 69.

(*a*) *New Mashonaland Exploration Co.*, [1892] 3 Ch. 577. The present rule seems to require this. For forms of summons, see *infra*, pp. 1071, 1072, and 1073, and for summons and order for leave to take proceedings, *infra*, p. 1070.

respondents are liable as contributories can be joined in one summons where such a course is not embarrassing (*b*).

The summons has, except where substituted service is ordered, to be served personally, this being the practice in the case of an originating summons, and it must therefore be served as nearly as may be in the manner prescribed by the Rules of the Supreme Court for the personal service of a writ of summons (*c*). It would seem that leave may now be obtained for serving it out of the jurisdiction (*d*). The practice nowadays is for the cross-examination to take place in open Court on the hearing of the summons, though it is on rare occasions taken before the Registrar (*e*). Not infrequently an order is obtained giving the parties leave to adduce oral evidence (*ee*), but on an appeal the Court of Appeal will be very slow to allow a party to adduce further evidence, as he will have seen what is the weak spot in his case (*f*).

Where in the course of the proceedings in a winding-up by the Court an order has been made for the public examination of persons named in the order pursuant to section 175 of the Act, and it appears from the examination that the persons examined, or some of them, have misapplied, or retained, or become liable, or accountable for moneys or property of the company, or been guilty of misfeasance or breach of trust in relation to the company, then in any proceedings subsequently instituted under section 215 of the Act, for the purpose of examining into the conduct of such persons, or any of them, and compelling repayment or restoration to the company of any moneys or property, or contribution by way of compensation to the assets of the company by such persons or any of them, the verified notes of the examination of each person who was examined under the order will, subject as hereinafter mentioned, and to any order or directions of the Court as to the manner and extent in and to which the notes are to be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made who, under section 175 of the said Act, and the order for the public examination, was or had the opportunity of being present at and taking part in the examination. Before any such notes of a public examination are used on any such application, the person

(*b*) *Wragg, Ltd.*, [1897] 1 Ch. 796; see also *Innes & Co.*, [1903] 2 Ch. 254, where this course was taken without objection.

(*c*) O. 67, r. 5, R. S. C.

(*d*) O. 11, r. 8A., R. S. C. See *supra*, pp. 1027 and 1028, as to service.

(*e*) The statement of practice in *Faure Electric Accumulator* (1888), 58 L. T. 42, relates the practice before the Companies (Winding-up) Act, 1890, came into force, and is not in accordance with the existing practice.

(*ee*) See *infra*, p. 1072, for an order for oral evidence.

(*f*) *Weston's Case* (1879), 10 C. D. 579.

intending to use the same must, not less than fifteen days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to read against him, and furnish him with copies of such notes, or parts of notes (except notes of the person's own depositions), and every person against whom the application is made is at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application (*g*).

It has been argued that this rule is *ultra vires*, but it has been held not to be; by it, notes of a public examination are merely treated as an affidavit, and the deponent must be produced for examination if required (*h*).

On applications under the section it is not competent for the respondent to avail himself of any set-off (*i*), and he cannot avail himself of the third party procedure (*k*), he can, however, avail himself of the Statute of Limitations (*l*), and, even apart from any Statute of Limitations, if the liquidator has made a long delay in taking proceedings, such delay may in some cases be a defence to the respondent, if he has been injured by the delay (*m*), but not, it is thought, otherwise (*n*). A summons may be taken out against any person liable or alleged to be liable, even where there are others who are not parties, equally liable with the person summoned (*o*).

Where misfeasance proceedings are taken against a person, it is open for him, without going into the facts, to take out a summons asking that the misfeasance proceedings against him may be stayed on the ground that he is not an officer or other person against whom such proceedings can be taken under the section (*p*), and a similar application has been successful where the liquidator had sold all interest in the property claimed by the misfeasance proceedings (*q*). Such an application would seem to resemble a demurrer, and should, it is thought, only be made where the misfeasance summons and the

(*g*) Companies (Winding-up) Rules, 1909, r. 70.

(*h*) *London and General Bank (No. 1)* (1894), 63 L. J. (CH.) 853.

(*i*) *Ex parte Kelly* (1882), 21 C. D. 492; *Flitcroft's Case* (1882), 21 C. D. 519; *Carriage Co-operative Supply Association* (1884), 27 C. D. 322; *Leeds and Hanley Theatre of Varieties*, [1904] 2 Ch. 45.

(*k*) *Land Securities Co.* (1895), 13 Rep. 341; (1895), 2 Mans. 127.

(*l*) *Lands Allotment Co.*, [1894] 1 Ch. 616.

(*m*) *Mammoth Copperopolis of Utah* (1881), 50 L. J. (CH.) 11; *Stringer's Case* (1869), 4 Ch. 475.

(*n*) *Alexandra Palace Co.* (1882), 21 C. D. 149; *Re Sharpe*, [1892] 1 Ch. 154.

(*o*) *British Guardian Life Assurance Co.* (1880), 14 C. D. 335, distinguishing *Carpenter's Executor's Case* (1852), 5 De G. & Sm. 402.

(*p*) Cp. *Western Counties Steam Bakeries and Milling Co.*, [1897] 1 Ch. 617; *Kingston Cotton Mill Co.*, [1896] 1 Ch. 6.

(*q*) *Park Gate Waggon Works Co.* (1881), 17 C. D. 234.

affidavits, etc., in support of it do not show a cause of action, and no affidavit should be filed in support of the summons to stay.

With regard to the interest ordered to be paid under the section. In the case of fraud, interest will usually be given at 5 per cent. per annum from the date of the fraudulent action (r), though in *Archer's Case* (s), interest was only given from the date of the summons. Where persons have honestly, though wrongfully, distributed property of the company, interest will only be given at 4 per cent. per annum (t). The Court, however, has a wide discretion, and in *Gluckstein* v. *Barnes* (u), the Court of Appeal gave interest at 3 per cent. per annum. Income-tax cannot be deducted from the interest so payable (r). The Court will usually not charge interest on the rents, profits or income of property recovered (x). In an Irish case (y) the respondent was ordered to pay the costs of a misfeasance summons, even though he had restored the moneys misapplied.

A liquidator cannot be ordered to give security for the costs of a misfeasance summons, but in a proper case the Court will order him to pay the costs personally (z). A liquidator can usually not be required to make an affidavit of documents, but a respondent to a misfeasance summons should apply to the liquidator to let him see such documents as he requires for the purposes of his case (a).

Hitherto where the facts were complicated a misfeasance summons was almost always more favourable to the respondent than an action would have been. Apart from the difficulty of setting out the applicant's case clearly and forcibly on a summons, the respondent had a far wider range for his defence than if he were tied down by a defence in an action. On the other hand a person applying for leave to bring an action, where misfeasance proceedings could be brought, was faced with the following points, namely: (1) in such an action security for costs will usually be ordered under section 278 of the Act; and (2) the defendant to the action may have some set-off of which he could avail himself in the action. As has already been shown, on a misfeasance summons there can neither be set-off nor as against a liquidator an order for security for costs (aa). In *A. Carter and Co.* (aaa), however, NEVILLE, J., stated that in future where the facts were complicated he would require points of claims and points of defence to be delivered on a misfeasance summons.

(r) *National Bank of Wales*, [1899] 2 Ch. 629. See Order on pp. 1073 *et seq.*

(s) [1892] 1 Ch. 322.

(t) *Re Sharpe*, [1892] 1 Ch. 154.

(u) [1900] A. C. 240, at p. 255, where Lord MACNAGHTEN says he does not understand why, as this was a case for penal interest, *i.e.* at 5 per cent. per annum. See Order on p. 1072.

(x) *Silkstone and Haigh Moor Coal Co.* v. *Edey*, [1900] 1 Ch. 167.

(y) *David Ireland & Co.*, [1905] 1 Ir. 133.

(z) *Strand Wood Co.*, [1904] 2 Ch. 1, commenting on *W. Powell and Sons*, [1896] 1 Ch. 681; cp. also *Brazilian Rubber Plantations and Estates*, [1911] 1 Ch. 425.

(a) *Mutual Society* (1883), 22 C. D. 714; and see *Gooch's Case* (1871), 7 Ch. 207. It was also decided in the first cited case that where the evidence contains a variety of charges and there are several respondents, the applicant cannot be required to show which charges apply to any particular respondent. For summons and order for inspection, see p. 1070 and 1071; and see p. 1072 for notice of intention to use documents.

(aa) If the winding-up is in a county court, questions of jurisdiction will usually arise if an action is brought.

(aaa) 00213 of 1910, March 14th, 1912.

If proceedings in bankruptcy are taken on an order on misfeasance proceedings, the bankruptcy notice and petition should be headed *ex parte* the company, and not *ex parte* the liquidator, so as to allow any counterclaim, set-off, or cross-claim which the debtor may have against the company to be set up. The costs of an unsuccessful appeal from a misfeasance order should not be included in the same bankruptcy notice as the sum directed to be paid by such order (*b*). Moneys payable under an order based on breach of trust or under an order for an account can be proved for in bankruptcy, and a discharge will release the bankrupt, except in the case of a fraudulent breach of trust; if the order is for unliquidated damage for tort there can be no proof and no release (*bb*). It is not necessary to obtain leave to appeal from an order on a misfeasance summons (*c*).

ORDER DIRECTING A PUBLIC EXAMINATION (*d*).

(*Title.*)

UPON reading the reports of the Official Receiver in the above matter, dated respectively the day of 19 , the day of 19 , and ,

IT IS ORDERED that the several persons whose names and addresses are set forth in the schedule hereto do attend before the Court on a day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the Company, and as to the conduct of the business of the Company, and as to their conduct and dealings as directors or officers of the Company.

THE SCHEDULE REFERRED TO.

Name.	Address.	Connection with the Company.

ORDER DIRECTING PUBLIC EXAMINATION TO BE TAKEN BEFORE DISTRICT REGISTRAR NAMED BY THE LORD CHANCELLOR FOR THE PURPOSE.

(*Title.*)

UPON the application by summons dated the 19th October, 1911, of H. de V.B. the Official Receiver and Liquidator of the above-named Company and upon hearing the applicant in person and upon reading the order dated the 20th June, 1911 and the report of the Deputy Official Receiver dated the 16th October, 1911 :—

IT IS ORDERED that notwithstanding the said Order of the 20th June, 1911 the public examination referred to in the said Order be taken before

(*b*) *Re Bassett* (1895), 2 Mans. 177.

(*bb*) Cp. *The Joint Stock Trust and Finance Corporation*, "Times" Newspaper, January 12th, 1912. No trustee had been appointed in this case, but the applicants being willing to take the risk of a trustee disputing the order, were allowed to proceed.

(*c*) Judicature (Procedure) Act, 1894, s. 1 (1), (*b*), (iii).

(*d*) Companies (Winding-up) Rules, 1909, Appendix, Form 31.

the District Registrar of the High Court of Justice at Cardiff the said District Registrar having been named by the Lord Chancellor for the purpose. [*Thomas Rees & Co., Cardiff, Ltd.*, 00339 of 1908. SWINFEN EADY, J., October 26th, 1911.]

INFORMAL NOTICE SENT BY THE OFFICIAL RECEIVER TO A PERSON AGAINST WHOM AN ORDER FOR PUBLIC EXAMINATION HAS BEEN MADE.

O.R. C.A. No. 196A.

Notice of order for Public Examination.

Please address all communications respecting this matter to the Official Receiver in Companies Liquidation, and quote the name of the Company.

TELEGRAMS :—"*Concluding, London.*"

Board of Trade.

Department of the Official Receivers in Companies Liquidation.

33, Carey Street,
Lincoln's Inn,
London, W.C., 19 .

In the Matter of the
Limited.

SIR,

I am desired by the Official Receiver to inform you that on the an order for a Public Examination was made in the above matter, and that you are one of the persons ordered to be examined.

You will receive notice of the time and place appointed for holding the examination when the same has been fixed.

I am, Sir,
Your obedient Servant,

Assistant Official Receiver.

ORDER APPOINTING A TIME FOR PUBLIC EXAMINATION (c)

(*Title.*)

UPON the application of the Official Receiver in the above matter, it is ordered that the public examination of who, by the Order of the Court dated the day of 19 , was directed to attend before to be publicly examined, be held at* on the day of 19 , at o'clock in the noon.

* Insert the place for the Examination.

And it is ordered that the above-named do attend at the place and time above-mentioned.

Dated this day of 19 .

NOTE.—Notice is hereby given that if you, the above-named fail, without reasonable excuse, to attend at the time and place aforesaid, you will be liable to be committed to prison without further notice.

ORDER DISCHARGING ORDER FOR PUBLIC EXAMINATION.

(*Title.*)

UPON Motion this day made unto this Court by Counsel for F.G.P. of Street E.C. H.J.L. W.O.T.L. J.A.B. and J.L. And upon

(c) Companies (Winding-up) Rules, 1909, Appendix, Form 32. This order is, however, not now used in London; an informal notice is sent in the first instance, and then when a day is fixed a formal notice in Form 33 (*infra*, p. 1064) is given.

hearing Counsel for George Stapylton Barnes the Official Receiver and Liquidator of the above-named Company. And upon reading the Order to Wind-up dated 3rd April 1895 the Order dated 19th February 1896 the Affidavit of J.A.B. filed 16th March 1896 the Affidavit of J.L. and the Affidavit of T.L. both filed the 20th March 1896 and the Affidavit of T.L.W. filed 21st March 1896 and the Exhibits in the said Affidavits or some of them respectively referred to.

THIS COURT DOTH ORDER that the said Order dated 19th February 1896 be discharged.

AND IT IS ORDERED that the said George Stapylton Barnes do pay to the said F.G.P. his Costs and the said H.J.L. W.O.T.L. J.A.B. and J.L. their Costs of their respective Applications such Costs to be taxed with liberty to the said George Stapylton Barnes to recoup himself the amount of the said Costs so to be paid by him out of the assets of the above-named Company. *Re The Hounslow Brewery Co., Ltd.*, 0078 of 1895. [VAUGHAN WILLIAMS, J., April 15th, 1896.]

NOTICE OF DAY APPOINTED FOR PUBLIC EXAMINATION FOR GAZETTING (*f*).

Name of Company.	Address of Registered Office.	Court.	Number of Matter.	Date fixed for Examination.	Names of Persons to be Examined.	Hour.	Place.

NOTICE TO ATTEND PUBLIC EXAMINATION (*g*).

(*Title.*)

Whereas by an order of this Court, made on the day of 19 , it was ordered that you, the undermentioned should attend before the Court on a day and at a place to be named for the purpose, and be publicly examined as to the promotion or formation of the Company, and as to the conduct of the business of the Company, and as to your conduct and dealings as.*

* Insert director or officer [or as the case may be].

And whereas the day of 19 at o'clock in the noon, before the sitting at has been appointed as the time and place for holding the said examination.

Notice is hereby given that you are required to attend at the said time and place, and at any adjournments of the examination which may be ordered, and to bring with you and produce all books, papers, and writings and other documents in your custody or power in any wise relating to the above-named Company.

And take notice that if you fail, without reasonable excuse, to attend at such time and place, and at the adjournments of the said public

(*f*) Companies (Winding-up) Rules, 1909, Appendix, Form 103 (3).

(*g*) *Ibid.*, Form 33.

examination which may be ordered, you will be liable to be committed to prison without further notice.

Dated the day of 19 .

To

Official Receiver.

APPLICATION FOR APPOINTMENT OF SHORTHAND-WRITER TO TAKE DOWN NOTES OF PUBLIC EXAMINATION AND ORDER THEREON (*h*).

(*Title.*)

Ex parte the Official Receiver.

I, the Official Receiver, herein, do hereby, pursuant to Rule 71 of the Companies (Winding-up) Rules, 1909, apply to the Court for an order for the appointment of of in the county of to take down in shorthand the notes of examination of at their public examination, the costs of taking such notes, and of making a transcript thereof, to be paid in accordance with Rule 71.

Dated this day of 19 .

Official Receiver.

Before

Upon the application of the Official Receiver the Court hereby appoints of in the county of to take down in shorthand the notes of examination of the persons mentioned in the above application at their public examination, or at any adjournment thereof, pursuant to Rule 71 of the Companies (Winding-up) Rules, 1909, the cost of taking such notes, and of making a transcript thereof, to be paid in accordance with Rules 71.

Dated this day of 19 .

DECLARATION BY SHORTHAND-WRITER (*i*).

(*Title.*)

Before

I, , of , in the county of , the shorthand-writer appointed by this Court to take down the examination of , do solemnly and sincerely declare that I will truly and faithfully take down the questions and answers put to and given by the said in this matter, and will deliver true and faithful transcripts thereof as the Court may direct.

Dated this day of 19 .

[Declared before me at the time and place above-mentioned.]

NOTES OF PUBLIC EXAMINATION WHERE A SHORTHAND-WRITER IS APPOINTED (*k*).

(*Title.*)

Public examination of *

Before at the Court this day of 19 .

* Mr. an officer [*or as the case may be*] of the above-named Company.

The above-named , being sworn and examined at the time

(*h*) Companies (Winding-up) Rules, 1909, Appendix, Form 34. An order appointing a shorthand-writer bears a 5*s*. impressed stamp: Order as to fees of July 31, 1908.

(*i*) Companies (Winding-up) Rules, 1909, Appendix, Form 35.

(*k*) *Ibid.*, Form 36.

and place above-mentioned, upon the several questions following being put and propounded to him, gave the several answers thereto respectively following each question, that is to say :—

A.

These are the notes of the public examination referred to in the memorandum of public examination of , taken before me this day of 19 .

NOTES OF PUBLIC EXAMINATION WHERE A SHORTHAND-WRITER IS NOT APPOINTED (*l*).

(*Title.*)

* Mr. an officer [*or as the case may be*] of the above-named Company.

Public examination of *

Before at the Court this day of 19 .

The above-named , being sworn and examined at the time and place above-mentioned, upon his oath saith as follows :—

A.

These are the notes of the public examination referred to in the memorandum of public examination of , taken before me this day of 19 .

REPORT TO THE COURT WHERE PERSON EXAMINED REFUSES TO ANSWER TO SATISFACTION OF REGISTRAR OR OFFICER (*m*).

* *E.g.* A.B., a person ordered to attend for examination.
† Here state question.
‡ Witness.
§ Here insert answers (if any).

(*Title.*)

At the [public] examination of * held before me this day of 19 , the following question was allowed by me to be put to the said [ ].

Q. †

The refused to answer the said question.

(or) The ‡ answered the said question as follows :—

A. §

I thereupon named the day of 19 , at as the time and place for such [refusal to] answer to be reported to the Hon. Mr. Justice [*or* His Honour Judge].

Dated this day of 19 .

Registrar.
[*or as the case may be.*]

FORM OF SUMMONS FOR PRIVATE EXAMINATION.

(*Title.*)

LET ALL PARTIES concerned attend at the office of the Registrar at the Bankruptcy Buildings, Carey Street, London, on the day of 19 , at o'clock in the noon, on the

(*l*) Companies (Winding-up) Rules, 1909, Appendix, Form 37.

(*m*) *Ibid.*, Form 38.

hearing of an application of the Official Receiver, the [Provisional] Liquidator of the above-named Company, for an order that
be examined under the provisions of Section 174 of the Companies (Consolidation) Act, 1908.

Dated the day of 19 .

This Summons was taken out by the Official Receiver in Companies Liquidation, 33, Carey Street, Lincoln's Inn, W.C.

FORM OF ORDER ENDORSED ON ABOVE SUMMONS.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. REGISTRAR
day the day of 19 .
Appeared,
Official Receiver in person.
Read,
Order to wind-up dated
Report of Applicant dated

Order, Liberty to Applicant to examine person named in the within Summons under Section 174 of the Companies (Consolidation) Act, 1908, and that Summons do issue accordingly.

Registrar.

ORDER ON PERSONS TO ATTEND AT CHAMBERS TO BE EXAMINED (n).

(*Title.*)

* State place of examination.

A.B. of &c., and E.F. of &c., are hereby severally ordered to attend at *, in the county of on the day of at of the clock in the noon, to be examined on the part of the Official Receiver [*or* the Liquidator] for the purpose of proceedings directed by the Court to be taken in the above matter. [And the said A.B. is hereby required to bring with him and produce, at the time and place aforesaid, the documents mentioned in the schedule hereto, and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the above-named Company.]

Dated this day of 19 .

This order was made on the application of Messrs. C. and D., of in the county of , Solicitors for

The Schedule above referred to.

SUMMONS UNDER SECTION 227 OF THE ACT.

(*Title and Formal Parts.*)

for an order

(1) Directing the sheriff of the county of Renfrewshire in the part of the United Kingdom called Scotland to summon A.B. of a person now resident in the said county before him at a time and place to be specified

(n) Companies (Winding-up) Rules, 1909, Form 39.

in the summons, for examination on oath as a witness in regard to the trade dealings affairs and property of the above-mentioned Company which is now in course of being wound-up [and to produce the following books and papers which are now in his possession or power that is to say]. Cp. *Tyne Chemical Co.* (1874), 43 L. J. Ch. 354.

ORDER FOR WARRANT OF ARREST OF PERSON WHO HAS FAILED TO ATTEND PUBLIC EXAMINATION.

(*Title.*)

UPON the Application of S. W. the Official Receiver and Liquidator of the above-named Company by Summons dated the 23rd May 1898 and upon hearing the Applicant in person and upon reading the Order to wind-up the said Company dated the 9th February 1898 the Order dated the 4th May 1898 and the Affidavit of J.C.D. filed this day and the Exhibits therein referred to and by which said Affidavit it has been made to appear to the satisfaction of the Court that by the said Order dated the 4th May 1898 A.B. was directed to attend before a Registrar in Bankruptcy of the High Court on a day to be named for the purpose and be publicly examined as to the matters referred to in the said Order and that the 16th and 17th days of May 1898 at 11 o'clock in the forenoon respectively Bankruptcy Buildings Carey Street London were appointed as the days time and place for holding the said Examination and it has also been duly proved by the said Affidavit of J.C.D. that the said Order dated the 4th May 1898 and the notice to attend such Examination on the 16th and 17th May 1898 at 11 o'clock respectively had been duly served upon the said A.B. and it appearing that the said A.B. without good cause shown failed to attend on the said 16th and 17th May 1898 in pursuance of the said Order of the 4th May 1898. It is Ordered that a Warrant do issue for the arrest of the said A.B. [*Re London Joint Stock Trust, Ltd.*, 0025 of 1908. Mr. Registrar HOOD, May 24th, 1898.]

WARRANT AGAINST PERSON WHO FAILS TO ATTEND EXAMINATION (*o*).

(*Title.*)

* Name of person required to attend.
† Place of examination.
‡ Name or title of officer before whom examination is directed to be held.

To X.Y., the officer of this Court [*or where warrant issues from a County Court*, to the high bailiff and others the bailiffs of the said Court] and all peace officers within the jurisdiction of the said Court, and to the governor or keeper of the [*here insert the prison*].

Whereas by evidence taken upon oath, it hath been made to appear to the satisfaction of the Court that by order of the Court, dated the day of 19 , and directed to * he was directed to attend personally at the † and be examined before ‡ , which order was afterwards, as hath been duly proved on oath, duly served upon the said * [*or*, that

(*o*) Companies (Winding-up) Rules, 1909, Appendix, Form 40. The form only applies to a public examination under s. 175 and not to a private examination under s. 174.

there is probable reason to suspect and believe that the said * , has absconded and gone abroad [*or* quitted his place of residence, *or*] is about to go abroad [*or* quit his place of residence] with a view of avoiding examination under the Companies (Consolidation) Act, 1908.]

And whereas the said * did without good cause fail to attend on the said day of 19 , for the purpose of being examined, according to the requirements of the said order of this Court made on the day of 19 , directing him so to attend.

These are therefore to require you the said [*or* high bailiff, bailiffs, and others], to take the said * and to deliver him to the governor or keeper of the above-named prison, and you the said governor or keeper to receive the said * and him safely to keep in the said prison until such time as this Court may order.

Dated this day of 19 .

ORDER TO ATTEND EXAMINATION AND ANSWER QUESTIONS WHERE SOLICITOR OF EXAMINEE IS ACTING IN AN ACTION IN WHICH INFORMATION OBTAINED ON EXAMINATION IS LIKELY TO BE USEFUL.

(*Title and Formal Parts.*)

The Court doth order that the said J.D.H. do at his own expense attend before the Registrar at the Bankruptcy Buildings Carey Street London on day the day of at o'clock in the noon for the purpose of being further examined and of answering all questions that the said Registrar may allow to be put to him on behalf of the said Liquidator and it is ordered that the said H.H. (*p*) is not to be allowed to be present at such further examination and it is ordered that on any such further examination the Registrar may require the managing or other clerk of the said H.H. either to withdraw from such examination or to give his undertaking to the Registrar to use any information he may acquire at such examination for the purpose only of the re-examination of the said J.D.H. and not to disclose or allow to be disclosed to any one without the leave of the Court any information he may so acquire and at the close of such examination to forthwith destroy all notes taken by him at such examination but the said managing or other clerk of the said H.H. is to be at liberty to disclose such information to the said H.H. upon the said H.H. first giving a similar undertaking to the said Registrar. And it is ordered that the costs of the Liquidator the said J.G. occasioned by the refusal of the said J.D.H. to answer the questions put to him at his said examination on the 7th February 1902 be taxed and paid by the said J.D.H. and the said J.D.H. by his counsel applying for leave to appeal from this order it is ordered that the said J.D.H. be at liberty to appeal if so advised (*q*). *London and Northern Bank, Haddock and Hoyles Cases*, [1902] 2 Ch. 73, 00408 and 00410 of 1899. BYRNE, J., March 6th, 1902.

(*p*) The solicitor.

(*q*) The application was by motion to reverse the ruling of Mr. Registrar Hood, disallowing certain questions and for an order on the witness to answer them. It was supported by a report of the registrar setting out the facts.

FORM OF APPLICATION BY LIQUIDATOR FOR LEAVE TO BRING MISFEASANCE PROCEEDINGS.

In the High Court of Justice,
Companies (Winding-up).
Mr. Justice Neville.

In the Matter of the Companies Act 1862 to 1907
and
In the Matter of the Brazilian Rubber Plantations and Estates Ltd.

Let all parties concerned attend at the office of the Registrar Companies (Winding-up) Bankruptcy Buildings Carey Street London on Thursday the 10th day of June 1909 at 12 o'clock at noon on the hearing of an application of the Official Receiver and Liquidator of the above-named Company for an order that the Liquidator may be at liberty to commence proceedings against the directors and promoters of the Brazilian Rubber Plantations and Estates Ltd. for misfeasance in such manner as the Liquidator may be advised.

Dated

This Summons was taken out etc.

Order Endorsed on above Summons.

In the High Court of Justice,
Companies (Winding-up).
Mr. Registrar Hood.
Thursday the 10th day of June 1909.
Appeared the solicitors for the applicant.
Read order to wind-up dated 14th January 1908.
Order Leave as asked by the within Summons.

SUMMONS TO GIVE INSPECTION OF DOCUMENTS TO RESPONDENTS TO MISFEASANCE SUMMONS.

In the High Court of Justice,
Companies (Winding-up).
Mr. Justice Neville.

No. 00317 of 1907.

In the Matter of the Companies Acts 1862 to 1907
and
In the Matter of The Brazilian Rubber Plantations and Estates Limited.

Let the Official Receiver attend at the Chambers of the Registrar, Companies (Winding-up) Bankruptcy Buildings Carey Street London on Thursday the 8th day of July 1909 at o'clock in the noon on the hearing of an application of A.P.F.A. for an order that the Official Receiver do give inspection of all documents in his possession so far as relates to the Respondent's Case.

Dated the 8th day of July 1909.

This Summons was taken out by S. & R. of E.C. Solicitors for the Applicant

To Messrs. N. B. & K. Solicitors for the Official Receiver.

NOTE.—If you do not attend either in person or by your Solicitor at the time and place above-mentioned such order will be made and proceedings taken as the Judge (or Registrar) may think just and expedient.

ORDER ENDORSED ON ABOVE SUMMONS.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. REGISTRAR HOOD.
Thursday the 8th day of July 1909.

Appeared the Solicitors for the Applicant and for the Official Receiver and Liquidator of the Company.

Read Order to wind-up dated 14th January 1908 and the Summons issued on the 26th June 1909.

Order giving liberty to the Applicant and to the other Respondents to the above-mentioned Summons to inspect all such documents in the possession of the Official Receiver and Liquidator of the Company as are material to the several Respondents Cases respectively.

Liberty to apply.

H. J. HOOD,
Registrar.

MISFEASANCE SUMMONS.

(*Title.*)

Let E.F. of attend at the offices of the Registrar at the Bankruptcy Buildings Carey Street London on day the day of 19 , at o'clock in the noon on the hearing of an application of C.D. of the Liquidator of the above-named Company for the following declarations and Order.

(1) That it may be declared that the said E.F. who with G.H. of and I.J. of took part in the formation and promotion of the above-named Company and was also a director thereof together with the said G.H. and I.J. was guilty of misfeasance or breach of trust in that he and the said G.H. and I.J. being such promoters and directors as aforesaid obtained and retained for their own use and benefit out of the purchase money paid by the above-named Company for the property known as Blackacre the sum of £ which was divided among them as follows that is to say the said E.F. the sum of £ the said G.H. the sum of £ and the said I.J. the sum of £ .

(2) That it may be declared that the said E.F. is liable to contribute to the assets of the said Company as compensation for the said misfeasance or breach of trust the above-mentioned sum of £ so secretly obtained and retained as aforesaid and also any further sum which upon such inquiry in that behalf as the Court may think fit to direct shall be found to have been so secretly obtained and retained out of the said purchase money together with interest at the rate of 5 per cent. per annum on the sum or sums for which he shall be declared liable as from the respective dates when the amounts making up the same were received and that he may be ordered to pay the said sums together with such interest to the applicant as Liquidator of the said Company.

(3) That the said E.F. may be ordered to pay to the applicant his costs of and incidental to this application.

(4) Or that such other order may be made in the premises as this Court may think fit.

Dated

This Summons was taken out etc.

NOTICE OF INTENTION TO USE DOCUMENTS AS EVIDENCE.

(*Title.*)

TAKE NOTICE that C.D. the Liquidator of the above-named Company intends to read in evidence the following documents that is to say [here follow documents].

ORDER FOR ORAL EVIDENCE.

(*Title.*)

Upon the application by summons dated by M.G. the respondent to the summons herein issued on the day of 19 and upon hearing Counsel for the applicant and for G.S.B. the Official Receiver and Liquidator of the above-named Company and upon reading the order to wind-up dated an order sanctioning a scheme of arrangement dated .

It is ordered that upon the hearing of the above-mentioned summons the said M.G. and the said G.S.B. shall be at liberty to adduce oral evidence.

[*Re Olympia, Ltd.* (regd. 1893). 00131, 00136, 00138 of 1895. Mr. Registrar Hood.]

January 13th, 1898.

ORDER ON MISFEASANCE SUMMONS.

This Court doth order that the judgment dated the 17th February 1898 be discharged and it is ordered that the Respondent M.G. do pay to the said G.S.B. as such Official Receiver [and Liquidator] (*r*) the sum of £ together with interest thereon as follows at the rate of 3 per cent. per annum, from the 13th September 1893 on £ part thereof and from the 18th May 1894 on £ the remaining part thereof the said G.S.B. by his counsel undertaking not to distribute the same if notice of appeal to the House of Lords be given within three weeks from the date of this order—and it is ordered that the said M.G. do pay to the said G.S.B. his costs of the said judgment dated the 17th February 1898 and of this appeal such costs to be taxed by the Taxing Master. [*Re Olympia, Ltd.* (regd. 1893), C. A. May 26th, 1898. 00131, 00136, 00138 of 1895, [1898] 2 Ch. 153, S. C. *sub nom. Gluckstein* v. *Barnes*, [1900] A.C. 240.]

(*r*) These words are omitted in the order.

ANOTHER FORM OF MISFEASANCE SUMMONS.

(*Title and Formal Parts.*)

(1) A declaration that A.B. a former director of the above-named Company was as such director guilty of misfeasance and breach of trust in authorizing and sanctioning the payment to the shareholders of the above-named Company of dividends out of capital.

(2) That all necessary accounts and inquiries may be taken for ascertaining what sums the said A.B. is liable to contribute to the assets of the Company by way of compensation in respect of such misfeasance and breach of trust as aforesaid and that on taking and making such accounts and inquiries the whole period during which the said A.B. acted as such director as aforesaid may be considered notwithstanding the fact that he commenced to act as such director more than six years before the date of the issue of this summons on the ground that the said A.B. fraudulently issued or caused to be issued in each year of such directorship balance sheets which to his knowledge concealed the true state of affairs of the Company and which made it appear though such was not the case as he well knew that the Company was in a position to pay the dividends which it did pay and that the losses which the Company suffered by reason of such misfeasance and breach of trust as aforesaid were caused by the false and fraudulent balance sheets issued or caused to be issued by the said A.B. as aforesaid.

(3) That the said A.B. may be ordered to contribute to the assets of the Company and to pay to the said C.D. as such Liquidator as aforesaid by way of compensation for such misfeasance and breach of trust as aforesaid all sums that he may be found liable to contribute to such assets on taking and making such accounts and inquiries as aforesaid with interest on such sums at the rate of 5 per cent. per annum as from the several dates when the same were respectively wrongfully paid away until the date of repayment.

(4) That the said A.B. may be ordered to pay to the said C.D. his costs of and incidental to this application.

ANOTHER ORDER ON MISFEASANCE SUMMONS.

(*Title.*)

The application by originating summons dated the 14th July 1895 by C.E.D. the Liquidator appointed in the voluntary winding-up of the above-mentioned Company that it might be declared that the Respondent J.C. was guilty of misfeasance or breach of trust (1) in authorizing sanctioning etc. [here is set out the rest of the prayer of the summons] which upon hearing the solicitors for the applicant and for the respondent J.C. in chambers was adjourned to be heard in Court coming on on the
to be heard accordingly and upon hearing counsel for the applicant C.E.D. for the respondent J.C. and for the M.B. of E. and W. Ltd. who in pursuance of the leave of the Court given on the   have been added as applicant to the said summons and upon reading the said originating summons the *London Gazette* of the   1893 containing a notice of the passing of the resolutions for the voluntary winding-up of the above-mentioned Company and appointing C.E.D. and T.C. liquidators thereof

and the *London Gazette* of appointing the said C.E.D. sole Liquidator of the above-mentioned Company the order dated the the two several affidavits of [here is set out the affidavit evidence] and upon hearing the evidence of the several persons named in the first schedule hereto on their examination taken orally before the Court on the several days set opposite their respective names in the second column of the said first schedule and upon [here are set out particulars of the documents admitted in evidence and rejected by reference to the schedules to the order]. This Court doth order that the respondent the said J.C. is liable to make good to the assets of the above-named Company the sum of £37,000 in respect of dividends recommended by the Board of Directors to and declared at meetings of the said Company and paid out of the Company's funds in the years of which the following are particulars *videlicet.*

£ the amount of *interim* dividend declared on 1st July 1887.

£ the amount of annual dividend declared on [here are set out particulars of further dividends] together with interest on the amounts of such respective dividends or parts of dividends at the rate of 5 per cent. per annum from the date when such respective dividends or parts of dividends were paid until payment. And it is ordered that the respondent J.C. do on or before the 1st March 1899 or subsequently within four days after service of this order on him pay to the applicant C.E.D. as such liquidator as aforesaid the sum of £57,000 (*s*) (the particulars of which are set out in the 4th schedule hereto) together with interest on the said sum of £37,000 at the said rate of 5 per cent. per annum from the said 1st March 1899 until payment and it is ordered that the respondent J.C. do pay to the said C.E.D. the costs of the said application except so far (if at all) as such costs have been increased by the inclusion of claims relating to improper advances to directors such costs including therein the costs of the shorthand note of the proceedings on the hearing of the said application and the transcript thereof and the necessary copies for counsel and the judge to be taxed. And it is ordered that the costs of the separate application by the said M.B. of E. and W. Ltd. on the said application be taxed and paid by the applicant the said C.E.D. out of the assets of the above-mentioned Company and this order is to be without prejudice to the right (if any) the said J.C. may have as to the repayment to him by the shareholders of the above-mentioned Company of any sums the said respondent may pay pursuant to this order in respect of the said dividends so paid as aforesaid and the applicant the said C.E.D. is to be at liberty if so advised to apply for an inquiry as to what advances if any were made by the above-named Company or J.P.H. or J.C. or either of them during the years 1889 and 1890 without or upon insufficient security for which the respondent J.C. ought to be held liable but the costs of such inquiry if applied for and proceeded with are reserved and the respondent the said J.C. by his counsel applying for a stay of execution pending an appeal by him from this order and the said J.C. having given security for the sum of £37,000 to the satisfaction of the Registrar by

(*s*) Being the sum of £37,000 with interest at 5 per cent. per annum on the sums of which such total sum was composed from payment to March 1, 1899.

entering into a bond dated together with the N.P. B. of E. Ltd. as his sureties which has duly been enrolled and the respondent the said J.C. having given notice of appeal from this order it is ordered that execution and all proceedings under or in pursuance of this order be stayed until such appeal has been heard or otherwise disposed of and this Court doth not think fit to make any further or other order in the premises. [Then follow the schedules the first three naming witnesses and documents received in evidence or rejected the fourth showing how the sum of £57,000 was made up.] [*National Bank of Wales*, 00161 of 1895, [1899] 2 Ch. 629. WRIGHT, J., December 7th, 1898.]

ANOTHER FORM OF ORDER ON MISFEASANCE SUMMONS.

(*Title.*)

The application by summons dated the 25th January 1910 of M.H.M. the Liquidator of the above-named Company which upon hearing Counsel for the Applicant and the Solicitor for H.S. the Respondent to the said Summons in Chambers was adjourned to be heard in Court coming on the 29th November, the 6th, the 13th, the 20th December 1910 and this day to be heard accordingly and upon hearing Counsel for the Applicant and for the said Respondent and upon reading the Order to wind-up the said Company dated the 23rd February 1909 the Order dated the 13th May 1909 (appointing Liquidator) the affidavit of M.H.M. filed the 16th February 1910 the affidavit of H.S. the affidavit of R.F. and the affidavit of C.J.F. all filed the 9th June 1910 the affidavit of F.L.R. filed the 21st July 1910 the affidavit of J.M.L. filed the 22nd July 1910 and the exhibits in the said affidavits or some of them respectively referred to and the Minute Book of the above-named Company and upon the evidence of the persons named in the Second Schedule hereto on their examinations and cross-examinations taken orally before this Court upon the days set opposite their respective names in the second column of the said schedule and upon production to some of such persons of the exhibits and other documents set opposite to their names in the third column of the said schedule, and upon hearing the following document produced in evidence and admitted by Counsel on both sides, viz. a letter dated 10th January 1910 from W.G.W. to Mrs. G.E.R.

THIS COURT doth declare that the Respondent the said H.S. as a promoter of the above-named Company is accountable to the above-named Company and the applicant as Liquidator thereof for the sum of £5000 and for any profits that may have been received by him by the sale or otherwise of 35000 fully paid shares in the above-named Company or any part thereof which said shares were numbered 35001 to 70000 which said sum and shares were part of the purchase price paid by the above-named Company pursuant to an Agreement dated the 14th May 1907 made between the C.G. of of the one part and H.C.T. (on behalf of the above-named Company) of the other part and were improperly retained by the said Respondent.

AND THIS COURT doth order that the Respondent the said H.S. do

within fourteen days after service upon him of this order pay to the said Liquidator the said M.H.M. the said sum of Five thousand pounds together with interest thereon at the rate of £4 per centum per annum from the 8th August 1907 until payment of the aforesaid sum.

AND IT IS ORDERED that the following account be taken that is to say: An account of the profit received by the Respondent the said H.S. by the sale of or other dealings in the said 35000 shares in the above-named Company and the Liquidator is to be at liberty to apply to the Court after the result of the said account has been certified but the Liquidator is to be at liberty to refrain from proceeding with the said account if so advised. And it is ordered that the Respondent the said H.S. do pay to the Liquidator the said M.H.M. his costs of the said application such costs to be taxed and the Respondent by his Counsel desiring to appeal from this order. IT IS ORDERED that execution under this order be suspended for twenty-one days from the date of this order and if within that time notice of appeal be given and the sum of £5000 be lodged in Court as directed in the Schedule hereto execution under this order is suspended pending the determination of the appeal.

LODGMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE,

Companies (Winding-up).

21st December 1910.

Re The Companies Acts 1862 *to* 1907 and *Re The British Ceroferm Company Limited* (0061 *of* 1909).

Ledger Credit as above. "Deposit pending appeal."

Particulars of Funds to be lodged to the Account of the Paymaster-General.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Cash . . .	H.S. of London (Respondent)	5000	0	0			
The above funds are not to be paid out transferred or otherwise dealt with without notice to the said H.S.							

SECOND SCHEDULE.

Names of Witnesses.	Date of Examination.	Exhibits.
	1910	
F.L.R. . .	29 Nov.	J.M.L. (1). Affidavit of Witness of documents in action of R. & S.
H.P.B. . .	29 Nov.	
R.T.G. . .	6 Dec.	Letter dated 26 March, 1907, from S to Witness. Bundle of letters marked R.T.G. (2). Defence in action of the S.F.C. Limited, S. and others.
J.M.L. . .	6 Dec.	Form of Application for shares signed by witness marked J.M.L. (2)
M.H.M. . .	6 Dec.	Transfer of shares dated 12 Aug., 1907, the respondent to C.F., No. 10, in Transfer Book of the Company.
H.S. . . .	6 Dec.	List of preliminary expenses incurred in formation of Company, marked H.S. (2).
R.F. . . .	6 and 13 Dec.	Prospectus marked J.M.L. (2) to the affidavit of J.M.L. sworn 1 July, 1910. Bill of Costs marked R.F. (2) delivered by R.F. and Son to the above-named Company.
C.J.F. . .	20 Dec.	C.J.F. (3) (cheque for £15 10*s*. signed by witness in favour of M.E.). C.J.F. (4) applications from F. and H. both dated 1 June, 1907. C.J.F. (5) Account of charges and expenses delivered by M.E. to Company dated 11 July, 1907.

[*Re The British Cerofirm Company, Ltd.*, 0061 of 1909. NEVILLE, J., December 21st, 1910.]

PROSECUTION OF DIRECTORS AND OTHERS.

If it appears to the Court in the course of a winding-up by or subject to the supervision of the Court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding-up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

If it appears to the liquidator in the course of a voluntary winding-up that any past or present director, manager, officer, or member of

the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender, and all expenses properly incurred by him in the prosecution will be payable out of the assets of the company in priority to all other liabilities (*t*).

Proceedings under this section may in the High Court be taken by summons (*u*), but the summons will be adjourned into Court, and should not be heard in Chambers; creditors and others interested will be allowed to appear, but, except, of course, where they are the applicants, will not be allowed to file evidence or to argue that there is not a *primâ facie* case for a prosecution; they are there to show that even if there is a *primâ facie* case for a prosecution, the company's assets should not be applied in conducting it (*x*).

The application can be made by the liquidator (*y*), or by a creditor (*z*), or a contributory, or by the Court on its own motion. The summons will be *ex parte* (*a*), but the Court will sometimes direct notice of the application to be given to creditors and others interested (*b*).

The offences for which prosecution at the expense of the company will usually be sought are offences under sections 81, 82, 83, and 84 of the Larceny Act, 1861, and under sections 216 and 281 of the Companies (Consolidation) Act, 1908, and section 5 of the Perjury Act, 1911.

The Larceny Act, 1861, provides (section 81) that—

Whosoever being a director member or public officer of any body corporate or public company shall fraudulently take or apply for his own use or benefit or for any use or purposes other than the use or purposes of such body corporate or public company any of the property of such body corporate or public company shall be guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned (*c*).

(*t*) Companies (Consolidation) Act, 1908, s. 217.

(*u*) Companies (Winding-up) Rules, 1909, r. 5. In Courts other than the High Court the application must be in open Court: *Ibid.*, r. 6. For forms of summons and order, *infra*, pp. 1082 and 1083.

(*x*) *London and Globe Finance Corporation* (1903), 72 L. J. (CH.) 368; 19 T. L. R. 314. From the report of this case in 88 L. T. 194 it would appear that the Court declined to allow any evidence to be filed by creditors. In *Charles Denham & Co.* (1884), 53 L. J. (CH.) 1113, CHITTY, J., declined to read an affidavit of a creditor.

(*y*) *Northern Counties Bank* (1883), 31 W. R. 546; *Charles Denham & Co.* (1884), 53 L. J. (CH.) 1113.

(*z*) *London and Globe Finance Corporation*, [1903] 1 Ch. 728.

(*a*) *Charles Denham & Co.* (1884), 53 L. J. (CH.) 1113; *London and Globe Finance Corporation* (1903), 72 L. J. (CH.) 368; [1903] 1 Ch. 728.

(*b*) *Northern Counties Bank* (1883), 31 W. R. 546.

(*c*) Penal servitude for any period not exceeding seven years: Larceny Act, 1861, s. 75.

(Section 82) that—

Whosoever being a director public officer or manager of any body corporate or public company shall as such receive or possess himself of any of the property of such body corporate or public Company otherwise than in payment of a just debt or demand and shall with intent to defraud omit to make or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company shall be guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned (*d*).

(Section 83) that—

Whosoever being a director manager public officer or member of any body corporate or public company shall with intent to defraud destroy alter mutilate or falsify any book paper writing or valuable security belonging to a body corporate or public company or make or concur in the making of any false entry or omit or concur in the omitting of any material particular in any book of account or other document shall be guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned (*d*).

And (section 84) that—

Whosoever being a director manager (*e*) or public officer of any body corporate or public company shall make circulate or publish or concur in making circulating or publishing any written statement or account which he shall know to be false in any material particular with intent to deceive or defraud any member shareholder or creditor of such body corporate or public company or with intent to induce any person to become a shareholder or partner therein (*f*) or to entrust or advance any property to such body corporate or public company or to enter into any security for the benefit thereof shall be guilty of a misdemeanor and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned (*g*).

Sections 216 and 281 of the Companies (Consolidation) Act, 1908, contain the following provisions (*h*) :—

216. If any director, officer, or contributory of any Company being wound-up destroys, mutilates, alters, or falsifies any books, papers, or

(*d*) Penal servitude for any period not exceeding seven years: Larceny Act, 1861, s. 75.

(*e*) This includes a *de facto* manager: *Rex* v. *Lawson*, [1905] 1 K. B. 541.

(*f*) Cp. *Burnes* v. *Pennell* (1849), 2 H. L. C. 497.

(*g*) *I.e.* penal servitude for any period not exceeding seven years: Larceny Act, 1861, s. 75.

(*h*) See also s. 1 of the Perjury Act, 1911 (repealing s. 218 of the Act), as to perjury in judicial proceedings, which include proceedings before Courts, persons, etc., having power to hear, receive, and examine on oath, or to administer an oath.

securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the Company with intent to defraud or deceive any person, he shall be guilty of a misdemeanor, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

281. If any person in any return, report, certificate, balance-sheet, or other document, required by or for the purposes of any of the provisions of this Act specified in the Fifth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and to a fine in lieu of or in addition to such imprisonment as aforesaid.

Provided that the fine imposed on summary conviction shall not exceed one hundred pounds (*i*).

Persons knowingly and wilfully making in such documents statements which are false in any material particular, will be liable on conviction on indictment to imprisonment, with or without hard labour, for any term not exceeding two years or to a fine or to both fine and imprisonment (*ii*).

THE FIFTH SCHEDULE ABOVE REFERRED TO.

Provisions referred to in section 281 of the Act (section 281);

Provisions relating to :—

The conclusiveness of certificates of incorporation (section 17);

Restrictions on appointments or advertisement of directors (section 72);

Restrictions on commencement of business (section 87);

Returns as to allotments (section 88);

Statutory meetings (section 65);

The particulars as to directors and mortgage debt and the statement in the form of a balance-sheet in the annual summary (section 26);

The appointment and remuneration, and powers and duties, of auditors: (sections 112, 113);

Obligations of companies where no prospectus is issued (section 82);

Registration of mortgages and charges in England and Ireland (section 93);

Filing of accounts of receiver and manager (section 95);

Notice by liquidator in voluntary winding-up of his appointment (section 187);

Rights of creditors in a voluntary winding-up (section 188);

Requirements as to companies established outside the United Kingdom (section 274); and

Annual Report by Board of Trade (section 283).

Other instances of criminal offences by directors and others are the case of a conspiracy to procure by fraud and falsehood the shares of a company to be quoted in the official list of the Stock Exchange, and thus give a fictitious value to the shares beyond what they

(*i*) Offences under this section may be prosecuted under the Summary Jurisdiction Acts. In Scotland most prosecutions under the section must be at the instance of the Lord Advocate or a procurator fiscal, as the Lord Advocate directs: Companies (Consolidation) Act, 1908, s. 276 (1); and as prosecutions in Scotland: *ibid.* (2).

(*ii*) Perjury Act, 1911, s. 5.

would otherwise have in the market, this being a fraud on the public and an indictable offence (*k*). And the case of persons agreeing or conspiring together to cheat the public by leading them to believe that shares have a value which the conspirators know they have not, and thus inducing them to become purchasers (*l*).

For the Court to direct a prosecution at the expense of the assets under section 217, there must in the first place be evidence sufficient to satisfy it that there is a *primâ facie* case against the person to be prosecuted (*m*). On this point the Court itself must be satisfied, it will not act on the opinion of the liquidator (*n*), and will, it would seem, pay but little attention to the fact that the law officers of the Crown have advised that the Crown should not institute a prosecution (*m*).

Once there is a *primâ facie* case made out the Court will have to consider whether the expense of the prosecution should be thrown on the assets of the company. It would seem that on this point the dominant consideration for the guidance of the Court in its discretion is whether or not a good citizen in the discharge of his duty to the State would think that he ought to prosecute and bear the expense (*o*). It would seem, however, that on this point the Court will take into consideration the views of the creditors or other persons who have to bear the expense of the prosecution (*p*). In considering the case of *London and Globe Finance Corporation* (*q*), it must be borne in mind that only one creditor, a large one, it is true, opposed the application, while a substantial majority of the creditors who expressed any view supported it, that it was calculated that the dividend creditors would get would only be diminished by a halfpenny in the pound, and that all the members of the committee of inspection who could be got at except one, who was the broker of the person to be prosecuted, were taken to be in favour of the application.

The Court has in one case (*r*) declined to make an order where all the creditors were paid, and the only asset of the company consisted of uncalled capital. It is thought, however, that in a proper case the Court would direct a prosecution at the expense of the company, in spite of the existence of circumstances of this nature.

(*k*) *Reg.* v. *Aspinall* (1876), 2 Q. B. D. 48, citing *Rex* v. *De Berenger* (1814), 3 M. & S. 67.

(*l*) See *Scott* v. *Brown, Doering, M'Nab & Co.*, [1892] 2 Q. B. 724, 730, 733.

(*m*) *London and Globe Finance Corporation*, [1903] 1 Ch. 728.

(*n*) *Northern Counties Bank* (1883), 31 W. R. 546.

(*o*) *London and Globe Finance Corporation*, [1903] 1 Ch. 728.

(*p*) *Northern Counties Bank* (1883), 31 W. R. 546; *Charles Denham & Co.* (1884), 53 L. J. (ch.) 1113.

(*q*) [1903] 1 Ch. 728.

(*r*) *Eupion Fuel and Gas Co.*, [1875] W. N. 10.

SUMMONS ASKING FOR DIRECTION FOR PROSECUTION OF DELINQUENT DIRECTORS AND FOR PAYMENT OF COSTS OUT OF ASSETS.

(*Title.*)

Let all parties concerned (continue as in ordinary *ex parte* summons) on the hearing of an application by A.B. a creditor of the above-named Company for an order :—

(1) That C.D. the liquidator of the above-named Company as such liquidator as aforesaid do institute criminal proceedings against X.Y. a former director of the said Company for such offences under sections 83 and 84 of the Larceny Act 1861 and section 216 of the Companies (Consolidation) Act 1908 or any of those sections of the said acts as the said liquidator may be advised and that the costs and expenses of such prosecution be paid out of the assets of the above-named Company. See *London and Globe Finance Corporation*, [1903] 1 Ch. 728.

ORDER DIRECTING OFFICIAL RECEIVER AND LIQUIDATOR TO INSTITUTE CRIMINAL PROCEEDINGS.

(*Title.*)

UPON THE APPLICATION (by summons dated the 14th January 1903) of J.F. of   in the City of London a creditor of the above-named Company which upon hearing the solicitors for the Applicant for George Stapylton Barnes the Official Receiver and Liquidator of the above-named Company and for the N.C. Limited in Chambers was adjourned to be heard in Court coming on on the 4th and 5th March 1903 to be heard accordingly and upon hearing Counsel for the Applicant for the said Official Receiver and Liquidator and for the N.C. Limited a creditor of the above-named Company having liberty to attend on the hearing of the said summons pursuant to order dated the 24th February 1903 and upon reading the order to wind-up the above-named Company dated the 30th October 1901 the said order dated the 24th February 1903 the affidavit of A.J.G. filed the 5th March 1903 the three several affidavits of J.F. the affidavit of L.F.G. the two several affidavits of J.W.W. all filed this day and the exhibits in the said affidavits or some of them respectively referred to and the report of George Stapylton Barnes the said Official Receiver made to the Court and dated the 27th February 1903 and the receipt of The Bank of England dated this day for One thousand two hundred and fifty pounds—

THIS COURT DID ORDER that the said summons should stand for judgment and the said summons standing for judgment this day in the paper in the presence of Counsel for the Applicant for the said Official Receiver and Liquidator and for the said N.C. Limited—

THIS COURT DOTH ORDER that the said George Stapylton Barnes as such Official Receiver and Liquidator as aforesaid do institute criminal proceedings against X.Y. for such offences under sections 83 and 84 of The Larceny Act 1861 and section 166 of The Companies Act 1862 or any of those sections of the said Acts as the said Official Receiver and Liquidator may be advised.

AND IT IS ORDERED that the proper costs and expenses of the said Official Receiver and Liquidator of the proceedings to be taken in pursuance of this order as aforesaid be paid out of the assets of the above-named Company so far as funds may be required in aid of the sum of One thousand two hundred and fifty pounds to be lodged by the Applicant in Court as hereinafter directed.

And the Applicant the said J.F. having this day paid the sum of One thousand two hundred and fifty pounds to the Supreme Court suspense account for the purpose of the same being lodged in Court as hereinafter directed—

IT IS ORDERED that the Applicant J.F. do make the lodgment in Court of the sum of One thousand two hundred and fifty pounds as directed in the Lodgment Schedule hereto such sum to be applied in or towards payment of the said costs and expenses of the said Official Receiver and Liquidator.

AND IT IS ORDERED that the costs of the Applicant the said J.F. and of the said George Stapylton Barnes as such Official Receiver and Liquidator as aforesaid of the said application be taxed and paid out of the assets of the above-named Company.

And the Applicant and the said Official Receiver and Liquidator are to be at liberty to apply as there may be occasion.

Registrar Companies (Winding-up).

LODGMENT SCHEDULE.

IN THE HIGH COURT OF JUSTICE.
Companies (Winding-up).

10th March 1903.

Re The Companies Acts 1862 *to* 1893. *And Re The London and Globe Finance Corporation Limited* (00277 *of* 1901).

Ledger Credit as above. "Security for Costs and Expenses of Official Receiver and Liquidator of Criminal Proceedings against X.Y."

Particulars of Funds to be lodged.	Persons to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	*s.*	*d.*	£	*s.*	*d.*
Cash . . .	J.F. of (creditor)	1250	0	0			
The said funds are not to be paid out transferred or otherwise dealt with without notice to the said J.F.							

[*Re The London and Globe Finance Corporation, Ltd.*, 00277 of 1901. BUCKLEY, J., March 10th, 1903.]

FRAUDULENT PREFERENCE.

The effect of section 207 of the Act, which applies the rules of bankruptcy to the winding-up of insolvent companies, is not to enlarge the assets of the company, by introducing into winding-up bankruptcy rules made for the purpose of enlarging the assets of a bankrupt (*s*), so neither the bankruptcy rules as to reputed ownership (*t*), nor section 11 of the Bankruptcy Act, 1890, which deprives an execution creditor of his execution under certain circumstances (*u*), nor the provisions in the Bankruptcy Acts giving a landlord priority for six months' rent (*x*) applies in a winding-up. The Deeds of Arrangement Acts are also not applicable to companies (*y*). The provisions of the Bankruptcy Acts as to fraudulent preference are, however, expressly applicable to windings-up.

Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, will, if made or done by or against a company, be deemed, in the event of its being wound-up, a fraudulent preference of its creditors, and be invalid accordingly.

For the purposes of this provision the presentation of a petition for winding-up, in the case of a winding-up by or subject to the supervision of the Court, and a resolution for winding-up in the case of a voluntary winding-up, will be deemed to correspond with the act of bankruptcy in the case of an individual.

Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors will be void to all intents (*z*).

Where a voluntary winding-up is superseded by a compulsory or even a supervision order, though, in the latter case, the resolution for winding-up will be the commencement of the winding-up, it is the order and not the resolutions for winding-up which corresponds with the act of Bankruptcy (*a*). The rules applicable are the rules of bankruptcy for the time being (*b*).

The provisions as to what will amount to an act of fraudulent preference are contained in section 48 of the Bankruptcy Act of 1883. They are as follows :—

(1) Every conveyance or transfer of property or charge thereon made every payment made every obligation incurred and every judicial proceeding

(*s*) *Count d'Epineuil* (1882), 20 C. D. 217.

(*t*) *Gorringe* v. *Irwell India Rubber and Gutta Percha Works* (1886), 34 C. D. 128 ; *Crumlin Viaduct Works Co.* (1879), 11 C. D. 755.

(*u*) *Withernsea Brickworks* (1880), 16 C. D. 337 ; *Pratt* v. *Inman* (1889), 43 C. D. 175.

(*x*) *Thomas* v. *Patent Lionite Co.* (1881), 17 C. D. 250.

(*y*) *Re Rileys*, [1903] 2 Ch. 590.

(*z*) Companies (Consolidation) Act, 1908, s. 210.

(*a*) *Russell Hunting Record Co.*, [1910] 2 Ch. 78.

(*b*) *Mason, Gallagher, and Slater's Cases* (1882), 46 L. T. 54.

taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor or any person in trust for any creditor with a view of giving such creditor a preference over the other creditors shall if the person making taking paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making taking paying or suffering the same be deemed fraudulent and void as against the trustee in bankruptcy.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

There are cases where the doctrine of fraudulent preference will be carried further in a winding-up than in a bankruptcy. Thus, a set-off within three months of bankruptcy does not amount to a fraudulent preference, but as the mutual credit clauses of the Bankruptcy Act do *not* apply to a set-off against calls in a winding-up, such a set-off within three months of winding-up may amount to a fraudulent preference (*c*).

Under the section the conveyance, etc., impeached must be to a creditor which does not include a withdrawing member of an industrial and provident society (*d*), but does, it is thought, include a surety who has paid nothing in respect of his suretyship (*e*), and a *cestui que trust* who has claims against his trustee (*f*). Moreover, the particular creditor whom it is intended to prefer must be the one to whom such conveyance, etc., has been made, and so a payment to a creditor with the intention of preferring his surety will not be within the section, and cannot be recovered from either surety or creditor (*g*).

Again, the money or property sought to be recovered, must be money or property which apart from the transaction would be part of the general assets of the company, there can be therefore no fraudulent preference when money held by or paid to the company for a particular purpose or clothed with a special trust, is paid away for such purpose or in accordance with such trust (*h*).

(*c*) *Washington Diamond Mining Co.*, [1893] 3 Ch. 95.

(*d*) *Dovey* v. *Morgan*, [1901] 2 K. B. 477.

(*e*) *Blackpool Motor Car Co.*, [1901] 1 Ch. 77: *Ex parte Delmar* (1890), 38 W. R. 752; *Ex parte Whittaker* (1891), 63 L. T. 777; *Re Paine*, [1897] 1 Q. B. 122; but see *Re Mills* (1888), 58 L. T. 871.

(*f*) See *Sharp* v. *Jackson*, [1899] A. C. 419; but see the interlocutory remarks of RIGBY, L.J.: *Re Lake*, [1901] 1 K. B. 710, 715, which, however, do not seem to have been persisted in, for the settlement seems to proceed on there being the relationship of debtor and creditor: *Blackpool Motor Car Co.*, [1901] 1 Ch. 77; but see *Ex parte Taylor* (1887), 18 Q. B. D. 295.

(*g*) *Stenotyper, Ltd.*, [1901] 1 Ch. 250; *Re Mills* (1888), 58 L. T. 871; *Re Warren*, [1900] 2 Q. B. 138, disapproving on this point: *Re Paine*, [1897] 1 Q. B. 122.

(*h*) *Re Vautin*, [1900] 2 Q. B. 325; *Re Rogers* (1891), 8 Mor. 243; *Toovey* v. *Milne* (1819), 2 B. & Ald. 683; *Vacher* v. *Cocks* (1830), 1 B. & Ad. 145; *Re Drucker*, [1902] 2 K. B. 237.

The better view would seem to be that a liquidator or other person seeking to set aside a transaction on the ground of fraudulent preference must show something more than that at the time of such transaction the company was and knew itself to be insolvent (*i*), but no doubt in many cases the transaction itself will be sufficiently suspicious when coupled with the above facts to shift the onus of proof.

Once it is established that a company is unable to pay its debts as they become due, and a company may apparently be this where it has assets which are sufficient for this purpose but which cannot be readily realized (*k*), and that there has been a payment, etc., out of the general assets of the company to a creditor, within the three months, then the question remains what was the view of the debtor in making such payment?

The word "preference" would seem to show that the act must be one which is done without any consideration (*l*), but where the Court finds as a fact that the motives of the debtor are mixed, it will have to ascertain what was his dominant motive (*m*). So payment under pressure, as where the debtor has been threatened with what will happen if he does not pay (*n*), or, where there has been no threat, where the debtor is afraid, *e.g.*, of being prosecuted (*o*), will be enough to take the payment out of the section, unless it can be shown that the debtor did not mind the threat or was not intimidated (*p*). Again, the fact that a debt was paid as it became due and in the ordinary course of business, will *primâ facie* take it out of the fraudulent preference provisions (*q*). The more especially is this so if the transaction is one of meeting bills as they become due, for failure to meet them, more than failure to meet any other debt, would mean, as the debtor must know, that he could no longer

(*i*) *Ex parte Lancaster* (1884), 25 C. D. 311; *Re Laurie* (1898), 67 L. J. (Q.B.) 431; but see *contra*, *Ex parte Viney*, [1897] 2 Q. B. 16; *Re Lake*, [1901] 1 K. B. 710; *per* VAUGHAN WILLIAMS, L.J., the Judge who decided the last cited case.

(*k*) See *Washington Diamond Mining Co.*, [1893] 2 Ch. 95, *per* VAUGHAN WILLIAMS, J.

(*l*) *Ex parte Tempest* (1871), 6 Ch. 70; *Ex parte Bolland* (1872), 7 Ch. 24; *Adamson's Case* (1874), 18 Eq. 670; *Ex parte Topham* (1873), 8 Ch. 614; see also *Butcher* v. *Stead* (1875), L. R. 7 H. L. 839, 846; *Sharp* v. *Jackson*, [1899] A. C. 419.

(*m*) *Ex parte Hill* (1883), 23 C. D. 695; see *supra*, pp. 447 and 448, as to floating charges.

(*n*) *Ex parte Taylor* (1887), 18 Q. B. D. 295.

(*o*) *Sharp* v. *Jackson*, [1899] A. C. 419.

(*p*) *Ex parte Wheatley* (1882), 45 L. T. 80; *Cook* v. *Rogers* (1831), 7 Bing. 438; *Re Bell* (1893), 10 Mor. 115; *Ex parte Hall* (1882), 19 C. D. 580.

(*q*) *Ex parte Blackburn* (1871), 12 Eq. 258. In *Poole Jackson and Whyte's Case* (1878), 9 C. D. 322, where a bank had got judgment against sureties for a company, and the company paid out of calls made on the sureties who were directors, the transaction was held to be in the ordinary course of business.

carry on his business (*r*). *Primâ facie*, too, a presumption of fraudulent preference will be rebutted if it be shown that a payment was made or security given in pursuance of a contract made previously (*s*); but this will not be the case where there is a contract to give security when asked for, and security is asked for just before the winding-up, there the presumption will be that the security was held over to save the debtor's credit (*t*), and this will be especially so in the case of debentures where an agreement to issue the security immediately would require registration (*u*), such an agreement will strengthen a presumption of fraudulent preference. Where a payment is made because the debtor thinks however erroneously that he is legally bound to make it, that will take the payment out of the section (*x*). The fact that a debtor has made a payment to satisfy his own conscience will usually not take it out of the section (*y*), though perhaps a more favourable view will be taken where the payment is to make good a breach of trust (*z*). Where a debt which is not due is paid (*a*), or where a debt which is due is set off against cross demands which are not due, and the persons benefited are directors (*b*), who, it has been said, cannot exercise pressure on a company unless they resign first (*c*), there will be a likelihood of a case of fraudulent preference being made out. The fact that the creditor has not asked for payment will help in establishing a case (*d*), but a case can in some cases be made where there have been not merely demands, but threats of proceedings (*e*). It must, however, be borne in mind that when all is said and done the cases above-mentioned are only illustrative, and the real question is one of fact, viz. what was the debtor's intention in making the payment? (*f*).

(*r*) *Re Clay and Sons* (1896), 3 Mans. 31. This does not apply where the bills have been held over and afterwards paid: *Ex parte Viney*, [1897] 2 Q. B. 16.

(*s*) *Re Softley* (1875), 20 Eq. 746; *Ex parte Hauxwell* (1883), 23 C. D. 626.

(*t*) *Ex parte Kilner* (1880), 13 C. D. 245; *Ex parte Burton* (1880), 13 C. D. 102; *Ex parte Fisher* (1872), 7 Ch. 636.

(*u*) *Jackson and Bassford*, [1906] 2 Ch. 467. For order in this case, *post*, p. 1089. Where an advance is made and debentures for such advance and past advances are issued, and the debentures confer a floating charge, s. 212 of the Act considered under debentures, *supra*, pp. 447 and 448, must be borne in mind.

(*x*) *Bills* v. *Smith* (1865), 6 B. & S. 314; 34 L. J. (Q.B.) 68; *Re Tweedale*, [1892] 2 Q. B. 216; *Re Vautin*, [1900] 2 Q. B. 325.

(*y*) *Re Fletcher* (1892), 9 Mor. 8; *Re Vingoe and Davies* (1894), 1 Mans. 416; *Buckley's Case*, [1899] 2 Ch. 725; *Re Jukes*, [1902] 2 K. B. 58.

(*z*) *Re Lake*, [1901] 1 K. B. 710.

(*a*) *Haberhshon's Case* (1868), 5 Eq. 286; *Kent's Case* (1888), 39 C. D. 259.

(*b*) *Washington Diamond Mining Co.*, [1893] 3 Ch. 95; *Sykes' Case* (1872), 13 Eq. 255.

(*c*) *Gaslight Improvement Co.* v. *Terrell* (1870), 10 Eq. 168. Perhaps this statement is too strong.

(*d*) *London, Windsor, and Greenwich Hotels* (1889), 1 Meg. 242.

(*e*) *Ex parte Hall* (1882), 19 C. D. 580.

(*f*) See *Sharp* v. *Jackson*, [1899] A. C. 419.

Where an act is declared to be a fraudulent preference it would seem to be void *ab initio*, and therefore will not prevent the person preferred setting up any title he may have got to the property between the date of the preference and that of the order (*g*). The fraudulent preference provisions are for the benefit of the general creditors and of the winding-up, and so cannot be put into force at the instance of an outside creditor, such as a debenture-holder (*h*).

Questions of fraudulent preference may be raised by an action in the name of the company (*i*), or on misfeasance summons, always assuming that the person against whom the summons is taken out is a person liable under section 215 of the Act (*k*), they may also be raised by summons or motion in the winding-up (*l*), and such questions have been raised by summons in a debenture-holder's action (*m*). It would seem that proceedings can be taken either against the person preferred (*l*), or under the misfeasance section against the directors or others responsible for giving the preference (*k*). In the latter case presumably such persons will only be liable for the damage the company has suffered which would usually be the difference between the sum paid or the value of the security or property given and the dividend the person preferred would be entitled to in the winding-up (*n*).

FORM OF SUMMONS AGAINST PERSON PREFERRED (*o*).

(*Title.*)

Let C.D. of etc.

on the hearing of an application of A.B. the Liquidator of the above-named Company for the following declaration and order.

(1) A declaration that the following payments made by the above-named Company to the said C.D. a creditor of such Company on the dates following that is to say the sum of £ paid to the said C.D. on the 19 the sum of £ paid to the said C.D. on the 19 and the sum of £ paid to the said C.D. on the 19

(*g*) *Re Ferd Baller* (1892), 66 L. T. 619 (COLLINS, J., and VAUGHAN WILLIAMS, J., the latter dissenting); *Re Johnson* (1908), 99 L. T. 305.

(*h*) *Willmott* v. *London Celluloid Co.* (1886), 34 C. D. 147, following *Ex parte Cooper* (1875), 10 Ch. 510. In *Yates, Haywood and Co.*, 00198 of 1909, before EADY, J., on 17th and 18th April, 1912, the application was stood over to see if the debenture-holders would give up their charge on moneys recovered under these provisions, as otherwise no order could be made as the debenture-holders alone would benefit by such an order: cp., however, *New City Constitutional* (1887), 34 C. D. 646.

(*i*) *Gaslight Improvement Co.* v. *Terrell* (1870), 10 Eq. 168. See *Blackpool Motor Car Co.*, [1901] 1 Ch. 77.

(*k*) This was done in *Mason, Gallagher, and Slater's Case* (1882), 46 L. T. 54, and in *Russell Hunting Record Co.*, [1910] 2 Ch. 78.

(*l*) See *Buckley's Case*, [1899] 2 Ch. 725.

(*m*) *Stenotyper, Ltd.*, [1901] 1 Ch. 250.

(*n*) Cp. *Neath Harbour Smelting and Rolling Works* (1887), 56 L. T. 727.

(*o*) For summons against directors, see forms of misfeasance summons with necessary variations, *supra*, pp. 1071 and 1072 and 1073.

are an undue and fraudulent preference of the said C.D. over the other creditors of the Company under section 210 of the Companies (Consolidation) Act 1908 and are invalid accordingly.

(2) An order that the said C.D. do pay the said sums of £ £ and £ to the said A.B. as such Liquidator as aforesaid.

(3) That the said C.D. do pay to the said A.B. his costs of this application.

(4) Or that such other order may be made in the premises as to this Court may seem meet.

ORDER SETTING ASIDE DEBENTURES AS A FRAUDULENT PREFERENCE.

(*Title.*)

The application by Originating Summons dated the 25th March 1906 of J.R.B. of in the County of Chartered Accountant the Liquidator appointed in the Voluntary Winding-up of the above-named Company which upon hearing the Solicitors for the Applicant and for W.J. the Respondent to the said Summons in Chambers was adjourned to be heard in Court coming on this day to be heard accordingly. And upon hearing Counsel for the Applicant and for the said Respondent. And upon reading the said Originating Summons the *London Gazette* dated the 5th January 1906 containing a Notice of the passing of the Resolution for the Voluntary Winding-up of the above-named Company and of the appointment of the Applicant as Liquidator thereof the two several Affidavits of J.R.B. filed respectively the 25th April 1906 and the 3rd July 1906 the Affidavit of W.J. and the Affidavit of A.J. both filed the 21st May 1906 and the Affidavit of F.J.B. filed the 22nd May 1906 and the Several Exhibits in the said Affidavits or some of them respectively referred to.

THIS COURT DOTH DECLARE that the creation and issue to the Respondent the said W.J. by the above-named Company of a Debenture (Numbered 1) for £3600 and interest and dated the 15th December 1905 are an undue and fraudulent preference of the said W.J. over the other Creditors of the said Company under Section 164 of The Companies Act 1862 and that the said Debenture is invalid accordingly.

AND IT IS ORDERED that the Respondent the said W.J. do pay to the Liquidator the said J.R.B. his Costs of the said application such costs to be taxed.

[And the Liquidator and any of the Creditors and Contributories of the said Company are to be at liberty to apply to the Court in this proceeding with reference to any matter arising in the Voluntary Winding-up of the said Company as there may be occasion (*p*).] [*Re Jackson and Bassford, Ltd.*, 0079 of 1906. BUCKLEY, J., July 17th, 1906.]

(*p*) The words in square brackets will not be inserted where the company is being wound-up by or under the supervision of the Court.

CHAPTER XII.

CONTRIBUTORIES.

THE LIST OF CONTRIBUTORIES.

THE term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound-up, and in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, it includes any person alleged to be a contributory (*a*).

The expression "contributories" includes, as already stated, fully paid shareholders (*b*), but they will not be settled on the list if they disclaim all interest (*c*).

As soon as may be after making a winding-up order, the Court must settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of the Act, and must cause the assets of the company to be collected, and applied in discharge of its liabilities.

In settling the list of contributories, the Court must distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others (*d*).

General rules may be and, as will be seen below, have been made by the Lord Chancellor with the concurrence of the President of the Board of Trade (*e*) for enabling or requiring all or any of the powers conferred and imposed on the Court in England by the Act in respect of settling the list of contributories and rectifying the register of members where required and collecting and applying the assets, but a liquidator may not without the special leave of the Court rectify the register of members (*f*).

(*a*) Companies (Consolidation) Act, 1908, s. 124.

(*b*) *National Savings Bank Association* (1866), 1 Ch. 547; *Anglesea Colliery Co.* (1866), 1 Ch. 555; *Rica Gold Washing Co.* (1879), 11 C. D. 36; *Peveril Gold Mines*, [1898] 1 Ch. 122.

(*c*) *Marlborough Club Co.* (1868), 5 Eq. 365; *Britannia Permanent Benefit Building Society* (1892), 65 L. T. 196.

(*d*) Companies (Consolidation) Act, 1908, s. 163.

(*e*) *Ibid.*, s. 237 (1). These general rules must be laid before Parliament within three weeks after they are made, if it is then sitting, and if not, within three weeks after the next session of Parliament; they will be judicially noticed and have the same effect as if enacted by the Act: *Ibid.*, s. 237 (2). And see *Institute of Patent Agents* v. *Lockwood*, [1894] A. C. 347, as to the validity of such rules.

(*f*) Companies (Consolidation) Act, 1908, s. 173. For orders rectifying the test register and of varying the contributories, see *post*, pp. 1098 *et seq.*

The liquidator (*g*) must with all convenient speed after his appointment settle a list of contributories of the company, and must appoint a time and place for that purpose. The list of contributories must contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and must distinguish the several classes of contributories. As regards representative contributories, the liquidator must, so far as practicable, observe the requirements of section 163 (2) of the Act (*h*).

There will usually be two lists of contributories, the "A" list, and the "B" list. The former consisting of the persons who are primarily liable, *i.e.* the members at the date of the commencement of the winding-up, the latter consisting of the past members of the company who are liable.

It is usual to settle the "A" list of contributories in the first instance, as this may be all that is necessary, and in that event the trouble and expense of settling the "B" list will not have to be incurred (*i*); but if for any reason this is undesirable, it would seem that the two lists may be settled simultaneously (*k*).

Where shares have been transferred several times within a year before the commencement of a winding-up, all the persons who have transferred within that period will be liable as past members (*l*), and though each of them will be liable to indemnify the person who has transferred to him (*m*), they will all go on to the "B" list, and the Court will not make a "C" list for the earlier transferors (*n*).

The liquidator must give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and must state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list (*o*).

On the day appointed for settlement of the list of contributories, the liquidator must hear any person who objects to being settled as a contributory, and, after such hearing, must finally settle the list, which, when so settled, will be the list of contributories of the company (*p*).

(*g*) The official receiver, while acting as provisional liquidator, may exercise this power: *English Bank of the River Plate*, [1892] 3 Ch. 391.

(*h*) Companies (Winding-up) Rules, 1909, r. 77. For form of list see *infra*, pp. 1093 and 1094; see also r. 75, which provides for a liquidator collecting and applying the assets of a company as an officer of the Court, and puts him in the same position as a receiver in doing these things.

(*i*) *McEwen's Case* (1871), 6 Ch. 582; *Wright's Case* (1868), 12 Eq. 335 n.; *Needham's Case* (1867), 4 Eq. 135.

(*k*) *Andrews' Case* (1867), 3 Ch. 161; but see *Weston's Case* (1868), 6 Eq. 17.

(*l*) See *post*, p. 1136.

(*m*) *Kellock* v. *Enthoven* (1873), L. R. 9 Q. B. 241.

(*n*) *Humby's Case* (1872), 26 L. T. 936.

(*o*) Companies (Winding-up) Rules, 1909, r. 78. For form of notice and of affidavit of posting, *infra*, pp. 1094 and 1095.

(*p*) *Ibid.*, r. 79. For form of such final list, *infra*, pp. 1095 and 1096.

The liquidator must forthwith give notice to every person whom he has finally placed on the list of contributories, stating in what character and for what number of shares or interest he has been placed on the list, and in the notice inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the Court by summons within twenty-one days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories (*q*).

Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the liquidator will be entertained after the expiration of twenty-one days from the date of the service on such person of notice of the settlement of the list.

The official receiver will not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company (*r*).

The liquidator may from time to time vary or add to the list of contributories, but any such variation or addition must be made in the same manner in all respects as the settlement of the original list (*s*). An appeal will lie to the Court of Appeal without leave on any decision determining the liability of any contributory (*t*).

PROVISIONAL LIST OF CONTRIBUTORIES TO BE MADE OUT BY LIQUIDATOR (*u*).

(*Title.*)

The following is a list of members of the Company liable to be placed on the list of contributories of the said Company, made out by me from the books and papers of the said Company, together with their respective addresses and the number of shares [or extent of interest] to be attributed to each, so far as I have been able to make out or ascertain the same.

In the first part of the list, the persons who are contributories in their own right are distinguished.

In the second part of the said list, the persons who are contributories as being representatives of, or being liable to the debts of others, are distinguished.

(*q*) Companies (Winding-up) Rules, 1909, r. 80. For form of notice and of affidavit of posting, *infra*, pp. 1097 and 1098.

(*r*) *Ibid.*, r. 81. As to the costs of the liquidator in such cases, see *supra*, pp. 1008 and 1009.

(*s*) *Ibid.*, r. 82. For form of supplemental list, *infra*, pp. 1097 and 1098.

(*t*) Judicature Act, 1894, s. 1 (1), (*b*), (iii.).

(*u*) Companies (Winding-up) Rules, 1909, Appendix, Form 42.

FIRST PART.—CONTRIBUTORIES IN THEIR OWN RIGHT.

Serial No.	Name.	Address.	Description.	Number of Shares [or extent of Interest].

SECOND PART.—CONTRIBUTORIES AS BEING REPRESENTATIVES OF, OR LIABLE TO THE DEBTS OF OTHERS.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].

NOTICE TO CONTRIBUTORIES OF APPOINTMENT TO SETTLE LIST OF CONTRIBUTORIES (x).

(*Title.*)

Take notice that I,
the Liquidator of the above-named Company, have appointed the
day of 19 , at of the clock in the noon, at
* in the County of , to settle the list of the contributories of the above-named Company, made out by me, pursuant to the Companies (Consolidation) Act, 1908, and the rules thereunder, and that you are included in such list in the character and for the number of shares [or extent of interest] stated below; and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled, including you therein.

* Insert place of appointment.

Dated this day of 19 .

Liquidator.

To Mr. A.B. [and to Mr. C.D., his solicitor].

No. on List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].

(x) Companies (Winding-up) Rules, 1909, Appendix, Form 43.

AFFIDAVIT OF POSTAGE OF NOTICES OF APPOINTMENT TO SETTLE LIST OF CONTRIBUTORIES (y).

(*Title.*)

I, a *

make oath and say as follows :—

* State the description of the deponent.

1. That I did on the day of 19 , send to each contributory mentioned in the list of contributories made out by the [Official Receiver and] Liquidator on the day of 19 and now on the file of proceedings of the above-named Company, at the address appearing in such list, a notice of the time and place of the appointment to settle the list of contributories in the form hereunto annexed, marked "A," except that in the tabular form at the foot of such copies respectively I inserted the number, name, address, description in what character included and † of the person on whom such copy of the said notice was served.

† "Number of shares," or "extent of interest."

2. That I sent the said notices by putting the same prepaid into the post office at before the hour of o'clock, in the noon on the said day.

Sworn, etc.

CERTIFICATE OF LIQUIDATOR OF FINAL SETTLEMENT OF THE LIST OF CONTRIBUTORIES (z).

(*Title.*)

Pursuant to the Companies (Consolidation) Act, 1908 and to the rules made thereunder, I, the undersigned, being the Liquidator of the above-named Company, hereby certify that the result of the settlement of the list of contributories of the above-named Company, so far as the said list has been settled, up to the date of this certificate, is as follows :—

1. The several persons whose names are set forth in the second column of the First Schedule hereto have been included in the said list of contributories as contributories of the said Company in respect of the * set opposite the names of such contributories respectively in the said schedule.

* "Number of shares," or "extent of interest."

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of or being liable to the debts of others.

2. The several persons whose names are set forth in the second column of the Second Schedule hereto, and were included in the provisional list of contributories, have been excluded from the said list of contributories.

3. I have, in the sixth column of the first part of the First Schedule and in the seventh column of the second part of the First Schedule and in the same column of the Second Schedule, set forth opposite the name of

(y) Companies (Winding-up) Rules, 1909, Appendix, Form 44.

(z) *Ibid.*, Form 45.

each of the several persons respectively the date when such person was included in or excluded from the said list of contributories.

4. Before settling the s id list, I was satisfied by the affidavit of clerk to duly filed with the proceedings herein, that notice was duly sent by post to each of the persons mentioned in the said list, informing him that he was included in such list in the character and for the * stated therein, and of the day appointed for finally settling the said list.

Dated this day of 19 .

In the Matter of Limited.

THE FIRST SCHEDULE ABOVE REFERRED TO.

FIRST PART.—CONTRIBUTORIES IN THEIR OWN RIGHT.

Serial No. in List.	Name.	Address.	Description.	Number of Shares [or extent of Interest].	Date when included in the List.

In the Matter of Limited.

SECOND PART.—CONTRIBUTORIES AS BEING REPRESENTATIVES OF OR LIABLE TO THE DEBTS OF OTHERS.

Serial No. in List.	Name.	Address.	Description.	In what character included.	Number of Shares [or extent of Interest].	Date when included in the List.

In the Matter of Limited.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Serial No. in List.	Name.	Address.	Description.	In what Character proposed to be included.	Number of Shares [or extent of Interest].	Date when excluded from the List.

NOTICE TO CONTRIBUTORY OF FINAL SETTLEMENT OF LIST OF CONTRIBUTORIES, AND THAT HIS NAME IS INCLUDED (*a*).

(*Title.*)

Take notice that I,
the Liquidator of the above-named Company, have, by certificate, dated the day of 19 , under my hand, finally settled the list of contributories of the said Company, and that you are included in such list in the character and for the number of shares [or extent of interest] stated below.

Any application by you to vary the said list of contributories, or that your name may be excluded therefrom, must be made by you to the Court within 21 days from the service on you of this notice, or the same will not be entertained.

The said list may be inspected by you at the chambers of the Registrar at * on any day between the hours of and .

* State address.

Dated this day of 19 .

(Signed)
Liquidator.

To Mr.
[or to Mr.
his solicitor].

No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].

SUPPLEMENTAL LIST OF CONTRIBUTORIES (*b*).

(*Title.*)

1. The following is a list of persons who, since making out the list of contributories herein, dated the day of 19 , I have ascertained are, or have been, holders of shares in [or members of] the above-named Company, and to the best of my judgment are contributories of the said Company.

2. The said supplemental list contains the names of such persons, together with their respective addresses and the number of shares [or extent of interest] to be attributed to each.

3. In the first part of the said list such of the said persons as are contributories in their own right are distinguished.

4. In the second part of the said list such of the said persons as are

(*a*) Companies (Winding-up) Rules, 1909, Appendix, Form 46.

(*b*) *Ibid.*, Form 47.

contributories as being representatives of, or being liable to the debts of others, are distinguished.

[The supplemental list is to be made out in the same form as the original list.]

AFFIDAVIT OF SERVICE OF NOTICE TO CONTRIBUTORY (c).

(*Title.*)

I, * of , make oath and say as follows :—

1. I did on the day of 19 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me and marked "A" upon each of the respective persons whose names, addresses, and descriptions appear in the second, third, and fourth columns of the First Schedule to the list of contributories of the said Company made out by the [Official Receiver and] Liquidator of the Company on the day of 19 , and now on the file of proceedings of the said Company, except that in the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, and † of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule.

* State full description of the deponent.

† Number of shares [or extent of interest].

2. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively, according to their respective names and addresses appearing in the said schedule, by placing the same prepaid in the Post Office at before the hour of o'clock in the noon of the said day of 19 .

Sworn, &c.

ORDER ON APPLICATION TO VARY LIST OF CONTRIBUTORIES (d).

(*Title.*)

UPON the application of W.N., by summons dated the day of 19 , for an order that the list of contributories of the Company and the Liquidator's certificate finally settling the same be varied by excluding the name of the applicant therefrom [*or, as the case may be*] and upon hearing, &c., and upon reading, &c., It is Ordered, That the list of contributories of the Company and the Liquidator's certificate finally settling the same be varied by excluding the name of the said W.N. from the said list of contributories, *or* by including the name of the said W.N. as a contributory in the said list for shares, [*or, as the case may be*] [*or* the Court doth not think fit to make any order on the said application, except that the said W.N. do pay to the Liquidator of the said Company his costs of this application, to be taxed in case the parties differ].

(c) Companies (Winding-up) Rules, 1909, Appendix, Form 48.

(d) *Ibid.*, Form 49.

ORDER TO VARY OFFICIAL RECEIVER'S LIST OF CONTRIBUTORIES, THE COMPANY BEING ESTOPPED FROM SAYING THAT THE SHARES WERE NOT FULLY PAID.

(*Title.*)

THE application by Summons dated the 18th May 1910 of J.C. and G.K. trading as C.K. & Company of in the County of Contributories of the above-named Company which upon hearing the Solicitors for the Applicants and for Harold de Vaux Brougham the Official Receiver and Liquidator of the above-named Company the Respondent to the said Summons in Chambers was adjourned to be heard in Court coming on 25th October 1910 and this day to be heard accordingly and upon hearing Counsel for the Applicant and for the said Respondent and upon reading the Order to wind-up the said Company dated the 17th February 1909 the two affidavits of G.K. filed respectively the 2nd June 1910 and the 20th July 1910 the affidavit of H.E.B. filed the 23rd June 1910 and the Exhibits in the said Affidavits or some of them respectively referred to and the Certificate dated 25th April 1910 of the said Official Receiver and Liquidator of the Settlement of the List of Contributories of the above-named Company.

THIS COURT DOTH ORDER that the List of Contributories of the above-named Company and the Official Receiver and Liquidator's said Certificate finally settling the same be varied by excluding therefrom the names of the applicants the said C.K. and Company.

AND IT IS ORDERED that the said Harold de Vaux Brougham do out the assets of the said Company pay to the said C.K. and Company their costs of the said application such costs to be taxed.

AND the said Official Receiver and Liquidator is to be at liberty to retain his costs of the said application out of the assets of the said Company such costs to be taxed. [*Re Coasters, Ltd.*, 0048 of 1909. Mr. Justice NEVILLE, November 1st, 1910, [1911] 1 Ch. 86.]

ORDER IN WINDING-UP TO RECTIFY REGISTER OF MEMBERS AND TO VARY LIQUIDATOR'S CERTIFICATE OF LIST OF CONTRIBUTORIES.

(*Title.*)

UPON the Application (by Summons dated the 31st day of July 1911) of J.E.W.M. of in the City of and upon hearing the Solicitors for the Applicant and for the above-named Company by C.F.S. the Liquidator thereof and for the L. and S.-W. B., Ltd., a party attending the proceedings pursuant to Order dated 15th August, 1911 and upon reading the Order to wind-up the above-named Law Car and General Insurance Company Ltd., dated the 20th December 1910 the Order dated 20th February 1911 (appointing liquidator) the Liquidator's Certificate of the Settlement of the List of Contributories of the said Corporation dated 7th July 1911, the Affidavit of the said J.E.W.M. filed the 2nd October, 1911, and the exhibits therein referred to.

IT IS ORDERED that the Register of Shareholders of the said Corporation be rectified by removing the name of the Applicant therefrom as the

holder of 100 B. Shares in the said Corporation numbered 197925 to 198024 (both inclusive) and that the said List of Contributories and the Liquidator's Certificate finally settling the same be varied in similar manner.

AND IT IS ORDERED that the said C.F.S. as such Liquidator do out of the assets of the above-named Company pay to the Applicant the said J.E.W.M. his costs of the said Application such costs to be taxed.

AND IT IS ORDERED that this order be produced and an Office Copy thereof delivered to the Registrar of Companies by the said Applicant within 14 days from the date hereof. [*Re The Law Car and General Insurance Corporation, Ltd.*, 00437 of 1910. Mr. Registrar HOOD, November 8th, 1911.]

ORDER RECTIFYING REGISTER IN WINDING-UP.

(*Title.*)

THE application by Summons dated the 20th December 1910 of the above-named Company which upon hearing Counsel for the Applicant and for W.E.H. the Respondent to the said Summons in Chambers was adjourned to be heard in Court coming on to be heard accordingly. And upon hearing Counsel on the 20th June 1911 and this day for the Applicant and for the said Respondent. And upon reading the Order to wind-up the above-named Company dated the 25th May 1909 the Order dated the 31st day of May 1911 the Joint Affidavit of F.S. and G.W.S. filed the 13th January 1911. The two several Affidavits of W.E.H. filed the 16th February 1911 and the 12th day of May 1911 respectively the further Joint Affidavit of F.S. and G.W.S. filed the 29th May 1911 and the several Exhibits in the said Affidavits or some of them respectively referred to.

THIS COURT DOTH ORDER that the Register of the Shareholders of the above-named Company be rectified by removing therefrom the name of the Respondent the said W.E.H. as the Holder of 375 Shares of the above-named Company Nos. 14008 to 14032 and 14281 to 14630 all inclusive.

AND IT IS ORDERED that the Respondent the said W.E.H. do pay to the above-named Sly Spink and Company Limited its Costs of the said Application such costs to be taxed.

AND IT IS ORDERED that this Order be produced to the Registrar of Companies and that an Office Copy of this Order be delivered to him by the Applicant within 7 days from the completion thereof. [*Sly Spink and Co.*, 00184 of 1909. NEVILLE, J., 21st June, 1911, [1911] 2 Ch. 430.]

Until the register of a company is rectified the liquidator is bound to enter the name of every person who is on its register of members at the date of the winding-up on the "A" list of contributories (*e*). The representatives of deceased or bankrupt members being entered and distinguished as representative members (*f*).

(*e*) *Ex parte Dunlop* (1863), 8 L. T. 846; *Reese River Silver Mining Co.* v. *Smith* (1869), L. R. 4 H. L. 64; see also *Fox's Case* (1863), 3 De G. J. & S. 465; *Bird's Case* (1864), 4 De G. J. & S. 200; *Barrett's Case* (1864), 4 De G. J. & S. 416.

(*f*) Companies (Consolidation) Act, 1908, s. 163 (2).

The powers of rectifying the register conferred by section 32 of the Act are, however, kept alive during a winding-up, and this, not merely by virtue of section 163 for the purposes of the winding-up and of settling the list of contributories, but also for all purposes (*g*).

Rectification under section 32 may take place if (*a*) the name of any person is without sufficient cause entered in or omitted from the register of members of a company; or (*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member. The books and papers of the company and of the liquidators are where the company is in liquidation as between the contributories *primâ facie* evidence of the truth of all matters purporting to be therein recorded (*h*), and a person who is admittedly a contributory for some shares will often be in a more difficult position than he would otherwise have been when trying to repudiate other shares (*i*).

The cases as to who are and who are not contributories may be grouped under four heads—

I. The cases where a person has or is alleged to have agreed with the company to become a member in respect of certain shares, and there is no entry on the register in respect of such shares.

II. The cases where a person's name has been entered on the register as the holder of certain shares and he either has not or is alleged not to have agreed to take such shares.

III. The cases where a person has been a member and either has or is alleged to have ceased to be a member and his name does not appear on the register at the date of the winding-up.

IV. The cases where a person has been a member and his name is on the register at the date of the winding-up, but it is alleged that he had got rid of his shares before that date and that his name ought not to have appeared on the register then.

Persons not on the Register.

I. If a person has agreed to become a member but his name has not been entered on the register of members, then the register will have to be rectified, and his name inserted on the list of contributories, if he has signed the memorandum of association for the shares he has agreed to take, and, it is thought, also in other cases, unless there is some special equitable reason why the contract which is still in *fieri* should not be performed. It may here be mentioned that a person whose name is for any reason not on the register will not be precluded by cases like *Oakes* v. *Turquand* (*k*) from raising any

(*g*) *Sussex Brick Co.*, [1904] 1 Ch. 598; *Reese River Silver Mining Co.* v. *Smith* (1869), L. R. 4 H. L. 64; *Breckenridge's Case* (1865), 2 H. & M. 642.

(*h*) Companies (Consolidation) Act, 1908, s. 220.

(*i*) See *Ex parte Kennedy* (1890), 44 C. D. 472. The section is not, however, brought into play by the mere fact of a person's name being on the register: *Fox's Case* (1863), 3 De G. J. & S. 465, at p. 468.

(*k*) (1867), L. R. 2 H. L. 325.

equitable defence he may have (*e.g.* that he has been induced to take his shares by fraud) so as to avoid being put on the list of contributories (*l*).

Turning first of all to the subscribers to the memorandum. The effect of the Act is that they do not merely agree to take but actually do take the shares allotted to them (*m*). The fact that their names have not been put on the register and that for a long period of years they have not been treated as shareholders is quite immaterial (*n*), except, perhaps, where the company has allotted the whole of its share capital to other persons (*o*), but where a company has allotted the whole of the first issue of its share capital (*p*), and such first issue does not exhaust its share capital or where the company has increased its share capital and by means of such increased capital has sufficient shares (*q*), there the signatories will be liable for the shares they have signed for. Where a signatory to the memorandum has applied for a larger number of shares than he has signed the memorandum for, such application will *primâ facie* be taken to include the shares he has signed for (*r*), though, no doubt, if a contrary intention were shown, he would be liable for both the shares applied for and those signed for, and allotment to a firm in the firm's name has been held to relieve one of the partners from his liability as a contributory (*s*). Further, where a person has signed for a particular class of shares he may satisfy his liability by accepting the allotment of other shares of at least equal value (*t*), but, of course, in this case he would have to prove that the allotment was intended to satisfy his original liability.

Now that the difficulty caused by section 25 of the Companies Act, 1867, is out of the way (*u*), a company can, no doubt, arrange that a signatory shall pay for the shares he has subscribed for in kind and not in cash (*x*) ; but the mere fact that a person has signed for a certain number of shares, and has subsequently agreed to sell

(*l*) *Aaron's Reefs* v. *Twiss*, [1896] H. L. 273 ; *Coleman's Case* (1863), 1 De G. J. & S. 495.

(*m*) *Fothergill's Case* (1873), 8 Ch. 270.

(*n*) *Evans' Case* (1867), 2 Ch. 427 ; *Sidney's Case* (1871), 13 Eq. 228 ; *Tooth's Case* (1868), 19 L. T. 599 ; *Levick's Case* (1870), 40 L. J. (CH.) 180 ; *Smyth's Case* (1868), Ir. Rep. 2 Eq. 573, seems wrongly decided.

(*o*) *Mackley's Case* (1875), 1 C. D. 247. Might not an increase of capital be inferred in some cases ? See *Campbell's Case* (1873), 9 Ch. 1.

(*p*) *Tyddyn Sheffrey State Quarries* (1869), 20 L. T. 105.

(*q*) *Tooth's Case* (1868), 19 L. T. 599.

(*r*) *Gilman's Case* (1886), 31 C. D. 420 ; *Ex parte Elliot* (1866), 15 L. T. 406.

(*s*) *Dunster's Case*, [1894] 3 Ch. 473 ; but see *Noke's Case* (1868), 37 L. J. (CH.) 624, where the partner who had signed was held liable, but the firm escaped liability.

(*t*) *Duke's Case* (1876), 1 C. D. 620.

(*u*) See as to this *Ebenezer Timmins and Sons*, [1902] 1 Ch. 238.

(*x*) *Drummond's Case* (1869), 4 Ch. 772 ; *Pells' Case* (1869), 5 Ch. 11 ; *Jones' Case* (1870), 6 Ch. 48.

property for that number of fully paid shares will not be enough to relieve him from his liability for the shares he has signed for, even if that has throughout been the intention of the parties, unless either the memorandum or the articles or the agreement or some other contemporaneous document makes it clear that one and the same set of shares are referred to in each transaction (*y*), and even that would apparently not be enough where the liability to the persons entitled to the fully paid shares is a joint one (*z*). These remarks do not, however, apply in cases where the liability to persons to whom fully paid shares have been or have been agreed to be allotted would support a plea of payment in cash (*a*). Where shares have been allotted to a person in consideration of services rendered, this will not *primâ facie* satisfy his liability as a subscriber (*b*). Moreover, where the vendor of a property has agreed to give fully paid shares which form part of the purchase money to a subscriber, this will not satisfy the latter's obligation to pay for the shares he has subscribed for, for his contract as subscriber is with the company (*c*). A provision in the articles that all the shares subscribed for shall be allotted as fully paid up is, of course, wholly bad (*d*). In one case (*e*), where a subscriber subscribed for a certain number of ordinary shares, and a certain number of fully paid shares, it was held that he was not liable for the latter shares, though he probably would have been had he subscribed for them only; Lord Justice Buckley says in his book (*f*) that this case "is to the author not intelligible," and it certainly would not be followed.

In *Snell's Case* (*g*) it was held that subscribers could be released from liability where there was an express power in the articles to accept surrenders, but this case was not followed where the transaction was considered to be really a bargain and sale and the power of surrender was considered to be part of the power to forfeit (*h*), or where there was no power to accept surrenders, and the directors simply decided not to allot (*i*), or where the directors cancelled the

(*y*) *Fothergill's Case* (1873), 8 Ch. 270, in which *Pells' Case* (1869), 5 Ch. 11, and *Jones' Case* (1870), 6 Ch. 48, are doubted: *Dent's Case* (1873), 8 Ch. 768; *Fraser's Case* (1873), 42 L. J. (CH.) 358; *Coates' Case* (1874), 17 Eq. 169.

(*z*) *Fothergill's Case* (1873), 8 Ch. 270.

(*a*) See *Spargo's Case* (1873), 8 Ch. 407, and the other cases, and with it *supra*, pp. 259 and 260, and also *Coates' Case* (1874), 17 Eq. 169, which is, however, a somewhat doubtful case.

(*b*) *Bennett's Case* (1867), 16 L. T. 475.

(*c*) *Forbes and Judd's Case* (1870), 5 Ch. 270; *Migotti's Case* (1867), 4 Eq. 238.

(*d*) *Dent's Case* (1873), 8 Ch. 768

(*e*) *Baron de Beville's Case* (1868), 7 Eq. 11.

(*f*) Buckley, 9th Ed. p. 48, note (*n*).

(*g*) (1869), 5 Ch. 22.

(*h*) *Hall's Case* (1870), 5 Ch. 707.

(*i*) *London and Provincial Consolidated Coal Co.* (1877), 5 C. D. 525.

shares of some of the subscribers, although they had no power to cancel shares, and did not purport to act under and could not *bonâ fide* have exercised their power to forfeit shares for non-payment of calls (*k*). It is very doubtful whether *Snell's Case* (*l*) is consistent with either *Trevor and Whitworth* (*m*) or *Bellerby* v. *Rowland* (*n*). In one case (*o*) a man subscribed for shares, and, on becoming dissatisfied, demanded to be allowed to resign, whereupon the secretary of the company told him that he had found a man who would take his shares. Shares to that amount were actually allotted to the man so found, but the company kept no register, and there was nothing to identify the two sets of shares or to show that the parties had come together, and it was held that the Court would not, as in *Nicol's, Tufnell's, and Ponsonby's Cases* (*p*), imply an equitable transfer from the subscriber to the allottee. It is submitted that it might well have done so.

It has been suggested that a person who signs a copy of the memorandum, but not the registered copy, will be liable as a signatory (*q*); but this suggestion, which depended on a case (*r*) decided on very special provisions in the Act of 1856, seems wrong, as these provisions do not occur in the later Acts, but it may be that the fact of having signed such a document would be evidence of an agreement to take the shares.

The question remains as to whether a subscriber is liable where the memorandum has been altered without his knowledge after he has signed, but before it was registered. It is thought in such case that if the alteration be at all material he will not be liable (*s*), though if he allows his name to be put on the register and acts as a shareholder he will, no doubt, be liable on a subsequent implied contract (*t*), it being his duty to acquaint himself with the contents of the memorandum. Persons, however, who have signed while the document was in the state in which it was ultimately registered, cannot escape from liability merely because the document was in a different state when other persons who signed either before or after them, signed it (*u*).

(*k*) *Esparto Trading Co.* (1879), 12 C. D. 191.

(*l*) (1869), 5 Ch. 22.

(*m*) (1887), 12 A. C. 409.

(*n*) [1902] 2 Ch. 14; and see the judgment of KEKEWICH, J. (not overruled on this point); [1901] 2 Ch. at pp. 272, 273. The subject of surrenders is dealt with *supra*, pp. 71 and 72.

(*o*) *Ex parte Watson* (1885), 54 L. T. 233.

(*p*) (1885), 29 C. D. 421; but see *Wallscourt's Case* (1899), 7 Mans. 235.

(*q*) *Palmer's Case* (1868), Ir. Rep. 2 Eq. 573.

(*r*) *New Brunswick Railway* v. *Boore* (1858), 3 H. & N. 249.

(*s*) *Felgate's Case* (1865), 2 De G. J. & S. 456; *Cox's Case*, mentioned in *Richmond's Case* (1858), 4 K. & J. 305; see also *Peel's Case* (1867), 2 Ch. 674, 682.

(*t*) *Sheffield's Case* (1859), Johnson, 451.

(*u*) *Richmond's Case and Painter's Case* (1858), 4 K. & J. 305.

Turning to the case of persons who are not subscribers to the memorandum, but who have agreed to take shares, it is thought that in the absence of anything very special the liquidator can have the register of the company rectified so as to include the names of such persons, even though their names were not on the register while the company was a going concern (*x*). Where a company has a contract with a person not on the register that he would be able to repudiate, if the company were a going concern, *e.g.* a contract to issue fully paid shares where the company can only issue unpaid shares, such person's name will not be put on the list (*y*). It was suggested in *Nicol's, Tufnell's, and Ponsonby's Cases* (*z*) that mere delay might preclude a liquidator from altering the register in such cases, but the point did not really arise, as all the shares of the company had been issued under subsequent arrangements made with the concurrence of all parties, and it was held that the transaction amounted to an equitable transfer of what was after all only an equitable right to shares. In spite of these cases, it is not thought that delay by the company can preclude the right of the liquidator to have the names of persons who have definitely agreed to take shares put on the register, for the company could not release them (*a*), and as there can be no question of estoppel, where all parties know the facts, it is difficult to see how the company can by its omissions effect a thing which it could not have done by any positive act (*b*). Even directors who have applied for their qualification shares will not be liable where there has been no allotment and all the shares of the company have been issued (*c*). Of course, in many of these cases there will be no notice of allotment, and there will therefore be no contract (*d*), and probably the Court will be slower to infer a concluded contract in the cases now under consideration than in cases

(*x*) *Davies' Case* (1872), 41 L. J. (CH.) 659; *Ritso's Case* (1877), 4 C. D. 774 (where the offer was withdrawn before acceptance); *Whittet's Case* (1858), 2 De G. & J. 577; *Adam's Case* (1872), 13 Eq. 474; *Bloxam's Case* (1864), 33 Beav. 529; 4 De G. J. & S. 447; *Ex parte Fletcher* (1868), 37 L. J. (CH.) 49; see also *Isaac's Case*, [1892] 2 Ch. 158, and the other cases cited with it as to directors' qualification shares, *supra*, pp. 353 and 354; and *Langer's Case* (1868), 37 L. J. (CH.) 292; *Macdonald, Sons & Co.*, [1894] 1Ch. 89.

(*y*) *Macdonald, Sons & Co.*, [1894] 1 Ch. 89; *Arnot's Case* (1887), 36 C. D. 702.

(*z*) (1885), 29 C. D. 421.

(*a*) *Adams' Case* (1872), 13 Eq. 474; *Ex parte Fletcher* (1868), 37 L. J. (CH.) 49; and see Companies (Consolidation) Act, 1908, s. 41 (1) (*e*); *Duff's Executors' Case* (1886), 32 C. D. 301; see *Mercantile and Exchange Bank* (1871), 12 Eq. 268, where the application of a person who sought to be put on the list of contributories was refused as the contract could not be specifically performed.

(*b*) See *Bellerby* v. *Rowland*, [1902] 2 Ch. 14; *General Property Investment Co.* v. *Matheson's Trustees* (1888), 16 Rettie, 282.

(*c*) *Carmichael and Hewitt's Case* (1882), 46 L. T. 653.

(*d*) See *Best's Case* (1865), 2 De G. J. & S. 650.

where the name is on the register (*e*). Many of the cases as to director's qualification shares, and as to the liability of underwriters, come under this head (*f*).

Where the contract is that the allottee's name is not to go on the register, there he cannot be made a contributory (*g*). A liquidator cannot put directors on the list of contributories merely because of a statement in a prospectus to which they were privy, that they had agreed to take shares (*h*).

PERSONS ON THE REGISTER.

Turning to II., the cases where a person's name has been entered on the register (*i*) as the holder of certain shares and he either has not or is alleged to have not agreed to take such shares.

It is unnecessary here to consider the cases where a person has been induced to take shares by a fraudulent prospectus, or has otherwise entered into a voidable contract. In such cases the winding-up will in practically all cases, except the case mentioned in section 86 of the Act, preclude the right to relief (*k*). Moreover, the case of *Oakes* v. *Turquand* (*k*), and other cases that have followed it, go even further than this; not only do they preclude relief in ordinary misrepresentation cases, but also in cases where shares have been issued under an irregular resolution (*e.g.* for increasing capital) which has not been contested while the company was a going concern (*l*), or where a man has taken shares subject to a condition subsequent which the company either has not fulfilled or cannot fulfil, even though the register states that the allotment has been made conditionally (*m*). The fact that a shareholder has with his own consent become a full legal shareholder by registration of his shares will almost, if not quite, invariably be fatal to any claim that he may set up to have his name taken off the register on the ground of some agreement made at the time of application for shares (*n*), for this fact will be the strongest possible evidence that such

(*e*) *Ex parte Preston and Henry* (1867), 15 L. T. 496, and see also *post*, pp. 1107 *et seq.*, and p. 1123.

(*f*) As to these, see *supra*, pp. 350 *et seq.*, and pp. 180 and 181.

(*g*) See *Saunders' Case* (1864), 2 De G. J. & S. 101; *Gray's Case* (1876), 1 C. D. 664; *Bunn's Case* (1860), 2 De G. F. & J. 275.

(*h*) *Moore Bros. & Co.*, [1899] 1 Ch. 627; *Todd* v. *Millen*, [1910] S. C. 868; but cp. *Moore and De La Torre's Case* (1874), 18 Eq. 661.

(*i*) This will include persons whose names are in a book kept as a register abroad: *Sand's Case* (1875), 32 L. T. 299.

(*k*) *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 325, a misrepresentation case; and see the other cases cited *supra*, pp. 233 and 234, and *Pentelow's Case* (1869), 4 Ch. 178, where relief was given after winding-up, the applicant having repudiated on the ground of misrepresentation while the contract was in *fieri* and defended an action for calls before winding-up; see also *Peek's Case* (1869), 4 Ch. 532.

(*l*) *Miller's Dale and Ashwood Dale Lime Co.* (1885), 31 C. D. 211.

(*m*) *Fisher's Case* (1885), 31 C. D. 120.

(*n*) *Black & Co.'s Case* (1872), 8 Ch. 254.

agreement was merely a collateral agreement or a condition subsequent, and not a condition precedent to the taking of the shares (*o*). This point seems to be the real and only distinction between *Shackleford's Case* (*p*) and *Pellat's Case* (*q*) on the one hand, and *Elkington's Case* (*r*) on the other. In all these cases there had been agreements to take shares and to pay for them by goods to be supplied, and the company had not accepted the goods.

In the first of these cases nothing had been done by the applicant except making an application for shares which set out the terms of the agreement, and he received no notice of the allotment, in the second it was the same except that the allottee paid a deposit pursuant to his agreement, but in the last case the allottee not only paid a deposit and a call, but received notice of allotment and his share certificates, and it was held that he knew of the fact of his name being on the register, and consequently was liable. In the other two cases the allottees escaped. In *Wood's Case* (*s*) the agreement was similar to those above, but the application was expressly made subject to the condition, and the allottee on getting a common form letter of allotment, asked for an undertaking as to the goods before paying a deposit; the deposit was never paid, and, after some correspondence, no definite terms were come to on this point. The allottee was not liable though on the register.

In another case (*t*) a person who applied for shares, in an unlimited company, "if limited," received an allotment letter, and, at his own request, certificates, and it was held that he was liable, as he remained on the register without protest though the name of the company as appearing on the documents he received must have shown him that the company was unlimited, and so could only issue unlimited shares. It would seem, moreover, that agreements to issue shares at a discount will, where the person to whom the shares are to be issued is and knows he is on the register, come within the class of cases (*u*); but where stock has been illegally issued by way of bonus or as partly paid, it has been held that the allottee was not

(*o*) *Elkington's Case* (1867), 2 Ch. 511; cp. *Simpson's Case* (1869), 4 Ch. 184, where the allottee retained his allotment letter, paid part of the moneys payable on allotment, and attended meetings and was held not to be liable, the condition being considered a condition precedent. He never paid calls or acted inconsistently with his agreement or asked for certificates or presumably knew he was on the register.

(*p*) (1866), 1 Ch. 567.

(*q*) (1867), 2 Ch. 527.

(*r*) (1867), 2 Ch. 511.

(*s*) (1858), 3 De G. & J. 85. In *Woodfall's Case* (1849), 3 De G. & Sm. 63, only scrip certificates were issued, and the allottee was held not liable for this reason.

(*t*) *Perrett's Case* (1873), 15 Eq. 250.

(*u*) Cp. *Addlestone Linoleum Co.* (1887), 37 C. D. 191; *Almada and Tirito Co.* (1888), 38 C. D. 415; *Ex parte Sandys* (1889), 42 C. D. 98. In the last case the company was not in liquidation.

liable as a contributory (x). Where the illegal condition was a condition subsequent, a person who signed a deed of settlement for a certain number of shares, which he proposed should be included in the shares he was to receive as fully paid under an agreement which was avoided by the liquidator, was treated like a subscriber to the memorandum, and held liable for the shares for which he had signed (y). And in another case (z) a person whose shares were to be and had been paid for in kind and not in cash was liable to pay for his shares in cash owing to (the now repealed) section 25 of the Companies Act, 1867, not having been complied with, and could not after winding-up get relief from his contract.

From this class of cases must be distinguished the cases where a vendor or promoter or other person entitled to fully paid shares has agreed to give some of such shares, however improperly, to a director or other person. In such cases the donee of the shares may be liable to misfeasance proceedings, but he will not be liable for unpaid shares as a contributory (a). It is thought that *De Ruvigne's Case* (b) is also an example of this latter class of cases, for though James, L.J. (at pp. 321 and 322), speaks of the agreement, under which the donor was to get the shares he was to give as *ultra vires*, he seems to mean simply *ultra vires* the directors in the sense of being a fraud on their powers.

Again, a company may be estopped, even against an allottee of shares, from claiming payment (c). Such was the cases where a person had paid the vendor for shares to which the vendor became entitled, but which, owing to non-registration of the contract, were not paid for under section 25 of the Act of 1867, though, apparently, it would have been otherwise if the person making the payment had known that he was to have vendor's shares (d).

A mortgagee who has agreed to lend a company money on the security of fully paid shares, will not be liable as a contributory where he has received certificates for fully paid shares and has lent

(x) *Home and Foreign Investment and Agency Co.*, [1912] 2 Ch. 72. It was considered doubtful whether the allottee could recover back moneys paid in respect of the stock, though it is difficult to see why not, if the decision is right. This matter was, however, not pressed, the more especially as the Statute of Limitations probably barred any such rights.

(y) *Nickoll's Case* (1857), 24 Beav. 639; and see *Daniell's Case* (1857), 1 De G. & J. 372, both explained in *Carling's Case* (1875), 1 C. D. 115.

(z) *Pagin and Gill's Case* (1877), 6 C. D. 681; see also *Hartley's Case* (1875), 10 Ch. 157.

(a) *Carling's Case* (1875), 1 C. D. 115.

(b) (1877), 5 C. D. 306. In this case the company did not seek to set aside the agreement with the donor, which was the only agreement with the company to take shares.

(c) *Parbury's Case*, [1896] 1 Ch. 100.

(d) *Markham and Darter's Case*, [1899] 1 Ch. 414, affirmed on other grounds, [1899] 2 Ch. 480.

his money or forborne to call it in, owing to reliance on the certificates. Even after winding-up he can get his name removed from the register, and the list of contributories (*e*). It would seem that such a person is in a more favourable position than a person who has applied for and received an allotment of shares, for the latter would, it is thought, be on his inquiry to ascertain how the shares had been paid for (*f*). The case last mentioned depended on estoppel. Where shares have not been paid for, a *bonâ fide* purchaser for value, without notice, who purchases such shares as fully paid shares, and relies on the certificates stating that they are fully paid, will be protected from liability by this same doctrine of estoppel (*g*), and so will a person taking from a *bonâ fide* purchaser for value without notice, even though he himself has notice (*h*). Purchasers with notice will, however, not be protected unless their vendor or some previous purchaser of the shares was a *bona fide* purchaser for value without notice (*i*).

There are other cases where the agreement is from its nature a condition subsequent. Such are the cases where a man agrees to take shares on the terms that he is to act as medical adviser (*k*) or broker (*l*) to the company, or that he is to supply goods on the terms that the moneys payable for such goods are to be set off against calls (*m*), or that he is to be credited with certain sums if he takes certain shares (*n*), or that the calls on the shares are to be paid for out of commission he expects to earn as the company's agent (*o*). In all these cases he will be liable when it comes to a winding-up as a contributory if his name is on the company's register, and the result is the same where a person advances money to a company and has shares allotted on the terms that if he gives notice the money is to be repaid and the allotment cancelled (*p*).

It will be otherwise where the application is expressly conditional

(*e*) *Bloomenthal* v. *Ford*, [1897] A. C. 156.

(*f*) See *per* Lord HERSCHELL, *Bloomenthal* v. *Ford*, [1897] A. C., p. 166.

(*g*) *Burkinshaw* v. *Nicolls* (1878), 3 A. C. 1004.

(*h*) *Barrow's Case* (1879), 14 C. D. 432; *Ex parte Sandys* (1889), 42 C. D. 98.

(*i*) *London Celluloid Co.* (1888), 39 C. D. 190; *British Farmers' Pure Linseed Co., Potter's and Brown's Cases* (1879), 48 L. J. (CH.) 56; *Eddystone Marine Insurance Co. (No. 3)*, [1894] W. N. 30.

(*k*) *Woollaston's Case* (1859), 4 De G. & J. 437; contrast *Coleman's Case* (1863), 1 De G. J. & S. 495, where the name was not on the register and the whole matter was therefore still *in fieri*.

(*l*) *Yelland's Case* (1852), 5 De G. & Sm. 395.

(*m*) *Black & Co.'s Case* (1872), 8 Ch. 254.

(*n*) *Fisher's Case* (1885), 31 C. D. 120.

(*o*) *Bridger's Case* (1870), 5 Ch. 305; and see also *Thompson's Case* (1865), 4 De G. J. & S. 749.

(*p*) *Addison's Case* (1870), 5 Ch. 294. In this case there was a transfer to a nominee of the company, and it is thought that this would now be sufficient to release the original allottee: see *post*, p. 1119.

on the applicant receiving a particular appointment, which he did not get (*q*).

This brings us to the cases where there had been a reconstruction which fails either wholly or partially.

With regard to the cases where the reconstruction has failed partially, as occurred in *Campbell's Case* (*r*) and *Hippisley's Case* (*r*), in which after an order had been obtained by dissentient shareholders restraining the company from carrying out the agreement, the matter was compromised with the sanction of the Court on the terms that the agreement should go through in its original form, but that dissentient shareholders should be bought out; in all such cases it is thought that persons who have applied for shares in the new company, whether their application was made direct to the new company or not, will be liable. In the cases where the amalgamation fails wholly, there persons who have applied directly to the new company (*s*), or, what comes to the same thing, who have on receiving certificates from the new company acknowledged the receipt of such certificates, and retained such certificates (*t*), will be liable as contributories if they are on the register and they have not taken proceedings to have the register rectified before the commencement of the winding-up. These cases are, it is thought, condition subsequent cases. There are two cases which at first sight seem to conflict with this view, but it will be noticed that in one of them (*u*) the shares had been forfeited long before the winding-up. It is true that the case seems to have been decided on the footing that there was no contract, but it is submitted that it cannot be supported on this ground. In the other case (*x*), the application for rectification of the register was made at a time when there was no winding-up, and was granted on the ground that the agreement to take shares was conditional. It is thought that there is no reason to quarrel with this case.

Where application has only been made to the officers of the old company, there it is thought that the validity of the reconstruction agreement, or, at all events, its partial validity, would be considered to be a condition precedent to the acceptance of the application, and the person who has applied will not be liable as a member unless he has acquiesced in his name being on the register or has done something which is only consistent with his being a member of the new company (*y*).

(*q*) See *Roger's and Harrison's Cases* (1868), 3 Ch. 633.

(*r*) (1873), 9 Ch. 1.

(*s*) *Hare's Case* (1869), 4 Ch. 503.

(*t*) *Challis's Case* (1871), 6 Ch. 266.

(*u*) *Bank of Hindustan, China, and Japan* v. *Allison* (1871), L. R. 6 C. P. 222; and see *Alison's Case* (1874), 9 Ch. 1.

(*x*) *London and Exchange Bank* (1867), 16 L. T. 340.

(*y*) *Dougan's Case* (1873), 8 Ch. 540; *Alabaster's Case* (1868), 7 Eq. 273.

There remains yet a third class of cases, viz. where the shareholder in the old company has done absolutely nothing by way of applying for shares, and nothing which is only consistent with being a member of the new company (z). In such case he will not be liable even if he has assented to the amalgamation (a).

These last belong to a different class of cases, namely, the cases where there never was a contract of any sort, they may be further instanced by (amongst other cases) some other reconstruction cases. Thus, where a man applied for shares on the terms of a certain scheme of reconstruction, and in reply was informed that shares had been allotted to him on certain wholly different terms, he was relieved from liability after a winding-up, in spite of some delay caused mainly by his absence (b). And in another case (c) arising on the same facts, even a request (several times repeated) for the certificates was held not to be fatal to relief after a winding-up. In these cases, where there is no contract to begin with, some very unequivocal positive act of membership will be necessary to fix a person with a contract (d). To this class of cases also belong the case of an agreement to place shares (e), and an invalid allotment by a person who had no authority to bind the company (f).

Another class of case coming under this head are the cases where there has in fact been no application by the person whose name is on the register. There have been cases where a person has applied for shares in the name of another, and has been held personally liable for the shares. This happened where the shares really belonged to the applicant, but he got other people to take them so as to make it appear that the company had more shareholders (g), and where the application was made in the name of the applicant's daughter, who, being a married woman, could not contract (h), and in another case (i) where a man accepted a transfer in the name of his son, a boy at school. On the other hand, it has been held to be no defence to a person, whom it is sought to put on the list of contributories, to show that though he applied in his own name he really applied as

(z) *Somerville's Case* (1871), 6 Ch. 266; *Ex parte Bagshaw* (1867), 4 Eq. 341; *Stace and Worth's Case* (1869), 4 Ch. 682.

(a) *Drew's Case* (1867), 36 L. J. [CH.) 785.

(b) *Wynne's Case* (1873), 8 Ch. 1002.

(c) *Beck's Case* (1874), 9 Ch. 392.

(d) See also *Jackson* v. *Turquand* (1869), L. R. 4 H. L. 305; *Addinell's Case* (1865), 1 Eq. 225, where an additional term (as to forfeiture) was introduced into the acceptance and there was held to be no contract; and cp. *Dobson's Case* (1865), 1 Ch. 231.

(e) *Gorrissen's Case* (1873), 8 Ch. 507.

(f) *Howard's Case* (1866), 1 Ch. 561.

(g) *Cox's Case* (1863), 4 De G. J. & S. 53.

(h) *Pugh and Sharman's Case* (1872), 13 Eq. 566; cp. also *Manley's Case* (1890), 2 Meg. 74. which seems, however, very near a case of fictitious names.

(i) *Richardson's Case* (1875), 19 Eq. 588.

agent for another (*k*), or that the true owner of the shares had agreed to indemnify him from all liability (*l*). And where a man, without making any false representation to the company, applied for and accepted an allotment of shares in the name of his wife, and afterwards dealt with such shares in her name, it was held that his name could not be put on the list of contributories, though she did not know of the shares throughout these transactions (*m*). And the same result followed where a director, without any intention of taking shares himself, applied for shares in the name of his son, who knew nothing about the matter, but in whose name the shares were pursuant to such application registered (*n*). *Cox's Case* (*o*), *Pugh and Sharman's Case* (*p*), and *Richardson's Case* (*q*) have been explained (*r*) on the ground that the names put forward were in reality mere *aliases*. No doubt, where a person has applied for shares in the name of an *alias* or a fictitious person he will be liable (*s*); but it is certainly thought that these three cases go to the very verge of the law, for in neither of them would there seem to be any doubt that the applicant did not intend to become a full legal shareholder, and this, it is submitted, is essential (*t*). In the case of married women, all shares which after the commencement of the Married Women's Property Act, 1882, are allotted to or placed or registered or transferred in or into or made to stand in the sole name of any married woman, will be deemed, unless and until the contrary is shown, to be her separate property, in respect of which, so far as any liability may be incident thereto, her separate estate will alone be liable, whether the same is so expressed in the document whereby her title to the same is created or certified or in the books or register wherein her title is recorded or not (*u*). A woman married after the commencement of the Act continues liable for any sum for which at the date of her marriage she may be liable as a contributory either before or after she has been placed on the list of contributories (*x*). The husband of a married woman married after the commencement of the Married Women's Property Act, 1882, is only liable for the antenuptial debts of his wife, including liabilities as a member of a company to the extent

(*k*) *Bird's Case* (1864), 4 De G. J. & S. 200.

(*l*) *Barrett's Case* (1864), 4 De G. J. & S. 416.

(*m*) *London, Bombay, and Mediterranean Bank* (1881), 18 C. D. 581.

(*n*) *Coventry's Case*, [1891] 1 Ch. 202.

(*o*) (1863), 4 De G. J. & S. 53.

(*p*) (1872), 13 Eq. 566.

(*q*) (1875), 19 Eq. 588.

(*r*) See *National Bank of Wales, Massey and Giffin's Case*, [1907] 1 Ch. 582; *King's Case* (1871), 6 Ch. 196.

(*s*) *Savigny's Case* (1898), 5 Mans. 336.

(*t*) See *Bunn's Case* (1860), 2 De G. F. & J. 275.

(*u*) Married Women's Property Act, 1882, s. 7. The same applies where shares are registered in her name and the name of any other person except her husband: *ibid.*, s. 8.

(*x*) Married Women's Property Act, 1881, s. 13.

of the property he has acquired or become entitled to through his wife (*y*). Section 17 of this Act gives a summary remedy for determining questions of liability as between husband, wife and company.

The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property Act (Scotland), 1881, as the case may be, will, during the continuance of the marriage, be liable as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he will be a contributory accordingly.

Subject to this, the Companies (Consolidation) Act, 1908, does not affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881 (*z*).

The old law was that where a woman was a shareholder at the date of her marriage the husband was liable to be put on the list of contributories, if the company was wound up. Such liability commenced with the marriage, and, where the company was not in winding-up at the date of the termination of the marriage and the husband's name was not then on the register, ended with it. Under the Act of 1862 he was liable to contribute as a contributory, and such liability was not affected or limited by the Married Women's Property Act, 1874, nor did it matter that the shares belonged to the wife for her separate use (*a*).

With regard to shares acquired during coverture a company, where not forbidden by its articles, could allow a married woman to become a shareholder in respect of her separate estate (*b*), and in such case the husband was not liable to be put on the list of contributories under the Act of 1862 (*c*) ; but it is thought that in these cases he will be liable to be put on the list of contributories under section 128 of the present Act (*d*). Where a married woman neither

(*y*) Married Women's Property Act, 1881, s. 14.

(*z*) Companies (Consolidation) Act, 1908, s. 128.

(*a*) Companies Act, 1862, s. 78 ; *Ex parte Hatcher* (1879), 12 C. D. 284 ; and see also *Luard's Case* (1860), 1 De G. F. & J. 533, under the earlier Acts ; but for *Ex parte Hatcher* (1879), 12 C. D. 284, it might have been doubtful whether the liability of a husband arose except when the company was in winding-up when the marriage took place, for only then was the wife a contributory : cp. *Financial Corporation* v. *Lawrence* (1869), 4 C. P. 731. Under the present section the point does not arise.

(*b*) *Matthewman's Case* (1866), 3 Eq. 781 ; *Butler* v. *Cumpston* (1868), 7 Eq. 16.

(*c*) *Belcher's Case*, [1883] W. N. 94 ; *London, Bombay, and Mediterranean Bank* (1881), 18 C. D. 581 ; and see *Angas's Case* (1849), 1 De G. & Sm. 560, and s. 4 of the Married Women's Property Act, 1870 ; and *Reg.* v. *Carnatic Railway* (1873), L. R. 8 Q. B. 299.

(*d*) Compare s. 78 of the Companies Act, 1862, with s. 128 of the Companies (Consolidation) Act, 1908.

contracted as agent for her husband, nor in respect of her separate estate, neither he nor she were liable (*e*).

Where both husband and wife are or may be liable as contributories, the names of both must be put on the list together, and the Court will not, in the absence of one of such names, decide questions relating to liability to be on the list (*f*).

In the usual case nowadays of persons married or having acquired shares after 1882, the wife alone will be liable, unless, in the case of a liability incurred by the wife before marriage, the husband has acquired or become entitled to property through his wife (*g*). Probably where the husband has acquired or become entitled to such property the name of both husband and wife should be on the list.

Somewhat analogous are the cases with regard to infants. They are considered more fully under the question of transfers to infants, the case where they usually arise, but it may be here said that except perhaps where the articles of the company forbid an infant being a member (*h*), a contract with an infant is voidable and not void, and he will be liable where before the winding-up he has attained full age and elected to keep shares (*i*), and possibly he will also be liable where the contract was for his benefit (*k*). Where an infant has repudiated and has never received any benefit under the contract, he may prove in the winding-up for the moneys he has paid in respect of the shares (*l*).

With regard to lunatics who apply for shares there seems to be no authority directly in point, but apparently the contract of a person of unsound mind will be binding where the other party at the time of entering into the contract does not know of his state of mind (*m*); but this principle does not apparently extend to cases where a company acts on a power of attorney executed by a person of unsound mind, the authority of the agent being wholly bad in such cases (*n*).

Where a company, which has no power to hold shares in another company, applies for and accepts an allotment of such shares, as the transaction is *ultra vires*, its name will be taken off the register

(*e*) *Ex parte Rhodes* (1859), 7 W. R. 510; *Pugh and Sharman's Case* (1872), 13 Eq. 566.

(*f*) *Bell, Lang, and others' Case* (1879), 4 A. C. 550, at pp. 560 *et seq.* (as to Mrs. Lang).

(*g*) Married Women's Property Act, 1882, ss. 14 and 15.

(*h*) Cp. *Royal Naval School*, [1910] 1 Ch. 806; and see s. 38 of the Building Societies Act, 1874, s. 32 of the Industrial and Provident Societies Act, 1893, and s. 36 of the Friendly Societies Act, 1896.

(*i*) *Ebbett's Case* (1870), 5 Ch. 302; *Yeoland Consols* (1888), 58 L. T. 922.

(*k*) See Lindley on Companies, 6th Ed. vol. ii. p. 1106.

(*l*) *Hamilton* v. *Vaughan-Sherrin Electrical Engineering Co.*, [1894] 3 Ch. 589.

(*m*) *Imperial Loan Co.* v. *Stone*, [1892] 1 Q. B. 599.

(*n*) *Daily Telegraph Newspaper Co.* v. *McLaughlin*, [1904] A. C. 776; see also *Elliott* v. *Ince* (1857), 7 De G. M. & G. 475.

of the second company (*o*); bodies corporate may now hold property as joint tenants in the same way as individuals (*p*).

With regard to the personal representatives of a deceased member the question sometimes arises as to whether they have so acted as to enable the liquidator to put their own names on the list of contributories, or whether they are only liable to be put on such list in their representative capacity. Where shares are offered to the existing shareholders of a company either on an increase of capital (*q*) or a reconstruction (*r*) or, it is thought, in any other way, if the personal representatives of a deceased shareholder apply for such shares they will in all cases be personally liable. *Mallorie's Case* (*s*) affords no exception to this rule, for there was an offer by a person, who was not an executor but who sometimes acted for the executors, to take shares on his own account and an allotment to the executors, and it was held that the person who made the offer could not be put on the list. Where the question arises with regard to the liability of a personal representative for a deceased member's shares, the question is, however, different. In such cases, the deceased's estate will be liable for all the debts of the company, whether incurred before or after the death, and the executor or administrator will consequently be liable in his representative capacity and to the extent of the deceased's estate (*t*). An executor or administrator will, however, not usually be personally liable as a contributory, unless his name is on the register and he has done some unequivocal act for the purpose of becoming, or in his character of, a member (*u*).

Thus, the production of the probate for the purpose of having it recorded on the register and the issue of certificates in terms which might have reference to his character of executor and the receipt of dividends, all taken together, would not apparently be enough to constitute an executor a member in a company formed under the

(*o*) *British Nation Life Assurance Association* (1878), 8 C. D. 679; see also *Ex parte International Contract Corporation* (1868), 19 L. T. 803; 20 L. T. 96; *Royal Bank of India's Case* (1869), 4 Ch. 252; *Barneds Banking Co.* (1867), 3 Ch. 105; *Goodson's Claim* (1880), 28 W. R. 760; *Joint Stock Discount Co.* v. *Brown* (1866), 3 Eq. 139; (1869) 8 Eq. 376.

(*p*) Bodies Corporate (Joint Tenancy) Act, 1899; *Re Thompson's Settlement*, [1905] 1 Ch. 229. Presumably this only applies where the company has power to hold shares.

(*q*) *Fearnside and Dean's Case and Dobson's Case* (1865), 1 Ch. 231; *Jackson* v. *Turquand* (1869), L. R. 4 H. L. 305.

(*r*) *Duff's Executors' Case* (1886), 32 C. D. 301; see also *Spence's Case* (1853), 17 Beav. 203.

(*s*) (1867), 2 Ch. 181.

(*t*) *Baird's Case* (1870), 5 Ch. 725; *Houldsworth* v. *Evans* (1868), L. R. 3 H. L. 263; *Blakeley's Executors* (1852), 3 Mac. & G. 726; *Heward* v. *Wheatley* (1853), 3 De G. M. & G. 628.

(*u*) *Armstrong's Case* (1849), 1 De G. & Sm. 565.

Act of 1862 or the Consolidation Act (*x*). Nor will a personal representative be liable where he has received and given receipts for dividends in his representative capacity, although dividends are by the constitution of the company not to be paid to representatives till registered (*y*). Nor will the fact that the personal representative is entitled to the shares beneficially, and has in some cases given receipts for dividends without saying he gave them as such representative, be enough (*z*). The representative will not be freed from liability to the extent of the assets of the deceased where he has assented to a legacy where the legatee is not on the register and has had no formal transfer if such is required by the company's articles (*a*). And the specific devisee of property of a testator will, to the extent of the property he has received, be liable even after a lapse of years if the personal representatives have neither got themselves or any other person registered (*b*).

Personal representatives will be personally liable where they have requested the company to register the shares in their name and it has done so, and also it is thought if they have allowed their names to remain on the register after it has been entered there, even though they have not authorised the original entry (*c*).

If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees, will be liable in a due course of administration to contribute to the assets of the company in discharge of his liability, and will be contributories accordingly.

Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but, except in the case of heirs or devisees of any such real estate in England, they may be added as and when the Court thinks fit.

If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment thereout of the money due (*d*).

This section clearly applies where the deceased has died before the winding-up, although it deals with contributories only and not

(*x*) *Per* Lord SELBORNE, *Buchan's Case* (1879), 4 A. C. 549, 583, at p. 594, citing *Lumsden* v. *Buchanan* (1865), 4 Macq. 950. It is otherwise where the Companies Clauses Act, 1845, is incorporated: *Barton* v. *London and North Western Railway* (1889), 24 Q. B. D. 77.

(*y*) *Doyle's Case* (1850), 2 H. & T. 221; see also *Ex parte Gouthwaite* (1851), 3 Mac. & G. 187, where the probate was in addition produced.

(*z*) *Bulmer's Case* (1864), 33 Beav. 435.

(*a*) *Keenes' Executor's Case* (1853), 3 De G. M. & G. 272.

(*b*) *Turquand* v. *Kirby* (1867), 4 Eq. 123.

(*c*) *Buchan's Case* (1879), 4 A. C. 549, 583.

(*d*) Companies (Consolidation) Act, 1908, s. 126.

with members (e). Where calls have been made in a winding-up a nominee of the company can be appointed administrator of a member who has died intestate (f).

An executor or administrator may be personally liable if he is on the list of contributories as executor and has distributed the assets of the deceased improperly (g).

Where the company has gone into liquidation the Court will set aside a sum in an administration action to meet the liability, even though no calls have been made; but where the company has not gone into liquidation the Court will not order a sum to be set aside, and the legal personal representative will be fully protected if he pays under an order of court in an administration action (h). Where a personal representative has before a winding-up and without calls being made, paid away moneys without providing for the liability on the shares of the deceased, he will, where such payments rank after the liability to calls, *e.g.* where they are made to legatees, be liable to refund to the liquidator the moneys he has so paid away (i), and the Court will make an order for payment, and, in default of such payment, for administration (k). And where an administrator who was also sole beneficiary assigned all the assets of the deceased to a third party upon the terms of such third party maintaining him, the Court, taking the view that the assignment was made to avoid calls, set it aside under 13 Eliz. c. 5 (l). Where executors or administrators have distributed the assets after issuing the statutory advertisements, they will be protected if they did not know of the shares at the date of the distribution (m), but not otherwise (n), and even in this case they will be put on the list of contributories as executors, for there may be further assets, and, moreover, this will be a defence where the liquidator seeks to enforce his rights in the only way open to him, *viz.*, by administration action (o).

(e) *Re Muggeridge* (1870), 10 Eq. 443; *Taylor* v. *Taylor* (1870), 10 Eq. 477.

(f) *Tomlinson* v. *Gilby* (1885), 54 L. J. P. 80.

(g) *Re Muggeridge* (1870), 10 Eq. 443.

(h) *Re King*, [1907] 1 Ch. 72. It was also decided in this case that the company is not a proper party to such proceedings, as it has no right to have a sum impounded. In *Re Griffiths*, [1880] W. N. 159, where there was no winding-up and the executors had apparently got rid of all liability, no sum was set aside.

(i) *Taylor* v. *Taylor* (1870), 10 Eq. 477; *Re Bewley* (1871), 24 L. T. 177.

(k) *Price* v. *Mayo* (1875), 43 L. J. (CH.) 402.

(l) *Re Troughton* (1895), 71 L. T. 427.

(m) *Russell's Executors' Case* (1871), 15 Sol. J. 790; *Cole's Executors' Case* (1871), 15 Sol. J. 711; *Dublin and Metropolitan Junction Railway* (1877), Ir. R. 11 Eq. 291. In the two former cases a note was put on the list stating that the executors alleged that they had distributed the assets come to their hands under the statute.

(n) *Markwell's Case* (1873), 21 W. R. 135.

(o) *Russell's Case* (1871), 15 Sol.

Moneys paid away to residuary legatees by personal representatives may, where the latter become liable for calls, be recovered together with all costs and expenses incurred by the personal representatives in relation to the shares, if, at the time of payment, the liability was a mere contingent claim which had not ripened into a debt (*i.e.* if no call had been made and there was no winding-up), but not otherwise (*p*). Legatees who do not disclaim but accept a legacy of shares will, no doubt, be liable to indemnify the personal representatives, but they will not be precluded from disclaiming the shares by the mere fact that they have obtained a notice in lieu of distringas on the strength of an affidavit stating that they believe they are interested in them (*q*). Whether where one of several joint holders dies his executors are liable to be put on the A or B list of contributories is a question on which there is singularly little authority. It was decided in *Hill's Case* (*r*), where the company was formed under the Act of 1856, that they were not liable to be placed on the A list, on the ground that the liability was joint, and not joint and several, but this view seems contrary to *Dunster's Case* (*s*), unless, indeed, a distinction can be drawn on the ground that the Act of 1856 every shareholder covenants for himself, etc., while in the Act of 1862 and the present Act, every member (*t*) covenants. In *Kirby's Executors' Case* (*u*)—a case, it must be noted, of an unregistered company—the executors of a joint holder who had died before the winding-up were put on the list with the surviving joint holder, but their liability was limited to debts incurred before the death. This case proceeded on the ground that the deceased covenanted as a proprietor, and that such covenant was a several one, although the joint holders were joint tenants; it would seem to follow from this case, that in a company registered under the Companies (Consolidation) Act, 1908, or the Act of 1862, where a joint holder dies after the winding-up has commenced, his executors will be liable in their representative capacity to be put on the A

J. 790; *Cole's Case* (1871), 15 Sol. J. 711; *Dublin and Metropolitan Junction Railway* (1877), Ir. R. 11 Eq. 294. In the two former cases a note was put on the list stating that the executors alleged that they had distributed the assets come to their hands under the statute.

(*p*) *Whittaker* v. *Kershaw* (1890), 45 C. D. 320; *Jervis* v. *Wolferstan* (1874), 18 Eq. 18.

(*q*) *Hobbs* v. *Wayet* (1887), 36 C. D. 256.

(*r*) (1875), 20 Eq. 585.

(*s*) [1894] 3 Ch. 473; see also *Cuninghame* v. *City of Glasgow Bank* (1879), 4 A. C. 607; *Gillespie* v. *City of Glasgow Bank* (1879), 4 A. C. 632.

(*t*) See *Dennison* v. *Jeffs*, [1896] 1 Ch. 611, where it was held that all the joint holders of a share in a building society should be considered as one for the purpose of consenting to a dissolution under s. 32 (3) of Building Societies Act, 1874.

(*u*) (1871), 15 S. J. 922.

list, but that in cases where a joint holder dies before the commencement of the winding-up his personal representatives will, in the absence of anything very special in the articles, only be liable to be put on the B list, and that only if the death occurred within the year. This view is, it is submitted, the correct view.

The question of the liability of trustees has been raised most frequently on Scotch cases, the reason being that in the case of Scotch companies notice of a trust may be entered on the register. It was argued that trustees were only liable to the extent of the trust funds, but the Courts emphatically repudiated this view, pointing out that trustees were not in any sense a corporation, and that this argument would involve a company being able to set up, at all events in the case of trustees, a different standard of liability to that imposed by the Acts (*x*). These decisions are, of course, at least equally applicable to England and Ireland. The mere fact of being a trustee is no doubt not enough to render a trustee liable in respect of shares which belong to the trust fund (*y*), any more than the mere fact of resignation of a trusteeship will terminate it (*z*), but the position of a trustee entitled to shares is very different to that of an executor so entitled (*a*), and it would seem that where a trustee's name is on the register, even where there has been no formal transfer, very slight acts of ownership will render him liable (*b*). There may, however, be some cases where a trustee is put on the register with his co-trustees in which such trustee will escape, if there was only authority for putting his co-trustees on, and there has been no Act which amounts to ratification (*c*). The fact that the trust under which the trustees hold is void (*d*) will in no way invalidate an application by or transfer to them, though it will, of course, affect their right to indemnity.

Where the trust is for some person who is beneficially entitled and *sui juris*, the right of indemnity is against him personally (*e*), and where the *cestui que trust* has transferred the beneficial ownership to another person with knowledge of the indemnity, the right of indemnity will be against such person (*e*). Such cases arise on some

(*x*) *Muir* v. *City of Glasgow Bank* (1879), 4 A. C. 337; *Lumsden* v. *Buchanan* (1865), 4 Macq. 950.

(*y*) *Hall's Case* (1849), 1 Mac. & G. 307.

(*z*) See *Alexander Mitchell's Case* (1879), 4 A. C. 548, 567; *Rutherfurd's Case* (1879), 4 A. C. 548, 581.

(*a*) *Buchan's Case* (1879), 4 A. C. 549, 583; *Hoare's Case* (1862), 2 J. & H. 229.

(*b*) *Hoare's Case* (1862), 2 J. & H. 229; *Ker's Case* (1879), 4 A. C. 549, 598; *Bell's Case* (1879), 4 A. C. 547, 550; *Cuninghame* v. *City of Glasgow Bank* (1879), 4 A. C. 607.

(*c*) *Lumsden* v. *Buchanan* (1865), 4 Macq. 950, explained on this point in *Cunninghame* v. *City of Glasgow Bank* (1879), 4 A. C. 607.

(*d*) *Cree* v. *Somervail* (1879), 4 A. C. 648; and see the other cases cited *post*, p. 1123.

(*e*) *Hardoon* v. *Belilios*, [1901] A. C. 118.

person or company (*f*) taking a transfer of shares in the name of a third party, and also as between vendor and purchaser (*g*) of shares where there has been no registered transfer. Where the trustees are trustees for persons who or some of whom are not *sui juris* or the nature of the transaction excludes the rule, there the right of indemnity only extends to trust funds which are held upon the same trusts as the shares (*h*).

It has been held (*i*) that even after a winding-up where no calls have been made and there is no evidence that calls will be made, this indemnity cannot be enforced, for an action to enforce it is a mere *quia timet* action, but this case seems inconsistent with *Hobbs* v. *Wayet* (*k*), and with *Whittaker* v. *Kershaw* (*l*). The liquidator can, of course, not avail himself of this right of indemnity unless he obtains from the trustee contributory an assignment of his rights or a right to sue in his name (*m*). If he chooses to make the contributory bankrupt, then the trustee in bankruptcy can enforce these rights, but for the benefit of all the creditors of the bankrupt, and not for that of the company only.

A firm may be settled on the list of contributories in their firm name, and in such case it will be exactly the same as if the names of all the partners were set out *in extenso*, and the partners will be jointly and severally liable (*n*), and in exactly the same position as any other joint holders. A firm is not allowed by the practice at the Registry of Joint Stock Companies, to be one of the seven or (in the case of a private company) of the two signatories to the memorandum of association (*o*), and where one of the partners had signed and some of the shares subscribed for have been allotted to each member of the firm (*p*), it was held that the signatory was liable for the whole, but the names of the other members were taken off the list (*p*). In another case (*o*), however, where one

(*f*) *Hardoon* v. *Belilios*, [1901] A. C. 118; *James* v. *May* (1873), L. R. 6 H. L. 328; *National Financial Co.* (1868), 3 Ch. 791; *Hemming* v. *Maddick* (1872), 7 Ch. 395.

(*g*) *Kellock* v. *Enthoven* (1873), L. R. 9 Q. B. 241; *Grissell* v. *Bristowe* (1869), L. R. 4 C. P. 36; *Loring* v. *Davis* (1886), 32 C. D. 625; *Castellan* v. *Hobson* (1870), 10 Eq. 47; *Brown* v. *Black* (1873), 8 Ch. 939.

(*h*) See *Wise* v. *Perpetual Trustee Co.*, [1903] A. C. 139; *Fraser* v. *Murdoch* (1881), 6 A. C. 855.

(*i*) *Hughes-Hallet* v. *Indian Mammoth Gold Mines* (1882), 22 C. D. 561.

(*k*) (1887), 36 C. D. 256.

(*l*) (1890), 45 C. D. 320; see also *Ascherson* v. *Tredegar Dry Dock and Wharf Co.*, [1909] 2 Ch. 401.

(*m*) As was done in *National Financial Co.* (1868), 3 Ch. 791, see also *British Nation Life Assurance Association* (1878), 8 C. D. 679, at p. 708.

(*n*) *Weikersheim's Case* (1873), 8 Ch. 831; see also *Dunster's Case*, [1894] 3 Ch. 473; *Gillespie* v. *City of Glasgow Bank* (1879), 4 A. C. 632; but cp. *Vagliano Anthracite Collieries* (1910), 79 L. J. (CH.) 769, where JOYCE, J., declined to rectify the register on the ground that a partnership was not a person.

(*o*) *Dunster's Case*, [1894] 3 Ch. 473.

(*p*) *Ex parte Nokes* (1868), 37 L. J. (CH.) 624.

partner had signed and the firm had had an allotment of and paid for the shares signed for, the name of the signatory was taken off the list (*q*).

Where a person has taken shares in one company in the belief that he was taking shares in another company, there will be no contract, if he was fraudulently induced by the company whose shares he did take to believe that he was taking shares in the other company (*r*), and even where there was no such fraud it is thought that the result would be the same, for in all these cases the question of what company a man is dealing with must necessarily be most material (*s*).

The questions arising where no notice of allotment has been given, and other similar questions have, it is thought, already been dealt with sufficiently fully, under contracts to take shares (*ss*).

PERSONS WHOSE NAMES HAVE CEASED TO BE ON THE REGISTER.

With regard to III. The cases where a person has been a member and either has or is alleged to have ceased to be a member, and his name does not appear on the register at the date of the winding-up.

It is probable that where a person has agreed to transfer shares and the transferee has agreed to become a member and has been accepted and has had his name put on the register by the company, any informality, however gross in the transfer, will not enable the Court to substitute the name of the transferee for that of the transferor (*t*).

Thus, where transfers were apparently required to be by deed and there was no valid deed, but the transferee had agreed to go on the register and subsequently signed a proxy, he was held to be liable (*u*), and the same result followed where trustees had accepted dividends but had never signed either the deed of settlement or a deed of transfer (*x*), and where a trustee had given directions as to dividends and authorized the purchase of the shares (*y*), and also where a person had been registered to his knowledge but the instrument of transfer had not been executed by both transferor and

(*q*) Cp. also *Pim's Case* (1849), 3 De G. & Sm. 11, where the name of a firm was substituted for the name of one of its members.

(*r*) *Baillie's Case*, [1898] 1 Ch. 110; *Lindsay* v. *Cundy* (1878), 3 A. C. 459.

(*s*) *Re Reed* (1876), 3 C. D. 123; *Boulton* v. *Jones* (1857), 2 H. & N. 564; see also the passage from Pothier Traité des Obligations, § 19, cited in *Smith* v. *Wheatcroft* (1878), 9 C. D. 223, and *Gordon* v. *Street*, [1899] 2 Q. B. 641.

(*ss*) See *supra*, pp. 206 and 207.

(*t*) *Langer's Case* (1868), 37 L. J. (CH.) 292; *Taylor* v. *Hughes* (1844), 2 Jo. & Lat. 24; *Sanderson's Case* (1849), 3 De G. & Sm. 66; *Gordon's Case* (1850), 3 De G. & Sm. 249; *Burnes* v. *Pennell* (1849), 2 H. L. C. 497.

(*u*) *Langer's Case* (1868), 37 L. J. (CH.) 292; see also *Cockburn's Case* (1850), 4 De G. & Sm. 177.

(*x*) *Hoare's Case* (1862), 2 J. & H. 229. In *Hall's Case* (1849), 1 Mac. & G. 307, it was held that the executor was never really on the register or at all events had not consented to be there: *Ker's Case* (1879), 4 A. C. 547, 598.

(*y*) *Cunninghame* v. *City of Glasgow Bank* (1879), 4 A. C. 607; *Ker's Case* (1879), 4 A. C. 547, 598.

transferee as required by the articles (z). So, too, in the older cases, where the deed of settlement had to be signed, a person on the register to his own knowledge was liable if he had only signed a document referring to the deed of settlement (a), or had signed no deed at all (b).

Again, the consent of the directors where that is necessary will be presumed in such cases (c), and that even where such consent has to be given in a particular way and has not been so given (d). So, too, where the transfers contain a false description of the transferee (e) or wrong numbers of the shares transferred (f). So, also, a transferor will cease to be liable if a transfer is registered, even if he is not entitled to transfer his shares while calls are unpaid (g), and where the articles provide that his shares are not to vest till payment of certain moneys which have not been paid (h). These remarks apply with equal force where no consideration has been given for the transfer, always provided that the transfer was an out and out one (i). It has been said that where the shares transferred belong to a director, he cannot escape liability unless all formalities are complied with, even though the name of his transferee is on the register (k); but this view seems contrary to *Murray* v. *Bush* (l), and fixes a director with notice of the contents of the books to an extent which is not consistent with the later cases on the subject (m).

Where shares have been illegally subdivided and some of such subdivided shares have been transferred, then if and so far as such subdivided shares can be traced to and shown to represent the original shares, the transferees will be liable (n). If a company which is entitled to acquire shares accepts a transfer of them, it will

(z) *Taurine Co.* (1883), 25 C. D. 118; *Hughes' Case* (1867), 15 L. T. 526.

(a) *Straffon's Executors' Case* (1852), 1 De G. M. & G. 576.

(b) *Murray* v. *Bush* (1873), L. R. 6 H. L. 37.

(c) *Walter's Case* (1850), 3 De G. & Sm. 149; 19 L. J. (CH.) 501; *Branksea Island Co., Ex parte Bentinck* (*No.* 2) (1888), 1 Meg. 23, where the transferee's name was only in a ledger, and not in the register.

(d) *Bargate* v. *Shortridge* (1855), 5 H. L. C. 297.

(e) *Master's Case* (1872), 7 Ch. 292; see *post*, pp. 1126 and 1127, as to a fraudulent description where the assent of the directors is necessary.

(f) *Ind's Case* (1872), 7 Ch. 485.

(g) *Ex parte Littledale* (1874), 9 Ch. 257.

(h) *Morton's Case* (1873), 16 Eq. 104.

(i) *Maguire's Case* (1849), 3 De G. & Sm. 31; see *post*, p. 1125, as to where the transfers are not out and out.

(k) *Ex parte Brown* (1854), 19 Beav. 97 (where as a fact the transferor's name was still on the register); and see also *Ex parte Henderson* (1854), 19 Beav. 107, the case of an auditor who was held to be in a similar position.

(l) (1873), L. R. 6 H. L. 37; and see S. C. *sub nom. Bush's Case* (1870), 6 Ch. 246.

(m) See *Coasters*, [1911] 1 Ch. 86, and *ante*, pp. 205 and 206, and p. 353 on this point.

(n) *Feeling and Rimington's Case* (1867), 2 Ch. 714; *Sewell's Case* (1868), 3 Ch. 131.

be liable, even though its by-laws preclude it from taking shares in its own name (*o*).

Where a man has transferred shares into a purely fictitious name, whether with a view to defrauding his creditors or otherwise, there the Court will order the register to be rectified by inserting the name of the transferor (*p*). Similarly, where a considerable number of members were anxious to take proceedings against persons who were promoters of and vendors to the company, and the directors entered into an arrangement by which such persons were to transfer their shares to nominees of the directors, and to pay the company certain moneys, which were applied by the directors in paying themselves debts owing by the company, it was held that the whole transaction was bad, and amounted to an improper exercise by the directors of their fiduciary power of consenting to transfers (*q*).

Where a member has transferred shares to a person who has not assented to the transfer or agreed to become a member the transferor will remain liable (*r*).

In like manner, as a limited company cannot purchase its own shares, a transfer to such a company will be simply bad, and the transferor will be liable to have his name put on the list of contributories (*s*), but in the case of a transfer to trustees for a company, it would seem that such trustees and not the transferor will be liable to be put on the list of contributories (*t*), for a company is not concerned with trusts, and may treat a trustee whose name is on the register as liable, even though the register states that the trustee holds his shares as trustee, and the company is a Scotch one, and has therefore power to enter notices of trusts on its register (*u*).

(*o*) *Royal Bank of India's Case* (1869), 4 Ch. 252.

(*p*) *Arthur* v. *Midland Railway* (1857), 3 K. & J. 204; *Green* v. *The Bank of England* (1840), 3 Y. & C. Ex. 722.

(*q*) *Bennett's Case* (1854), 5 De G. M. & G. 284.

(*r*) *Ex parte Hennessy* (1850), 2 Mac. & G. 201; *Heritage's Case* (1869), 9 Eq. 5; *Andrew Buchanan's Case* in *Lumsden* v. *Buchanan* (1865), 4 Macq. 950, as explained in *Cunninghame* v. *City of Glasgow Bank* (1879), 4 A. C. 607; *Cartmell's Case* (1874), 9 Ch. 691; but cp. *Richardson's Case* (1875), 19 Eq. 588; *Weston's Case* (1870), 5 Ch. 614; *Gray's Case* (1876), 1 C. D. 664.

(*s*) *Trevor* v. *Whitworth* (1887), 12 A. C. 409; *Denham & Co.* (1883), 25 C. D. 752; see this subject discussed *supra*, pp. 71, *et seq.*; see also *Lane's Case* (1863), 1 De G. J. & S. 504, a case of an unlimited company.

(*t*) *Chapman and Barker's Case* (1867), 3 Eq. 361; *Cree* v. *Somervail* (1879), 4 A. C. 648. This case would seem to overrule some of the earlier cases, *e.g. Addison's Case* (1870), 5 Ch. 294; *Morgan's Case* (1849), 1 Mac. & G. 225; *Richmond's Executors' Case* (1849), 3 De G. & Sm. 96; see also *Hollwey's Case* (1849), 1 De G. & Sm. 777; *Nicol's Case* (1859), 3 De G. & J. 387.

(*u*) *Muir* v. *City of Glasgow Bank* (1879), 4 A. C. 337, following *Lumsden* v. *Buchanan* (1865), 4 Macq. 950; *Lumsden* v. *Peddie* (1866), 5 Macph. 34; see also *Hoare's*

Somewhat analogous to these cases are the cases of infants. Prior to the Infants' Relief Act, 1874, it was decided that a transfer to an infant was voidable and not void (x). In such cases the transferor was liable where the infant had not attained twenty-one at the date of the winding-up (y), and had not transferred the shares. If the infant had not attained twenty-one (z) at the date of the winding-up but had transferred part of the shares, then the transferor was liable for the rest (a). But in all these cases it would seem that the company by its laches might preclude itself from putting the name of the transferor on the register (b). It has been suggested that the Infants' Relief Act, 1874, makes a transfer to an infant void and not merely voidable. But it is not thought that this Act affects the question (c).

The cases where a person can be put on the list of contributories after he has transferred his shares to another person, who is of full age and capable of accepting a transfer, have recently been gone into by the Court of Appeal in *Lindlar's Case* (d).

That case divides the earlier cases on this point into three headings.

There is, first of all, the case where the articles of the company give the directors no power to refuse to register a transfer. In this case a person may transfer his shares to any one he likes, and the company cannot refuse to register the transfer (e), nor has the liquidator any higher rights, and he cannot put the name of the transferor on the list.

This has been held in cases where the transfer was made to escape liability (f), where the transferor was director and the company

Case (1862), 2 J. & H. 229; see also *Buchan's Case* (1879), 4 A. C. 549, 583.

(x) *Lumsden's Case* (1868), 4 Ch. 31; *Capper's Case* (1867), 3 Ch. 458, explaining *Mann's Case* (1867), 3 Ch. 459 n., and following *Litchfield's Case* (1850), 3 De G. & Sm. 141; *Reid's Case* (1857), 24 Beav. 318. In this last case the Master of the Rolls explained that the question of whether it was for the benefit of an infant to retain his shares could only be gone into in the case of a going company. See also *Mitchell's Case* (1870), 9 Eq. 363.

(y) *Symons' Case* (1870), 5 Ch. 298, where the infant had attained twenty-one at the date of the application and vainly asked to affirm the transaction; *Castello's Case* (1869), 8 Eq. 504; *Wilson's Case* (1869), 8 Eq. 240; *Baker's Case* (1871), 7 Ch. 115; *Weston's Case* (1870), 5 Ch. 614; *Sassoon's Case* (1869), 20 L. T. 161.

(z) *Gooch's Case* (1872), 8 Ch. 266.

(a) *Curtis's Case* (1868), 6 Eq. 455.

(b) *Parsons' Case* (1869), 8 Eq. 656.

(c) Cp. *Laxon & Co.* (*No.* 2), [1892] 3 Ch. 555; *Yeoland Consols* (1888), 58 L. T. 922; see also *National Bank of Wales, Massey and Giffin's Case*, [1907] 1 Ch. 582.

(d) [1910] 1 Ch. 312.

(e) *Weston's Case* (1868), 4 Ch. 20.

(f) *De Pass's Case* (1859), 4 De G. & J. 544; *Bugg's Case* (1865), 2 Dr. & Sm. 452; *Reg.* v. *Lambourn Valley Railway Co.* (1888), 22 Q. B. D. 463; *Lindlar's Case*,

was known to be in difficulties at the date of the transfer (*g*), where a false consideration was given in the transfer and also false addresses and descriptions (the transferee being the transferor's coachman) (*h*), and where the transferor actually paid the transferee to take the shares and from the transfer it appeared that the transferor was receiving money from the transferee (*i*). There is, however, an exception to this rule, and that is where the transfer is not an out and out transfer, but the transferor retains a beneficial interest in the shares, and constitutes the transferee a trustee for him, so as to escape liability. The reason for this exception is given in *Lindlar's Case* (*k*), that the trust is created for the fraudulent purpose of covering the real ownership, and is consequently one which the Court will not recognize or act upon.

Examples of this class of case are to be found in *Hyam's Case* (*l*), where a form of selling through a person, who was, in fact, found by the broker, was gone through. The transferee in this case purported to pay by certain stock which, in fact, belonged to the transferor, and was sold by the broker who retained the purchase money. Other examples of this class of case are to be found in *Costello's Case* (*m*) (which can only be supported on the ground that the transfer was not an out and out transfer (*n*)): *Chinnock's Case* (*o*), and *Budd's Case* (*p*).

The fact that the transferor has agreed to indemnify the transferee, will be no reason for putting the former on the list of contributories if he is retaining no benefit, though, no doubt, it will be some evidence that he is retaining a benefit (*q*).

The fact that the transferee may be entitled to have the register of the company rectified and the name of the transferor substituted for his own, will not enable the liquidator to make such substitution on his own account (*r*).

[1910] 1 Ch. 312, overruling *Lund's Case* (1859), 27 Beav. 465.

(*g*) *Jessopp's Case* (1858), 2 De G. & J. 638; *Libri's Case* (1857), 30 L. T. (O. S.) 185. In the former case there was an arrangement which the Court assumed to be beyond the directors' powers; the transferor objected, but transferred his shares. As the arrangement induced the transfer, and not the transfer the arrangement, the transfer was held good.

(*h*) *Battie's Case* (1870), 39 L. J. (CH.) 391.

(*i*) *Slater's Case* (1866), 35 Beav. 391.

(*k*) [1910] 1 Ch. 312; citing *Hyam's Case* (1859), 1 De G. F. & J. 75.

(*l*) (1859), 1 De G. F. & J. 75.

(*m*) (1860), 2 De G. F. & J. 302.

(*n*) See *Lindlar's Case*, [1910] 1 Ch. 312.

(*o*) (1860), Johns. 714.

(*p*) (1861), 3 De G. F. & J. 297.

(*q*) *Lindlar's Case*, [1910] 1 Ch. 312, explaining *Ex parte Hatton* (1862), 31 L. J. (CH.) 340.

(*r*) *Slater's Case* (1866), 35 Beav. 391; *Lindlar's Case*, [1910] 1 Ch. 312, overruling *Discoverers' Finance Corporation*, [1908] 1 Ch. 141 (compromised on appeal, [1908] 1 Ch. 334).

Where a person who is entitled to have shares transferred to him, has them transferred into the name of a nominee, there, even though such transfer was directed so as to save the real owner from liability, it would seem that such real owner cannot be put on the list of contributories for he has never come into any contractual relation with the company, the only exception to this rule being the case where the nominee has not consented to the transfer, and the Court comes to the conclusion that his name, even though it be the name of a real person, is an *alias* which the real owner has assumed (*s*). Thus, a man was held liable where he actually signed the transfer in the name of his son, who was a boy at school (*t*).

Section 35 of the Stannaries Act, 1869, provides as regards cost book mining companies that a transfer of shares made for the purpose of getting rid of the further liability of a shareholder as such for a nominal or no consideration or to a person without any apparent pecuniary ability to pay the reasonable expenses of working a mine or to a person in the menial or domestic service of the transferor is to be presumed to be a fraudulent transfer, and need not be recognized by the company or by the Court on the winding-up of the company, whether the company be a registered or unregistered company. After a company has registered a transferee and then, with full knowledge of the facts, forfeited his shares, it cannot avail itself of this section against the transferor (*u*).

The second class of cases dealt with in *Lindlar's Case* (*x*) are the cases where the articles do contain a power to refuse to register transfers. *Lindlar's Case* (*x*) itself was a case of this sort. There the rule is the same as in the cases where there is no such article, except that the transferor cannot escape liability if he has actively by falsehood or passively by concealment, induced the directors to pass and register a transfer, even though it be an out and out transfer, which if he had not so deceived or concealed they would have refused to register (*y*).

Thus, where there was such an article in the case of transfers to impecunious persons, the transfers have been held bad, where a clerk was described as a gentleman and no consideration had, in

(*s*) *National Bank of Wales, Massey and Giffin's Case*, [1907] 1 Ch. 582; *King's Case* (1871), 6 Ch. 196; *Bugg's Case* (1865), 2 Dr. & Sm. 452; *Bunn's Case* (1860), 2 De G. F. & J. 275, 300; *Williams' Case* (1875), 1 C. D. 576; *Colquhoun* v. *Courtenay* (1874), 43 L. J. (CH.) 338.

(*t*) *Richardson's Case* (1875), 19 Eq. 588; and see the cases where applications have been made in the name of a nominee, viz. *Pugh and Sharman's Case* (1872), 13 Eq. 566; *Cox's Case* (1863), 4 De G. J. & S. 53; *Savigny's Case* (1898), 5 Mans. 336; but cp. *Coventry's Case*, [1891] 1 Ch. 202; *London, Bombay, and Mediterranean Bank* (1881), 18 C. D. 581.

(*u*) *Chynoweth's Case* (1880), 15 C. D. 13.

(*x*) [1910] 1 Ch. 312.

(*y*) *Lindlar's Case*, [1910] 1 Ch. 312, at p. 321.

fact, passed, though a consideration of £17 appeared from the transfer to have passed (*z*), and where a clerk was described as a public accountant and a consideration of £45 was untruly stated by the transfer deed to have passed (*a*) and where no description of the transferee, a ship's steward, was given, but a consideration of £195 was untruly stated to have passed (*b*), and where a consideration of £1320 was stated to have passed, while, in fact, the transferee, a young man earning a salary of less than £2 a week, described as a gentleman, had only given a promissory note for that sum (*c*). In all these cases the Court proceeded on the assumption that the directors would have done their duty if the facts had been brought before them. The Court has declined to put the transferor's name on where the only misrepresentation was that the transferee who was the transferor's son-in-law and a butcher was described as a gentleman, but in this case the shares had a market value at the date of the transfer, which had been made some years before the winding-up (*d*). Where a man had transferred shares to his clerk and the directors had passed the transfer on condition of his guaranteeing either a call then pending or all future calls, the Court declined to put the transferor's name on the list of contributories, holding that even if he were liable in respect of his guarantee, such liability was not the liability of a contributory (*e*).

In one case (*f*) where a company had power to refuse to register transfers of shares which were not fully paid up, they passed a transfer of certain shares which they believed to be fully paid, but subsequently on finding they were mistaken they put the transferor's name back on the register, and it was held that his name was properly put on the list of contributories. As the transferor in no way contributed to the mistake, it may perhaps be doubted whether this case is good law (*g*).

Turning to the third class of cases mentioned in *Lindlar's Case* (*h*). This is the case where the transferor has obtained the advantage of executing and registering his transfer to a man of straw upon an opportunity obtained by him fraudulently or in breach of some duty which he owed the company. This may occur both in cases where there is and where there is not an article restricting transfers.

Thus, where a company had power to refuse to register transfers in the case of persons who were indebted and a shareholder, who

(*z*) *Payne's Case* (1869), 9 Eq. 223.

(*a*) *Williams' Case* (1869), 9 Eq. 225 n.

(*b*) *Kintrea's Case* (1869), 5 Ch. 95.

(*c*) *Snow's Case* (1871), 19 W. R. 1057.

(*d*) *Masters' Case* (1872), 7 Ch. 292.

(*e*) *Harrison's Case* (1871), 6 Ch. 286.

(*f*) *Anderson's Case* (1869), 8 Eq. 509.

(*g*) Cp. *Harrison's Case* (1871), 6 Ch. 286, at p. 295.

(*h*) [1910] 1 Ch. 312, at p. 322.

was allowed to attend board meetings as representing the Newcastle shareholders of the company, got the board to postpone a call until he consulted the Newcastle shareholders, it was held that the Court would not, under section 35 of the Act of 1862, rectify the company's register by substituting for his name the name of a person to whom he had transferred before the call was made but after the meeting at which it was originally proposed to make it (*i*). And in another case where there was a similar article and it was held that a call had been postponed so as to enable directors to transfer their shares, a director who had transferred after the date when it was originally proposed to make a call was held liable (*k*).

It was even held in one case (*l*) by Kay, J., that this doctrine extended so as to prevent directors, whether they had a right to refuse to register transfers or not, from transferring their qualification shares, the case was, however, decided on different grounds in the Court of Appeal, and it is thought that on this point, it goes too far (*m*). It would seem that where the directors' consent is requisite, there is nothing to prevent a director consenting to a transfer of his own shares in a proper case (*n*). Where the consent of the directors to a transfer was necessary, and they agreed to a transfer of shares to a nominee of their own, so as to stop a petition, and to avoid cross-examination it was held that the transferor was liable (*o*). The questions of purchase by a company of its own shares, surrender and forfeiture have already been dealt with. As has been shown, a purchase by a limited company of its own shares is always bad, a surrender to a limited company of its own shares is almost always bad, but a forfeiture is in many cases good, a liquidator cannot go behind a valid forfeiture even where the name of the person whose shares have been forfeited has not been taken off the register (*p*), nor can he by consent cancel a forfeiture (*q*). A person whose shares have been forfeited may under the articles be liable for calls unpaid at the time of forfeiture, but he will not in respect of such calls be liable to be put on the A list of contributories (*r*). A transaction

(*i*) *Ex parte Parker* (1867), 2 Ch. 685.

(*k*) *Gilbert's Case* (1870), 5 Ch. 559.

(*l*) *South London Fish Market Co.* (1888), 39 C. D. 324; and see also *Gilbert's Case* (1870), 5 Ch. 559, *per* Lord ROMILLY, M.R. (p. 562 n.), and *per* GIFFARD, L.J. (p. 565).

(*m*) See *Cawley & Co.* (1889), 42 C. D. 209.

(*n*) *Bush's Case* (1870), 6 Ch. 246, *sub nom. Murray* v. *Bush* (1873), L. R. 6 H. L. 37.

(*o*) *Eyre's Case* (1862), 31 Beav. 177; *Lankester's Case* (1870), 6 Ch. 905 n.; and see on the latter case *Chappell's Case* (1871), 6 Ch. 902; *Taurine Co.* (1883), 25 C. D. 118.

(*p*) *Lyster's Case* (1867), 4 Eq. 233.

(*q*) *Dawes' Case* (1868), 6 Eq. 232.

(*r*) *Needham's Case* (1867), 4 Eq. 135; *Stocken's Case* (1868), 3 Ch. 412; *Ladies' Dress Association* v. *Pulbrook*, [1900] 2 Q. B. 376; *Randt Gold Mining Co.*, [1904] 2 Ch. 468.

which is *ultra vires* in the proper sense of the term so that the company could not with the assent of every shareholder ratify it, can be set aside after any length of time (*s*).

Where, however, the transaction is of such a nature that the majority can bind the minority only if they act in a particular way, there acquiescence by all the shareholders will be presumed after a lapse of time if all the shareholders have full knowledge of the character of the act to be adopted, or if they intend to adopt it at all events and in any circumstances (*t*). For this purpose it would seem that the shareholders will have full knowledge if they have notice of the way in which the affairs of the company are being conducted and its property is being managed and of the rights and interests which are being created and they abstain from making complaint (*u*). These remarks apply to a forfeiture in any company whose constitution does not allow of forfeiture, and to a surrender in companies other than limited companies where the constitution does not authorize surrenders; in such cases by taking the proper steps the members could so alter their constitution as to allow of the forfeiture or surrender. Where directors have a power and have not exercised it exactly *modo et forma*, probably the liquidator could not take this point, at all events when all the directors have with knowledge of the facts acquiesced, and so, too, where a company in general meeting can do a thing, the fact that it has not done it *modo et forma* will in similar circumstances be immaterial (*x*).

In the case of unlimited companies, the company may if authorized by its memorandum or articles, purchase or accept a surrender of its shares (*y*), and where a company has validly done this no calls can be made on any persons as present members in respect of such shares (*z*). A member of a company limited by guarantee and not having a share capital may, if the articles so provide, retire (*a*), and a company limited by guarantee and having a share capital may, if formed before January 1, 1901, purchase or accept a surrender of its shares, if authorized to do so by its memorandum or articles (*b*). Such companies, if formed after January 1, 1901, are, it is thought,

(*s*) *Bellerby* v. *Rowland*, [1902] 2 Ch. 14; *General Property Investment Co.* v. *Matheson's Trustees* (1888), 16 Rettie, 282.

(*t*) See *Phosphate of Lime Co.* v. *Green* (1871), 7 C. P. 43, at p. 57, *per* WILLES, J.

(*u*) See *Evans* v. *Smallcombe* (1868), L. R. 3 H. L. 249, at p. 256, *per* Lord CAIRNS.

(*x*) See *Phosphate of Lime Co.* v. *Green* (1871), 7 C. P. 43; *Ho Tung* v. *Man On Insurance Co.*, [1902] A. C. 232; *Spackman* v. *Evans* (1868), L. R. 3 H. L. 171; *Evans* v. *Smallcombe* (1868), L. R. 3 H. L. 249; *Houldsworth* v. *Evans* (1868), L. R. 3 H. L. 263.

(*y*) *Borough Commercial and Building Society*, [1893] 2 Ch. 242.

(*z*) *Sovereign Life Assurance Co.*, [1892] 3 Ch. 279.

(*a*) *Baird's Case*, [1899] 2 Ch. 593.

(*b*) See Companies Act, 1862, Second Schedule, Form C.

in the same position with regard to dealings with their shares as companies limited by shares (*c*), though it must be admitted that this view is extremely difficult to reconcile with the provisions of the Form C, in the third schedule to the Act. Shareholders in such companies will be contributories in respect of the amounts unpaid on their shares (*d*). There would appear to be no reason why a member of such a company should necessarily be a shareholder (*e*), but it would seem that a shareholder will necessarily be a member liable to contribute to the extent specified in section 123 (1) (v.), and he will also be liable as a contributory under section 123 (3) of the Act. In unlimited companies there may be two classes of members, *e.g.* shareholders and others who have agreed to become members (*e*). A member who has dissented from a reconstruction under section 192 of the Act will be liable as a contributory, even when he has transferred his shares to the liquidator (*f*).

With regard to the question of the effect of bankruptcy in releasing a member from his liability for shares, it would seem to be established that under the present Bankruptcy Act (*g*) calls may be proved for in the bankruptcy, not only where the winding-up has preceded the bankruptcy, as was the case under the Bankruptcy Act of 1861, and the earlier Acts (*h*), but also where the bankruptcy has preceded the winding-up (*i*), and even where there never has been a winding-up (*k*). It follows that in all these cases a bankrupt who has got his discharge will be relieved from all further liability in respect of his shares (*l*), and cannot be put on the list of contributories. Under the old law the bankruptcy of a person liable to be placed on the B. list had the same effect on such liability as bankruptcy had in the case of any other contributory (*m*). A bankrupt becomes on his bankruptcy a mere stranger to the liquidation, and ceases to be a contributory (*n*). With regard to the trustee in bankruptcy it is

(*c*) See Companies (Consolidation) Act, 1908, s. 56.

(*d*) Companies (Consolidation) Act, 1908, s. 123 (3).

(*e*) *Winstone's Case* (1879), 12 C. D. 239.

(*f*) *Vining's Case* (1870), 6 Ch. 96.

(*g*) Bankruptcy Act, 1883, s. 37; s. 31 of the Bankruptcy Act, 1869, was so far as material similar.

(*h*) *Hastie's Case* (1869), 4 Ch. 274; *Ex parte Pickering* (1868), 4 Ch. 58; *McEwen's Case* (1871), 6 Ch. 582; *Ex parte Marshall* (1872), 7 Ch. 324; *Martin's Patent Anchor Co.* v. *Morton* (1868), L. R. 3 Q. B. 306; *Financial Corporation* v. *Lawrence* (1869), L. R. 4 C. P. 731. The law as laid down in these cases still holds good in Ireland: *Ligoniel Spinning Co., Ex parte Connor*, [1900] 1 Ir. 250.

(*i*) *Mercantile Mutual Marine Insurance Co.* (1884), 25 C. D. 415; *Furdonjee's Case* (1876), 3 C. D. 264, must be taken to have turned on the Indian Bankruptcy Act.

(*k*) *Re McMahon*, [1900] 1 Ch. 173; *Rowe's Trustee's Claim*, [1906] 1 Ch. 1.

(*l*) Bankruptcy Act, 1883, s. 30; see also s. 10 of the Bankruptcy Act, 1890.

(*m*) *McEwen's Case* (1871), 6 Ch. 582.

(*n*) *Cape Breton Co.* (1881), 19 C. D. 77.

usually possible for him under the articles to get himself registered as a member, but this would expose him to personal liability; the Bankruptcy Act, 1883, also contains provisions enabling him in certain circumstances to transfer (*o*) or disclaim the shares (*p*), but assuming that he does not avail himself of any of these powers, the Companies (Consolidation) Act, 1908, makes the following provisions (*q*):—

If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then:—

(1) His trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the Company; and

(2) There may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

The proof ranks rateably with those of other separate creditors (*r*), even in the case of unregistered companies (*s*). A company which has a lien on shares will be deemed to have surrendered such lien unless it states in its proof the particulars of its security and the value at which it assesses it, though in a proper case it may obtain leave to amend its proof (*t*). Unless he has been registered as a member a trustee in bankruptcy will only be entered on the list in his representative capacity (*u*). It has been doubted whether where the bankruptcy precedes the winding-up, but has not been then closed, the trustee in bankruptcy can be put on the list of contributories. This doubt depends on the fact that it is said that the

(*o*) S. 50. See *supra*, p. 284.

(*p*) S. 55, and s. 13 of the Bankruptcy Act, 1890.

(*q*) S. 127. R. 17 of the Limited Partnership (Winding-up) Rules, 1909, provides that notwithstanding anything contained in s. 127 or 151 of the Companies (Consolidation) Act, 1908, the liquidator shall not in the event of any contributory being adjudged bankrupt, entering into any arrangement to pay his creditors less than 20*s*. in the £ or dying in insolvent circumstances, and of an order being made for the administration of his estate according to the law of bankruptcy, have power to prove, rank, claim, and draw a dividend for any balance against the estate of such contributory or to take and receive dividends in respect of such balance until the claims of the other separate creditors of such contributory for valuable consideration in money or money's worth have been satisfied.

(*r*) Companies (Consolidation) Act, 1908, s. 151 (2) (*c*).

(*s*) *Ex parte Ball* (1874), 10 Ch. 48.

(*t*) See Second Schedule to the Bankruptcy Act, 1883, rr. 13 and 14, and First Schedule to the same Act, r. 10: *Re Jennings* (1851), 1 Ir. Ch. 236 and 664; *Re Rowe, Ex parte West Coast Goldfields*, [1904] 2 K. B. 489, where the lien had been created by an alteration of the articles after proof and leave to amend was refused.

(*u*) *Stone's Case* (1850), 3 De G. & Sm. 220.

section deals only with contributories and not with members becoming bankrupt (*x*), but it will be observed that the liability of a contributory commences for some purposes, at all events, when he agrees to take his shares (*y*), and in *Hastie's Case* (*z*), the view was taken that the section 77 of the Act of 1862, which corresponded to section 127 of the present Act, but contained a reference to persons insolvent before the Act of 1862 came into force, and so showed that it must in some cases apply to bankruptcies which preceded the winding-up, did in some cases apply where the bankruptcy preceded the winding-up, though not so as to make a trustee liable for calls, which, under the then law of bankruptcy, were not provable at the date of the bankruptcy. It is thought, on the whole, that a trustee in bankruptcy may in such case be put on the list (*a*). This view is confirmed by the cases of deceased contributories under section 126 of the Act which have already been dealt with (*aa*).

Where a trustee disclaims he is discharged as from the date when the property vested in him from all personal liability in respect of the property disclaimed (*b*), and the estate will be released even if the bankruptcy took place after the liquidation, and it is thought, after a call has been made (*c*). In case of disclaimer the company may, however, prove for any injury it has suffered. In some cases this will be the amount unpaid on the shares disclaimed less any benefit the company may be able to obtain under section 55 (6) of the Bankruptcy Act, 1883 (*d*), but where the whole of such amount is not required for the purposes of the winding-up the liquidator will only be entitled to prove for the amount required (*e*).

PERSONS WHO HAVE TRANSFERRED THEIR SHARES TO TRANSFEREES WHO HAVE NOT BEEN REGISTERED.

Turning to IV. The cases where the person has been a member and his name is on the register at the date of the winding-up, but it is alleged that he got rid of his shares before that date and that his name ought not then to have appeared on the register.

Where a member has sold his shares and a duly executed transfer of them has been presented to the company for registration before the winding-up of the company, there if the transfer has not been

(*x*) See Buckley, 9th Ed. p. 296.

(*y*) Companies (Consolidation) Act, 1908, s. 125: *Williams* v. *Harding* (1866), L. R. 1 H. L. 9; *Ex parte Canwell* (1864), 4 De G. J. & S. 539; *Ex parte Hatcher* (1879), 12 C. D. 284.

(*z*) (1869), 4 Ch. 274; *Martin's Patent Anchor Co.* v. *Morton* (1868), L. R. 3 Q. B. 306; but see *contra*, *Financial Corporation* v. *Lawrence* (1869), L. R. 4 C. P. 731.

(*a*) In *Rowe's Trustee's Claim*, [1906] 1 Ch. 1, the trustee made an application apparently in his character of contributory, without objection being taken.

(*aa*) *Supra*, pp. 1116 and 1117.

(*b*) Bankruptcy Act, 1883, s. 55 (2).

(*c*) *West of England Bank* (1879), 12 C. D. 288.

(*d*) *Re Hallett, Ex parte National Insurance Corporation* (1894), 71 L. T. 408; 1 Mans. 380.

(*e*) *Re Hooley, Ex parte United Ordnance and Engineering Co.*, [1899] 2 Q. B. 579.

registered owing to the default of the company, the Court will order the register to be rectified by substituting the name of the transferor for that of the transferee (*f*). So where a transfer had been presented but had not been registered for a period of three weeks while petitions were pending the delay was held to be unreasonable (*g*), and where a transfer had been approved by the director whose duty it was to inspect transfers, but had, contrary to the ordinary practice of the company, not been confirmed and registered at the next meeting of directors, the register was rectified after the winding-up (*h*), and the same result followed where a transfer was made in the same circumstances, and before it was registered the transferee died, and no personal representatives of his existed (*i*). In all these cases the directors had a discretion to refuse the transfers (*k*) but they had not exercised it, and there was no reason why they should have done so, and the Court will not, where a transfer has been duly submitted, assume that directors would in the exercise of their discretion have refused to register it, unless there is some reason for such refusal (*l*), but where the transfer was to a man of straw, and a considerable time had elapsed after the transfer was deposited at the office of the company, during which time it was marked for inquiry but no decision was come to, the Court refused to order the register to be rectified (*m*). The principle at the bottom of the rectification cases being that section 32 of the Act is applicable as well after as before the commencement of a winding-up (*n*), but subject in the case of transfers which have taken place after the commencement of the winding-up to the considerations mentioned below, and that default has been made or unnecessary delay has taken place in entering on the register the fact of the transferor having ceased to be a member (*o*).

Thus, the Court has refused relief to a transferor who lodged his transfer for registration at a time when according to the ordinary practice of the company it could not have been registered before the

(*f*) *Manchester and Oldham Bank* (1885), 54 L. J. (CH.) 926.

(*g*) *Lowe's Case* (1870), 9 Eq. 589.

(*h*) *Nation's Case* (1886), 3 Eq. 77; *Hill's Case* (1867), 4 Ch. 769 n.

(*i*) *Fyfe's Case* (1869), 4 Ch. 768.

(*k*) These cases of course apply with even greater force where there is no such discretion: *Weston's Case* (1868), 4 Ch. 20.

(*l*) See *Evans* v. *Wood* (1868), 5 Eq. 9; *Paine* v. *Hutchinson* (1868), 3 Ch. 388, and cp. *Walker's Case* (1866), 2 Eq. 554.

(*m*) *Shipman's Case* (1868), 5 Eq. 219; see also *Union Debenture Co.* v. *Fletcher* (1895), 59 J. P. 708, where relief was refused, winding-up having supervened while the directors were making inquiries, the result of which justified a refusal.

(*n*) See *Sussex Brick Co.*, [1904] 1 Ch. 598, and the cases cited with it, *ante*, p. 1101, and also the case cited in the next note.

(*o*) See Companies (Consolidation) Act, 1908, s. 32 (1) (*b*); *Marshall* v. *Glamorgan Iron and Coal Co.* (1868), 7 Eq. 129.

winding-up (*p*), and where a transfer was lodged at a time when the company had stopped business and the directors had passed a resolution to register no further transfers (*q*). Nor will there have been unnecessary default or delay on the part of the company where it is the duty of the company, acting as agents for the purchaser to get his signature to a transfer, and it has been impossible to do this before winding-up (*r*), or where the articles require transfers to be by deed and no deed of transfer has been executed (*s*), or where the articles (*t*) or even the practice of the company (*u*) require the transfer to be executed by the transferee and it has not been so executed, or where no transfer at all of the shares has been executed (*x*) nor will relief be given where directors have properly refused to register a transfer (*y*), and in such case the company is under no obligation to notify the transferor of their refusal (*z*). At the same time, it would seem wholly wrong to say, as was said in *Lord R. Montagu's Case* (*a*), that, where a transfer which the company is bound to register is presented, and the company delays the registration, the transferor must suffer; and this proposition is certainly not borne out by *Marshall* v. *Glamorgan Iron and Coal Co.* (*b*), where a company was held to be bound to register a transfer to itself of shares which it was held to have validly agreed to accept, and seems contrary not only to many of the cases above cited, but also to *Cawley & Co.* (*c*). It is, no doubt, in spite of the provisions of section 28 of the Act, the duty of the transferee to see that the transfer is registered (*d*), but if he fails in lodging the transfer for registration the Court will not

(*p*) *Shepherd's Case* (1866), 2 Ch. 16. It is thought that *Ward and Garfit's Case* (1867), 4 Eq. 189, is quite inconsistent with this case, and was therefore wrongly decided. See also *Walker's Case* (1866), 2 Eq. 554.

(*q*) *Alexander Mitchell's Case* (1879), 4 A. C. 548, 567; *Rutherfurd's Case* (1879), 4 A. C. 548, 581; *Nelson Mitchell* v. *City of Glasgow Bank* (1869), 4 Ch. 624 (cases which turned perhaps partly on the articles); see also the decision of ROMILLY, M.R., in *Shepherd's Case* (1866), 2 Eq. 564 (afterwards affirmed on other grounds, 2 Ch. 16), and his remarks in *Nation's Case* (1866), 3 Eq. 77, 81; and cp. also *Allin's Case* (1873), 16 Eq. 449; *Chappell's Case* (1871), 6 Ch. 902; *Taurine Co.* (1883), 25 C. D. 118.

(*r*) *Marino's Case* (1867), 2 Ch. 596.

(*s*) *MacEuen* v. *West London Wharves and Warehouses Co.* (1871), 6 Ch. 655

(*t*) *Walker's Case* (1866), 2 Eq. 554; *Musgrave and Hart's Case* (1870), 5 Ch. 193.

(*u*) *Marino's Case* (1867), 2 Ch. 596.

(*x*) *Per* Lord PENZANCE in *Alexander Mitchell's Case* (1879), 4 A. C. 548, 567, at p. 576

(*y*) *Holden's Case* (1869), 8 Eq. 444.

(*z*) *Gustard's Case* (1869), 8 Eq. 438.

(*a*) (1888), W. N. 137. The case is very imperfectly reported.

(*b*) (1868), 7 Eq. 129.

(*c*) (1889), 42 C. D. 209.

(*d*) *Ward and Henry's Case* (1867), 2 Ch. 431; *Skinner and City of London Marine Insurance Co.* (1885), 14 Q. B. D. 882.

remove the transferor's name from the register (*e*), and where there is a dispute as to title between the transferor and transferee the Court will usually not decide it in the winding-up (*f*). In such cases if the transferee has been in default the transferor will be entitled to be indemnified by him (*g*), but in a proper case the transferee may be ordered to concur in all steps that may be necessary and proper for rectifying the register (*h*).

Where a person has sought to get a transfer registered while the company is a going concern and the company has declined to allow registration, the Court will not after winding up rectify at the instance of the liquidator (*i*), but delay in applying for rectification if it occurs after winding up will, as a rule, not be fatal to an application for rectification, where the transfer should have been registered before the winding-up (*k*). It would seem, however, that the Court will not rectify the register at the instance of a transferee where his conduct has been such as to render it inequitable to give him relief, *e.g.* where he has induced the directors to postpone a call so as to enable him to consult certain shareholders whom he represents, and has taken advantage of the interval to transfer his shares to a man of straw, the articles enabling the directors to decline to register a transfer from a person indebted to them (*l*).

In the case of a winding-up by or subject to the supervision of the Court every transfer of shares or alteration in the status of members made after the commencement of the winding-up will, unless the Court otherwise orders, be void (*m*). This section does not as between vendor and purchaser invalidate a contract for sale of shares whether made before winding-up and not completed (*n*)

(*e*) *Head's Case* and *White's Case* (1867), 3 Eq. 84, 86; *Marshall* v. *Glamorgan Iron and Coal Co.* (1868), 7 Eq. 129.

(*f*) *Ward and Henry's Case* (1867), 2 Ch. 431. The question as to the jurisdiction in these cases to rectify the register has already been discussed, *supra*, pp. 196 and 197.

(*g*) *Evans* v. *Wood* (1868), 5 Eq. 9.

(*h*) *Paine* v. *Hutchinson* (1868), 3 Ch. 388 (varying the order made in 3 Eq. 257). In the case of Stock Exchange contracts, where there have been subsales, the original purchaser will be released when the ultimate purchaser's name has been given to the ultimate seller, or at all events when he has accepted such name: *Grissell* v. *Bristowe* (1869), L. R. 4 C. P. 36; *Coles* v. *Bristowe* (1869), 4 Ch. 3: unless it ultimately turns out that such name is not the name of a person able and willing to purchase: *Nickalls* v. *Merry* (1875), L. R. 7 H. L. 530, or unless registration is guaranteed: *Cruse* v. *Paine* (1869), 4 Ch. 441.

(*i*) *Sichell's Case* (1867), 3 Ch. 119.

(*k*) *Shewell's Case* (1867), 2 Ch. 387; *Fyfe's Case* (1869), 4 Ch. 768.

(*l*) *Ex parte Parker* (1867), 2 Ch. 685.

(*m*) Companies (Consolidation) Act, 1908, s. 205 (2).

(*n*) *Chapman* v. *Shepherd*, *Whitehead* v. *Izod* (1867), 2 C. P. 228; *Paine* v. *Hutchinson* (1868), 3 Ch. 388; *Evans* v. *Wood* (1868), 5 Eq. 9; but see *Bermingham* v. *Sheridan* (1864), 33 Beav. 660, where it was assumed that the contract was

or made after winding-up (*o*); but the Court has declined under this section to rectify the register at the instance of the vendor where both parties contracted in ignorance of a petition on which a compulsory order was made and no transfer was executed (*p*). At the same time it would appear that in a proper case the section will enable a vendor to get the name of his purchaser substituted for his own name (*q*). The Court, in giving leave under section 205 (2) to rectify the register, where there has been no delay or default on the part of the company, bears in mind the fact that the principle at the bottom of all the winding-up sections is that as the tree falls so shall it lie, and in such cases unless the proposed transfer can in some way or other be shown to be advantageous to the company, the Court will always be slow to sanction it at all events where the whole transaction has taken place after the winding-up of the company (*r*), where, however, only the transfer takes place after that date, and the contract on which the transfer was founded was prior to the winding-up, it may be disposed to take a more lenient view (*s*), though even in such cases it is thought that the interest and advantage of the company will be the paramount consideration, and on any such application the company should be a party (*r*). The Court will on the application of the company rectify the register where the allotment was bad and the allottee knew all the facts (*t*).

Where a transfer has been sanctioned under this section, the transferee's name must be substituted for that of the transferor on the A list of contributories, but the name of the transferor, or, where there have been several transfers of the same shares during the winding-up, the names of all the transferors must be put on the B list of contributories (*u*). All other persons who have been members within a year of the winding-up (*x*) will be liable to go on the B list of contributories. Thus, if there have been several transfers, all

conditional on the company accepting the purchaser as a member. This is certainly not the case with Stock Exchange contracts as a rule: *Stray* v. *Russell* (1859), 1 E. & E. 888, 917; *London Founders' Association* v. *Clarke* (1888), 20 Q. B. D. 576: nor it is thought usually with other contracts.

(*o*) *Rudge* v. *Bowman* (1868), L. R. 3 Q. B. 689.

(*p*) *Emmerson's Case* (1866), 1 Ch. 433.

(*q*) *Ibid.*

(*r*) *Onward Building Society* (*No.* 1), [1891] 2 Q. B. 463. The matter can be raised on the winding-up, the liquidator being served. See Orders, *supra*, pp. 1099 and 1100.

(*s*) See *Paine* v. *Hutchinson* (1868), 3 Ch. 388; and *Musgrave and Hart's Case* (1868), 5 Eq. 193, explained therein on this point.

(*t*) *Sly, Spink & Co.*, [1911] 1 Ch. 430.

(*u*) *Taylor's, Phillips', and Richard's Cases*, [1897] 1 Ch. 298.

(*x*) Where there is a voluntary winding-up followed by a compulsory order, the presentation of the petition for such order will be the commencement of the winding-up though the Court can adopt a list of contributories which has been settled in the voluntary winding-up: *Taurine Co.* (1883), 25 C. D. 118.

the transferors will be liable (*y*), if the shares have within the year been forfeited (*z*) or validly surrendered and cancelled (*a*), the persons in whose names they stood at the date of forfeiture or cancellation, and any persons who transferred to them within the year will be liable (*b*). If shares have been allotted under a void contract (*c*) or one which was voidable and has been avoided (*d*), then the person to whom the shares have been allotted will not be liable, and where shares have been validly surrendered and cancelled and after both cancellation and winding-up, the person to whom the shares were allotted found that there were misrepresentations which would have entitled him to rescind his contract, he was held not to be liable to be put on the B list of contributories (*e*). This view would seem to be borne out by *Aaron's Reefs* v. *Twiss* (*f*). A person who more than a year before the winding-up transfers to an infant will not be liable to be put on the B list of contributories, if the shares have subsequently been transferred to an adult, even if the subsequent transfer was within the year (*g*). In this case it may be that there will be no one on the list of B contributories for the shares so transferred (*g*), and this may also occur where a past member becomes bankrupt (*h*).

It would seem that in a proper case the Court can rectify the register so as to put the name of a person on the B list of contributories (*i*).

Past members of companies registered but not formed under the Act (*k*), and of illegal associations (*l*), which have been wound up, are liable to be put on the B list of contributories, in the same way as past members of other companies.

Other cases where there are two classes of contributories are the case of a company limited by guarantee and having a share capital, and also the case of unlimited companies which may provide for different classes, *e.g.* shareholders and policy-holders (*m*). In the

(*y*) *Humby's Case* (1872), 26 L. T. 936; *Kellock* v. *Enthoven* (1873), L. R. 9 Q. B. 241.

(*z*) *Creyke's Case* (1869), 5 Ch. 63.

(*a*) *Bath's Case* (1878), 8 C. D. 334.

(*b*) *Bridger's Case* and *Niell's Case* (1869), 4 Ch. 266.

(*c*) *Ward's Case* (1870), 10 Eq. 659; *Bath's Case* (1878), 8 C. D. 334.

(*d*) *Bath's Case* (1878), 8 C. D. 334; *Wright's Case* (1871), 7 Ch. 55; *Ex parte Walstab* (1851), 20 L. J. (CH.) 58.

(*e*) *Wright's Case* (1871), 7 Ch. 55.

(*f*) [1896] A. C. 273.

(*g*) *Gooch's Case* (1872), 8 Ch. 266.

(*h*) See *McEwen's Case* (1871), 6 Ch. 582, and *ante*, p. 1130.

(*i*) *Weikersheim's Case* (1873), 8 Ch. 831.

(*k*) *Ramsay's Case* (1876), 3 C. D. 388.

(*l*) *Ex parte Lynes* (1875), 38 L. T. 90.

(*m*) *Winstone's Case* (1879), 12 C. D. 239; and see *Smith's Case* (1869), 4 Ch. 611; *Blyth & Co.'s Case* (1872), 13 Eq. 529, as to not stamping a policy of marine insurance under the old law; and

absence of special provision it would appear that in such cases the shareholders will be primarily liable (*n*), and a policy-holder may, if the articles so provide, cease to be a member, even where no person is substituted as a member (*o*), and this will be so even where there is a person who gets the benefit of the retiring member's policy (*p*).

COMPANIES REGISTERED BUT NOT FORMED UNDER THE ACT AND UNREGISTERED COMPANIES.

With regard to companies which have registered under Part VII. of the Act, the Act provides (*q*) that—

In the event of the Company being wound-up, every person shall be a contributory, in respect of the debts and liabilities of the Company contracted before registration who is liable to pay or contribute to the payment of any debt or liability of the Company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding-up the Company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the Company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy, or insolvency, of any contributory or marriage of any female contributory, the provisions of this Act, with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

With regard to unregistered companies the following provisions are applicable (*r*) :—

(1) In the event of an unregistered Company being wound-up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the Company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs, and expenses of winding-up the Company, and every contributory shall be liable to contribute to the assets of the Company all sums due from him in respect of any such liability as aforesaid.

Provided that in the case of an unregistered Company within the Stannaries, a past member shall not be liable to contribute to the assets of the Company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

(2) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of

the Stamp Act, 1891, s. 95 (2), as to stamping a policy after execution.

(*n*) *Albion Life Assurance* (1880), 16 C. D. 83.

(*o*) *Brown's Case* (1881), 18 C. D. 639.

(*p*) *Sanders' Case* (1882), 20 C. D. 403.

(*q*) Companies (Consolidation) Act, 1908, s. 263 (ii.) (*f*).

(*r*) *Ibid.*, s. 269.

deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

Under these sections not every debtor to the company is a contributory, nor is a person who has taken shares in the name of a trustee, though, no doubt, he will be equitably liable to the trustee, and the company may be able to get at him through the trustee (*s*). Again, an officer of the company who is liable to refund assets he has misappropriated is not a contributory (*t*). The legal or equitable liability referred to in the Act is a liability to contribute in the character of a partner. Instances of the equitable liability are afforded by the cases of a person who has not taken shares, but is bound in equity to the company to do so (*u*), or who has got rid of his shares by some improper device which the Court can go behind (*x*).

Again, a person who has transferred shares but is still liable for calls made before transfer is not liable as a contributory (*y*), and a mortgagee of a ship which was insured with a mutual marine insurance society was not liable as a contributory in respect of a guarantee for the payment of all averages and contributions due or to become due in respect of such ship, which he had given to the society, in accordance with its rules (*z*).

Under the old Winding-up Act of 1848, the question of who was or was not a contributory was much discussed in *Bright* v. *Hutton* (*a*), but it may be stated that the general rules as to whether a person has or has not agreed to become a member of or partner in any unregistered company or society will depend very much on the same principles as those already considered in the case of companies registered under the Limited Liability Acts, except that in companies incorporated by special Act of Parliament, the special Act may and usually does make certain persons, generally the promoters, members (*b*). How far any person who has been a member has ceased to be one will depend partly on the principles already enunciated and partly on the Acts of Parliament and documents which apply to the company in question.

(*s*) *British Nation Life Assurance Association* (1878), 8 C. D. 679.

(*t*) *Davies' Case* (1890), 45 C. D. 537.

(*u*) *Moore and de la Torre's Case* (1874), 18 Eq. 661; cp. *Moore Bros. & Co.*, [1899] 1 Ch. 627; *Todd* v. *Millen*, [1910] S. C. 868, as to the very doubtful equity in this case.

(*x*) *Per* JAMES, L.J., in *British Nation Life Assurance Association* (1878), 8 C. D. 679, at p. 708, cited and followed in *Davies' Case* (1890), 45 C. D. 537, 548; see also *Arthur Average Association* (1876), 3 C. D. 522, 526.

(*y*) *Ex parte Littledale* (1874), 9 Ch. 257.

(*z*) *Lee and Moore's Case* (1868), 5 Eq. 368.

(*a*) (1852), 3 H. L. C. 341.

(*b*) *Portal* v. *Emmens* (1876), 1 C. P. D. 201, 664; *Kincaid's Case* (1870), 11 Eq. 192; *Forbes' Case* (1875), 19 Eq. 353; *South London Fish Market Co.* (1888), 39 C. D. 324.

The question of the liability of members whether past or present of a company or society depends on the further question whether such company is incorporated or not. If it is incorporated the members will only be liable if and to the extent that the Act of Parliament or the document governing the company so provides (*c*). If the society is unincorporated the members will on principles of partnership or of principal and agent be liable for all contracts entered into by the society during their membership, unless such contracts otherwise provide or were beyond the scope of the authority given to the society, or some Act of Parliament otherwise provides (*d*).

To apply these rules to the various companies and bodies which can be wound up under the Act (*e*).

I. INCORPORATED COMPANIES.

1. Companies governed by the Companies Clauses (Consolidation) Act, 1845. This will include companies incorporated by special Act of Parliament or by Provisional Order under some special statute (*e.g.* The Light Railways Act, 1896), where the Statute or Provisional Order incorporates the Companies Clauses (Consolidation) Act, 1845, and the later Acts amending it. In these cases the liability of a shareholder is limited to the amount unpaid on his shares (*f*). Such liability apparently only extends to existing shareholders, and if Part I. of the Companies Clauses Act, 1863, is incorporated the company may accept a surrender of its shares. It would seem doubtful whether directors may transfer their shares before the first general meeting under the usual clauses of special Acts (*g*).

2. Companies incorporated under the Joint Stock Companies Act, prior to 1856. Here the liability of all members is unlimited (*h*), but proceedings cannot be taken against a person who has been a member of a company formed under 7 & 8 Vict. c. 110 after three years from the time when he ceased to be a member, or for debts contracted after he ceased to be a member (*i*), or under 7 & 8 Vict. c. 113 for debts for which he would not be liable were the company

(*c*) *Sheffield and South Yorkshire Permanent Building Society* (1889), 22 Q. B. D. 470.

(*d*) *West London and General Permanent Benefit Building Society*, [1894] 2 Ch. 352.

(*e*) A British subject who is resident in England and who is a member of a foreign company will be subject to the laws of the country to which the company belongs, but will in the absence of express agreement not have agreed to submit to the jurisdiction of its courts: *Copin* v. *Anderson* (1874), L. R. 9 Ex. 345; 1 Ex. D. 17; *Emanuel* v. *Symon*, [1908] 1 K. B. 302.

(*f*) Companies Clauses (Consolidation) Act, 1845, ss. 21 and 36.

(*g*) *South London Fish Market Co.* (1888), 39 C. D. 324; and see *Kipling* v. *Todd* (1878), 3 C. P. D. 350.

(*h*) 7 & 8 Vict. c. 110, s. 25; 7 & 8 Vict. c. 113, s. 7; *Greenwood's Case* (1854), 3 De G. M. & G. 459.

(*i*) 7 & 8 Vict. c. 110, s. 66.

an ordinary partnership (*k*). Shares in such companies may be surrendered if and in manner authorized by the company's deed of settlement (*l*). The Act of 1855, though it enabled members to limit their liability, gave creditors (*m*) the same remedies and to the same extent as under the earlier Acts.

3. These enactments were followed by the Act of 1856, the Joint Stock Companies Act, 1857, and the Joint Stock Banking Companies Act, 1857. Under these Acts it appears that substantially the same rules are applicable as under the existing Acts, except that an existing shareholder in an unlimited company was only released after three years. These Acts for the first time really recognized limited companies, and were consolidated by the Act of 1862.

4. Companies incorporated by Royal Charter. At common law the Crown could not by a charter make the members of such a company liable for its debts (*n*), but now by 7 Will. IV. & 1 Vict. c. 74 (*o*), which replaces some earlier Acts, the Crown can do this.

5. Incorporated building societies. The Act of 1874, which deals with these societies, recognizes the right of withdrawal (*p*), and provides (*q*) that "the liability of any member of any society under this Act in respect of any share upon which no advance has been made shall be limited to the amount actually paid or in arrear on such share and in respect of any share upon which an advance has been made shall be limited to the amount payable thereon under any mortgage or other security or under the rules of the Society." It follows that a member who has withdrawn is not liable at all (*r*).

The position of members of a building society originally formed under the Act of 1836 but incorporated under the Act of 1874 (and every such society formed after the year 1856 is required to become so incorporated)(*r*), is precisely similar to that of a member of a society originally incorporated under the Act of 1874, and his liability is limited by section 14 of the Act of 1874, even as regards liabilities previously incurred (*s*).

Where there are no outside creditors, or where the assets of the company apart from calls are sufficient to provide for them, an unadvanced member cannot be put on the list of contributories

(*k*) 7 & 8 Vict. c. 113, s. 10.

(*l*) See *Evans* v. *Smallcombe* (1868), L. R. 3 H. L. 249, and the other cases in the same company in all of which it was recognized that a surrender acquiesced in by all members or authorized by the rules would be good.

(*m*) See s. 7.

(*n*) *Elve* v. *Boyton*, [1891] 1 Ch. 501.

(*o*) See s. 29.

(*p*) See s. 16 (5), repealed by the Building Societies Act, 1894; but the right of withdrawal is recognized by s. 1 (*b*) and (*c*) of that Act.

(*q*) S. 14.

(*r*) Building Societies Act, 1894, s. 25 (2).

(*s*) *Per* WRIGHT, J., *West London and General Permanent Benefit Building Society*, [1894] 2 Ch. 352, at p. 371, citing *Fountain's Case* (1865), 4 De G. J. & S. 699.

against his will (*t*), for a member is under no liability to contribute to the assets for the purpose of adjusting the rights of the contributories *inter se*, and can only be required to pay off the amount payable on his advance under any mortgage or other security or under the rules of the society (*u*); but where there are outside creditors and calls are or may be necessary an advanced member will or may be liable to be put on the list of contributories (*x*), but he will only be liable to pay the amount payable under the rules at the time or times and subject to the conditions therein expressed (*y*).

An unadvanced member can, it would seem, only be put on the list in respect of the amount he is in arrear in respect of his shares (*z*). That would be the amount actually due from him at the date of the winding-up (*a*).

Members who have given notice of withdrawal remain members until they are actually paid out (*b*).

7. Friendly societies may register under the Companies (Consolidation) Act. Such registration does not affect any right or claim subsisting against or any penalty incurred by the society, and, for the purpose of enforcing such right, claim, or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company; and every such right or claim or the liability to any such penalty will have priority as against the property of the company over all other rights or claims against or liabilities of the company (*c*).

8. Industrial and Provident societies may register under the Companies (Consolidation) Act, 1908, and companies may register under the Industrial and Provident Societies Act, 1893. The liabilities incurred before registration being in each case the same as in the case of friendly societies with regard to their contracts before registration (*d*). These societies when registered become incorporated

(*t*) *Middlesborough, Redcar, and Saltburn Building Society* (1889), 58 L. J. (CH.) 771; *Britannia Permanent Benefit Building Society* (1892), 65 L. T. 196.

(*u*) *Brownlie* v. *Russell* (1883), 8 A. C. 235; *Tosh* v. *North British Building Society* (1886), 11 A. C. 489.

(*x* *London Provident Building Society* v. *Morgan*, [1892] 2 Q. B. 266; *Doncaster Permanent Building Society* (1867), 3 Eq. 158.

(*y*) Building Societies Act, 1894, s. 10.

(*z*) Building Societies Act, 1874, s. 14.

(*a*) See *Sheffield and South Yorkshire Permanent Building Society* (1889), 22 Q. B. D. 470, 476; *Brownlie* v. *Russell* (1883), 8 A. C. 235.

(*b*) *Sibun* v. *Pearce* (1890), 44 C. D. 354; *Pepe* v. *City and Suburban Permanent Building Society*, [1893] 2 Ch. 311, where the priority given by the notice of withdrawal was lost by an alteration of the rules after the notice had matured.

(*c*) Friendly Societies Act, 1896, s. 71; and see *post*, p. 1145, as to friendly societies which have not so registered.

(*d*) Industrial and Provident Societies Act, 1893, ss. 54 and 55.

companies with limited liability (*e*), and this was also the case with societies under the earlier Acts of 1862 and 1876, but not with societies under the Act of 1852 (*f*), which, however, could register under the later Acts.

The Act of 1893 applies to all incorporated societies (*g*).

Where an incorporated society is wound-up in pursuance of an order or resolution the liability of a present or past member of the society to contribute for payment of the debts and liabilities of the society the expenses of winding-up and the adjustment of the rights of contributories amongst themselves is qualified as follows :—

(*a*) No individual society or company who or which has ceased to be a member for one year or upwards prior to the commencement of the winding-up shall be liable to contribute.

(*b*) No individual society or company shall be liable to contribute in respect of any debt or liability contracted after he or it ceased to be a member.

(*c*) No individual society or company not a member shall be liable to contribute unless it appears to the Court that the contributions of the existing members are insufficient to satisfy the just demands on the society.

(*d*) No contribution shall be required from any individual society or company exceeding the amount if any unpaid on the shares in respect of which he or it is liable as a past or present member.

(*e*) An individual society or company shall be taken to have ceased to be a member in respect of any withdrawable share withdrawn from the date of the notice or application for withdrawal (*h*). Shares can, if the rules permit, be transferred or withdrawn (*i*).

II. UNINCOROPRATED COMPANIES.

1. Unincorporated companies privileged by letters patent under 7 Will. IV. & 1 Vict. c. 73. The letters patent may provide for the liability of members of such companies being limited, and the members will, if there is such a limit, be liable only to the extent specified in the letters patent, such liability being enforced in such manner and subject to such provisions as is specified in the letters patent (*l*).

(*e*) Industrial and Provident Societies Act, 1893, s. 21.

(*f*) These societies could not under the Companies Act, 1862, be wound up if not registered : *Chatham Co-operative Industrial Society* (1864), 33 L. J. (CH.) 737.

(*g*) Industrial and Provident Societies Act, 1893, s. 3.

(*h*) *Ibid.*, s. 60.

(*i*) *Ibid.*, s. 10 and Schedule II. See also *United Service Share Purchase Society*, [1909] 2 Ch. 326, on these provisions.

(*l*) 7 Will. IV. & 1 Vict. c. 37, s. 4.

The Act contemplates persons ceasing to be members by transfer (*m*) and otherwise (*n*). In the absence of any limit in the charter, the liability of a shareholder in such a company would appear to be the ordinary partnership liability, viz. unlimited as regards debts while he was a shareholder.

2. The liability of members of companies empowered by special Act of Parliament to sue by a public officer and not incorporated is, unless otherwise provided by such Act, unlimited (*o*).

3. With regard to banking companies under 7 Geo. IV. c. 46. Present members are primarily liable for all debts, whether incurred before or during their membership (*p*), but with leave execution may also be issued against any person who was a member at the time when the contract or engagement on which the judgment was founded was entered into or before it was executed, if the judgment cannot be satisfied from the present members (*q*). The liability of members is, subject to this, unlimited.

4. Unincorporated building societies. Here on the ordinary principles of principal and agent, if the assets including the unmatured subscriptions of the unadvanced members and the unmatured instalments of the advanced members are insufficient to pay the debts properly incurred by the society, all persons who were members whether advanced or unadvanced when such debts were incurred will as against outside creditors be liable (*r*); but loan creditors of such societies have no rights against the members personally, they can only look to the assets for repayment (*s*). As between the members themselves the advanced members will not usually be liable to make good any losses sustained by the unadvanced

(*m*) 7 Will. IV. & 1 Vict. c. 73, s. 9.

(*n*) *Ibid.*, s. 8.

(*o*) *Aldridge* v. *Cato* (1872), L. R. 4 P. C. 313.

(*p*) *Capes' Executors' Case* (1852), 2 De G. M. & G. 562.

(*q*) 7 Geo. IV. c. 46, s. 13.

(*r*) *West London and General Permanent Benefit Building Society*, [1894] 2 Ch. 352. In this case the members had also to pay the costs of winding-up other than those of realization. See also *Murray* v. *Scott* (1884), 9 A. C. 519, 546–548, 554; *Irvine and Fullarton Property Investment and Building Society* v. *Cuthbertson* (1905), 8 Fra. 1.

(*s*) A rule authorizing the directors of such a society to pledge the credit of the members would be *ultra vires*: *West London and General Permanent Benefit Building Society*, [1894] 2 Ch. 352, following *Murray* v. *Scott* (1884), 9 A. C. 519; *Birkbeck Permanent Building Society* (1911), 28 T. L. R. 46. This last case decides following *Guardian Permanent Benefit Building Society* (1883), 23 C. D. 440, that where there has been an *ultra vires* borrowing, the lenders will be entitled to repayment after all outside creditors and members have been repaid. It is difficult to see on what principle.

members (*t*), but their liability as also that of the unadvanced members for this purpose would seem to depend wholly on the rules (*u*).

(5) With regard to friendly societies as a general rule, it would seem that their members would be liable for their debts as against outside creditors. Legal proceedings must, it is true, be brought against the trustees (*x*), but in such actions the society is the real defendant (*y*), and it is thought that members are in the same position as members of unincorporated building societies (*z*), or of industrial and provident societies under the Industrial and Provident Societies Act of 1852 (*a*). With regard to the liability of the members of friendly societies among themselves: to take first of all the law relating to cattle insurance societies (*i.e.* societies for the purpose of insurance to any amount against loss of meat, cattle, sheep, lambs, swine, horses, and other animals against death from disease or otherwise) or to societies specially authorized by the Treasury to register under the Act for any purpose and to take the benefit of section 31 of the Act.

With regard to these societies their rules are to bind the society or branch and the members thereof and all persons claiming through them respectively to the same extent as if each member had subscribed his name and affixed his seal thereto and there were in the rules contained a covenant on the part of himself his heirs executors and administrators to conform to the rules subject to the provisions of the Act.

All sums of money payable by a member to such society or branch will be deemed to be a debt due from such member to such society or branch, and will be recoverable as such in the county court of the district in which the member resides (*b*). In other friendly societies the subscription of a person being or having been a member is not recoverable at law (*c*).

(6) Cost-book mining companies are usually partnerships for working mines within the Stannaries, but they may be limited

(*t*) *Brownlie* v. *Russell* (1883), 8 A. C. 235; *Tosh* v. *North British Building Society* (1886), 11 A. C. 489.

(*u*) *West Riding of Yorkshire Permanent Benefit Building Society* (1890), 45 C. D. 463; see also *Reliance Building Society* (1892), 61 L. J. (CH.) 453.

(*x*) Friendly Societies Act, 1896, s. 94; and see *ibid.*, s. 19, as to the vesting of property in and the liability of trustees.

(*y*) *Laskey* v. *Runtz* (1908), 24 T. L. R. 496.

(*z*) See *supra*, p. 1144.

(*a*) See *Myers* v. *Rawson* (1860), 5 H. & N. 99; *Dean* v. *Mellard* (1863), 15 C. B. (N. S.) 19. It is thought that on the question of the liability of members of friendly societies it will also be useful to consult *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants*, [1901] A. C. 426; *Harrison* v. *Timmins* (1838), 4 M. & W. 510.

(*b*) Friendly Societies Act, 1896, s. 31.

(*c*) *Ibid.*, s. 23.

companies. They are governed partly by custom, partly by statute, and partly, no doubt, in each case by the instrument constituting the partnership, which is usually the cost-book (*d*).

The Stannaries Act, 1869, extends only to mines within the Stannaries of Devon and Cornwall, and subject to the jurisdiction of the Court of the Vice-Warden or within the cognizance of the Vice-Warden of the Stannaries (*e*), and does not extend to registered companies, except where such companies are expressly mentioned or necessarily implied (*f*).

The Stannaries Act, 1887, extends also to registered companies engaged or formed for working mines (*i.e.* metalliferous mines and tin-streaming works (*g*)), within the Stannaries of Cornwall and Devon (*h*).

The shares in a cost-book mining company are transferable, but under the Act of 1869 a company is not bound to recognize a transfer of a share until all calls made in respect thereof with interest and expenses have been paid (*i*), or a transfer of a fractional part of a share (*k*).

Moreover, a transfer of shares made for the purpose of getting rid of the further liability of a shareholder as such for a nominal or no consideration, or to a person without any apparent pecuniary ability to pay the reasonable expenses of working a mine or to a person in the menial or domestic service of the transferor will be presumed to be a fraudulent transfer, and need not be recognized by the company or by the Court on the winding-up of the company whether the company be a registered or unregistered company (*l*). Where a transfer has been registered and the transferee sued for calls and the shares forfeited with knowledge of his insolvency, the Court will not allow the company or its liquidator to take advantage of this section (*m*).

By the custom of the Stannaries shares in a cost-book mining company may be relinquished (*n*); when a share in a company governed by the Act of 1869 is relinquished it must be carried to an account to be called the Account of Relinquished Shares, and will be deemed to be the property of the company and may be disposed of as the company thinks fit, and any shareholder may purchase such share if sold (*o*).

(*d*) Lindley on Companies, 6th Ed. p. 132; Stannaries Act, 1869, s. 9.

(*e*) This means now mines which would have been within the jurisdiction of such Court had it not been abolished.

(*f*) Stannaries Act, 1869, s. 3.

(*g*) Stannaries Act, 1887, s. 3.

(*h*) *Ibid.*, s. 2.

(*i*) Stannaries Act, 1869, s. 14.

(*k*) *Ibid.*, s. 15.

(*l*) *Ibid.*, s. 35.

(*m*) *Chynoweth's Case* (1880), 15 C. D. 13.

(*n*) See *Ex parte Palmer* (1872), 7 Ch. 286; *Frank Mills Mining Co.* (1883), 23 C. D. 52: and the sections of the Acts next cited; presumably shares in limited companies could not be so relinquished.

(*o*) Stannaries Act, 1869, s. 21.

Every relinquishment of a share in such a company must be by notice in writing delivered to the purser (*p*), and the company is not bound to recognize the relinquishment of a fractional part of a share (*q*). A statutory declaration in writing by the purser of such a company that a share has been relinquished will be sufficient evidence of the facts therein stated as against all persons interested in the share and that declaration and the receipt of the purser to a purchaser of the share for the price thereof if sold will constitute a good title thereto, and the purchaser must be entered in the cost-book as a shareholder in respect of the share, and thereupon he will be deemed to be the holder thereof discharged as against the company from all unpaid calls interest and expenses due to the company in respect thereof accrued before his purchase, and he will not be bound to see to the application of the purchase money, nor will his title to the share be affected by any irregularity in the proceedings in reference to such sale (*r*). Where a share in a company has been relinquished after November 30, 1887, and a valuation of the materials and other assets of the company is required to be made as between the shareholder who has relinquished and the continuing shareholders, such valuation must be made on the basis that all the continuing shareholders had at the same time relinquished their shares (*s*).

Prior to this enactment each shareholder was by custom entitled to relinquish his share in a cost-book mining company. On such relinquishment the assets of the company were valued and also its liabilities. If such assets exceeded the liabilities, he was entitled to his share of the surplus. If the liabilities exceeded the assets, he had to pay his proportion of the deficiency. Sums due to a person under this custom were immediately due and payable at the expiration of two years, and if there were not sufficient assets to make the necessary payments calls could be made on the other adventurers in the mine. Such sums were a debt provable in the winding-up (*t*). In estimating the assets, the business was valued as a going concern, and regard had to be had to the solvency of shareholders and others who were indebted to the company (*u*). It is difficult to see the exact effect of the section, but it would seem to take away any right to have calls made on co-adventurers and possibly the right to have the business valued as a going concern. In one case (*x*) a practice of a company to accept surrenders without

(*p*) "Purser" means the purser for the time being of a company, and if there is no purser, then the secretary for the time being, or if there is no secretary, then the principal agent for the time being of the company: *ibid.*, s. 2.

(*q*) *Ibid.*, s. 22.

(*r*) Stannaries Act, 1869, s. 23.

(*s*) Stannaries Act, 1887, s. 21.

(*t*) *Ex parte Palmer* (1872), 7 Ch. 286.

(*u*) *Frank Mills Mining Co.* (1883), 23 C. D. 52.

(*x*) *Bodmin United Mines* (1857), 23 Beav. 370.

requiring payment of arrears was held good, but in these big partnerships it is very difficult to show that a departure from the general customs which is not sanctioned by the rules, has been assented to by all the members (*y*).

After November 30, 1887, a relinquishment will not have any effect if it is delivered within the six weeks immediately preceding the day on which a resolution to wind-up the company is legally passed at a duly convened meeting of the company or on which an order is made to wind-up the same by or subject to the supervision of the Court (*z*). The Act of 1869 also contains provisions as to forfeiture (*a*).

The position of shareholders in a cost-book mining company, then, is as follows: The company is a mere partnership (*b*) unless registered as a company, and may sue in the partnership name (*c*). It is no doubt competent for the rules to provide that persons relinquishing their shares (*d*) or transferring them (*e*) shall cease to be liable for debts past as well as present, and such rules will be binding on the co-adventurers. But as against outside creditors a person will be liable for all debts incurred while he is on the register (*f*), and a transferee will not be liable for any debts till he gets on the register (*g*), though no doubt he will have to indemnify his transferor against all debts whether incurred between the purchase and the registration of the transfer (*h*) or prior to the purchase (*i*). It follows that a shareholder remains liable for the debts incurred during his membership even after he ceases to be a member (*k*).

He is, however, now partly relieved from his liability by section 269 (1) of the Companies (Consolidation) Act, 1908 (*l*), which provides that in the case of an unregistered company within the Stannaries being wound-up a former shareholder shall not be liable to contribute to the assets of the company if he has ceased to be a member

(*y*) *Frank Mills Mining Co.* (1883), 23 C. D. 52.

(*z*) Stannaries Act, 1887, s. 22.

(*a*) Ss. 16 to 20.

(*b*) *Peel* v. *Thomas* (1855), 15 C. B. 714; *Sibley* v. *Minton* (1858), 27 L. J. (CH.) 53; *Kittow* v. *Liskeard Union* (1875), L. R. 10 Q. B. 7.

(*c*) *Escott* v. *Gray* (1878), 47 L. J. (C. P.) 606.

(*d*) *Fenn's Case* (1854), 4 De G. M. & G. 285.

(*e*) *Mayhew's Case* (1854), 5 De G. M. & G. 837.

(*f*) *Peel* v. *Thomas* (1855), 15 C. B. 714; *Sibley* v. *Minton* (1858), 27 L. J. (CH.) 53; *Kittow* v. *Liskeard Union* (1875), L. R. 10 Q. B. 7.

(*g*) *Thomas* v. *Clark* (1856), 18 C. B. 662; *Humby's Case* (1859), 28 L. J. (CH.) 875; but see *Northey* v. *Johnson* (1852), 19 L. T. (O. S.) 104.

(*h*) *Walker* v. *Bartlett* (1856), 18 C. B. 845.

(*i*) *Mayhew's Case* (1854), 5 De G. M. & G. 837.

(*k*) *Chynoweth's Case* (1880), 15 C. D. 13; but cf. *Bowen's Case* (1856), 4 W. R. 800.

(*l*) *Suprà*, p. 1138. This provision replaces section 25 of the Stannaries Act, 1869, which section is repealed by the Companies (Consolidation) Act, 1908.

for a period of two years or upwards before the mine has ceased to be worked or before the date of the winding-up order. It has been said that the words "the mine has ceased to be worked" might as well have been left out (*n*), but it is thought that with the proviso to section 269 of the Companies (Consolidation) Act, 1908 they relieve a past shareholder where the mine is continued to be worked after the winding-up, and the shareholder was a member within two years of the winding-up, but not within two years of the time when the mine ceased to be worked.

7. Savings bank certified under the Trustee Savings Bank Act, 1863 (*o*). With regard to institutions certified under this Act which was passed for the purpose of encouraging thrift amongst persons of small means (*p*), the Trustee Savings Bank Act, 1863 (*q*), provides that no trustee or manager of any savings bank under the Act (subject to the provisions of the Act in respect to savings banks in Ireland (*r*)) is to be personally liable except—

(1) For moneys actually received by him on account of or for the use of such savings bank and not paid over and disposed of in the manner directed by the rules of the savings bank.

(2) For neglect or omission in complying with the rules and regulations required by the Act to be adopted in the maintenance of checks the audit and examination of accounts the holding of meetings and keeping of minutes of proceedings thereat.

(3) And also for neglect or omission in taking security from officers as in the Act provided.

A trustee may be liable where he does not come within the provisions of this section, but he will not be liable as a contributory (*s*); the section seems to contemplate responsibility for a man's own acts and defaults, and where he has no reason to suspect that anything is wrong a trustee who takes no part in the bank's affairs will usually not be personally liable (*t*). Non-attendance at meetings and failure to take part in the business of the bank for a year ending on any 20th of November, will, however, now cause the office of trustee to be vacated, and his name will not be allowed to continue on the list of trustees (*u*).

8. Limited partnerships (*x*). In the case of a limited partnership the provisions of the Companies (Consolidation) Act, 1908, with

(*n*) *Chynoweth's Case* (1880), 15 C. D. 13.

(*o*) See the Trustee Savings Banks Acts, 1862 to 1904.

(*p*) See *Davies' Case* (1890), 45 C. D. 537; *Ex parte Coe* (1861), 3 De G. F. & J. 335.

(*q*) S. 11.

(*r*) See Trustee Savings Bank Act, 1863, s. 12, as to the power of trustees and managers of Trustee Savings Banks in Ireland to limit their responsibilities.

(*s*) *Davies' Case* (1890), 45 C. D. 537.

(*t*) *Bute's Case*, [1892] 2 Ch. 100.

(*u*) Savings Bank Act, 1891, s. 7.

(*x*) In an ordinary partnership

respect to winding-up apply with such modifications if any as may be provided by rules made by the Lord Chancellor with the concurrence of the Board of Trade and with the substitution of general partners for directors (*y*).

By rules (*z*) made under this section the provisions of the Companies (Consolidation) Act, 1908, with respect to winding up and the provisions of the Companies (Winding-up) Rules, 1909, so far as applicable to the proceedings in a winding-up by the Court are made to apply to the winding-up by the Court of limited partnership subject to certain modifications (*a*).

The following expressions are, unless the context or subject-matter otherwise requires substituted, in the applied provisions (*b*), and in the forms prescribed by such rules for the expressions hereinafter particularly mentioned, that is to say—

"Limited partnership" for "company."

"General partner" for "director" and for "secretary," and for "secretary or chief officer."

"Manager clerk, or servant" for "officer."

"Partner" for "member" or "shareholder."

"Principal place of business as registered" for "registered office."

In these rules, unless the context or subject-matter otherwise requires, the expression "the Act" means the Companies (Consolidation) Act, 1908, and the expression "the Court" means the Court which has jurisdiction to wind up the limited partnership.

For the purposes of the application of section 124 (*c*) of the Act, the provisions of these rules with regard to the liability of partners and others as contributories shall be substituted for the provisions of section 123 of the Act (*d*).

In the event of a limited partnership being wound-up by the Court every present and past partner, general or limited, is liable to contribute to the assets of the limited partnership to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding-up and for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say—

the partners past and present will be the contributories, and each member is liable without limit for all debts properly incurred by the partnership while he was a partner.

(*y*) Companies (Consolidation) Act, 1908, s. 268 (1) (vii).

(*z*) Limited Partnerships (Winding-up) Rules, 1909.

(*a*) These modifications will be dealt with where they occur; here it will only be necessary to consider who are contributories and their position, and the definition section.

(*b*) *I.e.* the Companies (Consolidation) Act, 1908, and the Companies (Winding-up) Rules, 1909.

(*c*) *I.e.* the section defining a contributory.

(*d*) Limited Partnerships (Winding-up) Rules, 1909, r. 3.

(1) No present or past limited partner will be liable to contribute as such to the assets of the limited partnership to any greater amount than the amount of any part of his contribution as such limited partner which he may have drawn out or received back since he became or whilst he remained a limited partner, except in the case of a present limited partner who is a past general partner and in case of a past limited partner who has become a present general partner.

(2) No past general partner will be liable to contribute as such to the assets of the limited partnership, except in respect of partnership debts and obligations incurred whilst he continued to be a general partner; but every past general partner who has become a limited partner will in addition to any amount which he may be liable to contribute in respect of partnership debts and obligations incurred whilst he continued to be a general partner be liable to contribute to the assets of the limited partnership to an amount equal to the amount of any part of his contribution as such limited partner which he may have drawn out or received back since he became or whilst he remained a limited partner.

(3) No past partner, general or limited, will be liable to contribute as such to the assets of the limited partnership unless it appears to the Court that the existing partners are unable to satisfy the contributions required to be made by them in pursuance of this Rule.

(4) No sum due to any partner, general or limited in his character of a partner by way of capital, dividends, profits, or otherwise, will be deemed to be a debt of the limited partnership payable to such partner in a case of competition between himself and any other creditor not being a partner; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves (*e*).

In the event of any contributory dying in insolvent circumstances and of an order being made for the administration of his estate according to the law of bankruptcy, either before or after he has been placed on the list of contributories, the trustee (or in Ireland, the assignees) of his estate will be deemed to represent the deceased for all purposes of the winding-up of the limited partnership and will be deemed to be a contributory accordingly, and may be called upon to admit to proof against the estate of the deceased or otherwise to allow to be paid out of his assets in due course of law any moneys due from the deceased in respect of his liability to contribute to the assets of the limited partnership being wound up (*f*).

Notwithstanding anything contained in sections 127 or 151 of the Companies (Consolidation) Act, 1908, the liquidator will not, in the event of any contributory being adjudged bankrupt, entering into

(*e*) Limited Partnerships (Winding-up) Rules, 1909, r. 4.

(*f*) *Ibid.*, r. 5.

an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, and of an order being made for the administration of his estate according to the law of bankruptcy, have power to prove, rank, claim, and draw a dividend for any balance against the estate of such contributory, or to take and receive dividends in respect of such balance, until the claims of the other separate creditors of such contributory for valuable consideration in money or money's worth have been satisfied (*g*).

For the purpose of settling the list of contributories the Court has power to rectify the register of the limited partnership in respect of—

(*a*) The name of any of the partners whether general or limited; and
(*b*) The sum contributed by any limited partner; and
(*c*) The nature of the liability of any partner, whether general or limited as therein registered and otherwise as may be necessary for the purpose aforesaid upon the application of any person aggrieved or of any partner whether general or limited (*h*).

Not improbably difficult questions may arise under these provisions, *e.g.* on the question of whether a limited partner has or has not taken part in the management of the firm's business.

LIABILITY OF CONTRIBUTORIES.

In the event of a company registered under the Act or under the Companies Act, 1862, or under the Joint Stock Companies Acts (as defined in the Act (*i*)), being wound up every present and past member will subject to the provisions of section 123 of the Companies (Consolidation) Act, 1908, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves with the qualifications following (that is to say)—

(i) A past member will not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding-up:
(ii) A past member will not be liable to contribute in respect of any debt or liability of the Company contracted after he ceased to be a member:
(iii) A past member will not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Act:
(iv) In the case of a Company limited by shares no contribution can be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member (*k*):

(*g*) Limited Partnerships (Winding-up) Rules, 1909, r. 17.

(*h*) *Ibid.*, r. 13.

(*i*) See Companies (Consolidation) Act, 1908, s. 285, and *supra*, p. 779, note (*b*).

(*k*) But see s. 53 of the Act, *supra*, p. 675, as to the rights of a creditor entitled to object to a reduction of capital, but who by reason of his ignorance of the proceedings for reduction or their effect on his

(v) In the case of a Company limited by guarantee, no contribution can be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound-up.

(vi) Nothing in the Act invalidates any provision contained in any policy of insurance or other contract by which the liability of individual members on the policy or contract is restricted or by which the funds of the Company are alone made liable in respect of the policy or contract:

(vii) A sum due to any member of a Company, in his character of a member, by way of dividends, profits, or otherwise, will not be deemed to be a debt of the Company, payable to that member in a case of competition between himself and any other creditor not a member of the Company; but any such sum may be taken into account, for the purpose of the final adjustment of the rights of the contributories among themselves.

In the winding-up of a limited Company, any director or manager whether past or present, whose liability is, in pursuance of the Act, unlimited will in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding-up a member of an unlimited company: but—

(i) A past director or manager will not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding-up:

(ii) A past director or manager will not be liable to make such further contribution in respect of any debt or liability of the Company contracted after he ceased to hold office:

(iii) Subject to the articles of the Company, a director or manager will not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the Company, and the costs and expenses of the winding-up.

In the winding-up of a Company limited by guarantee which has a share capital, every member of the Company will be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound-up, to contribute to the extent of any sums unpaid on any shares held by him (*l*).

The Act also provides (*m*) that—

A bank of issue registered under the Act (*n*) as a limited Company shall not be entitled to limited liability in respect of its notes; and the members thereof will be liable in respect of its notes in the same manner as if it had been registered as unlimited; but if, in the event of the Company being wound-up, the general assets are insufficient to satisfy the claims of

claim who has not been entered on the list of creditors if the company is unable to meet his claim. It is believed that a list of contributories has never been settled under this section.

(*l*) Companies (Consolidation) Act, 1908, s. 123.

(*m*) *Ibid*, s. 251.

(*n*) Having regard to the various Acts limiting the rights of banks to issue notes, this would only apply to companies registered under Part VII. of the Act.

both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, will be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets.

For the purposes of the section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder.

Any bank of issue registered under the Act as a limited Company may state on its notes that the limited liability does not extend to its notes, and that the members of the Company are liable in respect of its notes in the same manner as if it had been registered as an unlimited Company.

THE "B" LIST OF CONTRIBUTORIES.

The liability of past shareholders is purely statutory, the liquidator can settle a list of B shareholders at any time (*o*), but with a view to saving trouble and expense should usually not do so until it is clear that it will be necessary to do so (*p*); but where it is clear that even if everything possible is obtained from the present members, the company will not be able to pay its debts the Court will settle the B list (*q*).

Before a call can be made on a past member there must be reasonable evidence of two things, viz. that there were debts contracted before the time of his ceasing to be a member and that the existing shareholders will not be able to satisfy the contributions required by the Act (*r*). Having regard to the power to make calls before the sufficiency of the assets of the company has been ascertained (*s*), a call may be made on past members before the debts of the company are definitely ascertained, if it is impossible that sufficient assets to pay the creditors of the company will be obtained within a reasonable time (*t*). The rule in *Clayton's Case* (*u*) applies for the benefit of past members, and even where a bank has declined to allow further overdrafts except on the terms of the money being paid on or within a definite time this rule will apply, as the bank will be under no duty to apply such payments to satisfy the later drawings (*x*).

The assets of the company are in the first place divided so far as they will go rateably among all creditors regardless of when their debts were contracted and of the question whether any of them have

(*o*) *Andrew's Case* (1867), 3 Ch. 161.

(*p*) *McEwen's Case* (1871), 6 Ch. 582; *Wright's Case* (1871), 12 Eq. 334 n., citing *Sutton's Case* (1850), 3 De G. & Sm. 262; and see *Needham's Case* (1867), 4 Eq. 136; and *Weston's Case* (1868), 6 Eq. 17, the latter of which at all events seems inconsistent with *Andrew's Case* (1867), 3 Ch. 161.

(*q*) *Andrew's Case* (1867), 3 Ch. 161.

(*r*) *Helbert* v. *Banner* (1871), L. R. 5 H. L. 28.

(*s*) Companies (Consolidation) Act, 1908, s. 166 (1).

(*t*) *Contract Corporation* (1866), 2 Ch. 95; *Helbert* v. *Banner* (1871), L. R. 5 H. L. 28.

(*u*) (1816), 1 Mer. 572.

(*x*) *Devonport and South Devon Steam Flour Mill Co.* (1873), 42 L. J. (CH.) 577.

rights against past members (*y*), then any sums which can under the section be got from past members are got in and all the creditors will be entitled to prove for the balance due to them against such fund, creditors whose debts were contracted after a person ceased to be a member, being entitled to prove against his contribution (*z*) equally with those who are creditors for debts incurred while such person was a member. Dividends received on debts incurred during a past member's membership will, however, have to be taken into account, and deducted from the amounts recoverable from the past members (*a*). It has been decided that a past member can even after winding up, buy up the debts incurred before he ceased to be a member, and in such case he cannot be required to contribute as a past member. This decision was arrived at in *Brett's Case* (*b*) after a re-argument consequent on the decision in *Webb* v. *Whiffin* (*c*), and was in a subsequent case (*d*) held to apply where a call had been made but not paid, before the debts were purchased; it obviously gives a past member the power of deciding that his contribution shall not be distributed in the ordinary way, and will in many cases enable him to avoid payment of part of his contribution without consulting either the liquidator or the creditors whose debts were contracted after he ceased to be a member. It would seem, however, that the decision in *Brett's Case* (*e*) has stood too long now for the question of whether it was rightly decided or not to be considered as open (*f*).

Under section 123 (1) (iii), past members cannot be called upon to contribute unless the liability of existing members is exhausted (*g*), and the question arises whether where a company has entered into a contract under which its liability is limited to a particular class of shares, the past holders of such shares can be called on, though existing holders of other shares have not been called on to the full. In *Bath's Case* (*h*) it was held that they could, and *Hesketh's Case* (*i*) does not seem to overrule the law there laid down, but simply to say that the particular shareholders in that case had been validly released by a compromise. The decision in *Bath's Case* (*h*) would, however, seem very hard to support for it enables a company to make some of its members liable where the Act says they are not to be liable.

(*y*) *Morris' Case* (1871), 7 Ch. 200; 8 Ch. 800; *Webb* v. *Whiffin* (1872), L. R. 5 H. L. 711.

(*z*) *Webb* v. *Whiffin* (1872), L. R. 5 H. L. 711.

(*a*) *Brett's Case* and *Morris' Case* (1873), 8 Ch. 800.

(*b*) (1873), 8 Ch. 800 (on the first hearing (1871), 6 Ch. 800).

(*c*) (1872), L. R. 5 H. L. 711.

(*d*) *Marsh's Case* (1871), 13 Eq. 388.

(*e*) (1873), 8 Ch. 800.

(*f*) See Buckley, 9th Ed. pp. 287 and 288.

(*g*) See *Brett's Case* and *Morris' Case* (1873), 8 Ch. 800.

(*h*) (1879), 11 C. D. 386.

(*i*) (1880), 13 C. D. 693; see also *Bath's Case* (1878), 8 C. D. 334.

It has been held that the section must be read *reddendo singula singulis*, and that the costs, charges, and expenses of the winding-up must be borne by the different classes of contributories according to the circumstances of each case and the discretion of the Court: thus where the costs of settling the B list have been heavy past members may have to bear such costs (*k*).

Past members cannot be called on for the purpose of adjusting the rights of the members *inter se* (*l*).

Every transferee of shares will be bound to indemnify his transferor against any liability the latter has incurred as a past member (*m*), and the fact that such transferee has entered into an arrangement with the company, which relieved him from further liability will not relieve him from this liability to his transferor (*n*), nor will such an arrangement relieve the transferor from his liability as a past member, whether the liability of the transferor was (*o*) or was not (*p*) specially reserved by the arrangement. The only limit to the liability of existing members of an unlimited company is that mentioned in sub-section 1 (vi) of section 123.

PROVISIONS IN CONTRACTS LIMITING THE LIABILITY OF INDIVIDUAL MEMBERS.

It has for many years past been common in policies of assurance to incorporate a condition limiting the liability of the company to the capital stock and funds of the company and relieving directors and proprietors from personal liability.

The result of the decisions on such policies was gone into by Lindley, L.J., in *Sovereign Life Assurance Co.* (*q*). He says (*r*)—

"1. The policy-holders acquire no charge at law or in equity "upon the funds of the company (*s*).

"2. Their right (when their policies become payable or provable) "is to be paid out of the then existing funds of the company in-"cluding its then uncalled capital (*t*).

"3. They have no right to call upon any shareholder to pay any

(*k*) *Marsh's Case* (1871), 13 Eq. 388; *Brett's Case* (1871), 6 Ch. 800; 8 Ch. 800; but see *Webb* v. *Whiffin* (1872), L. R. 5 H. L. 711.

(*l*) *Brett's Case* (1871), 6 Ch. 800; (1873) 8 Ch. 800.

(*m*) *Kellock* v. *Enthoven* (1873), L. R. 9 Q. B. 241.

(*n*) *Roberts* v. *Crowe* (1872), L. R. 7 C. P. 629.

(*o*) *Nevill's Case* (1870), 6 Ch. 43.

(*p*) *Hudson's Case* (1871), 12 Eq. 1; *Helbert* v. *Banner* (1871), L. R. 5 H. L. 28.

(*q*) [1892] 3 Ch. 279.

(*r*) [1892] 3 Ch. 287.

(*s*) *State Fire Insurance* (1863), 1 H. & M. 457; 1 De G. J. & S. 634; *Bell's Case* (1870), 9 Eq. 706. They may in some cases, however, be entitled to a receiver or an injunction to restrain a waste of assets: *State Fire Insurance*, *supra*, *Evans* v. *Coventry* (1854), 5 De G. M. & G. 911; (1857) 8 De G. M. & G. 835. The cases of *Robson* v. *M'Creight* (1858), 25 Beav. 272; *Law* v. *London Indisputable Life Policy* (1855), 1 K. & J. 223; *Athenæum Life Assurance Society* (1859), Johns. 633, would appear not to be law; but of course the policy may be in such a form as to give a charge: see *British Imperial Corporation* (1878), 47 L. J. (CH.) 318.

(*t*) *Lord Talbot's Case* (1852), 5 De G. & Sm. 386.

"more than the full amount of the shares held by him and unpaid "when the demand is made upon him" (*u*).

In addition, they have no right to have the funds of the company marshalled so that the general creditors shall be paid out of calls in excess of the nominal value of the shares so as to enable them to take the whole fund for themselves (*x*) or where part of their fund is charged to general creditors to have any part of the charge thrown on to the general assets (*y*).

On the other hand the general creditors will not have priority, even if the policies are participating policies at all events where the policy-holders have no share in the management of the company and are not members (*z*). Where the rights conferred by a policy are thus limited, this will not prevent the holder from participating in moneys recovered in misfeasance proceedings, even though the persons from whom such moneys have been recovered have paid up their shares in full (*a*).

The fund available for the policy-holders will, however, not have to bear the general costs of winding up, the costs of getting in calls or any costs other than those of realizing the assets forming part of such fund (*b*); liquidators of a company who have entered into compromises under section 214 of the Act with some of the shareholders should apply moneys received under such compromises to the fund available for the policy-holders even though they release the shareholders from all further liability, and the shareholders who have not entered into such compromises cannot require such sums to be apportioned or marshalled for their benefit (*c*); where the sum received from the shareholders who have entered into compromises exceeds the sum which they are liable to contribute to the policy-holders' fund, there the general creditors will be entitled to the excess, and the policy-holders' fund to the balance of such sum (*d*).

(*u*) *Halket* v. *Merchant Traders' Insurance Co.* (1849), 13 Q. B. 960; *Hassell* v. *Merchant Traders' Insurance Co.* (1869), 4 Ex. 525; *Hallet* v. *Dowdall* (1852), 18 Q. B. 2; *King* v. *Accumulative Co.* (1857), 3 C. B. (N. S.) 151; *Athenæum Life Assurance Society* (1853), Johns. 80; 3 De G. & J. 660; *Durham's Case* (1858), 4 K. & J. 517; *Lethbridge* v. *Adams* (1872), 13 Eq. 547.

(*x*) *State Fire Insurance Co.* (1865), 34 L. J. (CH.) 436; *Professional Life Assurance Co.* (1867), 3 Eq. 688.

(*y*) *International Life Assurance Society* (1876), 2 C. D. 476.

(*z*) *English and Irish Church University Assurance Society* (No. 2) (1863), 1 H. & M. 85.

(*a*) *Evans* v. *Coventry* (1856), 25 L. J. (CH.) 489; 8 De G. M. & G. 835; *British Guardian Life Assurance Co.* (1880), 14 C. D. 335.

(*b*) *Agriculturist Cattle Insurance Co.* (1874), 10 Ch. 1; *State Fire Insurance Co.* (1865), 34 L. J. (CH.) 436; *Professional Life Assurance Co.* (1867), 3 Eq. 668, 3 Ch. 167; *Lethbridge* v. *Adams* (1872), 13 Eq. 547.

(*c*) *Accidental Death Insurance Co.* (1878), 7 C. D. 568.

(*d*) *International Life Assurance Society* (1878), 47 L. J. (CH.) 88.

Where the articles of an unlimited company provided that the company should only be liable for debts up to a limited amount it was held in *Greenwood's Case* (*e*) that creditors would not be concerned with such limitations and that in the absence of express notice they would have the same rights against the company and its members as though there had been no such limitation. But in a later case (*f*), which seems consistent with the analogous cases on debentures already mentioned, it was said that this doctrine had been altered by *Ernest* v. *Nicholls* (*g*) to this extent, namely, that it was applicable only where the document containing the limitation was not a public document accessible to all. This view is most material, as it would seem to cover practically all incorporated companies, and certainly all registered under the Act of 1862, or the present Act if the limitation is contained in the memorandum or articles; such a limitation would appear to be binding between the members of a company and the company, and between the company and creditors with notice of the limitation (*h*). A company will be an unlimited company for the purposes of the Act, even where its articles or policies contain limitations similar to those above referred to (*i*).

The liability of members of limited companies whether such limit be by shares or guarantee has, it is thought, already been sufficiently discussed, apart from estoppel they are liable as contributories for the full nominal amount of their shares or of their guarantee. At one time it was considered (*k*) that where a person agreed to purchase shares at a premium from a company, he was liable for such premium as a contributory, this view has not prevailed in the case of companies limited by guarantee (*l*), and is, it is thought, inconsistent with *Dent's Case* (*m*), and with *Ooregum Gold Mining Co.* v. *Roper* (*n*), and therefore wrong.

SUMS DUE TO MEMBERS IN THEIR CHARACTER OF MEMBERS.

Section 123, 1 (vii.) provides that a sum due to a member in his character of member by way of dividends profits or otherwise, is not to be deemed to be a debt of the company payable to that member in competition between himself and any creditor not a member of the company, but that such debts may be taken into account in adjusting the rights of the contributories among themselves.

(*e*) (1854), 3 De G. M. & G. 459.
(*f*) *Norwich Equitable Fire Insurance Co.* (1888), 58 L. T. 35.
(*g*) (1857), 6 H. L. C. 401.
(*h*) *Worcester Corn Exchange Co.* (1853), 3 De G. M. & G. 180; but see *Norwich Yarn Co.* (1856), 22 Beav. 143, which, it is submitted, was wrongly decided on this point.
(*i*) *Gibbs and West's Case* (1870), 10 Eq. 312.
(*k*) *McKewan's Case* (1877), 6 C. D. 447; *Maxwell's Case* (1875), 20 Eq. 585.
(*l*) *Lion Insurance Association* v. *Tucker* (1883), 12 Q. B. D. 176; *Baird's Case*, [1899] 2 Ch. 593.
(*m*) (1873), 8 Ch. 768, 776.
(*n*) [1892] A. C. 125; see also *Marlborough Club Co.* (1868), 5 Eq. 365.

It was held in *Ex parte Cannon* (o) that directors' fees came within this provision, at all events, where the articles required a director to be a member, but this case does not seem to be consistent with the later authorities (p), and is, it is thought, wrong, for the payment is not made to the payee in his character of holder of his qualification shares, but in his character of director, and in return for his services as such (p). Where shares have been wrongfully forfeited the claim of the person injured will not be for a sum due to him in his character of member, the claim being for the loss of his rights of membership (q). The section is a disabling one, and under it claims by a member which are barred by the principle of *Houldsworth* v. *City of Glasgow Bank* (r), such as claims against the company for damages where the person claiming is a member who is too late to get rescission, or by persons who claimed damages for non-registration of a contract for payment for shares otherwise than in cash, cannot be proved, even where all creditors have been paid in full (s). It is thought that a person in the position of the claimant in *Ex parte Welton* (t), who claimed on a debt which had not effectually been cancelled by an issue of shares which purported to be, but were not, fully paid, would not be affected by the section. Stirling, J., in *New Chile Gold Mining Co.* (q) seems to have taken the view that the section did not apply where the member was not liable to be put on the list of contributories, and that it was doubtful if it applied to a person liable to be put on the B list. It is respectfully submitted that neither of these views are correct.

SET OFF AGAINST CALLS.

This brings us to the question of whether a debt can be set-off against calls where such debt is not due to the member in his character of member by way of dividends, profits or otherwise.

Taking first the case of a limited company where all the creditors have not been paid in full, and where the question does not arise in the case of a member who is a director or manager with unlimited liability.

Here there can be no set-off, whether the winding-up is compulsory (u), under supervision (x), or purely voluntary (y), and

(o) (1885), 30 C. D. 629.

(p) *Dale and Plant* (1889), 43 C. D. 255; *Ex parte Beckwith*, [1898] 1 Ch. 324; *Dover Coalfield Extension*, [1907] 2 Ch. 76; [1908] 1 Ch. 65; *A1 Biscuit Co.*, [1899] W. N. 115.

(q) *New Chile Gold Mining Co.* (1890), 45 C. D. 598.

(r) (1880), 5 A. C. 317.

(s) *Addlestone Linoleum Co.* (1887), 37 C. D. 191, overruling *Mudford's Claim* (1880), 14 C. D. 634, and *Ex parte Appleyard* (1881), 18 C. D. 587.

(t) [1899] 1 Ch. 108.

(u) *Black & Co.'s Case* (1872), 8 Ch. 254.

(x) *Grissell's Case* (1866), 1 Ch. 528; but cp. *Ex parte Clark* (1869), 7 Eq. 550, where the liquidator owed the shareholder for services rendered practically the same amount as was due on the latter's shares.

(y) *Whitehouse & Co.* (1878), 9

whether the call was made before or after the winding-up (*z*), and this rule would seem to hold good even where there was a contract to allow set-off at the time when the shares were issued (*a*). It does not apply where the member claiming the set-off is bankrupt whether the question arises in the bankruptcy (*b*) or in the winding-up (*c*), nor does the rule apply where two debts have been validly set-off against one another before the winding-up (*d*); it has been held to hold good, however, where the member claiming the set-off is a company in winding-up (*e*) or the representative of a person who died insolvent before section 10 of the Judicature Act, 1875, came into force and whose estate was being administered by the Court (*f*), and where the set-off had been pleaded before the winding-up, but the action in which such plea has been put forward has not come to trial before winding-up (*g*). The rule applies to counterclaims as well as to claims for set-off (*h*).

Turning to the reason for the rule, on the one hand it has been said that section 123 of the Act gives the limit of the liability of the contributory, *viz.* the amount unpaid on his shares and that any set-off would be inconsistent alike with this provision and with section 186 (1) of the Act which directs payment of debts *pari passu*, and which shows the rule which is applicable not merely in a voluntary winding-up, but in all windings-up. And, in further support of this view it is pointed out that section 165 of the Act (*i*), allows of set-off in certain cases of which this is not one (*k*). In *Whitehouse & Co.* (*l*), Jessel, M.R., while recognizing all these points as indications in favour of the view against set-off, said that the real reason

C. D. 595; *Hoby* v. *Birch* (1890), 59 L. J. (Q. B.) 247, not following *Brighton Arcade Co.* v. *Dowling* (1868), 3 C. P. 175, or *Groom* v. *Rathbone* (1880), 41 L. T. 591.

(*z*) *Whitehouse & Co.* (1878), 9 C. D. 595; *Barnett's Case* (1875), 19 Eq. 449.

(*a*) *Black & Co.'s Case* (1872), 8 Ch. 254; *Law Car and General Insurance Corporation*, [1912] 1 Ch. 405.

(*b*) *Re Duckworth* (1867), L. R. 2 Ch. 578.

(*c*) *Ex parte Strang* (1870), 5 Ch. 492; *Carralli and Haggard's Claim* (1869), 4 Ch. 174; *Ex parte Cooper* (1867), 15 L. T. 637.

(*d*) *Ramwell's Case* (1881), 50 L. J. (CH.) 827; and see *Blakeley's Case* (1868), 17 L. T. 307; *Norton's Case* (1881), 50 L. J. (CH.) 454; *Ex parte Clark* (1869), 7 Eq. 550; *Ex parte Lynes* (1878), 26 W. R. 432; and *Dovey* v. *Morgan*, [1901] 2 K. B. 477, for the powers of an industrial and provident society under the Act of 1893.

(*e*) *Auriferous Properties (No. 1)*, [1898] 1 Ch. 691; see *post*, p. 1162, as to this; and for order, *infra*, pp. 1248 and 1249.

(*f*) *Gunn's Case* (1878), 38 L. T. 139; see *post*, p. 1162, as to this.

(*g*) *Hiram Maxim Lamp Co.*, [1903] 1 Ch. 70.

(*h*) *Government Security Investment Co.* v. *Dempsey* (1888), 50 L. J. (Q. B.) 199.

(*i*) See *post*, p. 1163.

(*k*) *Grissell's Case* (1866), 1 Ch. 528; *Black & Co.'s Case* (1872), 8 Ch. 254; *Calisher's Case* (1868), 5 Eq. 214.

(*l*) (1878), 9 C. D. 595; see also *Ex parte Branwhite* (1879), 48 L. J. (CH.) 463, where FRY, J., took the same line.

against it was that for set-off the debts must be mutual, and that as section 125 of the Act gave rise to a new debt due not to the company but to the liquidator, there could be no mutuality, and consequently no set-off, this case was decided after section 10 of the Judicature Act, 1875 (*m*), came into force, and that section, it appears, makes no difference on this question (*n*). The reasoning of Sir George Jessel was not approved by the Court of Appeal in *Pyle Works* (*o*), where they held that the debt created by section 14 (2) of the Act while the company is a going concern, and the debt created by section 125 when it is in liquidation were one and the same, and that consequently a company could charge its uncalled capital. In a later case where the Privy Council came to the same conclusion, they took the view that the liability of a contributory under section 125 does not spring into existence for the first time on the winding-up, but is a ripening of the liability which he undertook for the first time when he became a member (*p*). In a later case (*q*) still, the Court of Appeal seem to have followed Sir George Jessel's view, and this view is, it is submitted, at all events right to this extent that there can be no mutuality, the debt of the contributory, whether it is the same or not, being due to the liquidator, and not to the company (*r*). It is, however, certainly not easy to reconcile *Black & Co.'s Case* (*s*) in so far as it denies the power of a company to contract for a set-off, with *Pyle Works* (*t*); for, after all, a contract for a set-off is something very analogous to a charge, and if a company can charge the uncalled capital of all its members to one of them, it is difficult to see why it cannot charge the uncalled capital of that one to him. The point is, perhaps, not very important now, as if such an agreement were held to confer a charge, such charge would be void if not registered under section 93 of the Act. The bankruptcy cases cause more difficulty, but seem to go on this: either a

(*m*) This section applies the bankruptcy rules to the winding-up of insolvent companies and the administration of insolvent estates; it is now repealed so far as it relates to companies and re-enacted by s. 207 of the Companies (Consolidation) Act, 1908.

(*n*) *Gill's Case* (1879), 12 C. D. 755.

(*o*) (1890), 44 C. D. 534. STIRLING, J., seems to have taken a different view, and see *post*, p. 1165.

(*p*) *Newton* v. *Debenture-holders of Anglo-Australian Investment Co.*, [1895] A. C. 244, 248.

(*q*) *Re G. E. B.*, [1903] 2 K. B. 340.

(*r*) *Sankey Brook Coal Co.* v. *Marsh* (1871), L. R. 6 Ex. 185. This was, however, apparently not the view of BLACKBURN, J., in *Garnett and Mosley Gold Mining Co.* v. *Sutton* (1862), 3 B. & S. 321, but this case was decided on the repealed (and not re-enacted) s. 17 of the Joint Stock Companies Amendment Act, 1858.

(*s*) (1872), 8 Ch. 254. As a matter of fact, no agreement was established in this case; it was followed in *Law Car and General Insurance Corporation*, [1912] 1 Ch. 405. See also *Calisher's Case* (1868), 5 Eq. 214; *Ex parte Clark* (1869), 7 Eq. 550.

(*t*) (1890), 44 C. D. 534; and see also *Newton* v. *Debenture-holders of Anglo-Australian Investment Co.*, [1895] A. C. 244.

company in winding-up was to be treated better than other creditors in a bankruptcy, or a bankrupt was to be treated better than other contributories in a winding-up. The Courts chose the latter alternative, taking the view that the special legislation as to bankruptcy overruled the general company legislation which applied to all contributories (*u*). Some weight was, however, in some of these cases (*x*) laid on the fact that under section 127 of the Companies (Consolidation) Act, 1908, the trustee is only bound to allow payment "in due course of law" of the contributories' liability, and under section 151 (*c*) the liquidator can only prove rank and claim in the bankruptcy insolvency or sequestration of any contributory "for any balance" against his estate. The difficulty of lack of mutuality apparently does not arise under the mutual credit clause in bankruptcy (*y*), as though the liquidator represents the creditors, they can only claim through the company (*z*), and as the rights of the creditors of the company and of the creditors of the bankrupt have to be considered and such rights are equal, the only way to deal with the matter is to treat the mutual rights as if they were the old rights of the company in its individual capacity and of the debtor in his individual capacity (*a*).

Having regard to section 10 of the Judicature Act, 1875 (now repealed and replaced by section 207 of the Act), and section 126 of the Companies (Consolidation) Act, 1908, precisely the same arguments would seem to apply to the case of insolvent estates, and nearly the same arguments would also be applicable to the case of insolvent companies being wound-up. In *Gunn's Case* (*b*) the deceased insolvent died before section 10 of the Judicature Act, 1875, came into force, and so it is no authority against this view under the existing law, but it is submitted that *Auriferous Properties* (*No.* 1) (*c*) is not good law, and is inconsistent with *Re Duckworth* (*d*) and the other bankruptcy cases (*d*) above cited. Where no set-off is allowed a contributory will not be entitled to receive any dividend until either he has paid all the calls actually made on him in full (*e*), or until

(*u*) *Re Duckworth* (1867), 2 Ch. 578; *Ex parte Strang* (1870), 5 Ch. 492; *Carralli and Haggard's Claim* (1869), 4 Ch. 174; *Ex parte Cooper* (1867), 15 L. T. 637; *Re G. E. B.*, [1903] 2 K. B. 340.

(*x*) *Re Duckworth* (1867), 2 Ch. 578; *Ex parte Cooper* (1867), 15 L. T. 637.

(*y*) See Bankruptcy Act, 1883, s. 28.

(*z*) *Re Duckworth* (1867), 2 Ch. 578.

(*a*) *Re G. E. B.*, [1903] 2 K. B. 340, *per* ROMER, L.J., at p. 352.

(*b*) (1878), 38 L. T. 139; and see *Sherwin* v. *Selkirk* (1879), 12 C. D. 68, as the date when the provisions of s. 10 of the Judicature Act, 1875, came into force.

(*c*) [1898] 1 Ch. 691.

(*d*) (1867), 2 Ch. 578.

(*e*) Cp. *Grissell's Case* (1866), 1 Ch. 528; *West of England Bank* (1879), 12 C. D. 823; and see *Auriferous Properties* (*No.* 2), [1898] 2 Ch. 428, in which case the order was that the contributory must pay

the amount he has paid in respect of calls together with the amount of dividend he is entitled to in respect of his debt equals the amount for which he is liable in respect of calls, in this latter case he will be entitled to receive any further dividends he may be entitled to (*f*). Payment of a dividend in a winding-up does not amount to payment for this purpose (*g*).

A liquidator cannot refuse to pay a dividend to joint tenants because one of them is liable for calls (*h*), and he cannot refuse to pay dividends to a person because he is tenant-for-life of certain shares registered in the names of persons who have not paid calls (*i*). Where an action by a liquidator has been dismissed with costs, he cannot retain such costs against unpaid calls, without having regard to the lien of the solicitor of the successful party in the action (*k*).

Turning to the case of unlimited companies and of directors or managers whose liability is unlimited, and to the case of companies whose debts are paid in full, section 165 of the Act provides as follows :—

(1) The Court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the Company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court in making such an order may, in the case of an unlimited Company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the Company on any independent dealing or contract with the Company, but not any money due to him as a member of the Company in respect of any dividend or profit ; and may, in the case of a limited Company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) But in the case of any Company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the Company may be allowed to him by way of set-off against any subsequent call.

This section applies to calls made but not paid before the winding-up (*l*), but not to calls made in the winding-up (*m*). It gives the

all calls; in this case the contributory company was in liquidation.

(*f*) Cp. *Leeds and Hanley Theatre of Varieties*, [1904] 2 Ch. 45, discussed more at length *post*, pp. 1234 and 1235.

(*g*) *Rowe's Trustees' Case*, [1906] 1 Ch. 1.

(*h*) *Imperial Mercantile Credit Association* (1867), 16 L. T. 314.

(*i*) *Ex parte Molyneux* (1869), 19 L. T. 445.

(*k*) *Ex parte Smith* (1867), 17 L. T. 339.

(*l*) *Whitehouse & Co.* (1878), 9 C. D. 595; *Brasnett's Case* (1886), 53 L. T. 569.

(*m*) *Ex parte Branwhite* (1879), 48 L. J. (CH.) 463; *Whitehouse & Co.* (1878), 9 C. D. 595. It would seem that *Gibbs and West's Case* (1870), 10 Eq. 312, which was disapproved in both the last cited cases, is not law.

Court a discretion as to whether it will or will not allow a set-off (*n*), and in one case (*n*) the Court declined to allow an undisputed debt for calls made before a winding-up to be set off against a doubtful debt due by the contributory as surety for the company. These rules as to set-off do not in any way prevent even directors who have paid moneys in advance of calls under an article enabling them so to do, from claiming that to the extent of such payments they are relieved from their liability as contributories (*o*), but where a payment has been made before a winding-up, and has been set-off against calls it may amount to a fraudulent preference, though it could not do so in a bankruptcy (*p*), and such a payment made between a winding-up petition and the order on it, will be treated as a mere loan (*q*). Where a guarantee was given on the terms that moneys paid under it were to be treated as payments in advance of calls, and the guarantor had to pay after winding-up, he was bound to pay the full amount of his calls, and only entitled to prove for his debt (*qq*). An assignee of a debt after winding-up will, it would seem, ordinarily be in precisely the same position as to set-off and proof as his assignor, and so if the assignor fails to pay calls he will not be entitled to a dividend (*r*). Further, a company in winding-up will be entitled to set-off against an assignee before winding-up calls due though not actually payable before it had notice of the assignment (*s*).

It would seem that a sum due from the liquidator for services in the liquidation can be set off against calls (*t*), and that where a liquidator discontinues an action for calls commenced before winding-up, the costs of the discontinued action may be set off against calls (*u*). The costs of a successful petitioner must be paid, even though there are calls in the winding-up payable by him (*x*).

CALLS.

The liability of a contributory creates a debt in England and Ireland of the nature of a specialty accruing due from the time when his liability commenced, but payable at the time when calls are made for enforcing the liability (*y*). This liability has its inception and originates with the date when the person liable became a member (*z*). In some sense, no doubt, the liability created by this

(*n*) *Brasnett's Case* (1886), 53 L. T. 569.

(*o*) See *Poole's, Jackson's, and Whyte's Case* (1878), 9 C. D. 322; *Mason, Gallagher's and Slater's Case* (1882), 46 L. T. 54; 30 W. R. 378.

(*p*) *Washington Diamond Mining Co.*, [1893] 3 Ch. 95, where directors' fees were set off against calls; see also *Syke's Case* (1872), 13 Eq. 255; and *Habershon's Case* (1868), 5 Eq. 286, which must, it is thought, really depend on fraudulent preference.

(*q*) *Pennington's Case* (1882), 45 L. T. 433.

(*qq*) *Law Car and General Insurance Corporation*, [1912] 1 Ch. 405.

(*r*) *Ex parte Mackenzie* (1869), 7 Eq. 240; and see *Ex parte Strang* (1870), 5 Ch. 492.

(*s*) *Christie* v. *Taunton, Delmard & Co.*, [1893] 2 Ch. 175.

(*t*) *Ex parte Clark* (1869), 7 Eq. 550.

(*u*) *United Service Association*, [1901] 1 Ch. 97.

(*x*) *General Exchange Bank* (1867), 4 Eq. 138.

(*y*) Companies (Consolidation) Act, 1908, s. 125. The section applies to the winding-up of unregistered companies: *Re Muggeridge* (1870), 10 Eq. 443.

(*z*) *Williams* v. *Harding* (1866), L. R. 1 H. L. 9; *Ex parte Canwell* (1864), 4 De G. J. & S. 539; *Ex parte Hatcher* (1879), 12 C. D. 284; *Hastie's Case* (1869), 4 Ch. 274.

section is a different liability from that of a member under section 14 (2) prior to winding-up (*a*). But the liability under section 125 would seem to exist along with the liability under section 14 (2) while the company is a going concern, and when the company is wound up, then, for the first time, the liability under section 125 would seem to ripen into a debt (*b*). A liquidator can enforce a call made by directors before winding-up under the general powers conferred on him by section 151 (2) (*b*) and (*g*) of the Act, and not under the special powers as to calls in a winding-up (*c*). Sums so called up are not payable by virtue of any call in pursuance of the Act (*d*), but on the winding-up the liability in respect of such calls becomes a liability to contribute, and though the liability is still to the company and not to its liquidator, it is no longer a debt due to the company (*e*). The Court can, under section 165 of the Act, make an order for payment of sums due in respect of such calls on an application in the winding-up (*f*). Where a call has been made and charged while the company is a going concern the Court will not allow a fresh call by the liquidator to defeat the charge (*g*).

The Court may, at any time after making a winding-up order, and either before or after it has ascertained the insufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call (*h*).

General rules have under the power in that behalf conferred by section 173 of the Act been made enabling the liquidator as an officer and subject to the control of the Court to make calls. That section

(*a*) *Re Whitehouse & Co.* (1878), 9 C. D. 595; *Re G. E. B.*, [1903] 2 K. B. 340; *Ex parte Branwhite* (1879), 48 L. J. (CH.) 463. If the Court of Appeal in *Pyle Works* (1890), 44 C. D. 534, intended to decide that the liabilities are one and the same, it would seem to stand alone except perhaps for *Buck* v. *Robson* (1870), 10 Eq. 629.

(*b*) See *Newton* v. *Debenture-holders of Anglo-Australian Investment Co.*, [1895] A. C. 244, 248; *Re McMahon*, [1900] 1 Ch. 173.

(*c*) *Stone* v. *City and County Bank* (1877), 3 C. P. D. 282.

(*d*) *Whitehouse & Co.* (1878), 9 C. D. 595; *Ex parte Branwhite* (1879), 48 L. J. (CH.) 463.

(*e*) *Whitehouse & Co.* (1878), 9 C. D. 595.

(*f*) See *United Service Association*, [1901] 1 Ch. 97; *Hiram Maxim Lamp Co.*, [1903] 1 Ch. 70, in both of which cases the winding-up was voluntary, and so the application was by originating summons.

(*g*) *Humber Ironworks* (1868), 16 W. R. 667.

(*h*) Companies (Consolidation) Act, 1908, s. 166.

requires that the rules shall not permit of a call being made without the special leave of the Court or the sanction of the committee of inspection. Having regard to rule 1 of the Companies (Winding-up) Rules, 1909, none of such rules except rule 87 applies to a voluntary winding-up, whether under supervision or not; but sometimes leave to make a call is asked for and granted in such cases. Such rules are as follows :—

The powers and duties of the Court in relation to making calls upon contributories conferred by section 166 of the Act shall and may be exercised, in a winding-up by the Court (*i*), by the Liquidator as an officer of the Court subject to the provisions of section 173 of the Act, and to the following regulations :—

(1) Where the Liquidator desires to make any call on the contributories, or any of them for any purpose authorized by the Acts, if there is a Committee of Inspection he may summon a meeting of such Committee for the purpose of obtaining their sanction to the intended call.

(2) The notice of the meeting shall be sent to each member of the Committee of Inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notice of the intended call and the intended meeting of the Committee of Inspection shall also be advertised once at least in a London newspaper, or where the winding-up is not in the High Court, in a newspaper circulating in the district of the Court in which the proceedings are pending. The advertisement shall state the time and place of the intended meeting of the Committee of Inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the Liquidator or members of the Committee of Inspection to be laid before the Meeting, in reference to the said intended call.

(3) At the meeting of the Committee of Inspection any statements or representations made either to the meeting personally or addressed in writing to the Liquidator or members of the Committee by any contributory shall be considered before the intended call is sanctioned.

(4) The sanction of the Committee shall be given by resolution, which shall be passed by a majority of the members present.

(5) Where there is no Committee of Inspection, the Liquidator shall not make a call without obtaining the leave of the Court (*k*).

In a winding-up by the Court an application to the Court for leave to make any call on the contributories of a Company, or any of them, for any purpose authorized by the Acts, shall be made by summons stating the proposed amount of such call, which summons shall be served four clear days at the least before the day appointed for making the call on every

(*i*) See the order in *The Law Guarantee Trust and Accident Society*, 00422 of 1909, set out *post*, p. 1321.

(*k*) Companies (Winding-up) Rules, 1909, r. 83. For forms of notice and advertisement of meeting, and for form of resolution of committee of inspection, see *infra*, pp. 1176 and 1177.

contributory proposed to be included in such call; or if the Court so directs notice of such intended call may be given by advertisement, without a separate notice to each contributory (*l*).

The liquidator is the only person who can make calls in a compulsory winding-up. Where the calls have been charged and the mortgagee wishes to get the benefit of them it will be necessary for him to make an application in the winding-up for an order on the liquidator to take the necessary steps for getting in the calls upon receiving a proper indemnity from the mortgagee against his costs of so doing (*m*), or where a receiver has been appointed in an action by the mortgagees an application for leave for such receiver to make such calls in the name of the liquidator upon giving a like indemnity (*n*). The latter course is, perhaps, the more usual one, but the Court has declined to extend this practice so as to allow a nominee of the mortgagee, who is in no sense an officer of the Court, to use the name of the liquidator (*n*).

The fact that according to the contract between the company and its shareholders the amount payable on the shares is only payable at a future date will be no bar to a call by the liquidator (*o*).

Where there are sufficient assets in hand to satisfy all liabilities and there is no question of adjusting the rights of the contributories *inter se*, a call should not be made (*p*); but a call can be made notwithstanding the fact that the debts and liabilities which are to be paid out of it are not ascertained and proved, for the section enables a call to be made immediately after the winding-up order, and it is therefore only necessary that such debts and liabilities should be estimated debts and liabilities.

The Court will be very slow to disallow or reduce a call which the liquidator thinks will be necessary and will usually not require him to give his reasons for his estimate, unless there is reasonable ground

(*l*) Companies (Winding-up) Rules, 1909, r. 84. For forms of summons for leave to make call affidavit in support, advertisement and orders, *infra*, pp. 1177 *et seq.* Applications for an order directing notice of an intended call to be given by advertisement will be made by summons. The order will be endorsed on the summons. Such an order is referred to in the order for leave to make a call, *infra*, pp. 1179 and 1180.

(*m*) *Fowler* v. *Broad's Patent Night Light Co.*, [1893] 1 Ch. 724; *London Metallurgical Co.*, [1897] 1 Ch. 262; *Re Born*, [1900] 2 Ch. 433, 435.

(*n*) *Westminster Syndicate* (1908), 99 L. T. 924. VAUGHAN WILLIAMS, J., objected to allowing the liquidator's name being used in these cases: *Harrison* v. *St. Etienne Brewery Co.*, [1893] W. N. 108 (where, however, he allowed it on terms; see the order, *supra*, pp. 600 and 601); and he always required the official receiver to form his own opinion as to whether his name should or should not be used: *Anglo-Sardinian Antimony Co.*, [1894] W. N. 156; *Piccadilly Chambers* (1894), 8 Rep. 617, and cases cited in the note thereto.

(*o*) *Cordova Union Gold Co.*, [1891] 2 Ch. 580; and see as to building societies, *London Provident Building Society* v. *Morgan*, [1893] 2 Q. B. 266, and Building Societies Act, 1894, s. 10.

(*p*) *Helbert* v. *Banner* (1871), L. R. 5 H. L. 28.

for thinking that the debts and liabilities to be paid will not be established (*q*), and, still more, will the Court of Appeal be slow to interfere with the discretion of a Judge who has given leave to make a call (*r*). It should be borne in mind in considering the question of making a call that a winding-up deprives the creditors of their ordinary rights by action, and calls should be made where the liquidator and the Court or the committee of inspection take the view that it is improbable that the debts will be paid within a reasonable time if calls are not made (*s*). Further, the possibility that some of the contributories may as time goes on become insolvent, or, at all events, unable to pay their calls in full, must be taken into account (*t*).

The latest case (*u*) on the subject re-affirms the proposition that it is the duty of the liquidators to get in the assets at the earliest possible moment, even where the money is not immediately wanted, and it shows that the Court will not take into consideration the fact that if payment of the call is deferred, interest could be demanded from the contributories at a rate higher than a bank would allow were the money placed on deposit. Where contributories are allowed to defer payment of calls by making an affidavit of means, such affidavit will be a private document for the use of the liquidator, and will not be placed on the file (*u*). A call may be made payable by instalments (*u*). The fact that some contributories are making claims to have their names taken off the list of contributories is no reason for deferring the making of a call, the remedy of such contributories is to apply for the suspension of the operation of the call against themselves (*y*). Where debts have been proved and admitted a call made for the purpose of paying such debts cannot be opposed on the ground that the proofs for such debts ought not to have been made or that there was no jurisdiction to make the winding-up order (*z*).

Much the same principles govern calls on persons on the B list

(*q*) *Contract Corporation* (1866), 2 Ch. 95; *Helbert* v. *Banner* (1871), L. R. 5 H. L. 28; see also *Miller's Case* (1885), 54 L. J. (CH.) 141, where the debts were not paid and a statement that calls were required for the purpose of adjusting the rights of contributories *inter se* was held to show that such calls were necessary for paying the debts; and Forms 50 and 55 in the appendix to the Companies (Winding-up) Rules, 1909, *post*, pp. 1176 and 1178.

(*r*) *Contract Corporation* (1866), 2 Ch. 95; *Barned's Banking Co.* (1867), 36 L. J. (CH.) 215.

(*s*) *Helbert* v. *Banner* (1871), L. R. 5 H. L. 28.

(*t*) *Contract Corporation* (1866), 2 Ch. 95.

(*u*) *Law Guarantee Trust and Accident Society* (1910), 26 T. L. R. 565. For form of affidavit as to means, *infra*, pp. 1181 *et seq.*

(*y*) *Barned's Banking Co.* (1867), 36 L. J. (CH.) 215.

(*z*) *Arthur Average Association* (1876), 3 C. D. 522, disapproving *London Marine Insurance Association* (1869), 8 Eq. 176.

of contributories (*a*), though, of course, no calls will be made on them unless at all events there is a probability of their being liable (*b*).

With regard to the liability of persons who were members at the date of the liquidation to pay calls for the purposes of adjusting the rights of the members *inter se.*

These rights are usually provided for by the articles, apart from such provision the rights of members of a company divided into shares would appear to be that if there is a loss it must be borne by the members in proportion to the nominal value of their shares (*c*). If there is a surplus after repaying all members their capital such surplus will be distributed among the members in a like proportion (*d*). Where there are no shares and no means of ascertaining how the losses or gains of the company are to be borne or distributed, they must be borne by the contributories equally (*e*).

Payments made in advance of calls will, as between the contributories be treated as loans (*f*), and interest on such loans will, where the contract so provides, be paid down to the date of repayment (*g*).

Unquestionably, calls can be made for adjusting these rights (*h*), and in the case of an unlimited company in the absence of anything special in the memorandum or articles, calls can be made beyond the nominal amounts of the shares (*i*). In adjusting the rights of the contributories the Court will, however, not concern itself with matters which did not concern the company, *e.g.* rights under an agreement by which one contributory has agreed to indemnify another against calls (*k*), or rights which director contributories who have been held to be liable in misfeasance proceedings may have over against other contributories (*l*). These being matters which are altogether outside the winding-up (*m*).

(*a*) *Helbert* v. *Banner* (1871), L. R. 5 H. L. 28.

(*b*) *Marsh's Case* (1871), 13 Eq. 388; and see *supra*, pp. 1154 *et seq.* as to the liability of B shareholders.

(*c*) *Ex parte Maude* (1870), 6 Ch. 51. The subject of the rights of contributories *inter se* is discussed at length later; see pp. 1253 *et seq.*

(*d*) *Birch* v. *Cropper* (1889), 14 A. C. 525.

(*e*) *Arthur Average Association* (1876), 3 C. D. 522; *Ex parte Woolmer* (1852), 2 De G. M. & G. 665; and see *London Marine Insurance Association* (1869), 8 Eq. 176.

(*f*) *Lock* v. *Queensland Investment Land and Mortgage Co.*, [1896] A. C. 461; *Dale* v. *Martin* (1883), 11 Ir. L. R. 371.

(*g*) *Exchange Drapery Co.* (1888), 38 C. D. 171.

(*h*) *Anglesea Colliery Co.* (1866), 1 Ch. 555; *Provision Merchants Co.* (1872), 26 L. T. 862.

(*i*) *Marylebone Joint Stock Bank* (1856), 25 L. J. (CH.) 650.

(*k*) *Addison's Case* (1875), 20 Eq. 620. The fact that a creditor has agreed to indemnify individual members of a company will not preclude him from proving against the company: *Shaw's Claim* (1875), 10 Ch. 177.

(*l*) *Alexandra Palace Co.* (1883), 23 C. D. 297.

(*m*) *Welsh Flannel and Tweed Co.* (1875), 20 Eq. 360.

Articles providing for interest if calls are not paid when due have no application in a winding-up, but interest on calls in a winding-up usually at 5 per cent. may be given under 3 & 4 Will. IV., c. 42, whether the notice of call does (*n*) or does not (*o*) demand such interest, such interest will continue to run, where the calls have been paid into a special account to await the result of an action which is in the nature of a test action (*p*).

An agreement between contributories, that one of them shall for a pecuniary consideration endeavour to postpone the making of a call, or support the claim of a creditor, is void as being against the policy of the Act (*q*).

BALANCE ORDERS.

When the liquidator is authorized by resolution or order to make a call on the contributories, he must file with the Registrar a document in the Form 58 in the Appendix to the Companies (Winding-up) Rules, 1909, with such variations as circumstances may require making the call (*r*).

When a call has been made by the liquidator in a winding-up by the Court, a copy of the resolution of the Committee of inspection or order of the Court (if any, as the case may be), must forthwith after the call has been made be served upon each of the contributories included in such call, together with a notice from the liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs (*s*).

The payment of the amount due from each contributory on a call may be enforced by order of the Court, to be made in Chambers on summons by the liquidator (*t*).

Formerly the Court could not direct service of either an order for calls or a balance order out of the jurisdiction (*u*), but now the Court or a Judge may direct that any summons, order, or notice may be served on any party or person in a foreign country, and the procedure prescribed by Order 11, r. 8A, R. S. C., with reference to serving notice of a writ of summons applies to the service of any summons, order, or notice so directed to be served (*x*). Personal service of a balance order is required, but in a proper case an order for substituted service can be made, it is also necessary to serve the

(*n*) *Ex parte Barrow* (1868), 3 Ch. 784; *Ex parte Lintott* (1867), 4 Eq. 184.

(*o*) *Welsh Flannel and Tweed Co.* (1875), 20 Eq. 360.

(*p*) *Barrow's Case* (1868), 3 Ch. 784.

(*q*) *Elliott* v. *Richardson* (1870), 5 C. P. 744.

(*r*) Companies (Winding-up) Rules, 1909, r. 85. For Form, see *infra*, p. 1180.

(*s*) *Ibid.*, r. 86. For form of notice, *infra*, p. 1180.

(*t*) *Ibid.*, r. 87. For forms of balance orders, *infra*, pp. 1184 *et seq.*; for form of affidavit in support, *infra*, pp. 1180 and 1181.

(*u*) *Anglo-African Steamship Co.* (1886), 32 C. D. 348. Scotland and Ireland stand on an altogether different footing owing to s. 180 of the Act. See *Hollyford Copper Mining Co.* (1869), 5 Ch. 93 *et supra*, p. 1027; but see *George* v. *Wake* (1911), 45 Ir. L. T. 276.

(*x*) O. 11, r. 8A, R. S. C.; cp. *Charles Duval & Co., Ltd.* v. *Gans*, [1904] 2 K. B. 685; and see *supra*, pp. 1027 and 1028.

summons for a balance order, but this may be served by post under rule 23 of the Companies (Winding-up) Rules, 1909.

A balance order should not be made when the contributory who was liable is bankrupt; there the right is limited to proof in the bankruptcy (*y*). The Court has, on evidence as to the means of a contributory against whom a balance order had been obtained, made an order under section 5 of the Debtors Act, 1869, for payment of the sum due under the balance order by instalments with interest (*z*), but a director contributory who has been ordered to pay for shares presented to him by a promoter cannot be committed to prison under section 4 (3) of that Act (*a*).

An order made by the Court on a contributory will (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

All other pertinent matters stated in the order will be taken to be truly stated as against all persons, and in all proceedings except proceedings against the real estate of a deceased contributory, in which case the order will be only *primâ facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made (*b*). A balance order is not in the nature of a judgment, but is a mere direction given by the Court for the better getting in of an asset (*c*). Having regard to section 178 of the Act (*d*), it can be enforced by a *fieri facias* (*e*) though an order under section 167 of the Act for payment of the money due to the Bank of England to the account of the liquidator instead of to the liquidator, cannot be so enforced, and if a liquidator who has obtained such an order wishes to enforce it he must obtain a further order for payment to himself (*f*). A balance order is, however, not a final judgment so as to be capable of supporting a bankruptcy notice under section 4 (1) (*g*) of the Bankruptcy Act, 1883 (*g*), and a balance order against an executor does

(*y*) *Mitchell's Case* (1870), 5 Ch. 400.

(*z*) *Lewis' Case* (1873), 42 L. J. (CH.) 379. The jurisdiction of the High Court under this section is now transferred to the Judge in Bankruptcy. See Bankruptcy Act, 1883, s. 103, order of March 4, 1885, Bankruptcy Rules, 1886, rr. 355 to 361.

(*a*) *Metcalfe's Case* (1880), 13 C. D. 815.

(*b*) Companies (Consolidation) Act, 1908, s. 168.

(*c*) *Westmoreland Green and Blue Slate Co.* v. *Feilden*, [1891] 3 Ch. 15, at p. 27, *per* BOWEN, L.J.

(*d*) This section provides that orders made in the High Court in England or Ireland under the Act may be enforced in the same manner as orders made in any action pending therein; it also empowers the Court exercising the Stannaries jurisdiction to enforce its orders throughout England in the same way as the High Court can.

(*e*) *Westmoreland Green and Blue Slate Co.* v. *Feilden*, [1891] 3 Ch. 15.

(*f*) *Leeds Banking Co.* (1866), 1 Ch. 150.

(*g*) *Ex parte Whinney* (1884), 13 Q. B. D. 476; *Ex parte Moore* (1885), 14 Q. B. D. 627; *Ex parte*

not deprive him of his right of retainer, as it is not a judgment but analogous to an administration order, on a balance order against an executor a *fieri facias* cannot issue, and the only remedy is by taking proceedings under section 126 for administering the estate of the deceased (*h*).

An action will not lie to enforce a balance order, for as such order is enforceable under section 178 of the Companies (Consolidation) Act, 1908, it is not a ground of action (*i*), but the fact that a balance order has been made for calls whether such calls were made before or during winding-up will be no defence to an action for the same calls, though if the two proceedings are taken vexatiously the Court will set the matter right when dealing with the costs (*k*).

POWER OF COURT TO ORDER ARREST OF CONTRIBUTORY.

The Court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the Court may order (*l*).

The Court has under this provision ordered the seizure of the books, papers, etc., of a contributory on evidence which was considered insufficient to order his arrest (*m*).

Under the similar provisions of the various Bankruptcy Acts, it has been held that very different considerations will prevail in the case of a foreigner temporarily resident here and about to return home than in the case of a person resident here, and that in the former case a far stronger case of intention to evade payment must be made out (*n*). It has also been held under these provisions that to effect the arrest doors may be broken (*o*), and that no action will

Grimwade (1886), 17 Q. B. D. 357; *Ex parte Mackay* (1887), 58 L. T. 237.

(*h*) *Re Hubback* (1885), 29 C. D. 934; and cp., for the distinction between such an order and a judgment at law against an executor, *Re Marvin*, [1905] 2 Ch. 490. It would seem that a liquidator can take proceedings in his official name for administration: Companies (Consolidation) Act, 1908, s. 151 (2) (*f*).

(*i*) *Chalk & Co.* v. *Tennant* (1887), 57 L. T. 598, as explained by KEKEWICH, J., in *Westmoreland Green and Blue Slate Co.* v. *Feilden*, [1891] 3 Ch. 15; *Ex parte Mackay* (1887), 58 L. T. 237. Such explanation seems in accordance with *Ivimey* v. *Ivimey*, [1908] 2 K. B. 260.

(*k*) *Westmoreland Green and Blue Slate Co.* v. *Feilden*, [1891] 3 Ch. 15.

(*l*) Companies (Consolidation) Act, 1908, s. 176. S. 177 provides that the powers conferred by the Act are cumulative; s. 164 provides for orders for delivery over of property to which the company is *primâ facie* entitled; see *supra*, pp. 997 *et seq.*

(*m*) *Imperial Mercantile Credit Co.* (1867), 5 Eq. 264.

(*n*) *Ex parte Gutierrez* (1879), 11 C. D. 298; see also *Ex parte Crispin* (1873), 8 Ch. 374.

(*o*) *Ex parte Hendry* (1892), 9 Mor. 30.

lie on the part of the person arrested unless he can show some false statement or at least some *suppressio veri* on the part of the person who applied for the order (*p*). Applications for orders under the section may be made by *ex parte* motion (*q*), but the Court has declined to make an order where the contributory has had no opportunity of denying the debt (*r*).

ARRESTS AND COMMITMENTS.

The provisions of the Companies (Winding-up) Rules as to arrests and commitments are as follows :—

A Warrant of Arrest, or any other Warrant issued under the provisions of the Act and Rules, may be addressed to such Officer of the Court, or to such High Bailiff or Officer of any County Court, whether such County Court has jurisdiction to wind-up a Company or not, as the Court may in each case direct (*s*).

Where the Court issues a Warrant for the arrest of a person under any of the provisions of the Act or Rules, the prison (to be named in the Warrant of Arrest) to which the person shall be committed shall, unless the Court shall otherwise order, be the prison used by the Court in cases of Orders of Commitment made in the exercise by the Court of its ordinary jurisdiction (*t*).

Where a Warrant for the Arrest of a person has been issued by a Court other than the High Court under any of the provisions of the Act and Rules, the High Bailiff of the Court, or other Officer of the Court to whom the Warrant is addressed, may send the Warrant of Arrest to the Registrar of any other Court (other than the High Court) within the ordinary jurisdiction or district of which such person shall then be or be believed to be, with a Warrant annexed thereto under the hand of the High Bailiff or Officer and Seal of the Court from which the Warrant originally issued, requiring execution of the Warrant by the Court to which it is so sent ; and the Registrar of the last-mentioned Court shall seal or stamp the Warrant with the Seal of his Court, and issue the same to the High Bailiff or other proper Officer of his Court, with an endorsement thereon in the Form 106 ; and thereupon such last-mentioned High Bailiff or Officer may, and shall in all respects execute the said Warrant according to the requirements thereof, and all Constables and Peace Officers shall aid and assist within their respective districts in the execution of such Warrant (*u*).

Where a person is arrested under a Warrant of Commitment issued under any of the Provisions of the Act and Rules, other than sections 174 and 176 of the Act and Rule 66 of the Rules, he shall be forthwith conveyed in custody of the Bailiff or Officer apprehending him to the prison of the Court within the ordinary jurisdiction of which he is apprehended, and kept therein for the time mentioned in the Warrant of

(*p*) *Daniels* v. *Fielding* (1846), 16 M. & W. 200.

(*q*) See *Ulster Land, etc., Investment Co.* (1887), 17 L. R. Ir. 591, where the affidavit spoke only to information and belief. This may often be necessary in these cases, which turn on intention.

(*r*) *Cotton Plantation Co. of Natal*, [1868] W. N. 79.

(*s*) Companies (Winding-up) Rules, 1909, r. 211.

(*t*) *Ibid.*, r. 212.

(*u*) *Ibid.*, r. 213. For forms of warrant and endorsement, *infra*, p. 1188.

Commitment, unless sooner discharged by the Order of the Court which originally issued the Warrant of Commitment, or otherwise by law.

Where a person is arrested under a Warrant, issued under section 174 or section 176 of the Act, or under Rule 66 of the Rules, he shall be forthwith conveyed in custody of the Bailiff or Officer apprehending him to the prison of the Court within the ordinary jurisdiction of which he is apprehended; and the Governor or Keeper of such prison shall produce such person before the Court as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law. Provided that where any such person is conveyed to a prison other than the prison used by the Court which originally issued the Warrant in cases of Orders of Commitment made by such Court in the exercise of its ordinary jurisdiction, the Court may by Order direct such person to be transferred to such last-mentioned prison; and on receipt of such Order the Governor or Keeper of the prison to which such person has been conveyed, shall cause such person to be conveyed in proper custody to the prison mentioned in such Order, and the Governor or Keeper of such last-mentioned prison shall, on production of such Order and of the Warrant of Arrest, receive such person, and shall produce him before the Court, as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law (*x*).

ATTACHMENT OF DEBTS IN STANNARIES.

When several companies are in course of liquidation by or under the superintendence of the Court exercising the Stannaries Jurisdiction and acting under that jurisdiction if it appears to the Judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies the Judge may (if after inquiry he thinks fit) direct that the debt when allowed shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory, and the amount thereof will be applied to such payment in due course. Such an order will not prejudice any claim which the indebted company has by way of set-off, counterclaim, or otherwise, or any lawful claim of lien or specific charge on the debt in favour of any third person (*y*).

COMPROMISES.

Under the powers of compromise conferred by section 214 of the Act the liquidator can enter into compromises. The terms of the section are wide, and under the section where there is a doubt as to whether certain contributories are liable a compromise dealing with the liabilities of all such contributories can be entered into (*z*), but

(*x*) Companies (Winding-up) Rules, 1909, r. 214.

(*y*) Companies (Consolidation) Act, 1908, s. 239. The word "superintendence" which occurs in the Act presumably means supervision.

(*z*) *Commercial Bank Corporation of India and the East* (1869), 8 Eq. 240; *The Bank of Hindustan* v. *Eastern Financial Association* (1869), L. R. 2 P. C. 489; and see as to the

where the question is not one of liability, but of ability to pay, the authority sanctioning the compromise should be furnished with information as to the means of each person whom it is proposed to relieve from liability (*a*). The liquidator will sometimes be authorized to compromise in such cases by endorsed order: but it is better to have an order drawn up in the ordinary way (*aa*). The affidavit as to means is not put on the file (*b*).

The Court cannot under the section force a liquidator to accept a compromise of which he does not approve (*c*). It is thought that where the sanction of a committee of inspection has been given and the liquidator has entered into the compromise, the onus of showing that the compromise is improper will be on a person who asks the Court to disallow it, though in such case the facts will no doubt have to be fully brought before the Court (*d*).

A compromise by which £20 per share was to be paid immediately instead of £25 per share extended over a period of two years has been sanctioned (*e*), and also one by which the executrix of a deceased contributory was to pay a certain sum down in lieu of a larger sum for which the deceased was liable, and to give security for the payment of a further sum if further calls were made (*f*). The Court will not allow a contributory to retire from a compromise he has entered into merely because it turns out subsequently that he ought not to have been on the list at all (*g*), and it would seem that such a compromise can only be set aside if fraud is shown (*h*), moreover, if a contributory has made a statement in writing of his property to the liquidator, and such statement omits to mention certain assets, the Court will not after a lapse of time presume that such assets were not disclosed, at all events in cases where it can be shown that the liquidator and the contributory had constant meetings and discussions on the subject, and that no active step was taken by the contributory to conceal the ownership of such assets (*i*).

section generally *supra*, pp. 1036 *et seq.* As will be seen, it will not infrequently be necessary on a compromise to resort to s. 120 of the Act. For form of compromise agreement, *infra*, pp. 1187 and 1188.

(*a*) *Ex parte Totty* (1860), 29 L. J. (CH.) 702.

(*aa*) See O. 52, r. 14, R. S. C.

(*b*) *Law Guarantee Trust and Accident Society* (1910), 26 T. L. R. 565. For form of affidavit, *infra*, pp. 1181 *et seq.*

(*c*) *Pearson's Case* (1872), 7 Ch. 309; *Hankey's Case* (1872), 41 L. J. (CH.) 385.

(*d*) See *Lama Coal Co.* (1867), 2 Ch. 692.

(*e*) *Smith, Knight & Co.* (1868), 37 L. J. (CH.) 864.

(*f*) *Hughes' Case* (1849), 1 De G. & Sm. 606.

(*g*) *Lucy's Case* (1853), 4 De G. M. & G. 356.

(*h*) *Liquidators of the City of Glasgow Bank* v. *Assets Co.* (1883), 10 Rettie 676; *Watt* v. *Assets Co.*, [1905] A. C. 317.

(*i*) *Watt* v. *Assets Co.*, [1905] A. C. 317.

NOTICE TO EACH MEMBER OF COMMITTEE OF INSPECTION OF MEETING FOR SANCTION TO PROPOSED CALL (*k*).

(*Title.*)

Take notice that a meeting of the Committee of Inspection of the above Company will be held at on the * day of , 19 , at o'clock in the noon, for the purpose of considering and obtaining the sanction of the Committee to a call of £ per share proposed to be made by the Liquidator on the contributories.

* To be a date not less than seven days from the date when the notice will in course of post reach the person to whom it is addressed.

Annexed hereto is a statement showing the necessity for the proposed call and the amount required.

Dated this day of 19 .

(Signed)

Liquidator.

STATEMENT.

1. The amount due in respect of proofs admitted against the Company, and the estimated amount of the costs, charges and expenses of the winding-up, form in the aggregate the sum of £ or thereabouts.

2. The assets of the Company are estimated to realize the sum of £ . There are no other assets, except the amounts due from certain of the contributories to the company, and in my opinion it will not be possible to realize in respect of the said amounts more than £ .

3. The list of contributories has been duly settled, and persons have been settled on the list in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the Company, and of paying the costs, charges and expenses of the winding-up, I estimate that a sum of £ will be required in addition to the amount of the Company's assets hereinbefore mentioned.

5. In order to provide the said sum of £ it is necessary to make a call on the contributories, and having regard to the probability that some of them will partly or wholly fail to pay the amount of the call, I estimate that for the purpose of realizing the amount required it is necessary that a call of £ per share should be made.

(*Annex tabular statement showing amounts of debts, costs, &c., and of assets.*)

ADVERTISEMENT OF MEETING OF COMMITTEE OF INSPECTION TO SANCTION PROPOSED CALL (*l*).

(*Title.*)

Notice is hereby given that the undersigned Liquidator of the above-named Company proposes that a call should be made "on all the contributories of the said Company," *or, as the case may be* of £ per share, and that he has summoned a meeting of the Committee of Inspection of the Company, to be held at on the day of 19 , at o'clock in the noon, to obtain their sanction to the proposed call.

Each contributory may attend the meeting, and be heard or make any

(*k*) Companies (Winding-up) Rules, 1909, Appendix, Form 50.

(*l*) *Ibid.*, Form 51.

communication in writing to the Liquidator or the members of the Committee of Inspection in reference to the intended call.

A statement showing the necessity of the proposed call and the purpose for which it is intended may be obtained on application to the Liquidator at his office at *

* Insert address.

Dated this day of 19 .

Liquidator.

RESOLUTION OF COMMITTEE OF INSPECTION SANCTIONING CALL (*m*).

Resolved, that a call of £ per share be made by the Liquidator on all the contributories of the Company [*or, as the case may be*].

(Signed)

Members of the Committee of Inspection.

Dated this day of 19 .

NOTICE OF CALL SANCTIONED BY COMMITTEE OF INSPECTION TO BE SENT TO CONTRIBUTORY (*n*).

(*Title.*)

Take notice that the Committee of Inspection in the winding-up of this Company have sanctioned a call of per share on all the contributories of the Company.

The amount due from you in respect of the call is the sum of £ .

This sum should be paid by you direct to me at my office * on or before the day of 19 .

* State address.

Dated this day of 19 .

Liquidator.

To Mr.

SUMMONS FOR LEAVE TO MAKE A CALL (*o*).

(*Title.*)

Let the several persons whose names and addresses are set forth in the second column of the schedule hereto, being contributories of the above-named Company, as shown in the third column of the said schedule, attend at on the day of 19 , at o'clock in the noon, on the hearing of an application on the part of the [Official Receiver and] Liquidator of the Company for an order that he may be at liberty to make a call to the amount of per share on all the contributories [*or as the case may be*] of the said Company.

Dated the day of 19 .

This summons was taken out by of Solicitors for the [Official Receiver and] Liquidator.

To

NOTE.—If you do not attend either in person or by your Solicitor, at

(*m*) Companies (Winding-up) Rules, 1909, Appendix, Form 52.

(*n*) *Ibid.*, Form 53.

(*o*) *Ibid.*, Form 54.

the time and place above-mentioned, such order will be made and proceedings taken as the Court may think just and expedient.

SCHEDULE.

No. on List.	Name and Address.	In what Character included.

AFFIDAVIT OF LIQUIDATOR IN SUPPORT OF PROPOSAL FOR CALL (*p*).

(*Title.*)

I, , of &c., the Liquidator of the above-named Company, make oath and say as follows :—

1. I have in the Schedule now produced and shown to me, and marked with the letter A, set forth a statement showing the amount due in respect of the debts proved and admitted against the said Company, and the estimated amount of the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, and which several amounts form in the aggregate the sum of £ or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said Company, amounting to the sum of £ and no more. There are no other assets belonging to the said Company, except the amounts due from certain of the contributories of the said Company, and, to the best of my information and belief, it will be impossible to realize in respect of the said amounts more than the sum of £ or thereabouts.

3. persons have been settled by me on the list of contributories of the said Company in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said Company and of paying the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, I believe the sum of £ will be required in addition to the amount of the assets of the said Company mentioned in the said Schedule A, and the said sum of £

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that, for the purpose of realizing the amount required as before-mentioned, it is necessary that a call of £ per share should be made,

Sworn, etc.

(*p*) Companies (Winding-up) Rules, 1909, Appendix, Form 55.

ADVERTISEMENT FOR INTENDED CALL (q).

In the matter of

Notice is hereby given that the * Court has appointed the day of 19 , at o'clock in the noon at † , to sanction a call on all the contributories of the said Company [*or as the case may be*] and that the Liquidator of the said Company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour, and place, to offer objections to such call.

* Name of Court.

† State place of appointment.

Dated this day of 19 .

Liquidator.

ORDER GIVING LEAVE TO MAKE A CALL (r).

The day of 19 .

(*Title.*)

Upon the application of the Official Receiver and Liquidator of the above-named Company, and upon reading the affidavit of the said [Official Receiver and] Liquidator, filed the day of 19 , and the exhibit marked "A" therein referred to, and an affidavit of filed the day of 19 .

It is ordered that leave be given to the [Official Receiver and] Liquidator to make a call of £ per share on all the contributories of the said Company *.

* Or as the case may be.

And it is ordered that each such contributory do on or before the day of 19 , pay to the [Official Receiver and] Liquidator of the Company, the amount which will be due from him or her in respect of such call.

ORDER FOR LEAVE TO MAKE CALL BY INSTALMENTS, NOTICE OF SUMMONS HAVING PURSUANT TO PREVIOUS ORDER BEEN GIVEN BY ADVERTISEMENT.

(*Title.*)

Upon the application by summons dated 13th June 1911 of C.F.S. the Liquidator of the above-named Company and upon hearing the solicitors for the applicant and for C.N. a holder of 400 B shares and for H.H.W. a holder of 1500 B shares and 8000 D shares in the capital of the said Company upon reading the order to wind-up the above-named Company dated 20th December 1910 the order dated 20th February 1911 appointing Liquidator the order dated 20th June 1911 for service of notice of the above-mentioned summons by advertisement the affidavit of the said C.F.S. filed the 20th June 1911 the *London Gazette* of the 14th July 1911 and the *Daily Telegraph* newspaper of the 15th July 1911 each containing a notice of the hearing of the said summons pursuant to the said order of the 20th June 1911 and the certificate of the applicant of the settlement

(q) Companies (Winding-up) Rules, 1909, Appendix, Form 56.

(r) *Ibid.*, Form 57.

of the list of contributories of the said Company dated the 7th July 1911. It is ordered that the Liquidator of the above-named Company be at liberty to make a call on all the contributories of the above-named Company at the times and by the instalments set out in the schedule hereto and it is ordered that the said liquidator be at liberty to allow a discount not exceeding £3 10*s.* per cent. per annum on all sums paid in advance in respect of such call.

SCHEDULE.

	2 Months after Call.		4 Months after Call.		6 Months after Call.		9 Months after Call.		12 Months after Call.		15 Months after Call.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
B shares	2	6	2	6	2	6	2	6	2	6	2	6
C shares	5	0	2	6	2	6	2	6	2	6	2	6
D shares	6	6	2	6	2	6	2	6	2	6	2	6

[*Re Law Car and General Insurance Corporation, Ltd.*, 00437 of 1910. Mr. Registrar HOOD, July 25th, 1911.]

DOCUMENT MAKING A CALL (*s*).

(*Title.*)

* An order of Court, or resolution of the Committee of Inspection.
† Insert address.

I, the [Official Receiver and] Liquidator of the above-named Company, in pursuance of * made (*or* passed) this day of 19 , hereby make a call of per share on all the contributories of the Company, which sum is to be paid at my office † on the day of 19 .

Dated this day of 19 .

NOTICE TO BE SERVED WITH THE ORDER SANCTIONING A CALL (*t*).

(*Title.*)

The amount due from you, A.B., in respect of the call made pursuant to leave given by the above [*or* within] order is the sum of £ , which sum is to be paid by you to me as the Liquidator of the said Company at my office, No. Street, , in the county of

Dated this day of 19 .

Liquidator.

To Mr. A.B.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER FOR PAYMENT OF CALL (*u*).

(*Title.*)

I, of , &c., the Liquidator of the above-named Company, make oath and say as follows :—

1. None of the contributories of the said Company, whose names are

(*s*) Companies (Winding-up) Rules, 1909, Appendix, Form 58.

(*t*) *Ibid.*, Form 59.

(*u*) *Ibid.*, Form 60. Where there has been no previous order (*e.g.* in a voluntary winding-up), this affidavit will not be sufficient. It will be necessary to supple-

set forth in the schedule hereto annexed, marked A., have paid or caused to be paid the sums set opposite their respective names in the said Schedule which sums are the amounts now due from them respectively under the call of per share, duly made under the Companies (Consolidation) Act 1908 dated the day of 19 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively in respect of the said call.

A.

THE SCHEDULE ABOVE REFERRED TO.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
					£ s. d.

Sworn, &c.

NOTE.—In addition to the above affidavit, an affidavit of the service of the application for the call (*x*) will be required in cases in which the Committee of Inspection or the Court has authorized a call to be made.

FORM OF AFFIDAVIT AS TO MEANS.

No.______

No. of

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. JUSTICE NEVILLE.

In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of Limited.

ANSWERS AND AFFIDAVIT BY

Holder of ______ Shares.
No.________

In the Matter of Limited.

M______________________________
Holder of __________Shares ; Liability £

Questions to be answered by Shareholders desirous of compromising Amount due in respect of Calls.

I.—What Property do you possess ; and what is its nature and value to the best of your knowledge and belief ?

ment it by proving the making of the call and the reasons for the call.

(*x*) This presumably means the notice to be served with the order or resolution sanctioning a call; see *supra*, p. 1180, Form 59.

(Specify the particulars, if necessary, in the separate signed List or Schedule marked A; and accompany the statement with Valuations, certified Rentals, and other evidence of value, by competent parties.)

II.—Have you, since the , either as security for your debts or otherwise, sold, given, transferred, or conveyed away in trust or otherwise, or placed under the charge, or in the custody of any person or persons, or in any way put away, set aside, or concealed any Property, Money, Stock, Shares, Securities, or effects of any kind? If so, state the particulars and value, and present position of such property so alienated. Or have you, since renounced, or discharged, or given up any right of any kind which you then had? If so, state the particulars thereof.

III.—Have you within the last 10 years been a party to any settlement or deed of gift?

IV.—What is your regular or average annual income; and from what sources is it derived?

(Specify the particulars, if necessary, in the separate signed List or Schedule marked B.)

V.—What debts or obligations are owing by you besides the Calls for which you are liable as a Shareholder of the

(Specify the particulars, if necessary, in the separate signed List or Schedule marked C.)

VI.—Have you any expectation of funds or property of any kind coming to you by succession or otherwise? If so, state its nature and probable value.

VII.—Is your life insured? If so give particulars.

VIII.—Are you interested in any settlement made on marriage or otherwise?

IX.—State any circumstances connected with yourself, or those dependent on you, which you may wish to be considered along with your application.

X.—What sum or other consideration do you offer for a discharge in full of all claims by the Official Receiver and Liquidator against you as a Shareholder of the Limited; and in what manner do you propose it shall be secured or paid?

ANSWERS.

I.
II.
III.
IV.
V.
VI.
VII.
VIII.
IX.
X.

The details under I., III., and IV. may be given under separate signed Schedules, marked A, B, C, respectively.

Signature ______________________

Date ______________________

The above Answers should be verified by Affidavit as set forth on the next page.

In The High Court of Justice,
(Companies Winding-up).
Mr. Justice Neville.
In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the Limited.

[Address and profession, or other description to appear.]

I,
of make Oath and say as follows :—

That the several matters and things contained in the Answers written on the preceding page * [and in the Schedules A, B, and C], and which are signed by me as relative hereto, are full, true and correct answers to the foregoing printed questions to the best of my knowledge, information and belief.

* If Schedules not required, strike out these words.

Sworn at
in the of
this day of
19
Before me

A Commissioner for Oaths.

Schedule A.

	£	s.	d.

N.B.—This Schedule must be signed by the Shareholder.

Schedule B.

	£	s.	d.

N.B.—This Schedule must be signed by the Shareholder.

Schedule C.

	£	s.	d.

N.B.—This Schedule must be signed by the Shareholder.

ORDER FOR PAYMENT OF CALL DUE FROM A CONTRIBUTORY (y).

(*Balance Order.*)

The day of 19 .

(*Title.*)

Upon the application of the Liquidator of the above-named Company, and upon reading an affidavit of filed the day of , 19 , and an affidavit of the liquidator, filed the day of , 19 , it is ordered, that C.D., of, &c. [*or E.F.*, of, &c., the legal personal representative of L.M., late of &c., deceased], one of the contributories of the said Company [*or, if against several contributories,* the several persons named in the second column of the schedule of this Order, being respectively contributories of the said Company], do, on or before the day of 19 or within four days after service of this order, pay to the Liquidator of the said Company at his office, No. Street, , in the county of , the sum of £ , [*if against a legal personal representative add,* out of the assets of the said L.M., deceased, in his hands as such legal personal representative as aforesaid, to be administered in due course of administration, if the said E.F., has in his hands so much to be administered, *or, if against several contributories,* the several sums of money set opposite to the respective names in the sixth column of the said schedule hereto], such sum [*or sums*] being the amount [*or* amounts] due from the said C.D. [*or* L.M.], [*or* the several persons respectively], in respect of the call of £ per share duly made, dated the day of , 19 .

THE SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
					£ s. d.

NOTE.—The copy for service of the above order must be indorsed as follows :—

"If you, the under-mentioned A.B., neglect to obey this order by the time mentioned therein you will be liable to process of execution, for the purpose of compelling you to obey the same."

(y) Companies (Winding-up) Rules, 1909, Appendix, Form 61.

BALANCE ORDER (z).

(*Title.*)

Upon the Application by summons dated the 11th day of February 1903 of J.G. the Liquidator of the above-named Company and upon hearing the Solicitors for the Applicant and for the Respondents J.B. N.G. J.L. and E.S. and the Respondents G.B. F.G.B. G.L. and L.I.R. in person and no one appearing for or on behalf of the other Respondents to the said summons although they have been duly served therewith as appears by the affidavits of W.J.J. filed the 16th day of February 1903 and the 10th day of March 1903 respectively and upon reading the order dated the 17th January 1900 directing the voluntary winding-up of the said Company to be continued but subject to the supervision of the Court the order dated the 28th February 1902 the certificate dated the 23rd March 1900 of the said J.G. of the settlement of the list of contributories of the above-named Company the joint affidavit of H.G.P. H.K. and C.S. and the joint affidavit of W.A.B. A.H.H. and F.C.T. both filed the 13th day of February 1903 and the affidavit of J.G. filed the 20th day of February 1903 and the exhibits in the said affidavits or some of them respectively referred to :—

IT IS ORDERED that the several persons named in the second column of the Schedule hereto being respectively contributories of the said Company do within four days after service of this order upon them respectively pay to the Applicant the said J.G. as such Liquidator as aforesaid at his office situate at in the City of the several sums of money set opposite to their respective names in the sixth column of the schedule hereto such sums being the amounts due from the said several persons respectively in respect of a call of Two pounds ten shillings per share duly made by the said Liquidator on the 21st day of June 1902 pursuant to the said order dated the 28th February 1902.

AND IT IS ORDERED that the said several persons do within the like period and at the place aforesaid pay to the said J.G. as such Liquidator as aforesaid interest at the rate of Four pounds per centum per annum on the amounts specified in the sixth column of the said schedule from the 1st day of October 1902 to the date of payment.

AND IT IS ORDERED that the said several persons do within the like period and at the place aforesaid pay to the said J.G. as such Liquidator as aforesaid the several sums set opposite to their respective names in the seventh column of the schedule hereto such sums being the proportion of the Applicant's costs of the said application payable by such several persons respectively.

AND IT IS ORDERED that the amounts payable under this order by such of the persons named in the schedule hereto as are married women be payable out of their separate estates respectively and not otherwise and that execution hereon against such persons be limited to their separate property respectively not subject to any restriction against anticipation unless by reason of section 19 of The Married Women's Property Act 1882 the property shall be liable to execution notwithstanding such restraint.

(z) See the last preceding form as to the note to be endorsed on this order.

AND IT IS ORDERED that the amounts payable under this order by C.F. the legal personal representative of R.F. deceased be paid by him out of the assets in his hands as such legal personal representative to be administered in a due course of administration if he shall have in his hands so much to be administered.

AND IT IS ORDERED that the remainder of the said summons do stand adjourned with liberty to the Applicant to restore.

THE SCHEDULE BEFORE REFERRED TO.

1 No. on List of Contributories.	2 Name.	3 Address.	4 Occupation.	5 In what Character included.	6 Amount due for Call.	7 Proportion of Costs.	8 Total Amount payable exclusive of Interest.
					£ s. d.	£ s. d.	£ s. d.
195	D. A. H.		Married woman	In own right	100 0 0	0 19 0	100 19 0
236	C. F.		—	As executor of R. F. deceased	62 10 0	0 17 0	63 7 0
	[Here	follow other	names ad-	dresses	etc.]		

[*Re The London and Northern Bank, Ltd.*, 00408 and 00410 of 1899. Mr. Registrar HOOD, March 10th, 1903.]

AFFIDAVIT OF SERVICE OF ORDER FOR PAYMENT OF CALL (*a*).

(*Title.*)

I, J.B., of, &c., make oath and say as follows :—

1. I did on the day of 19 , personally serve G.F., of , in the county of , &c. with an order made in this matter by this court, dated the day of 19 , whereby it was ordered [*set out the order*] by delivering to and leaving with, the said G.F., at , in the county of , a true copy of the said order, and at the same time producing and showing unto him, the said G.F., the said original order.

2. There was indorsed on the said copy when so served the following words, that is to say, " If you, the under-mentioned G.F., neglect to obey this order by the time mentioned therein, you will be liable to process of execution for the purpose of compelling you to obey the same."

Sworn, &c.

(*a*) Companies (Winding-up) Rules, 1909, Appendix, Form 62.

MEMORANDUM OF AGREEMENT OF COMPROMISE WITH CONTRIBUTORY (*b*).

In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the X.Y. Co. Ltd.

Memorandum of Agreement entered into this day of 19 .

BETWEEN A.B. of &c. the Liquidator [or the Official Receiver and Liquidator] of the above-named Company of the one part and C.D. of &c. one of the contributories of the above-named Company of the other part.

WHEREAS the said C.D. has been settled on the list of contributories of the said Company as a contributory in respect of shares of the said Company. AND WHEREAS a call of £ per share has been duly made on all the contributories of the said Company and there is now due from the said C.D. the sum of £ in respect of the said call. AND WHEREAS the said C.D. has proposed to pay to the said A.B. the sum of £ by way of compromise and in satisfaction and discharge of the said sum of £ and of all liability whatsoever as a contributory of the said Company. AND WHEREAS the said A.B. having investigated the affairs of the said C.D. and believing that such compromise will be beneficial to the said Company hath in exercise of the power for that purpose given to him by the above statute agreed to accept the same subject to the sanction of the Committee of Inspection appointed in the winding-up of the said Company [or of the Court] and to the conditions and agreements hereafter contained.

NOW IT IS HEREBY AGREED by and between the parties hereto as follows that is to say :—

1. That the said A.B. shall on or before the day of apply to the said Committee of Inspection [or to the Court] to sanction this agreement of compromise.

2. That upon this agreement being sanctioned by the said Committee of Inspection [or by the Court] the said C.D. shall within days next after such sanction pay to the said A.B. the said sum of £ and when thereto required shall do and execute all such acts and deeds as may be necessary for transferring or surrendering and releasing to the said A.B. on behalf of the said Company or in such manner as the said Committee of Inspection [or the Court] may direct the said shares held by the said C.D. in the said Company and all claim and demand whatsoever which the said C.D. has or may have against the said Company in respect of the said shares or the distribution of assets of the said Company or otherwise howsoever.

3. That the said sum of £ and the transfer or surrender and release of the said shares and interest of the said C.D. aforesaid shall be accepted by the said A.B. as and be deemed and taken to give to the said C.D. a full and complete discharge from all calls and liabilities claims and demands whatsoever which the said Company or the Liquidator thereof now has or may hereafter have or be entitled to against the said C.D. in

(*b*) This form is adapted from Form 50 in the Appendix to the Rules of 1862.

respect of his being or having been the holder of the said shares or otherwise as a contributory of the said Company.

4. That in case this agreement shall not be sanctioned by the said Committee of Inspection [or by the Court] it shall cease and determine and all parties shall be remitted to their original rights as if this agreement had not been entered into.

5. That in case this agreement shall be sanctioned by the said Committee of Inspection [or by the Court] and the said C.D. shall not in all respects perform the same on his part the Liquidator of the said Company shall be at liberty without notice previously given to the said C.D. to enforce the performance thereof or to give notice to the said C.D. that he abandons this agreement whereupon the same shall cease and determine and the Liquidator of the said Company shall be entitled to proceed against the said C.D. to enforce payment of the said sum of £ and all other sums for which but for this agreement the said C.D. would have been liable or so much thereof as shall then remain due and unpaid.

IN WITNESS &c.

WARRANT TO REGISTRAR OF COURT IN WHOSE DISTRICT A PERSON AGAINST WHOM A WARRANT OF ARREST HAS BEEN ISSUED IS BELIEVED TO BE (*c*).

WHEREAS the Warrant of Arrest hereto annexed has been issued by this Court against the person named therein, namely, of under the provisions of the Companies (Consolidation) Act 1908 and Companies (Winding-up) Rules, 1909.

And whereas he is outside the ordinary jurisdiction of this Court, and is believed to be within the jurisdiction or district of the Court of which you are the Registrar.

These are therefore to require you to cause the said Warrant to be executed within the ordinary jurisdiction of the Court *

Dated this day of , 19 .

(Signed) †

To the Registrar of the Court.

* Insert name of Court.

† To be signed by the High Bailiff or other proper Officer of the Court.

ENDORSEMENT OF WARRANT OF ARREST ISSUED BY A COURT TO WHICH THE SAME HAS BEEN SENT FOR EXECUTION BY THE COURT WHICH ORIGINALLY ISSUED IT (*d*).

To the Governor of the prison at * .

Take notice that in accordance with the Companies (Winding-up) Rules, 1909, this Warrant of Arrest has been sent to and issued by me to the High Bailiff (or other Officer) of this Court, and that the person named in the Warrant, if apprehended within the jurisdiction thereof, is to be conveyed to the prison of this Court, and is to be there kept until otherwise directed by the Order of the Court which originally issued the Warrant of Arrest, or until discharged by that Court, or otherwise by law.

Dated the day of , 19 .

Registrar.

* Insert name of prison of the Court to which the Warrant has been sent.

(*c*) Companies (Winding-up) Rules, 1909, Appendix, Form 105.

(*d*) *Ibid.*, Form 106.

CHAPTER XIII.

Distribution of Assets.

The Act provides with regard to voluntary liquidations that all costs charges and expenses properly incurred in the winding-up including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims (*a*). This is subject to the rights of mortgagees, and applies equally in a compulsory winding-up (*b*). The Court may in either case in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding-up in such order of priority as the Court thinks just (*c*).

The Act further provides (*d*) that the property of the company shall be applied in satisfaction of its liabilities *pari passu* and subject thereto shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

To take these subjects in their order—

I. Payment of Costs, Charges, and Expenses.

The Companies (Winding-up) Rules, 1909 (*e*), contain the following special provisions on this point.

The assets of a Company in a winding-up by the Court, remaining after payment of the fees and actual expenses incurred in realizing or getting in the assets, shall, subject to any order of the Court, and, as regards a winding-up to which the provisions of the Stannaries Act, 1887, apply (*f*), subject to that Act as modified by the Act, be liable to the following payments, which shall be made in the following order of priority, namely :—

First.—The taxed costs of the petition (*g*), including the taxed costs

(*a*) Companies (Consolidation) Act, 1908, s. 196.

(*b*) *Webb* v. *Whiffin* (1872), L. R. 5 H. L. 711, 735.

(*c*) Companies (Consolidation) Act, 1908, ss. 171, 193.

(*d*) *Ibid.*, s. 186 (1). This again in terms only applies to a voluntary winding-up, but the same rule holds good in a compulsory liquidation : *Webb* v. *Whiffin* (1872), L. R. 5 H. L. 711 ; *Birch* v. *Cropper* (1889), 14 A. C. 525.

(*e*) R. 187.

(*f*) SS. 9 and (so far as material) 13 of this Act are now repealed by the Companies (Consolidation) Act. The provisions referred to are apparently now to be found in ss. 240 (3) and 241 of the latter Act, which are given below at pp. 1213 and 1214.

(*g*) Including probably the costs of an appeal where no security had been required : *Re Bright*, [1903] 1 K. B. 735.

of any person appearing on the petition whose costs are allowed by the Court.

Next.—The remuneration of the special manager (if any).

Next.—The costs and expenses of any person who makes or concurs in making, the Company's statement of affairs.

Next.—The taxed charges of any shorthand-writer appointed to take an examination. Provided that where the shorthand-writer is appointed at the instance of the Official Receiver the cost of the shorthand notes shall be deemed to be an expense incurred by the Official Receiver in getting in and realizing the assets of the Company.

Next.—The Liquidator's necessary disbursements, other than actual expenses of realization heretofore provided for.

Next.—The costs of any person properly employed by the Liquidator.

Next.—The remuneration of the Liquidator.

Next.—The actual out-of-pocket expenses necessarily incurred by the Committee of Inspection, subject to the approval of the Board of Trade.

No payments in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers, or other persons, other than payments for costs and expenses incurred and sanctioned under Rule 54 (*h*) and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the Company without proof that the same have been considered and allowed by the Registrar. The Taxing Officer shall satisfy himself before passing such bills or charges that the employment of the solicitor or other person in respect of the matters mentioned in the bills or charges has been duly sanctioned (*i*). Provided that the Official Receiver when acting as liquidator may without taxation pay and allow the costs and charges of any person other than a solicitor employed by him where such costs and charges are within the scale usually allowed by the Court and do not exceed the sum of £2 provided always that the Board of Trade may require such costs or charges to be taxed by the Taxing Officer.

Nothing contained in this Rule shall apply to or affect costs which, in the course of legal proceedings by or against a Company which is being wound-up by the Court, are ordered by the Court in which such proceedings are pending or a Judge thereof to be paid by the Company or the Liquidator, or the rights of the person to whom such costs are payable.

These rules have no application as between a company and its mortgagees (*j*). A liquidator who has sold property subject to a mortgage, will as against the mortgagee be entitled to retain out of the proceeds of sale the actual costs of the sale (*k*), and possibly the

(*h*) See *supra*, p. 910, as to this rule, which deals with the costs of the statement of affairs.

(*i*) *I.e.* either by the Court or the committee of inspection. See s. 151 (1) (*c*) and (*a*) of the Companies (Consolidation) Act, 1908, *supra*, pp. 1032 *et seq.*

(*j*) *Anglo-Austrian Printing and Publishing Union*, [1895] 2 Ch. 891.

(*k*) *Regent's Canal Ironworks, Ex parte Grissell* (1875), 3 C. D. 411; *New Zealand Midland Railway Co.*,

costs of a previous abortive sale (*l*), but he will not be entitled as against such mortgagee to retain costs he has incurred without the request express or implied of the mortgagee, in preserving the property as, for instance, by carrying on the business of the company (*m*), or even, it is thought, sums paid for rent so as to prevent the lease being forfeited, for the right to recover such sums would appear to depend on the principle of salvage, and it has been held that a mortgagor cannot rely on such principle (*n*). Under the costs of realization, costs of a second mortgagee in bringing an action for realizing his security have been allowed as against a first mortgagee except so far as such costs were incurred by such second mortgagee for the purpose of establishing his own particular security (*o*), probably the costs of a liquidator in bringing successful misfeasance proceedings (*p*) or recovering calls (*q*) would likewise be allowed against mortgagees. It may be here remarked that the views above set out, as to the costs of preserving the security, though now well established, did not always prevail (*r*).

A further question which arises in this connection is, putting aside all questions of mortgagees, what is the position of a person who has given credit to a company in liquidation, *e.g.* a person who has supplied goods to a company while the liquidator is carrying on its business? Such a creditor is usually not entitled to sue the liquidator personally (*s*), but he is entitled not merely to prove against the assets of the company, but to payment in full out of those assets (*t*), for such payment would appear to be part of the costs, charges, and expenses of the liquidation (*u*). Moreover, as in

Smith v. *Lubbock*, [1901] W. N. 105; *Omcrod Grierson & Co.*, [1890] W. N. 217; *Northern Milling Co.*, [1908] 1 Ir. 473; *Lathom* v. *Greenwich Ferry Co.* (1895), 72 L. T. 790. In this case the expenses of a licence for maintaining certain works which were necessary for the company's business were allowed, but the case turned, partly at all events, on the fact that there had been a previous order treating these expenses as expenses of realization, and see *supra*, p. 616, note (*t*), as to what are costs of realization.

(*l*) Cp. *Batten* v. *Wedgwood Coal and Iron Co.* (1884), 28 C. D. 317.

(*m*) See note (*k*) above.

(*n*) Cp. *Falcke* v. *Scottish Imperial Insurance Co.* (1886), 34 C. D. 234.

(*o*) *Batten* v. *Dartmouth Harbour Commissioners* (1890), 45 C. D. 612; *Carrick* v. *Wigan Tramways*, [1893] W. N. 98.

(*p*) Cp. *Anglo-Austrian Printing and Publishing Union*, [1895] 2 Ch. 891.

(*q*) *Re Born*, [1900] 2 Ch. 433.

(*r*) *Perry* v. *Oriental Hotels Co.* (1871), 12 Eq. 126. In *Marine Mansions Co.* (1867), 4 Eq. 601, the costs of preservation, as opposed to the costs of realization, were allowed by consent.

(*s*) *Anglo-Moravian Hungarian Junction Railway Co.* (1875), 1 C. D. 130; *Trueman's Estate* (1872), 14 Eq. 278.

(*t*) *Ex parte Smith* (1867), 3 Ch. 125; *International Marine Hydropathic Co.* (1884), 28 C. D. 470; *National Arms and Ammunition Co.* (1885), 28 C. D. 474; *Home Investment Society* (1880), 14 C. D. 167; and see the cases cited *post*, pp. 1214 *et seq.*, as to rates and taxes, and as to the landlord's rights, *supra*, pp. 892 and 893.

(*u*) Lindley on Companies, 6th Ed. vol. ii. p. 996.

the case which has already been discussed of a successful litigant, it would appear that, subject, of course, to the terms of his contract, he is entitled to payment at once on demand, if there are sufficient assets to pay any costs incurred in actual realization and any unpaid costs of the petition for winding-up, his claim, however, of course, ranking with the claims of other creditors in the same position as himself, and with the costs of persons who have successfully brought actions in the liquidation (*x*). The matter is not, it is true, referred to in the rules, but the order of costs there prescribed is "subject to any order of the Court," and the Court will on an application in the liquidation, give to such a creditor the relief to which he is entitled (*x*).

Where money is borrowed by a liquidator and its repayment is secured on the assets of the company, it is thought that such charge will usually rank after the liquidator's remuneration and all other costs, charges, and expenses mentioned in the rule (*y*), though probably a liquidator could give a charge which ranked in priority to all these costs.

Where a compulsory winding-up supersedes a voluntary winding-up it is thought that the costs of the petitioner and of the liquidator in the compulsory winding-up will have precedence over the liquidator's remuneration and over costs incurred by him in the voluntary winding-up (*z*). Where creditors are entitled to payment out of a particular fund only, the question sometimes arises how far such fund is liable to be charged with costs. This question would appear to be one which turns on the further question of what the contract is, but usually as between such creditors and the members of the company, the costs of getting in the fund and the general costs of the liquidation cannot be charged to the fund (*a*), though possibly it may be otherwise with the actual costs of realization (*i.e.* the sale) of the assets comprising the fund (*b*).

Every solicitor manager accountant auctioneer broker (*c*) or other person employed by an Official Receiver or Liquidator in a winding-up by the Court must on request by the Official Receiver or Liquidator (to be made a sufficient time before the declaration of a dividend) deliver his bill of costs or charges to the Official Receiver or Liquidator for the purpose of taxation; and if he fails to do so within the time stated in

(*x*) *London Metallurgical Society*, [1895] 1 Ch. 758. It should be observed that the last provision of r. 187, *supra*, p. 1190, was not in force at the date of this decision.

(*y*) Cp. *A. Boynton, Ltd.*, [1910] 1 Ch. 519.

(*z*) *Sanitary Burial Association*, [1900] 2 Ch. 289. It is not thought that *New York Exchange Co.*, [1893] 1 Ch. 371, could be applicable, at all events where the ultimate winding-up is a compulsory winding-up, and not one under supervision, as in that case.

(*a*) *Agriculturist Cattle Insurance Co.* (1874), 10 Ch. 1.

(*b*) *State Fire Insurance Co.* (1865), 34 L. J. (CH.) 436.

(*c*) In taxing these charges the Registrar will usually follow the scale prescribed for bankruptcy by the bankruptcy rules for the time being in force.

the request, or such extended time as the Court may allow, the Liquidator will declare and distribute the dividend without regard to such person's claim, and subject to any order of the Court the claim will be forfeited. The request by the Official Receiver or Liquidator must be in the Form 89 (*d*).

Where costs are directed to be taxed under an order a notice is sent requiring such costs to be lodged with the official receiver at his office (or if the order was not in a compulsory winding-up or the official receiver is not liquidator at the winding-up office) before a certain day with all papers and vouchers relating thereto. Such notice adds that after such date the taxation will be proceeded with and the certificate issued with reference to such costs only as shall then have been brought in and taxed.

Where a bill of costs or charges in any winding-up has been lodged with the Taxing Officer, he must give notice of an appointment to tax the same, in a winding-up by the Court to the Official Receiver, and in every winding-up to the Liquidator, and to the person to or by whom the bill or charges is or are to be paid (as the case may be) (*e*).

The bill or charges, if incurred in a winding-up by the Court prior to the appointment of a Liquidator, must be lodged with the Official Receiver, and if incurred after the appointment of a Liquidator, must be lodged with the Liquidator. The Official Receiver or the Liquidator, as the case may be, must lodge the bill or charges with the proper Taxing Officer (*f*).

Every person whose bill or charges in a winding-up by the Court is or are to be taxed must, on application either of the Official Receiver or the Liquidator, furnish a copy of his bill of charges so to be taxed, on payment at the rate of 4*d.* per folio, which payment will be charged on the assets of the Company. The Official Receiver must call the attention of the Liquidator to any items which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the taxation (*g*).

Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceedings :—

(1) Such party or person must serve notice of his intended application

(*d*) Companies (Winding-up) Rules, 1909, r. 177. For form, see *infra*, p. 1196.

(*e*) *Ibid.*, r. 178. The liquidator referred to in this rule is the person who is liquidator at the time of taxation: *Re Smith*, [1910] 2 K. B. 346. This rule and rule 180, *post*, apply where the liquidator's own solicitor's costs are being taxed: *ibid.* The notice referred to in this rule states that a certain day and time has been appointed to tax the costs directed to be taxed by the order (giving its date), after which the certificate will be issued with reference to such costs as shall then or at any adjournment of the appointment be taxed, and that the bills are to be left completed for the certificate by another named day, subsequent to the day fixed for taxation.

(*f*) Companies (Winding-up) Rules, 1909, r. 179.

(*g*) *Ibid.*, r. 180. Under this rule, unlike the bankruptcy rule, the official receiver may appear as a litigant: *Nash and Sons*, [1896] 1 Q. B. 13.

on the Official Receiver in a winding-up by the Court and in every winding-up on the Liquidator.

(2) The Official Receiver (if any) and Liquidator may appear on such application and object thereto.

(3) No costs of or incident to such application will be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceeding (*h*).

Upon the taxation of any bill of costs, charges, or expenses being completed, the Taxing Officer must issue to the person presenting such bill for taxation his allowance or certificate of taxation. The bill of costs, charges and expenses, together with the allowance or certificate, must be filed with the Registrar (*i*).

Where the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an Official Receiver or Liquidator, is or are payable out of the assets of the Company, a certificate in writing, signed by the Official Receiver or Liquidator, as the case may be, must on the taxation be produced to the Taxing Officer setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the employment (*k*).

In a County Court all costs properly incurred in a winding-up by the Court will be allowed on the Lower Scale in Appendix N to the Rules of the Supreme Court, and costs must be taxed by the Registrar in person (*l*).

The taxing officer is, in winding-up, the Registrar (*m*), and costs are taxed in the same manner and on the same scale as in other matters in the High Court (*n*). The professional charges must be entered in one column in the bill, the disbursements in another (*o*), and in the column dealing with professional charges should be entered costs already taxed and paid by some other party, credit being given for the amount so received (*p*). The items of the costs already paid by a third party (*e.g.* an unsuccessful litigant) should be given separately in two columns as in the rest of the bill (*q*). Where costs are taxed under an order which directs that they shall be paid out of the assets no costs of the solicitor of leaving the bill for taxation or for drawing or copying it or for attending the taxation will be allowed if one-sixth is taxed off the professional charges and disbursements (*r*), including in such items the items already paid and for the payment of which credit is given in the bill (*p*), and such costs will in any case only be allowed where the bill relates to litigious or semi-litigious matter, and where the taxation is not

(*h*) Companies (Winding-up) Rules, 1909, r. 181.

(*i*) *Ibid.*, r. 182. For forms of allowance and certificates, *infra*, pp. 1197 and 1198.

(*k*) *Ibid.*, r. 183.

(*l*) *Ibid.*, r. 184.

(*m*) *Ibid.*, r. 4 (3); and for definition of the expression "Registrar," *ibid.*, r. 2, *supra*, p. 814, note (*r*).

(*n*) As to these cp. O. 65, R. S. C., and especially rule 27 of that order.

(*o*) O. 65, r. 19, H. R. S. C.

(*p*) *Mercantile Lighterage Co.*, [1906] 1 Ch. 491.

(*q*) *Cobbett* v. *Wood*, [1908] 2 K. B. 420.

(*r*) O. 65, r. 27, sub-r. 38 (*b*).

between the solicitor and his own client (*s*). In compulsory winding up cases, however, costs are not usually taxed under an order, but lodged for allowance by the Registrar (*t*), and the solicitor is never allowed to charge for drawing the bill of costs. In such cases, if more than one-sixth is taxed off the costs of attending before the Registrar when the costs are being considered, will be disallowed. The Court will read these taxation rules in a broad way and so as to do substantial justice. And so, where a summons, which is not an originating summons, substantially raises an issue of fact before the Judge the costs of counsel will be allowed (*u*).

The costs of a liquidator's or special manager's security, including any premiums which he may pay to a guarantee society must in all cases be borne by the liquidator or special manager personally, and may not be charged against the assets of the company as an expense incurred in the winding-up (*x*).

Where a liquidator or special manager in a winding-up by the Court receives remuneration for his services as such, no payment will be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

Where a liquidator is a solicitor he may contract that the remuneration for his services as liquidator are to include all professional services (*y*).

A taxing master has power to make one or more *interim* certificate or certificates, *allocatur* or *allocaturs*, in any taxation for any portion or portions of the taxed costs directed to be taxed without waiting until a certificate for the full amount can be made (*z*).

With regard to the costs of conveyancing work. These are regulated by the Solicitors' Remuneration Act, 1881, but it would appear that where a liquidator enters into a contract under section 8 of that Act, for paying his solicitor otherwise than by the ordinary scale fee he should get the leave of the Court (*a*). Where a liquidator makes an application for the purpose of increasing the remuneration allowed to his solicitor, the application will be treated as though it were the application of the solicitor himself, and if it is unsuccessful his costs will not be allowed out of the estate (*b*).

(*s*) *National Bank of Wales*, [1902] 2 Ch. 412.

(*t*) Under r. 187 (2) of the Companies (Winding-up) Rules, 1909, *supra*, p. 1190.

(*u*) *Consolidated Exploration and Finance Co.*, [1899] 2 Ch. 599, and Appendix N, item 81, R. S. C.

(*x*) Companies (Winding-up) Rules, 1909, r. 57 (5).

(*y*) *Ibid.*, r. 186.

(*z*) O. 65, r. 27, sub-r. 17 (*b*). This rule seems to do away with the decision in *Silkstone and Haigh Moor Coal Co.* v. *Edey*, [1901] 2 Ch. 652.

(*a*) *United Kingdom Land and Building Association* (1889), 40 C. D. 471; and see *Re Evans*, [1905] 1 Ch. 290.

(*b*) *National Bank of Wales*, [1902] 2 Ch. 412.

Where any bill of costs, charges, fees or disbursements which are payable out of the assets of the company to any solicitor, manager, accountant, auctioneer, broker or other person has been taxed by a Registrar of a Court other than the High Court, the Board of Trade may require the taxation to be reviewed by the taxing officer of the High Court.

In any case in which the Board of Trade require such a review of taxation as is above mentioned they must give notice to the person whose bill has been taxed, and must apply to the taxing officer of the High Court to appoint a time for the review of such taxation, and thereupon such taxing officer must appoint a time for the review of, and must review, such taxation and certify the result thereof. The Board of Trade must give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

Where any such review of taxation as is above mentioned is required to be made by the taxing officer of the High Court, the Registrar whose taxation is to be reviewed must forward to such taxing officer the bill which is required to be reviewed.

The Board of Trade may appear upon the review of the taxation; and if, upon the review of the taxation, the bill is allowed at a lower sum than the sum allowed on the original taxation, the amount disallowed must (if the bill has been paid) be repaid to the official receiver or the liquidator, or other person entitled thereto. The certificate of the taxing officer will in every case of a review by him under this rule be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

The costs of and incidental to the review will be paid out of the assets of the company or otherwise as the taxing officer or the Court directs, but the costs of the attendance of a principal will not be allowed if in the opinion of the taxing officer he could have been sufficiently represented by his London agent (*c*).

This rule only applies to persons employed by the liquidator (*d*).

REQUEST TO DELIVER BILL FOR TAXATION (*e*).

(*Title.*)

I hereby request that you will, within days of this date, or such further time as the Court may allow, deliver to me for taxation by the proper officer your bill of costs [*or* charges] as * failing which, I shall, in pursuance of the Companies (Consolidation) Act and Rules proceed to declare and distribute a dividend without regard to any claim which you may have against the assets of the Company, and your claim against the assets of the Company will be liable to be forfeited.

* Here state nature of employment.

Dated this day of , 19 .

(*c*) Companies (Winding-up) Rules, 1909, r. 185.

(*d*) *Re Hunt*, [1898] 1 Q. B. 287.

(*e*) Companies (Winding-up) Rules, 1909, Appendix, Form 89.

ALLOWANCE OF BILL OF COSTS.

(*Title.*)

I have considered the Bill of Costs of Messrs. H. & S. the Solicitors employed by the Official Receiver and Liquidator of the above-named Company in the above matter from the 5th August 1910 to the 11th October 1911 relating to the matter referred to in the authority of the Board of Trade dated the 29th July 1910, and I have allowed the same at the sum of pounds shillings and pence including the fees of Taxation.

Dated 24th day of November 1911.

Registrar.

[*Re The Platinum Syndicate, Ltd.*, 00207 of 1909.]

CERTIFICATE OF TAXATION OF COSTS UNDER AN ORDER IN A COMPULSORY LIQUIDATION.

(*Title.*)

In pursuance of an Order in this matter dated the 24th day of October 1911 I hereby certify that I have been attended by the respective Solicitors for E.T.H. trading as E.T.H. & Co. and P. & R. Limited (the Petitioners) and The W. Company Limited (Creditor) for The B. and C.K. Company Limited (Creditor) and for the above-named Animatophone Syndicate Limited respectively named in the said Order and the Official Receiver and Provisional Liquidator of the said Animatophone Syndicate Limited has attended in person and the Costs of the said Petitioners of the said Creditors and of the said Animatophone Syndicate Limited by the said Order directed to be taxed, I have taxed in manner following that is to say :—

Parties.	Solicitors.	Amount.		
		£	s.	d.
The above-named Petitioners and the W. Company, Ltd.	Messrs. of			
The above-named B. & C. K. Company, Limited	Messrs. of			
The above-named Animatophone Syndicate, Limited.	Mr. of			

and which together amounts to the sum of pounds shillings and pence including the fees of taxation

Dated the 27th day of November 1911.

Registrar.

[*Re The Animatophone Syndicate, Ltd.*, 00353 of 1911.]

CERTIFICATE OF TAXATION (*f*).

(*Title.*)

I hereby certify that I have taxed the bill of costs [*or* charges] [*or* expenses] of Mr. C.D. [*here state capacity in which employed or engaged*] [*where necessary add* " pursuant to an order of the Court dated the day of 19 "], and have allowed the same at the sum of pounds shillings and pence [*where necessary add* " which sum is to be paid to the said C.D. by as directed by the said order "].

Dated this day of , 19 .

Taxing Master [*or* Registrar].

£ : :

CERTIFICATE OF TAXATION OF BILLS OF COSTS IN SUPERVISION CASE.

(*Title.*)

In pursuance of the request of the Liquidators of the above-named Company I have taxed the Bills of Costs Charges and Expenses of Messrs. F.C. & Co. incurred by the above-named Company as Trustees for the respective Debenture Holders of the Companies named in the schedule hereto and I have allowed the same at the sums specified in the said schedule including the fees of taxation.

Dated the 30th day of November 1911.

Registrar.

SCHEDULE.

Name of Company.	Allowed at
	£ *s.* *d.*

[*Re The Law Guarantee Trust and Accident Society, Ltd.*, 00422 of 1909.]

(*f*) Companies (Winding-up) Rules, 1909, Appendix, Form 90. This form is not used in practice, the form immediately preceding it being used instead.

REGISTER TO BE KEPT BY TAXING OFFICER (*g*).

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Name of Company.	Solicitors' Bills.			Auctioneers' Bills.			High Bailiffs' Bills.			Accountants' Bills.			Brokers' or other Persons' Bills.		
	Gross Amount of Bill.	Amount taxed off.	Net Amount allowed.	Gross Amount of Bill.	Amount taxed off.	Net Amount allowed.	Gross Amount of Bill.	Amount taxed off.	Net Amount allowed.	Gross Amount of Bill.	Amount taxed off.	Net Amount allowed.	Gross Amount of Bill.	Amount taxed off.	Net Amount allowed.

(*g*) Companies (Winding-up) Rules, 1909, Appendix, Form 91.

II. PAYMENT OF DEBTS AND LIABILITIES.

In every winding-up (subject in the case of insolvent Companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the Company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the Company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value (*h*).

In the winding-up of an insolvent Company registered in England or Ireland the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England or Ireland, as the case may be, with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the Company may come in under the winding-up, and make such claims against the Company as they respectively are entitled to by virtue of this section (*i*).

A company which is in liquidation will for the purposes of this section be taken to be insolvent unless it is shown that it can pay its debts in full (*j*), and also it is thought interest on such debts as bear interest down to the time of actual payment (*k*). It will in addition, of course, have to be able to provide for the costs of the liquidation, otherwise it cannot be said to be solvent (*l*).

In the winding-up of a company registered in Scotland, the general and special rules in regard to voting and ranking for payment of dividends provided by sections 49 to 66 of the Bankruptcy (Scotland) Act, 1856, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, will, so far as is consistent with the Act, apply to creditors of the company voting in matters relating to the winding-up, and ranking for payment of dividends; and for this purpose "sequestration" is to be taken to mean "winding-up," "trustee" to mean "liquidator," and "sheriff" to mean "the Court" (*m*).

Section 37 of the Bankruptcy Act, 1883, deals with the debts which are provable in bankruptcy. Its provisions are as follows:—

(1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract promise or breach of trust shall not be provable in bankruptcy.

(*h*) Companies (Consolidation) Act, 1908, s. 206.

(*i*) *Ibid.*, s. 207.

(*j*) *Ex parte Theys* (1884), 25 C. D. 587.

(*k*) *Re Whitaker*, [1904] 1 Ch. 299; and cp. *Re Henley* (1897), 75 L. T. 307.

(*l*) *Re Leng*, [1895] 1 Ch. 652.

(*m*) Companies (Consolidation) Act, 1908, s. 208.

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as aforesaid 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 shall be deemed to be debts provable in bankruptcy.

(4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies or for any other reason does not bear a certain value.

(5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court.

(6) If in the opinion of the Court the value of the debt or liability is incapable of being fairly estimated the Court may make an order to that effect and thereupon the debt or liability shall for the purposes of this Act be deemed to be a debt not provable in bankruptcy.

(7) If in the opinion of the Court the value of the debt or liability is capable of being fairly estimated the Court may direct the value to be assessed before the Court itself without the intervention of a jury and may give all necessary directions for this purpose and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(8) "Liability" shall for the purposes of this Act include 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 and generally it shall include 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 on any one contingency or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or as matter of opinion.

SECURED CREDITORS.

To ascertain who are and who are not secured creditors, reference must be made to the Bankruptcy Act, 1883 (*n*). Section 168 of that Act defines the expression "secured creditor" as meaning a person holding a mortgage charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor.

Section 45 of the Bankruptcy Act, 1883, does not apply in a winding-up so as to deprive an execution creditor of the fruits of his execution (*o*), and where a sheriff has seized under a writ of *fi. fa.*, this will make the creditor for whom he has seized a secured

(*n*) *Lough Neagh Sailing Ship Co.*, [1896] 1 Ir. 29.

(*o*) *Withernsea Brickworks* (1880), 16 C. D. 337; see also *Pratt* v. *Inman* (1889), 43 C. D. 175.

creditor (*p*); but where a writ of *fi. fa.* or other writ of execution is given to the sheriff, this will not in itself make the execution creditor a secured creditor even as against goods within his bailiwick, for though the Sale of Goods Act, 1893 (*q*), provides that such writ shall bind the goods (*r*) of the execution debtor as from the time when the writ is delivered to the sheriff to be executed, the sheriff has not even a qualified property in and cannot maintain an action of trover for such goods until actual seizure (*s*), and this rule also holds good in the case of money, bank-notes, cheques, bills of exchange, promissory notes, bonds, specialities, and other securities for money which can be seized under a *fi. fa.* by virtue of the provisions of section 12 of the Judgments Act, 1838, for there the Sale of Goods Act has no application and the goods are only bound from the date of the seizure (*t*).

With regard to leasehold interests these also are liable to seizure under a writ of *fi. fa.* (*u*), and at common law the sheriff did acquire some interest in the land from the time when the writ was delivered to him (*x*), but he could not take actual possession of the land, and if he did he could be ejected; he could take constructive possession by seizing the deeds, and when he had sold and executed a proper assignment to the purchaser the purchaser could bring ejectment (*y*). As against purchasers for value such writs are now void unless registered under the Land Charges Acts, 1888 and 1900.

Since the passing of the Bankruptcy Act, 1883, writs of *elegit* only extend to lands including chattels real (*z*). It is thought that they too will give a charge at a date not later than the time when the writ is delivered to the sheriff (*a*), but, at all events, a charge will,

(*p*) *Slater* v. *Pinder* (1872), L. R. 7 Ex. 95; *Re Clarke*, [1898] 1 Ch. 336; *Ex parte Abbott* (1880), 15 C. D. 447; *Withernsea Brickworks* (1880), 16 C. D. 337; *Ex parte Roche* (1868), 3 Ch. 238.

(*q*) S. 26.

(*r*) The expression "goods" is defined by s. 62 of the Sale of Goods Act, 1893, as including all chattels personal other than things in action and money, and in Scotland all corporeal moveables except money.

(*s*) *Ex parte Williams* (1872), 7 Ch. 314; *Re Joselyne* (1878), 8 C. D. 327, at pp. 330, 332; *Low* v. *Blakemore* (1875), L. R. 10 Q. B. 485; *Re Balbirnie* (1876), 3 C. D. 488.

(*t*) *Johnson* v. *Pickering*, [1908] 1 K. B. 1.

(*u*) *Fleetwood's Case* (1610), 8 Co. Rep. 171 *a*; *Taylor* v. *Cole* (1789), 3 T. R. 292. Though (apart from the Judicature Acts, at all events) not equitable interests in leaseholds: *Scott* v. *Scholey* (1807), 8 East, 467.

(*x*) *Burden* v. *Kennedy* (1757), 3 Atk. 739.

(*y*) See *Harley* v. *Harley* (1860), 11 Ir. Ch. R. 451, 465; *Colcman* v. *Rawlinson* (1858), 1 F. & F. 330; *Playfair* v. *Musgrove* (1845), 14 M. & W. 239; *Doe* v. *Jones* (1842), 9 M. & W. 372; *Murphy* v. *Sandes* (1876), Ir. 10 C. L. 309.

(*z*) See *Johns* v. *Pink*, [1900] 1 Ch. 296, for effect of a writ of elegit.

(*a*) *Burden* v. *Kennedy* (1757), 3 Atk. 739.

subject to the rights of a purchaser for value, be given when the sheriff has actually seized (*b*).

The appointment of a receiver of land will give a charge on the land from the date of the order, and that even though the receiver has been ordered to give security (*c*) the appointment of a receiver of personalty other than chattels real gives no charge, at all events, until an order has been made on the person who is in possession of the property directing him to give up possession to the receiver (*d*), what the appointment of a receiver does do is to restrain the debtor from dealing with the property (*e*). And, no doubt, if there were no provisions in the Act dealing with the respective rights of secured and unsecured creditors, and staying proceedings, executions, etc., during a winding-up and while a petition is pending, a person who had obtained the appointment of a receiver of personalty would be entitled to have his debt paid out of the fund, when it became ready to be distributed (*f*). It has been held (*g*) that an order appointing a receiver of a remainder in realty does not give a charge as it did not constitute an actual delivery in execution within section 1 of the Judgments Act, 1864; but that section has now been repealed by the Land Charges Act, 1900, and it is thought that the decision above-mentioned goes with it, as also a decision that no charge can be given under section 13 of the Judgments Act, 1838, where the property is in remainder (*h*). There is no power to give a charge by way of execution over reversionary interests in personalty (*i*).

With regard to writs of sequestration, personalty, other than chattels real, is not charged by the mere issue of the writ or even by its service and payment being made to the sequestrators, the creditor must go further and get some special order or special charge (*k*); this he can in many cases do (*l*). With regard to realty and leaseholds it is thought that there will not be a charge on the land until

(*b*) *Ex parte Abbott* (1880), 15 C. D. 447; *Re Pope* (1886), 17 Q. B. D. 743.

(*c*) *Ex parte Evans* (1880), 13 C. D. 252; *Ridout* v. *Fowler*, [1904] 1 Ch. 658; [1904] 2 Ch. 93; *Anglo-Italian Bank* v. *Davies* (1878), 9 C. D. 275; *Hatton* v. *Haywood* (1874), 9 Ch. 229.

(*d*) *Croshaw* v. *Lyndhurst Ship Co.*, [1897] 2 Ch. 154; *Lough Neagh Sailing Ship Co.*, [1896] 1 Ir. 29; *Re Potts*, [1893] 1 Q. B. 648; *Ridout* v. *Fowler*, [1904] 1 Ch. 658; [1904] 2 Ch. 93.

(*e*) *Marquis of Anglesey*, [1903] 2 Ch. 727; *Ideal Bedding Co.* v. *Holland*, [1907] 2 Ch. 157.

(*f*) *Levasseur* v. *Mason, Barry & Co.*, [1891] 2 Q. B. 73.

(*g*) *Harrison and Bottomley*, [1899] 1 Ch. 465.

(*h*) *Hood Barrs* v. *Cathcart*, [1895] 2 Ch. 411; see Land Charges Act, 1900, s. 2, as to registration.

(*i*) *Flegg* v. *Prentis*, [1892] 2 Ch. 428.

(*k*) *Ex parte Nelson* (1880), 14 C. D. 41; *Re H. E. Pollard*, [1903] 2 K. B. 41; *Re Hastings* (1892), 61 L. J. (Q. B.) 654; *Dixon* v. *Rowe* (1877), 35 L. T. 548.

(*l*) Cp. *Willcock* v. *Terrell* (1878), L. R. 3 Ex. Div. 323; *Wilson* v. *Metcalfe* (1839), 1 Beav. 263; *Miller* v. *Huddlestone* (1883), 22 C. D. 233; *Re Slade* (1881), 18 C. D. 365.

there has been actual seizure, at all events, this seems to be the effect of *Re Hastings* (*m*), a case which seems to be based on the Judgments Act, 1838, and not on the repealed Act of 1864.

A garnishee order, whether *nisi* or absolute, will charge the debt from the time when notice of such order has been given to the garnishee (*n*), but it will give no security before that date (*o*). A creditor who obtains a charging order becomes a secured creditor (*p*). Where prior to the commencement of a winding-up, property of a company has been arrested *jurisdictionis fundandæ causa,* the creditor who has taken such step will, if he bring an action and obtain an order arresting the property on the dependence of the action, not be restrained from proceeding with such action, and will, subject to obtaining a decree in such action, be a secured creditor (*q*).

The question of whether a landlord is or is not a secured creditor, depends on whether he has or has not put in a distress for his rent before the commencement of the winding-up; if he has, he will be a secured creditor, otherwise he will not (*r*); and where a power of distress was contained in a mining lease, and extended not only to chattels on the property comprised in the lease, but also to chattels of the lessee on adjoining collieries, it was held that the landlord was in the same position with regard to a distress on an adjoining colliery (*s*). In Scotland an urban landlord has a "real security without possession" upon the property demised, and he can put such right into force before the rent has actually accrued due, for the purpose of recovering the whole rent of the current year, and a Scotch landlord will, at all events where he has taken proceedings to enforce his hypothec, be a secured creditor (*t*). The privileges given to a landlord in bankruptcy by section 42 of the Bankruptcy Act, 1883, as amended by section 28 of the Bankruptcy Act, 1890, have no application in a winding-up (*u*).

Where property has been attached for a particular purpose, *e.g.* to compel the owner to enter an appearance in the suit, the

(*m*) (1892), 61 L. J. (Q. B.) 654; and cp. *Re Rush* (1870), 10 Eq. 442; *Burdett* v. *Rockley* (1682), 1 Vern. 58.

(*n*) *National United Investment Corporation*, [1901] 1 Ch. 950; *Re Joselyne* (1878), 8 C. D. 327; see also *Galbraith* v. *Grimshaw*, [1910] 1 K. B. 339.

(*o*) *Stanhope Silkstone Collieries* (1879), 11 C. D. 160.

(*p*) *Re Hutchinson* (1886), 16 Q. B. D. 515.

(*q*) *West Cumberland Iron and Steel Co.*, [1893] 1 Ch. 713; and see also *National Insurance Co.* (1912), 56 Sol. J. 291.

(*r*) See *Oak Pits Colliery Co.* (1882), 21 C. D. 322; *Bridgewater Engineering Co.* (1879), 12 C. D. 181. As has already been stated, there are cases where a landlord will be allowed to proceed with a distress, even though he had done nothing before winding-up, see *supra*, pp. 891 *et seq.*

(*s*) *Roundwood Colliery Co.*, [1897] 1 Ch. 373.

(*t*) *Wanzer, Ltd.*, [1891] 1 Ch. 305.

(*u*) *Bridgewater Engineering Co.* (1879), 12 C. D. 181; *Coal Consumers' Association* (1876), 4 C. D. 625; and see *Stockton Iron Furnace Co.* (1879), 10 C. D. 335.

person who has obtained the attachment will not be a secured creditor, for the attachment gives him no rights which he can enforce in all circumstances (*x*).

Where a solicitor has a common law lien at the date of winding-up the Court will supplement such lien by giving the statutory charge, unless it is for any reason inequitable so to do (*y*). Where documents are in the hands of a solicitor but ought not to be there either because of some provision in the Act or in the company's articles, then it would seem there can be no lien for a solicitor cannot claim any lien against his client, which that client was not in a position to give him (*z*), and a solicitor employed in a liquidation cannot utilize any lien he has got so as to prevent the liquidation being prosecuted in the ordinary way, because persons other than his client, the liquidator, are interested; but where the papers, etc., were properly in the solicitor's possession and subject to his lien at the date of the winding-up, there the liquidator cannot claim any higher rights than the company itself could have done (*a*). A solicitor has a common law lien on property recovered by his exertions (*b*). Other instances of liens are the lien of a broker and the lien of a banker (*c*), and of an unpaid vendor (*d*); but, of course, liens may be excluded by express contract, or by the conduct of the parties only being consistent with an intention that they should not exist or should be waived (*e*).

Money paid into Court before winding-up to abide the event of an action, will make the plaintiff a secured creditor (*f*). A creditor can, it is thought, follow moneys received by a company as his agent, even when such moneys have become mixed with the company's other moneys (*g*).

(*x*) *Levy* v. *Lovell* (1880), 14 C. D. 234; *Ex parte Sear* (1881), 17 C. D. 74; *Thomas* v. *Patent Lionite Co.* (1881), 17 C. D. 250.

(*y*) *Re Born*, [1900] 2 Ch. 433. It was said that such charge was in no sense an "execution" within the meaning of s. 211 of the Act.

(*z*) *Capital Fire Insurance Association* (1883), 24 C. D. 408.

(*a*) *Capital Fire Assurance Co.* (1883), 24 C. D. 408; *Rapid Road Transit Co.*, [1909] 1 Ch. 96.

(*b*) *Haymes* v. *Cooper* (1864), 33 Beav. 431; *Re Born*, [1900] 2 Ch. 433; *Meter Cabs*, [1911] 2 Ch. 557; *Re Massey* (1870), 9 Eq. 367; and see as to a solicitor's lien, *supra*, pp. 1033 and 1034.

(*c*) See *London and Globe Finance Corporation*, [1902] 2 Ch. 416; *Jones* v. *Peppercorne* (1858), Johns. 430; and for other instances see the following Scotch cases: *Meikle and Wilson* v. *Pollard* (1880), 8 Rettie, 69; *Robertson* v. *Ross* (1887), 15 Rettie, 67; *Findlay* v. *Waddell*, [1910] S. C. 670; and contrast *Barnton Hotel Co.* v. *Cook* (1899), 1 Fraser, 1190.

(*d*) *Re Pearce*, [1909] 2 Ch. 492; *Ex parte Clarke* (1893), 67 L. T. 465.

(*e*) Cp. *Wylde* v. *Radford* (1864), 33 L. J. (CH.) 51; *Re Bowes* (1886), 33 C. D. 586; *Re Morris*, [1908] 1 K. B. 473.

(*f*) *Ex parte Banner* (1874), 9 Ch. 379; *Ex parte Bouchard* (1879), 12 C. D. 26; *Ex parte Navalchand*, [1897] 2 Q. B. 516; *Re Ford*, [1900] 2 Q. B. 211.

(*g*) See *Knatchbull* v. *Hallett* (1880), 13 C. D. 696, not following

Persons who hold security over property which is in no sense the company's property, and would in no event go to augment the estate which is being realized in the winding-up are not considered as secured creditors in such winding-up, and can prove for the whole amount of their debt, and retain their security, though, of course, they cannot receive more than 20*s*. in the £ (*h*).

An example of this would seem to arise in the case of principal and surety. Thus, where a surety is liable for the whole debt even though his liability is limited, the principal creditor can demand payment from him, and at the same time prove for and retain all moneys originally due from the principal debtor until he has actually received 20*s*. in the £ (*i*).

No doubt, where the surety is surety for part only of the debt, he will, on paying such part, be entitled to stand in the shoes of the principal creditor, just as he would be able to do if he were surety for the whole on payment of the whole, but that is because as between him and the principal creditor the whole has been paid (*k*). But even here the surety may by his contract of suretyship waive his right in favour of the principal creditor and then the principal creditor can prove for the whole debt even if the surety has paid his part out of securities given him by the principal debtor (*l*). Sureties who have paid the debt of the principal creditor, will be entitled to the benefit of any proof he has made, and any moneys which he receives after payment of the whole debt he will receive as trustee for the sureties (*m*).

Except where the Act makes special provision a winding-up does not affect the right of a secured creditor to realize or otherwise deal with his security (*n*). But where a secured creditor is not content to rely on his security, there he will be subject to the rules of bankruptcy.

Ex parte Dale & Co. (1879), 11 C. D. 772; and cp. *Hallett & Co.*, [1894] 2 Q. B. 237.

(*h*) *Re Turner* (1882), 19 C. D. 105; *Re Plummer* (1841), 1 Ph. 56.

(*i*) *Re Sass*, [1896] 2 Q. B. 12; *Re Rees* (1881), 17 C. D. 98; see also *Re Blackburne* (1892), 9 Mor. 249, where a landlord was allowed to prove for damage by fire though he had received insurance moneys: cp. *Re Blakeley* (1892), 9 Mor. 173, which shows that dividends received in the bankruptcy of the principal debtor before proof in the bankruptcy of the surety must be allowed for in such proof, but that it is otherwise with regard to dividends after proof.

(*k*) *Re Sass*, [1896] 2 Q. B. 12; *Re Sellers* (1878), 38 L. T. 395; *Midland Banking Co.* v. *Chambers* (1869), 4 Ch. 398; *Gray* v. *Seckham* (1872), 7 Ch. 680.

(*l*) *Re Sellers* (1878), 38 L. T. 395; *Midland Banking Co.* v. *Chambers* (1869), 4 Ch. 398.

(*m*) See *Re Parker Morgan* v. *Hill*, [1894] 3 Ch. 400; *Re Sass*, [1896] 2 Q. B. 12.

(*n*) Bankruptcy Act, 1883, s. 9 (2); *David Lloyd & Co.* (1877), 6 C. D. 339.

COURSES OPEN TO SECURED CREDITORS.

These rules give him the choice of three courses (*o*). He may either—

(*a*) Realize his security and prove for the balance after deducting the net amount realized; or

(*b*) Surrender his security and prove for the whole debt; or

(*c*) State in his proof the particulars of his security, the date when it was given and the value at which he assesses it, in which case he will be entitled to receive a dividend in respect of the balance due to him after deducting the value so assessed.

Where a security is so valued the liquidator may at any time redeem it on payment to the creditor of the assessed value.

If the liquidator 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 time and on such terms as may be agreed on between the creditor and the liquidator, or as, in default of agreement, the Court may direct. If the sale be by public auction the creditor or the liquidator on behalf of the estate may bid or purchase. The creditor may at any time by notice in writing require the liquidator to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the liquidator does 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 will vest in the creditor, and the debt will be reduced by the amount at which the security has been valued (*p*).

Where a creditor has so valued his security he may at any time amend the valuation and proof on showing to the satisfaction of the liquidator 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 every such amendment must be made at the cost of the creditor and upon such terms as the Court orders unless the liquidator allows the amendment without application to the Court (*q*).

Where a valuation has been amended in accordance with the preceding rule the creditor must forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or as the case may be, will

(*o*) See Bankruptcy Act, 1883, Second Schedule, rr. 9, 10, and 11. A person who has sold a business to a company on the terms that it shall pay the debts may prove in the liquidation for debts he has been called on to pay, in spite of having conveyed the property to the company during its liquidation: *Todd's Application* (1911), 48 S. L. R. 980.

(*p*) Bankruptcy Act, 1883, Second Schedule, r. 12.

(*q*) *Ibid.*, r. 13.

be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend he may have failed to receive by reason of the inaccuracy of the original valuation before that money is made applicable to the payment of any future dividend, but he will not be entitled to disturb the distribution of any dividend declared before the amendment (*r*).

If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of Rule 12 (*supra*), the net amount realized will be substituted for the amount of any valuation previously made by the creditor, and will be treated in all respects as an amended valuation made by the creditor (*s*).

A secured creditor who does not comply with the foregoing rules will be excluded from all share in any dividend (*t*).

Subject to the provisions of Rule 12 (*supra*) a creditor may in no case receive more than 20*s*. in the £, and interest as provided by the Act (*u*).

Where a creditor relies on his security and does not prove, a liquidator is not bound on declaring a dividend to set aside any reserve fund to meet any proof he may make (*x*), but the creditor may always come in and prove so long as he does not disturb past dividends (*y*). Where a secured creditor realizes or values his security he will, as a general rule, be allowed to allocate such part of his debt as he pleases to his security and to prove for the rest (*z*), and it has been held that he will therefore in spite of the provisions of section 23 of the Bankruptcy Act, 1890, be entitled where his debt carries interest at a higher rate than 5 per cent. to allocate all interest due to him down to the date of the petition to his security, and to prove for the debt itself (*a*), but he will not be allowed to allocate interest after petition to his security, though if the security brings in interest or profits, he may pay himself interest on his debt for the period after petition out of the interest or profits brought in by his security (*b*). A secured creditor will be allowed to deduct from the value of his security or from the moneys arising from its realization sums reasonably incurred by him, even after the commencement of the winding-up in defending his title to his security,

(*r*) Bankruptcy Act, 1883, Second Schedule, r. 14.

(*s*) *Ibid.*, r. 15.

(*t*) *Ibid.*, r. 16.

(*u*) *Ibid.*, r. 17.

(*x*) *Ex parte Good* (1880), 14 C. D. 82.

(*y*) *Kit Hill Tunnel* (1881), 16 C. D. 590.

(*z*) *Ex parte Hunter* (1801), 6 Ves. 94: *Ex parte Glyn* (1840), 1 M. & D. 25.

(*a*) *Re Fox and Jacobs*, [1894] 1 Q. B. 438; *Re Green*, [1904] W. N. 105; but see Lindley on Companies, 6th Ed. vol. ii. p. 1011, and the cases cited in the next note.

(*b*) *Quartermaine's Claim*, [1892] 1 Ch. 639; *Re Savin* (1872), 7 Ch. 760; *Ex parte Badger* (1798), 4 Ves. 165; *Re Bonacino* (1894), 1 Mans. 59.

and also sums paid by way of damages to a third party for retaining property which has been wrongfully mortgaged to him (c). Premiums paid after the commencement of the winding-up for the purpose of keeping alive policies which form part of the security stand on the same footing as interest, and can neither be allocated to the security nor proved for (d). In ascertaining what is due to a creditor the Court will look to the substance of the transaction, and if it finds that the real intention was to give interest, it will not allow proof in respect of it in bankruptcy (e). At first sight the rules which deal with the rights of proof of a secured creditor (f) and the rules which affect his rights of voting (g) appear inconsistent; but they must be treated as entirely distinct rules which deal with different matters and give different rights (h).

To take the various steps taken by a secured creditor, who does not propose to rely on his security alone. He, in the first instance, lodges his proof for voting purposes (i). If that is not used for voting or for claiming a dividend, it is not adjudicated upon, and can be withdrawn, and if it is withdrawn, then the position is the same as if there had been no proof (k). If, on the other hand, the creditor votes in respect of his whole debt, he will be deemed to have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence (l). Where there has been no omission to value the security, but it has been valued at *nil*, the saving clause at the end of this rule does not come into play (m). Where on the other hand there is a security but no debt, although the parties have taken a contrary view, the rule itself has no application (n). As to what will constitute inadvertence, it will be noticed that relief under this rule can only be given under very different circumstances to relief under rule 13 in the second Schedule to the Bankruptcy Act, 1883. Where there has been a deliberate election as to whether the creditor will or will not take advantage of his security, and he ultimately votes in respect of his whole debt, there he will have surrendered his security owing to a mistaken view of the circumstances, perhaps, but not owing to inadvertence, and he can get no relief (o).

(c) *Ex parte Carr* (1879), 11 C. D. 62.

(d) *Re Pearce*, [1909] 2 Ch. 492.

(e) *Ex parte Robinson* (1862), 31 L. J. (BKCY.) 12; *Ex parte Bath* (1883), 22 C. D. 450; and cp. *Ex parte Bath* (1884), 27 C. D. 509.

(f) Bankruptcy Act, Second Schedule, rr. 9–17 (both inclusive).

(g) Companies (Winding-up) Rules, 1909, rr. 135 and 136.

(h) *Ex parte Norris* (1886), 17 Q. B. D. 728; *Re Attree*, [1907] 2 K. B. 868.

(i) Companies (Winding-up) Rules, 1909, r. 133.

(k) See *Re Attree*, [1907] 2 K. B. 868, at p. 876.

(l) Companies (Winding-up) Rules, 1909, r. 135.

(m) *Re Piers*, [1898] 1 Q. B. 627.

(n) *Ex parte Clarke* (1893), 67 L. T. 465.

(o) *Re Piers*, [1898] 1 Q. B. 627;

Where a company which had a lien for calls on partly paid shares, abandoned such lien and proved and received dividends in respect of calls for which the bankrupt was liable, and also, it would seem, voted, and then altered its articles so as to extend such lien to fully paid shares, the Court declined to allow the proof to be withdrawn or amended so as to enable the company to take advantage of the lien given it by such alteration (*q*), the Court in this case seems to have taken the view that there had been a deliberate election to omit all reference to the security, and to have decided the case under the rule as to a secured creditor voting without valuing his security, but it is difficult to see that the creditor had at the time of proving and voting any security over the fully paid shares to surrender. Possibly, however, the case can be supported apart from this rule on the ground that the company's proof had been adjudicated upon and dividends had been received in respect of it (*r*). A creditor who proved for his whole debt because he erroneously thought that his security was over property not belonging to the company, was given relief on the footing that he had acted inadvertently (*s*). It may be that even where there has been a surrender of a security, the Court can allow amendment, and so do away with the surrender itself (*t*).

If the creditor values his security for the purpose of voting, then within twenty-eight days after the proof has been used in voting at a meeting the official receiver or liquidator may require him to give up his security for the benefit of the creditors generally on payment of the value estimated in the proof with an addition of 20 per cent., but the creditor may at any time before being required to give up his security correct the valuation by a new proof and deduct the new value from his debt, but in that case the addition of 20 per cent. will not be made, if the security is required to be given up (*u*). The rights given to the liquidator by this rule are in addition to those given to him by rule 12 (*a*) in the second Schedule to the Bankruptcy Act, 1883, and where the liquidator has offered to redeem the security of a creditor under the latter rule the creditor may still

Safety Explosives Co., [1904] 1 Ch. 226; *Ex parte Clarke* (1892), 67 L. T. 232, affirmed on other grounds (1893), 67 L. T. 465.

(*q*) *Re Rowe*, [1904] 2 K. B. 489. It would appear from the argument as reported in 91 L. T. 101, that the company did vote, and this seems to accord with the arguments as a whole and the judgment.

(*r*) Cp. *Ex parte Solomon* (1821), 1 Gl. & J. 25; *Ex parte Downes* (1811), 18 Ves. 290; *Ex parte Hornby* (1819), *Buck*, 351; *Ex parte Eggington* (1830), Mont. 72; *Kingsford* v. *Swinford* (1859), 4 Dr. 705; *Stammers* v. *Elliott* (1868), 3 Ch. 195.

(*s*) *Henry Lister & Co.*, [1892] 2 Ch. 417.

(*t*) Cp. *Ex parte Bagshaw* (1879), 13 C. D. 304.

(*u*) Companies (Winding-up) Rules, 1909, r. 136.

apply to amend his proof under rule 13 in the second Schedule to the Bankruptcy Act, 1883 (*x*), and it would seem that nothing short of acceptance by the creditor of the amount tendered by the liquidator will deprive the creditor of his right of amendment, and that probably even that will not be sufficient where the money was accepted under a misapprehension (*y*). The existence of a subsequent mortgagee who opposes an amendment makes no difference (*z*).

Before adjudication a proof can, it would seem, be withdrawn without leave and a fresh proof substituted (*a*), except, perhaps, where the original proof has been used for voting purposes (*b*), but where a proof has been rejected no fresh proof can be put in, if the rejection was on the merits and not on purely technical grounds (*c*).

Rule 15 in the second Schedule to the Bankruptcy Act, 1883, substitutes the proceeds of a subsequent realization for the estimate made on a previous valuation (*d*).

Where a security is redeemed by a liquidator the liquidator as representing the general creditors would seem to step into the shoes of the mortgagee, and subsequent mortgagees will not have their rights accelerated (*e*). Where one creditor holds different securities for different debts, the various securities and debts are frequently lumped together in his proof; but this, it would seem, in no way alters the rights of the parties, and so the liquidator may redeem or the creditor may require him to redeem any one of the securities (*f*), and the creditor cannot retain more than 20*s*. in the £ out of one of his securities to make up for any deficiency in the rest (*g*), or obtain any right of consolidating his securities which apart from the winding-up he would not have had (*h*).

Where neither section 10 of the Judicature Act, 1875, nor section 207 of the Companies (Consolidation) Act, 1908, applies, *e.g.* where the company is solvent, a secured creditor will be entitled to realize his security and prove for the full amount of his debt, the only limit being that he must not receive more than 20*s*. in the £ in all (*i*); but where the security had been realized before the

(*x*) *Ex parte Norris* (1886), 17 Q. B. D. 728.

(*y*) *Re Newton*, [1896] 2 Q. B. 403; and see also *Re Fanshawe*, [1905] 1 K. B. 170.

(*z*) *Re Arden* (1885), 14 Q. B. D. 121.

(*a*) *Re Deerhurst* (1891), 8 Mor. 258; *Re Rhoades*, [1899] 1 Q. B. 905; [1899] 2 Q. B. 347; and see *Re Mateo Clark*, [1901] 1 K. B. 655.

(*b*) *Re Attree*, [1907] 2 K. B. 868.

(*c*) *Re Deerhurst* (1891), 8 Mor. 258.

(*d*) See *Société Générale de Paris* v. *Geen* (1883), 8 A. C. 606, for the law under the Bankruptcy Act, 1869.

(*e*) Cp. *Cracknell* v. *Janson* (1877), 6 C. D. 735 (decided under the Bankruptcy Act, 1869).

(*f*) *Re Smith, Ex parte Logan* (1895), 2 Mans. 70; 72 L. T. 362.

(*g*) *Re Morris*, [1898] 2 Ch. 413; [1899] 1 Ch. 485.

(*h*) *Re Pearce*, [1909] 2 Ch. 492.

(*i*) *Kellock's Case* (1869), 3 Ch. 769.

creditor had sent in a claim, not necessarily a formal claim, he could only prove for the balance due to him after deducting the proceeds of realization (*k*). He could, moreover, realize his security and prove until he had received 20*s*. in the £ and interest until repayment and this whether the security was (*l*) or was not (*m*) on the company's own property. It is submitted that this rule holds good where the Bankruptcy Rules apply if the security is not over the company's own property (*n*).

PREFERENTIAL DEBTS.

In a winding-up there must be paid in priority to all other debts—

(*a*) All parochial or other local rates due from the Company at the date fixed by the Act, and having become due and payable *within twelve months* next before that date, and all assessed taxes, land tax, property or income tax assessed on the Company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment ;

(*b*) All wages or salary of any clerk or servant in respect of services rendered to the Company during four months next before the date fixed by the Act not exceeding fifty pounds ; and

(*c*) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the Company during two months next before the date fixed by the Act ; but where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he will have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to that date ; and

(*d*) Unless the Company is being wound-up voluntarily merely for the purposes of reconstruction or of amalgamation with another Company all amounts not exceeding in any individual case £100 due in respect of compensation under the Workmen's Compensation Act 1906, the liability wherefore accrued before the date fixed by the Companies (Consolidation) Act 1908, but subject to the provisions of section 5 of the Workmen's Compensation Act 1906.

The foregoing debts—

(*a*) Rank equally among themselves and are to be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions ; and

(*b*) In the case of a Company registered in England or Ireland, so far as the assets of the Company available for payment of general

(*k*) *Ex parte Forwood* (1870), 5 Ch. 18 ; and see also *Re Oxford and Canterbury Hall Co.* (1870), 5 Ch. 433 ; *Ex parte Coupland* (1870), 5 Ch. 167 ; *Blakely Ordnance Co.* (1869), 8 Eq. 244.

(*l*) *Humber Ironworks and Shipbuilding Co., Warrant Finance Co.'s Case* (1870), 5 Ch. 88.

(*m*) *Joint Stock Discount Co., Warrant Finance Co.'s Case* (1870), 5 Ch. 86.

(*n*) But see *Ex parte Findlay* (1881), 17 C. D. 334.

creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the Company and are to be paid accordingly out of any property comprised in or subject to that charge.

Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up, the foregoing debts must be discharged forthwith so far as the assets are sufficient to meet them.

In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by the section will be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof.

But in respect of any money paid under any such charge the landlord or other person will have the same rights of priority as the person to whom the payment is made.

The date fixed by the Act and above referred to is, in the case of a company ordered to be wound-up compulsorily which has not previously commenced to be wound-up voluntarily, the date of the winding-up order; and in any other case, the date of the commencement of the winding-up (*o*).

Among debts which under section 209 of the Act are in the distribution of the assets of a company being wound-up to be paid in priority to all other debts will be included all contributions payable by the company under the National Insurance Act, 1911, in respect of employed contributors as defined by that Act, or workmen in an insured trade as defined by that Act, during the four months immediately preceding the commencement of the winding-up, or the winding-up order. These provisions do not apply where the company is being wound-up voluntarily for the purposes of reconstruction or amalgamation with another company (*oo*), and it would seem that these contributions are not given priority over a floating charge, for they are only given priority in the distribution of the assets of a company (*ooo*).

In the application to companies within the Stannaries (*p*) of the provisions of the Act with respect to preferential payments, the following modifications must be made:—

(1) In the case of a clerk or servant of such a Company, the priority with respect to wages and salary given by the Act will be given to the extent of three months only, instead of four months, and will not extend to the principal agent, manager, purser, or secretary:

(2) All wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months wages, will be included amongst the payments which are, under the Act, to be made in priority to other debts:

(3) Wages of any miner, artizan, or labourer unpaid at the commence-

(*o*) Companies (Consolidation) Act, 1908, s. 209.

(*oo*) National Insurance Act, 1911, s. 110. No formal proof of such debts will be required except where otherwise provided by rules under the Companies (Consolidation) Act, 1908, *ibid.* The Act comes into force on the 1st of July, 1912, unless a subsequent date is substituted by Order in Council: *ibid.*, s. 115.

(*ooo*) *Richards* v. *Overseers of Kidderminster*, [1896] 2 Ch. 212.

(*p*) The expression "company within the Stannaries" means a company engaged in or formed for working mines within the Stannaries: Companies (Consolidation) Act, 1908, s. 285.

ment of the winding-up, and, subject to the provisions of section five of the Workmen's Compensation Act, 1906, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under that Act payable to a miner or the dependants of a miner the liability wherefore accrued before the commencement of the winding-up, must to the extent aforesaid, be paid by the Liquidator forthwith in priority to all costs, except (in the case of a winding-up by the Court) such costs of and incidental to the making of the winding-up order as in the opinion of the Court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary, and, subject to the above provisions, the Court may, by order, charge the whole or any part of the assets of the Company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge such wages and amounts due in respect of compensation, with interest at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof; and as soon as such sum has been so advanced such wages and amounts due in respect of compensation must be paid without delay so far as the amount advanced extends and in such order as the Court directs (*q*).

(4) Payments which will have priority under the National Insurance Act, 1911, will, if payable in respect of a miner, have the same priority as the wages of a miner under section 9 of the Stannaries Act, 1887 (*qq*).

Section 10 of the Judicature Act, 1875, introduced the provisions as to preferential payments contained in the various Bankruptcy Acts into the winding-up of an insolvent company (*r*).

Under the section above set out, where rates are payable in advance, they will have to be paid in full for the quarter during which the winding-up commences or the winding-up order is made (*t*), where they are not payable in advance they will have to be apportioned down to that date (*u*). The law apart from this section would appear to be that there will be no priority for rates payable

(*q*) Companies (Consolidation) Act, 1908, s. 240. S. 241 of the Act provides that in such companies contributions of miners, artizans, or labourers for the purpose of a mine club, or accident or sick or benefit fund are not to be deemed to be or to be applied as part of the assets of the company in liquidation of the debts of the company or otherwise, but must be accounted for by the purser or any other person in possession of the fund to the liquidator, and are recoverable by him and must be applied by him in accordance with the rules of the club. If the company is being wound up voluntarily, the liquidator or any person claiming to be entitled to any such contributions or fund may apply to the Court for directions or to determine any question arising in the matter in the same manner as if the company were being wound up by the Court.

(*qq*) National Insurance Act, 1911, s. 110 (2). S. 9 of the Stannaries Act, 1887, is repealed by the Companies (Consolidation) Act, 1908, its provisions being substantially re-enacted by s. 240 of that Act.

(*r*) *Re Heywood*, [1897] 2 Ch. 593; and see *Albion Steel and Wire Co.* (1878), 7 C. D. 547; *Association of Land Financiers* (1881), 16 C. D. 373.

(*t*) *Mannesmann Tube Co.*, [1901] 2 Ch. 93; *Re Thomas* (1888), 57 L. J. (Q. B.) 39.

(*u*) *Mannesmann Tube Co.*, [1901] 2 Ch. 93.

before a winding-up, and no distress will be allowed for them, moreover, where they are payable in advance and the winding-up commences in the middle of a period there can be no apportionment, and the whole amount will be treated as being payable before the commencement of the winding-up, the occupation of the liquidator being the occupation of the company. With regard to rates payable after the winding-up, on the other hand, distress will be allowed for these as part of the costs of the liquidation, and they must consequently be paid in priority if there has been a beneficial occupation by the liquidator (*x*). Anything that will be a beneficial occupation for the purposes of the rating acts (*y*) will also be a beneficial occupation for the purposes of this rule (*z*). Where a receiver was appointed in a debenture-holder's action and was by the order appointing him not directed to take possession, and a distress was put in for the whole of the parish rates during the half-year in which the appointment was made, it was held that there was no change of occupation, and as there was only a floating charge on the goods distrained on, leave was given in the action to proceed with the distress (*a*). As a rule the Court will not go into the amount of the assessment where the liquidator has not appealed from it (*b*), on the other hand, in a somewhat earlier case where a receiver appointed by debenture-holders took possession, it was held that there had been a change of occupation, although the receiver was the agent of the company, and that he was therefore only liable to pay an apportioned part of the rate from the time when he went into possession (*c*).

A receiver and manager who was appointed by the Court in a debenture-holder's action and directed to take possession was held not entitled to prevent an electric light company from cutting off his supply on the ground that if there had been a change of occupation he was not entitled to be supplied without entering into a fresh contract, and if there had been no change of occupation, he must pay the arrears of the mortgagor company (*d*). And a receiver and manager originally appointed by the trustees of a trust deed, but

(*x*) *Wearmouth Crown Glass Co.*, (1882), 19 C. D. 640.

(*y*) See *Borwick* v. *Southwark Corporation*, [1909] 1 K. B. 78, as to what amounts to beneficial occupation for the purposes of the rating Acts.

(*z*) *International Marine Hydropathic Co.* (1884), 28 C. D. 470; *National Arms and Ammunition Co.* (1885), 28 C. D. 474; *Blazer Fire Lighter, Ltd.*, [1895] 1 Ch. 402. In the two later cases *West Hartlepool Iron Co.* (1876), 34 L. T. 568, and *Watson, Kipling & Co.* (1883), 23 C. D. 500, were treated as doubtful and not followed.

(*a*) *Marriage, Neave & Co.*, [1896] 2 Ch. 663, followed in *Crosbie, Ltd.* (1910), 74 J. P. 25.

(*b*) *National Arms and Ammunition Co.* (1885), 28 C. D. 474.

(*c*) *Richards* v. *Overseers of Kidderminster*, [1896] 2 Ch. 212. This case seems scarcely reconcilable with *Marriage, Neave & Co.*, [1896] 2 Ch. 663.

(*d*) *Husey* v. *London Electric Supply Corporation*, [1902] 1 Ch. 411.

afterwards continued by the Court, had no higher rights against a gas company than the mortgagor company had. In this case, under the Act regulating the gas company, the receiver had to show he was an incoming tenant to be entitled to a supply without paying the company's arrears (*e*).

It has been held that a water company is not entitled to cut off supply because a trustee in bankruptcy has not paid arrears due from the bankrupt, the trustee being an incoming tenant within the meaning of the Acts (*f*). This decision would, however, probably not be applicable to a liquidator, though it might well be so in the case of a receiver.

Turning to the question of King's Taxes, the Crown is not bound by a statute unless by express mention or necessary implication, and it followed that, at all events, prior to the Judicature Act, 1875, it was not bound by the Companies Acts then in force, and no right of distress or execution or otherwise which it then had was taken away by those Acts. It had also a further prerogative which was likewise untouched, viz. that its right prevailed when in competition with subjects (*g*). Section 10 of the Judicature Act, 1875, left the former prerogative, at all events, untouched, though it may have affected the latter (*h*). The effect of section 209 raises a further question. So far as the order of administration goes, the view taken in *Re Galvin* (*i*), viz. that the order will be (1) preferred debts; (2) Crown debts other than those which are preferred by the section; and (3) other debts, would seem to be right. But does the section take away the Crown's remedy by distress execution or otherwise? It was held in *Richards* v. *Overseers of Kidderminster* (*j*) that these provisions only amounted to a direction to the liquidator as to the mode in which the assets in his hands were to be distributed, and that they did not affect persons claiming not in the winding-up, but under securities given by the company. And it was said in another case (*k*) that where the Crown exercised its prerogative the assets of the company were its assets less that portion of them taken away

(*e*) *Paterson* v. *Gas Light and Coke Co.*, [1896] 2 Ch. 476.

(*f*) *Re Flack*, [1900] 2 Q. B. 32; cp. *Re Smith*, [1893] 1 Q. B. 323.

(*g*) *Re Henley & Co.* (1878), 9 C. D. 469, which would seem to overrule *Regent's United Service Stores* (1878), 38 L. T. 130.

(*h*) *Re Oriental Bank Corporation, Ex parte The Crown* (1884), 28 C. D. 643.

(*i*) [1897] 1 Ir. 520. The distinction between this case and *New South Wales Taxation Commissioners* v. *Palmer*, [1907] A. C. 179, is obvious. In the former case the word "debts" in the expression "in priority to all other debts" was taken to include Crown debts because some of the debts preferred were Crown debts.

(*j*) [1896] 2 Ch. 212, at p. 217. See now as to debts secured by a floating charge Companies (Consolidation) Act, 1908, s. 107.

(*k*) *Oriental Bank Corporation, Ex parte The Crown* (1884), 28 C. D. 643.

by the Crown. Under these circumstances it is submitted that this section does not interfere with the remedies of the Crown by way of distress, execution, etc. The prerogative of the Crown in the Colonies would appear to be the same as its prerogative here (*l*).

The Board of Trade have issued the following regulations and forms as approved by themselves and the Inland Revenue Commissioners.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Regulations approved by the Board of Trade and the Commissioners of Inland Revenue as to King's Taxes assessed on Companies wound-up by the Court.

1. Where a winding-up order is made on or after the 1st December in the year of assessment, or the Official Receiver or Liquidator remains in possession of the premises in respect of which King's Taxes are assessed under a winding-up order made prior to the 1st December, until the 1st January next following, the Collector shall be entitled to prove for the said taxes, viz.: the Income Tax (Schedule "A"), Inhabited House Duty and Land Tax, assessed on the Company up to the 5th April next following the date of the winding-up order, in the same manner as if such taxes had become due and payable at the date of the winding-up order, and such proof shall rank for dividend.

2. Where a winding-up order is made prior to the 1st December in the year of assessment, the Inland Revenue authorities will make no claim on the Official Receiver or Liquidator for Income Tax (Schedule "A"), Inhabited House Duty and Land Tax for the year ending 5th April next following the date of the winding-up order, unless the Official Receiver or Liquidator remains in possession of the premises in respect of which the taxes are assessed until the following 1st January.

3. Where the Official Receiver or Liquidator disposes of a business as a going concern, he will allow to the purchaser the proportion of the Income Tax (Schedule "A") and Land Tax for the current year to the date of the completion of the purchase, and the purchaser will become liable to the Inland Revenue authorities for the taxes in question for the whole year.

4. PROVIDED ALWAYS that nothing in these Regulations shall be deemed to interfere with the right of the Crown to enforce payment of Income Tax (Schedule "A") and Land Tax *actually due and payable*, by distress levied on the property of the Company. These taxes for the year ending 5th April next following the date of the winding-up order should, therefore, be dealt with on the footing of "secured" debts, and be paid by the Official Receiver or Liquidator on demand without any proof on the part of the Collector, if on or after the 1st January in the year of assessment there are on the premises sufficient goods belonging to the Company on which the Collector might levy, and notice of any such claim should be given to the Official Receiver or Liquidator by the Collector forthwith upon the making of the winding-up order. If at such time there are no

(*l*) *Oriental Bank Corporation, Ex parte The Crown* (1884), 28 C. D. 643.

goods upon which distress can be levied, proof of the debt may be made by the Collector as directed in paragraph 1, and such proof shall, if found correct, be admitted to rank for dividend.

In like manner any Income Tax (Schedule " A ") and Land Tax assessed on the Company up to the 5th April next *before* the date of the winding-up order should be dealt with as secured debts if there are at the time of the Collector's demand sufficient goods on the premises on which he might levy. If there are no such goods proof of the debt may be made by the Collector, and such proof shall, if found correct, be admitted as a preferential claim in so far as it relates to taxes payable in full under section 209 (1) (*a*) of the Companies (Consolidation) Act, 1908, and as ranking for dividend for any part thereof not so payable in full.

Where Income Tax is outstanding under Schedules " B," " D " or " E " the Inland Revenue authorities will, on receipt of an affidavit by the Secretary or other officer of the Company, with a certificate by the Official Receiver or Liquidator, setting out that no income taxable under such Schedule has been made, forego all claim to payment of the tax, whether the same is payable in full under section 209 (1) (*a*) of the Companies (Consolidation) Act, 1908, or otherwise, but the waiver of claim under this Regulation shall not embrace rents, royalties, interest of money, or annuities, or fees, or salaries, from which deductions have been made on account of Income Tax.

In cases where an affidavit by the Secretary or other officer of the Company cannot be obtained, the certificate of the Official Receiver or Liquidator may be accepted as sufficient evidence.

Board of Trade,
Companies Department,
27, Great George Street,
Westminster, London, S.W.

MODEL FORM OF CLAIM FOR RELIEF FROM PAYMENT OF INCOME TAX, SCHEDULES " B," " D," OR " E."

* The words in brackets to be left out in claims under Schedule " B " or " E."

† The words " By the said Company " to be left out in cases of of Schedule " E." Assessment on Fees, Salaries, etc., paid to Directors, etc.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

In the Matter of Limited.

the of the above-named Company, do HEREBY make oath and say as follows :—

1. That * [by virtue of an Act of Parliament, 5 & 6 Vict. cap. 35, section 134] * the said Company is justly and truly entitled to be relieved of the payment of the sum of £ , being the amount of Income Tax charged to the said Company under Schedule from the 6th April, 1 , to the 5th April, 1 , the ground for exemption being that no income taxable under the said schedule has been made † *by the said Company* † during the aforesaid period.

Sworn at in the county of
this day of 19 .
Before me,

‡ Secretary or other Officer.
§ Trading or farming operations, or income from other sources.
|| "Any income" *or* "any income liable to taxation under Schedules 'B,' 'D,' or 'E.'"
¶ See above.

I HEREBY CERTIFY that from an examination of the ‡ of the above-named Company (which Company is now being wound-up under an order made on the day of 190) and of such of the books and accounts produced to me as show the § of the said Company during the period referred to in the above Affidavit, it does not appear that || was made ¶ *by the said Company* ¶ during such period, and therefore the assets of the said Company should be relieved from the payment of £ , being the amount of Income Tax claimed under Schedule .

Dated this day of 19 .

Official Receiver or Liquidator.

Address.

The question of what persons are clerks, servants, workmen, or labourers, is one which has frequently been raised, but owing to changes in the wording of the different enactments on the subject, the decisions under the old Bankruptcy Acts are not all applicable. Thus the old decisions (*m*) that the employment must be of a more or less permanent nature and that a mere weekly hiring would not do, founded as they were on the words of the earlier statutes, would appear to be gone (*n*).

A managing director is not within the statute (*o*), for he is in no sense a servant. A secretary, on the other hand, will usually be so (*p*), but not, apparently, where it is not his duty to render the services himself, but rather to provide services or see that they are performed, and he is not bound to give much of his time to the company's business (*q*). An analytical chemist employed at a fixed salary, who has to attend at fixed hours and is subject to the orders of the company, is a servant (*qq*). On the one hand, a foreman and overworker of a brickyard engaged by the week on the terms of being paid so much per 1000 bricks, and who did not select but did pay the men, was held to be a workman and not an independent contractor (*r*). On the other hand, it was held in an old case that there was no debt between a drawer employed by a collier and the person owning and working the colliery (*s*).

A clerk has been held to be entitled to prove although he was entitled to a share of any profits that might come out of a patent his master was engaged on (*t*), and in another case (*u*), although he

(*m*) *Ex parte Crawfoot* (1831), Mont. 270; *Ex parte Grellier* (1831), Mont. 264; *Ex parte Collyer* (1834), 2 Mont. & A. 29; *Ex parte Skinner* (1833), 3 D. & C. 332.

(*n*) *Ex parte Hollyoak* (1887), 4 Mor. 63; and see also *Ex parte Allsopp* (1875), 32 L. T. 432.

(*o*) *Newspaper Proprietary Syndicate*, [1900] 2 Ch. 349.

(*p*) *Ex parte Pelly* (1884), 50 L. T. 754; *Ex parte Green* (1849), 13 Jur. 275.

(*q*) *Cairney* v. *Back*, [1906] 2 K. B. 746.

(*qq*) *S. H. Morison and Co.* (1912), 132 L. T. Jo. 575. The company was not the sole employer.

(*r*) *Ex parte Hollyoak* (1887), 4 Mor. 63; 35 W. R. 396; and see also *Ex parte Allsop* (1875), 32 L. T. 432.

(*s*) *Ex parte Ball* (1853), 3 De G. M. & G. 155.

(*t*) *Ex parte Hickin* (1850), 3 De G. & Sm. 662.

(*u*) *Ex parte Harris* (1845), 1 De G. 165.

had lent money to his master, was entitled to an account and had an option of becoming a partner.

A ship's mate has been held to be the servant of a person who was alike part owner of the ship and ship's master (*x*), and a commercial traveller would appear to be a servant (*y*), but, on the other hand, a dancing master and a drill sergeant employed by the lesson have been held not to be servants (*z*), and an accountant who gave up all his time as a book-keeper to a business man was held not to be clerk or servant (*a*). The wages for which there can be proof under the section must be for services rendered in the four or two months, as the case may be, immediately preceding the date referred to in the section (*b*).

Commission paid to a commercial traveller will be wages (*c*), and also sums paid to workmen and calculated on the basis of the total output in the yard (*d*); where sums have, having regard to the Truck Acts, been improperly deducted, they can be recovered as unpaid wages (*e*). The position of servants, clerks, and other employees of a company on the making of a compulsory order is that such order operates as a notice of dismissal to them as from the date of the order, and any right they may have to notice runs from that date (*f*). If the liquidator employs them in the winding-up it may be that a fresh contract for employment by the liquidator on the same terms as the previous employment by the company may be inferred (*g*), but this will not ordinarily be the case (*h*). In a voluntary winding up, on the other hand, it has been held the resolution will not have the effect of a notice of dismissal (*i*).

It would seem, too, that a director or other agent of a company who has an agreement in writing for a fixed term of years with the company will be entitled to prove in a winding-up at all events where it is compulsory (*k*). Where such a person is paid under the

(*x*) *Ex parte Homborg* (1842), 2 Mont. D. & D. 642.

(*y*) *Ex parte Neal* (1829), 2 Mont. & M'Ar. 194; *Re Klein* (1906), 22 T. L. R. 664.

(*z*) *Re Heath* (1873), 15 Eq. 412.

(*a*) *Ex parte Butler* (1857), 28 L. T. (o. s.) 375; and see *Ex parte Oldham* (1858), 32 L. T. (o. s.) 181.

(*b*) *Ex parte Fox* (1886), 17 Q. B. D. 4.

(*c*) *Re Klein* (1906), 22 T. L. R. 664.

(*d*) *Earle's Shipbuilding and Engineering Co.*, [1901] W. N. 78.

(*e*) *Ex parte Cooper* (1884), 26 C. D. 693.

(*f*) *Chapman's Case* (1866), 1 Eq. 346; *Macdowall's Case* (1886), 32 C. D. 366; *Midland Counties District Bank* v. *Attwood*, [1905] 1 Ch. 357: *Measures* v. *Measures*, [1910] 1 Ch. 336; [1910] 2 Ch. 248.

(*g*) *Harding's Case* (1867), 3 Eq. 341.

(*h*) *Macdowall's Case* (1886), 32 C. D. 366.

(*i*) *Midland Counties District Bank* v. *Attwood*, [1905] 1 Ch. 357; but cp. *Sheriff's Case* (1872), 14 Eq. 417; *Ex parte Schumann* (1887), L. R. 19 Ir. 240. These cases are discussed more fully in the chapter on voluntary winding-up, *infra*, pp. 1275 and 1276; it is there suggested that the first of them is doubtful law.

(*k*) *Measures* v. *Measures*, [1910] 1 Ch. 336; [1910] 2 Ch. 248.

agreement a fixed salary, the usual principle for computing what the right proof will be, is to ascertain what it would cost to purchase an annuity equal to the salary for the unexpired period of the contract due allowance being made for the power of a person who could not previously to the winding-up take other employment, being able to do so (*l*). Where, however, a definite sum is to be paid on ceasing to employ a person, such sum will be the amount to be proved for (*m*); whether an employee of a company who is to be paid by commission can prove for loss of commission by reason of the company having ceased to carry on business, would seem to turn on the terms of the contract in each case, but, as a rule, it is submitted that there can be proof for loss of such commission (*n*). Except under exceptional circumstances (*o*) there can be no claim for loss of employment where a man is paid by a fixed salary and the employer is willing to continue that salary (*p*). The fact that bills have been drawn in a foreign currency which has since depreciated will not prevent proof for the sum due in English currency if the bills have not been paid (*q*). The Workmen's Compensation Act, 1906, provides (*r*) that where any employer has entered into a contract with any insurers in respect of any liability under that Act to any workman, then in the event of the employer, if a company having commenced to be wound up, the rights of the employer against the insurers as respects that liability will, notwithstanding anything in the enactments relating to the winding up of companies, be transferred to and vest in the workman, and upon any such transfer

(*l*) *Yelland's Case* (1867), 4 Eq. 350, where there was also proof for loss of residence during the unexpired period. See also *Ex parte Clark* (1869), 7 Eq. 550; and *Addis* v. *Gramophone Co.*, [1909] A. C. 488. As a rule winding-up will release a servant or agent of a company from a contract restraining him from carrying on business after the termination of his employment: *Measures* v. *Measures*, [1910] 2 Ch. 248.

(*m*) *Logan's Case* (1870), 9 Eq. 149.

(*n*) See *Ex parte MacClure* (1870), 5 Ch. 737; *Dean and Gilbert's Claim* (1872), 41 L. J. (CH.) 476; *Ogdens, Limited* v. *Nelson*, [1905] A. C. 109; *Turner* v. *Goldsmith*, [1891] 1 Q. B. 544; *Devonald* v. *Rosser*, [1906] 2 K. B. 728; cp. also *Railway and Electric Appliances Co.* (1888), 38 C. D. 597, where liquidation made it impossible to work a patent.

(*o*) See *Bunning* v. *Lyric Theatre* (1895), 71 L. T. 396.

(*p*) *Turner* v. *Sawdon & Co.*, [1901] 2 K. B. 653.

(*q*) *Taltal Chile Nitrate Co.* (1896), 73 L. T. 422.

(*r*) S. 5. The section also provides that where the compensation is a weekly payment the amount due in respect thereof shall for the purposes of this provision be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to the Act (*i.e.* the Workmen's Compensation Act, 1906). There is also a provision in the section for the purpose of giving priority in the Stannaries.

the insurers will have the same rights and remedies and be subject to the same liabilities as if they were the employer, but the insurers will not be under any greater liability to the workman than they would have been under to the employer.

If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the liquidation. This provision does something more than put the workman into the shoes of his employer, it does that, and it also prevents any claim to the fund by the general creditors of the company. The workman will, however, have no higher rights against the insurers than his employer had, and he will be bound to submit to arbitration any claim which it would have been necessary for his employer to submit (*s*).

ORDINARY UNSECURED DEBTS.

As a general rule, all debts other than secured debts will since the introduction into winding-up of the bankruptcy rules rank *pari passu* (*t*). The preferential debts above mentioned form an exception to this rule. Further, no debts whether carrying interest at law or not, will carry interest after the date of the commencement of the winding-up unless there is a surplus (*u*); where the assets of the company are more than sufficient to pay all moneys due at the date of the winding-up and interest on all such debts as bear interest, such interest will be paid from the date of the commencement of the winding-up, all dividends paid during the course of the winding-up being treated as ordinary payments on account and being applied in the first place in payment of the interest due at the date of such dividend, and the surplus, if any, being applied in reduction of principal (*u*). No proof will be necessary for interest after the commencement of the winding-up; the creditor, if his debt is one that bears interest, gets it, if there is a surplus, as incidental to his debt (*x*). With regard to debts which do not bear interest at law some difficulty seems to be introduced by the case of *Re Whitaker* (*y*). Apart from the cases where the bankruptcy provisions apply, it would seem to be clear that such debts do not in winding-up bear interest (*z*), but *Re Whitaker* (*y*)

(*s*) *King* v. *Phœnix Assurance Co.*, [1910] 2 K. B. 566.

(*t*) *Leinster Contract Corporation*, [1903] 1 Ir. 517; *Re Whitaker*, [1901] 1 Ch. 9; *Re Leng*, [1895] 1 Ch. 652; *McCausland* v. *O'Callaghan*, [1904] 1 Ir. 376. Since these cases *Re Maggi* (1882), 20 C. D. 545, cannot be looked on as law.

(*u*) *Warrant Finance Co.'s Case* (1869), 4 Ch. 643. Even before the Judicature Act, 1875, the law on this point was the same in winding-up as in bankruptcy: *ibid.* See also *Ebbw Vale Co.'s Case* (1869), 5 Ch. 112; see as to interest to the date of winding-up: Companies (Winding-up) Rules, 1909, r. 97, *post*, p. 1240.

(*x*) *Re Whitaker*, [1904] 1 Ch. 299; *W. W. Duncan & Co.*, [1905] 1 Ch. 307; *Thomas Salt Co.* (1908), 98 L. T. 558.

(*y*) [1904] 1 Ch. 299.

(*z*) *Hatfield Patent Cask Co.* (1863), 2 N. R. 502; *Herefordshire Banking Co.* (1867), 4 Eq. 250; *East of England Banking Co.* (1868), 4 Ch. 14.

decides that where the assets are insufficient to pay all principal moneys and interest, the bankruptcy rules which give interest at 4 per cent. per annum on all debts proved, apply. It was, however, a case which arose in the administration of an insolvent estate and not in the winding-up of an insolvent company, and it is submitted that it has no application to the latter case (*a*).

The debts which will carry interest at law are (1) those where there is a contract to pay interest including the cases where by the course of dealing between the parties (*b*) or by mercantile custom (*c*), a contract to pay interest will be inferred; and (2) cases where a jury could under 3 & 4 Will. IV. c. 42, s. 28, allow interest to a creditor. The cases under this section are cases where there is a debt or sum payable at a certain time by virtue of some written instrument (*d*), and where a demand has been made in writing requiring payment and giving notice to the debtor that interest will be claimed from the date of such demand until payment (*e*).

Apparently a demand may be made under the section after a company is in liquidation (*f*). (3) A third case where interest can be proved for if there is a surplus, would be the case of a judgment (*g*). Where the debt in respect of which the judgment is obtained does not carry interest at 4 per cent., but at some other rate, the question will arise whether the interest will as from the date of the judgment be payable at 4 per cent. or at such other rate. This is a question which will be decided on the construction of the instrument giving the interest: where the covenant for payment of interest is incidental to the covenant for payment of principal moneys it will be merged in the judgment, in other cases it will not (*h*).

(4) Interest may also be given over and above the value of the goods at the time of the conversion or seizure in all actions of trover or trespass *de bonis asportatis* and over and above the money recoverable in all actions on policies of assurance (*i*).

(*a*) Cp. *Re Welton*, [1899] 1 Ch. 108; *W. W. Duncan & Co.*, [1905] 1 Ch. 307. The rule would scarcely seem to be one as to "debts provable" within s. 207 of the Act, seeing that, as already stated, no proof for such interest is required.

(*b*) *W. W. Duncan & Co.*, [1905] 1 Ch. 307.

(*c*) *Warrant Finance Co.'s Case* (1869), 4 Ch. 643.

(*d*) See *Ex parte Kemp*, [1894] 3 Ch. 690.

(*e*) Cp. *London, Chatham, and Dover Railway Co.* v. *South Eastern Railway*, [1893] A. C. 429; *Times Insurance Co.'s Claim* (1864), 2 H. & M. 722.

(*f*) *East of England Banking Co.* (1868), 4 Ch. 14; but cp. *Herefordshire Banking Co.* (1867), 4 Eq. 250; and see Buckley, 9th Ed. p. 472.

(*g*) 1 & 2 Vict. c. 110, s. 17.

(*h*) *Economic Life Assurance Society* v. *Usborne*, [1902] A. C. 147; *Agriculturist Cattle Insurance Co.* (1872), 4 C. D. 34 n.; *European Central Railway* (1876), 4 C. D. 33; *Popple* v. *Sylvester* (1882), 22 C. D. 98; *Ex parte Fewings* (1884), 25 C. D. 338; *Arbuthnot* v. *Bunsilall* (1890), 62 L. T. 234.

(*i*) 3 & 4 Will. IV. c. 42, s. 29.

(5) Interest can also be allowed in respect of moneys fraudulently obtained (*k*). The rate of interest will where it is reserved by contract be the rate reserved by the contract (*l*). Where it is given under 3 & 4 Will. IV. c. 42, the Court has frequently given interest at 5 per cent., but the regular rule would seem to be that interest should be given according to the current rate at the time (*m*). A surety paying money for a company will be in no worse position than a stranger, and he will be entitled to receive the usual rate of interest even in cases where the debt he guaranteed bore a lower rate of interest (*n*).

On the other hand a surety who, in the course of a winding-up has paid a debt of the company and interest thereon pursuant to his guarantee cannot recover such interest, unless the assets of the company are more than sufficient to pay all principal moneys due from the company in full, his right is to prove for his liability as it stood at the commencement of the winding-up (*o*).

The rule as to no interest being payable where there is no surplus, applies not merely in a compulsory winding-up, but also in winding-up subject to supervision (*p*) and a voluntary winding-up (*q*). It does not, however, prevent a creditor who has security on property not belonging to the company from paying himself his interest out of that security and proving against the company for the debt (*r*), and the same principle applies where two insolvent parties are liable to the creditor (*s*). Further, the holder of a bill cannot be required to give it up until he has been paid principal and interest in full (*t*). There is, however, apparently one case where future interest can be proved for in spite of the fact that there is no surplus, and that is where the debt carries interest and is not immediately payable at the time of the commencement of the winding-up. In such cases the creditor will prove for the debt as if it were immediately payable, but

(*k*) See *Johnson* v. *Rex*, [1904] A. C. 817; and see also *Mackintosh* v. *Great Western Railway Co.* (1865), 4 Giff. 683; *Karberg's Case*, [1892] 3 Ch. 1.

(*l*) This of course assumes that the contract is not merged in a judgment; and see also the Money-lenders Act, 1900. In *East of England Banking Co.* (1868), 4 Ch. 14, a resolution of directors to raise the rate of interest allowed on the deposits was held not binding because it was not communicated to the depositors and interest was therefore only allowed at the original rate.

(*m*) *London, Chatham, and Dover Railway Co.* v. *South Eastern Railway*, [1892] 1 Ch. 120; [1893] A. C. 429.

(*n*) *Sargood's Claim* (1873), 15 Eq. 43.

(*o*) *Hughes' Claim* (1872), 13 Eq. 623, as to premiums on policies; see *Re Moss*, [1905] 2 K. B. 307.

(*p*) *Colborne and Strawbridge's Case* (1870), 11 Eq. 478.

(*q*) *Thomas Salt & Co.* (1908), 98 L. T. 558.

(*r*) *Warrant Finance Co.'s Case* (*No.* 2) (1869), 5 Ch. 88.

(*s*) *Warrant Finance Co.'s Case* (1869), 5 Ch. 86.

(*t*) *Warrant Finance Co.'s Case* (1870), 10 Eq. 11.

must deduct a rebate at the rate of 5 per cent. per annum (*u*) from the time when the dividend was declared to the time when the debt would have become payable according to the terms on which it was contracted, he then proves for future interest at 5 per cent., if that is the rate provided by his contract, or perhaps though there would seem to be some doubt as to this, at a higher rate if his contract allows of a higher rate. If his contract allows of a lower rate only he will only be allowed to prove at such lower rate. The proof for interest and the rebate will extinguish one another if the interest is at the rate of 5 per cent. (*x*).

CROWN DEBTS.

Crown debts are entitled to priority in a winding-up, at all events after payment of the preferential debts mentioned in the Act (*y*). It is doubtful whether this has been in any way altered by section 10 of the Judicature Act, 1875, but, at all events, there has been no statutory alteration in the Crown's prerogative right of issuing process (*z*). The Crown's prerogative is applicable where any person receives money knowing that such money does or may belong to the Crown (*a*), and a surety for a Crown debt who has paid the debt of his prinicpal will be entitled to stand in the Crown's shoes (*b*).

JUDGMENT DEBTS AND VOLUNTARY DEBTS.

Section 207 of the Companies (Consolidation) Act, 1908, like section 10 of the Judicature Act, 1875, which it replaced, does not simply deal with the proof of debts (*c*). It brings into the winding-up of insolvent companies, all rules with regard to debts and liabilities provable which are for the time being in force in bankruptcy. The section, therefore, deprives judgment creditors of the priority which they formerly enjoyed in winding-up (*d*), and allows voluntary debts to participate with debts for valuable consideration (*e*).

BILLS OF EXCHANGE.

Bills of Exchange stand on a special footing (*e*). A holder may prove in the bankruptcies or windings-up of all prior parties, the only limitation being that he cannot receive more than 20*s*. in the £ (*f*); but if, at the date of proving (*g*), he has received a dividend in any such bankruptcy or winding-up, he can only prove for the balance due to him.

(*u*) See Companies (Winding-up) Rules, 1909, r. 98, *post*, p. 1240.

(*x*) *Ex parte Ador*, [1891] 2 Q. B. 574.

(*y*) See *supra*, pp. 1216 and 1217.

(*z*) *Henley & Co.* (1878), 9 C. D. 469; *Oriental Bank Corporation* (1884), 28 C. D. 643.

(*a*) *West London Commercial Bank* (1888), 38 C. D. 364.

(*b*) *Manisty* v. *Churchill* (1888), 39 C. D. 174.

(*c*) *Re Whitaker*, [1901] 1 Ch. 9; *Re Leng*, [1895] 1 Ch. 652.

(*d*) *Leinster Contract Corporation*, [1903] 1 Ir. 517; *M'Causland* v. *O'Callaghan*, [1904] 1 Ir. 376; *Re Maggi* (1882), 20 C. D. 545, is overruled by the cases mentioned in the last preceding note.

(*e*) See *Re Blackburne* (1892), 9 Mor. 249.

(*f*) See *Warrant Finance Co.'s Cases* (1869), 5 Ch. 86; 5 Ch. 88; and 10 Eq. 11, *supra*. p. 1212.

(*g*) See *Ligoniel Spinning Co.*, *Ex parte Bank of Ireland*, [1900] 1 Ir. 324; *Maxoudoff's Case* (1868), 6 Eq. 582.

Payments made after the proof has been filed do not count for this purpose (*h*). This brings us to the rule in *Re Waring* (*i*). By this rule it is laid down that if the drawer of a bill has given security to the acceptor, and both become bankrupt or the affairs of both become subject to some system of compulsory liquidation, the holders of the bills accepted or if the security has been given to meet particular bills, the holders of such bills will be entitled to the benefit of these securities (*k*), but they will only be entitled to such benefit on the terms of proving for the balance after the security has been realized (*l*). The rule is fully discussed in *Ex parte Dever, Re Suse* (*No.* 2) (*m*).

If the holder of a bill has proved in the estate of both drawer and acceptor and has received dividends which exceed the value of the security received by the acceptor he will not, in addition, be entitled to the benefit of such security (*n*). A person who has deposited bills to meet acceptances by a company cannot if those bills have been properly discounted before the winding-up, follow the proceeds if the acceptances are not met (*o*).

Even apart from section 10 of the Judicature Act, 1875, it would appear that a person who is entitled to the benefit of a security for the due payment of a bill of exchange which the company has accepted or agreed to accept, can only prove for the difference between the value of the security and the sum due in respect of the bill of exchange if the security to which he is entitled is a security which has been given to the company for the purpose of covering its liability on the bill of exchange (*p*). But the company cannot require any money that a holder has received in respect of such a security to be set off against the dividends to which the holder is entitled (*q*).

In winding-up, as in bankruptcy, double proof will not be allowed, and so where the holder of a bill has proved in the winding-up of both the drawer and acceptor, the latter will only be entitled to receive in the winding-up of the former such a sum as with the sum

(*h*) *Cooper* v. *Pepys* (1741), 1 Atk. 106; *Ex parte Wyldman* (1750), 2 Ves. Sen. 113; *Ex parte Taylor* (1857), 1 De G. & J. 302; *Ex parte Cama* (1874), 9 Ch. 686.

(*i*) (1815), 19 Ves. 345.

(*k*) See *Ex parte Dever, Re Suse* (*No.* 2) (1885), 14 Q. B. D. 611.

(*l*) *Barned's Banking Co., Ex parte Joint Stock Discount Co.* (1875), 10 Ch. 198.

(*m*) (1885), 14 Q. B. D. 611. The rule does not apply in Scotland: *Royal Bank of Scotland* v. *Commercial Bank of Scotland* (1882), 7 A. C. 366. It also does not apply where one of the parties is in a position to manage his own affairs, though insolvent: *General South American Co.* (1875), 10 Ch. 635.

(*n*) *Loder's Claim* (1868), 6 Eq. 491.

(*o*) *Gothenberg Commercial Co.* (1881), 44 L. T. 166.

(*p*) *Coupland's Claim* (1870), 5 Ch. 167; *Leech's Claim* (1871), 6 Ch. 388.

(*q*) *Leech's Claim* (1871), 6 Ch. 388.

paid to the holder is equal to the dividends paid to the other creditors of the company (*r*).

The question of when a company can issue a bill of exchange, and who are the persons entitled to bind the company by means of a bill of exchange has already been dealt with (*rr*). It would appear that where a company has had the benefit of a bill of exchange the holders of the bill will to the extent that they have advanced money of which the company has had the benefit, be entitled to prove for their advances (*s*). Where an unincorporated company consisting of several firms is being wound-up there can be no proof on a bill drawn by one of the firms and accepted by another unless each of the firms has authorized either the drawer or the acceptor to use its name as part of the name of the whole company (*t*).

The fact that a bill has been accepted from a third person for a debt of the company will usually not relieve a company from liability until actual payment has been made (*u*).

Where the same man is secretary of two companies, one of which has indorsed a bill to the other, it would seem that it will be unnecessary for him to give formal notice of dishonour to the indorser, such notice will be presumed where he owes a duty to the indorsee company to give the notice and to the indorser company to accept it (*x*).

The drawer of a bill who has been called on to pay on the non-acceptance by a company can prove for the expenses of protest for non-payment, but not for the expenses of protest for better security nor for commission charged by his bank for accepting the bill (*y*).

Where a company has deposited debentures for the purpose of securing the payment of a bill of smaller amount than the debentures, the holder of the bill will, it would seem, not be entitled to prove in the winding-up for an amount in excess of the amount of the bill (*z*).

A surety for a company will be entitled to prove and is a creditor in the winding-up, even though he has not been called on to pay anything (*a*).

(*r*) *Oriental Commercial Bank, Ex parte European Bank* (1871), 7 Ch. 99.

(*rr*) See *supra*, pp. 63, 67, and 322 *et seq.*

(*s*) See *Ex parte Birmingham Banking Co.* (1868), 3 Ch. 651; *Japanese Curtains and Patent Fabrics Co.* (1880), 28 W. R. 339.

(*t*) *Adansonia Fibre Co.* (1874), 9 Ch. 635.

(*u*) *Pearse's Claim* (1869), 8 Eq. 506.

(*x*) *Deep Sea Fishery Co.'s Claim*, [1902] 1 Ch. 507; *David Payne & Co.*, [1904] 2 Ch. 608.

(*y*) *English Bank of the River Plate*, [1893] 2 Ch. 438; and see s. 57 of the Bills of Exchange Act, 1882, and *Re Gillespie* (1887), 18 Q. B. D. 286 as to damages for re-exchange.

(*z*) *Blakely Ordnance Co., Metropolitan and Provincial Bank's Claim* (1869), 8 Eq. 244; but see *Warrant Finance Co.'s Claim (No. 2)* (1869), 5 Ch. 88; and as to the right of such a person in a debenture-holder's action, *Regent's Canal Ironworks Co.* (1876), 3 C. D. 43; and *supra*, pp. 457 and 458.

(*a*) *Wolmerhausen* v. *Gullick*, [1893] 2 Ch. 514; *Re Paine*, [1897]

Where a solicitor has acted for a company before liquidation and a proof is made in a compulsory liquidation for the amount of his bill of costs, the official receiver or liquidator sends such bill of costs to the Registrar of Companies (Winding-up) with a letter asking him to go through the bill and state what is a fair and proper allowance in respect thereof (*b*). The Registrar does as requested, and either endorses the result on the bill or issues an allocatur in a form similar to that used for allowance of costs but adapted to meet the case. Where such a claim is made in a non-compulsory liquidation, the liquidator can probably tax the bill under the Solicitors Act, 1843 (*c*), if it has not been delivered more than a year before liquidation (*d*), but the usual course is to allow him to prove, and in case of dispute to tax the disputed items (*e*).

PROOF BY LANDLORD OR ASSIGNOR OF LEASE.

The position of a lessor to a company or of a person who has assigned a lease to a company and has received the usual indemnity against non-payment of rent and breaches of covenant is, where the company goes into winding-up, one which is not definitely settled.

In bankruptcy it would appear the landlord or the assignor could prove, and it would be the duty of the trustee to make an estimate of the loss he has suffered, for such loss cannot be said to be incapable of being ascertained seeing that an arbitrator could and would ascertain it if there were a contract for release of liability (*f*).

In winding-up the earlier cases would seem to establish the right of the lessor or assignor to enter a claim (*g*), but they would also seem to indicate though perhaps not conclusively, that the liquidator can pay dividends to creditors (*h*), but cannot distribute the assets of the company among its contributories (*i*) without setting aside sufficient assets to meet such claim. It was considered doubtful

1 Q. B. 122; *Blackpool Motor Car Co.*, [1901] 1 Ch. 77.

(*b*) See Daniell's Chancery Practice, 5th Ed. Form 1238; and cp. *Allen* v. *Jarvis* (1869), 4 Ch. 616; *Re Park* (1889), 41 C. D. 326.

(*c*) Cp. *Re Allingham* (1886), 32 C. D. 36; *Re Brabant* (1879), 23 Sol. J. 779, which shows that the order in such case will not require the liquidator to pay any balance found due from him.

(*d*) *Ex parte Quilter* (1850), 4 De G. & Sm. 183; *Ex parte Evans* (1870), 11 Eq. 151, where the year expired after liquidation; but it is not clear that the order was made under the Solicitors Act, 1843.

(*e*) *Liverpool Household Stores* (1889), W. N. 48; *Re Park* (1889), 41 C. D. 326; *Ex parte Ditton* (1880), 13 C. D. 318; and see *Re Van Laun*, [1907] 2 K. B. 23.

(*f*) *Hardy* v. *Fothergill* (1888), 13 A. C. 351; *Re Hinks* (1886), 3 Mor. 218.

(*g*) *Haytor Granite Co.* (1865), 1 Ch. 77; *Horsey's Claim* (1868), 5 Eq. 561; *Gartness Iron Co.* (1870), 10 Eq. 412.

(*h*) *Horsey's Claim* (1868), 5 Eq. 561; *Gartness Iron Co.* (1870), 10 Eq. 412; but see *Telegraph Construction Co.* (1870), 10 Eq. 384.

(*i*) *Gooch* v. *London Banking Association* (1886), 32 C. D. 41; *Elphinstone* v. *Monkland Iron and Coal Co.* (1886), 11 A. C. 332.

whether the mere entry of such a claim would prevent the company from being dissolved (*k*).

The fact that the liquidator, unlike the trustee in bankruptcy, cannot disclaim a lease was treated as distinguishing the case from the bankruptcy cases (*l*).

Since the introduction of the bankruptcy rules as to proof into winding up and the decision in *Hardy* v. *Fothergill* (*m*), the previous decisions on this point have been said to require reconsideration (*n*). It would appear, however, that where the case is a simple one between a lessor on the one hand and a lessee on the other, the Court will usually, if the lessor is willing to accept a surrender, bring pressure upon a liquidator to make such surrender upon the terms of the lessor being allowed to come in and prove (*o*). In this connection it is impossible to overlook the case of *Hastings Corporation* v. *Letton* (*p*), where it was held that on the dissolution of a company a lease to it *ipso facto* terminated, at all events, where the lease had not been previously assigned. But the question remains what, assuming the last-mentioned case to have been wrongly decided, is to happen where the lessor will not accept a surrender of the lease, or where the lessee has assigned or where the question is one of an assignor claiming his right of indemnity? In such a case Vaughan Williams, J., said he could not allow a proof, and could only allow a claim to be entered (*q*). The learned Judge proceeded on the footing that the landlord could not have both rent and possession, and that *Hardy* v. *Fothergill* (*r*) only applied where there had been disclaimer. It may be mentioned that there had been no disclaimer in *Hardy* v. *Fothergill* (*r*), and that the question is not whether the lessor can have both rent and possession, but whether he can have his rent and compensation for the loss of the extra security given him by the covenant of the original lessee, or whether an assignor can have compensation for the loss of his indemnity: *Hardy* v. *Fothergill* (*r*) would seem almost conclusive that there will be a right of proof for such losses, if the landlord or assignor is willing to come in and prove. Where he was unwilling to do so, but wished simply to enter a claim for the full rent, which was the position taken up by the landlord in *New Oriental Bank Corporation* (*s*), the Courts have always felt a difficulty about forcing him to come in and prove. It is submitted, however, that a creditor cannot in such a case have

(*k*) Cp. *Haytor Granite Co.* (1865), 1 Ch. 77.

(*l*) *Westbourne Grove Drapery Co.* (1877), 5 C. D. 248.

(*m*) (1888), 13 A. C. 351.

(*n*) Cp. *Craig's Claim*, [1895] 1 Ch. 267; *Panther Lead Co.*, [1896] 1 Ch. 978.

(*o*) *Panther Lead Co.*, [1896] 1 Ch. 978.

(*p*) [1908] 1 K. B. 378. It has already been submitted that this case is of very doubtful authority. See *supra*, p. 993.

(*q*) *New Oriental Bank Corporation*, [1895] 1 Ch. 753.

(*r*) (1888), 13 A. C. 351.

(*s*) [1895] 1 Ch. 753.

the winding-up kept open for his benefit, that not only will he not be allowed to participate in dividends until he has proved (*t*), but that where the liquidator has given him notice of his intention to declare a final dividend if he fails to come in and prove, his claim may be expunged (*x*). A company which is the assignee of land subject to a rent-charge will not be liable to a proof in respect of such rent-charge, where it was not in arrear at the commencement of the winding-up, and the land has not been used by it after (*y*).

POLICIES OF ASSURANCE.

With regard to claims on policies of assurance which have not matured at the date of the winding-up, it would appear that the assured can continue to pay his premiums during the winding-up, and then when the policy has matured can prove for the amount of the insurance moneys (*z*).

This course is, however, not always either possible or desirable.

Section 17 of the Assurance Companies Act, 1909, makes the following provision :—

Where an assurance Company is being wound-up by the Court or subject to the supervision of the Court or voluntarily the value of a policy of any class or of a liability under such a policy requiring to be valued on such winding-up shall be estimated in manner applicable to policies and liabilities of that class provided by the Sixth Schedule to this Act. The rules in the Sixth and Seventh Schedules to this Act shall be of the same force and may be repealed altered or amended as if they were rules made in pursuance of Section 238 of the Companies (Consolidation) Act 1908 and rules may be made under that Section (*a*) for the purpose of carrying into effect the provisions of this Act with respect to the winding-up of assurance companies.

The sixth and seventh schedules above referred to contain the following provisions :—

SIXTH SCHEDULE.

RULES FOR VALUING POLICIES AND LIABILITIES.

(A).—*As respects Life Policies and Annuities.*

Rule for Valuing an Annuity.

An annuity shall be valued according to the tables used by the Company which granted such annuity at the time of granting the same, and where such tables cannot be ascertained or adopted to the satisfaction of the Court,

(*t*) Companies (Consolidation) Act, 1908, s. 169; Companies (Winding-up) Rules, 1909, r. 102.

(*x*) Cp. Companies (Winding-up) Rules, 1909, Appendix, Form 70, *post*, p. 1251.

(*y*) *Blackburn and District Benefit Building Society, Ex parte Graham* (1889), 42 C. D. 343.

(*z*) *Macfarlane's Claim* (1881), 17 C. D. 337; *Sovereign Life Assurance Co.* v. *Dodd*, [1892] 2 Q. B. 573.

(*a*) In England and Ireland by the authorities which have power to make rules for the Supreme Court in those countries respectively; in Scotland by act of sederunt.

then according to such rate of interest and table of mortality as the Court may direct.

Rule for Valuing a Policy.

The value of the policy is to be the difference between the present value of the reversion in the sum assured according to the contingency upon which it is payable, including any bonus or addition thereto made before the commencement of the winding-up and the present value of the future annual premiums.

In calculating such present values interest is to be assumed at such rate, and the rate of mortality according to such tables as the Court may direct.

The premium to be calculated is to be such premium as according to the said rate of interest and rate of mortality is sufficient to provide for the risk incurred by the office in issuing the policy, exclusive of any addition thereto for office expenses and other charges (*b*).

(B).—*As respects Fire Policies.*

Rule for Valuing a Policy.

The value of a current policy shall be such portion of the last premium paid as is proportionate to the unexpired portion of the period in respect of which the premium was paid.

(C).—*As respects Accident Policies.*

Rule for Valuing a Periodical Payment.

The present value of a periodical payment shall, in the case of total permanent incapacity, be such an amount as would, if invested in the purchase of a life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity equal to seventy-five per centum of the annual value of the periodical payment, and, in any other case, shall be such proportion of such amount as may, under the circumstances of the case, be proper.

Rule for Valuing a Policy.

The value of a current policy shall be such portion of the last premium paid as is proportionate to the unexpired portion of the period in respect of which the premium was paid.

(D).—*As respects Employers' Liability Policies.*

Rule for Valuing a Weekly Payment.

The present value of a weekly payment shall, if the incapacity of the workman in respect of which it is payable is total permanent incapacity, be such an amount as would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment and in any other

(*b*) These rules would appear to adopt tho rule laid down in *Lancaster's Case* (1872), 14 Eq. 71 n., and not that laid down in *Bell's Case* (1870), 9 Eq. 706, and *Holdich's Case* (1872), 14 Eq. 72.

case shall be such proportion of such amount as may, under the circumstances of the case, be proper.

Rule for Valuing a Policy.

The value of a current policy shall be such portion of the last premium paid as is proportionate to the unexpired portion of the period in respect of which the premium was paid, together with, in the case of a policy under which any weekly payment is payable, the present value of that weekly payment.

(E).—*As respects Bonds or Certificates.*

Rule for Valuing a Policy or Certificate.

The value of a policy or certificate is to be the difference between the present value of the sum assured according to the date at which it is payable, including any bonus or addition thereto, made before the commencement of the winding-up, and the present value of the future annual premiums.

In calculating such present values, interest is to be assumed at such rate as the Court may direct.

The premium to be calculated is to be such premium as, according to the said rate of interest, is sufficient to provide for the sum assured by the policy or certificate, exclusive of any addition thereto for office expenses and other charges.

SEVENTH SCHEDULE.

Where an assurance Company is being wound-up by the Court or subject to the supervision of the Court, the Liquidator, in the case of all persons appearing by the books of the Company to be entitled to or interested in policies granted by such Company, is to ascertain the value of the liability of the Company to each such person, and give notice of such value to such persons in such manner as the Court may direct, and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the Court.

Where notice terminating the contract has been given and has matured prior to winding-up, the Act has no application (*c*).

It would seem that where a valuation has once been finally made and has become binding under these provisions, a subsequent alteration of circumstances, *e.g.* arising by the falling in of the life assured in the case of a life policy, will make no difference (*d*). It will be otherwise, it is thought, where the contingency happens before the valuation has become binding (*e*).

OTHER DEBTS.

Where damages are sought for a breach of contract which continues during the winding-up it would appear that they may be

(*c*) *Farr and Whittall's Claims* (1878), 47 L. J. (CH.) 318.

(*d*) *Ex parte Bates* (1879), 11 C. D. 914; but cp. *Re Miller, Ex parte Wardley* (1877), 6 C. D. 790.

(*e*) *Re Bridges* (1881), 17 C. D. 342; *Re Dodds* (1890), 25 Q. B. D. 529.

ascertained at the period when they are capable of being finally estimated, even though that period is subsequent to the winding-up (*f*).

There can be no proof for the costs of an action for tort in which judgment has not been signed before winding-up (*g*), and the same rule applies to an unsuccessful action by the company (*h*).

But where an action is commenced against a company before winding-up and ultimately proving successful results in a debt which is provable in the winding-up, there the costs of the action may be added to the debt and proved for (*i*), and the same rule prevails in bankruptcy in an action against a promoter for taking secret profits, for the debt in such cases is not unliquidated, and is in respect of a breach of trust (*k*).

Statute barred debts cannot be proved for (*l*), but as against a creditor of the company the Statute does not continue to run after a winding-up (*m*).

A judgment is *primâ facie* evidence of a debt, but where the surrounding circumstances are suspicious, the creditor may be called on to show there was a good debt (*n*). Voluntary debts will, however, rank for dividends *pari passu* with other debts (*o*).

Sums that have been credited to a company's account at a bank, as part of a fictitious transaction under which no money really passed or was intended to pass cannot be recovered by the company or proved for in the winding-up of the bank (*p*), but where money has been paid into a company's account for the purpose of giving it fictitious credit, the person who has paid cannot reclaim his money in the winding-up, if he has made no previous claim (*q*).

Where a company has borrowed moneys which it has no power to borrow the lender's only remedy will be to prove for so much of the moneys as he can show to have been applied in paying off loans

(*f*) *Re Trent and Humber Shipbuilding Co.* (1868), 4 Ch. 112; *Ebbw Vale Co.'s Claim* (1869), 8 Eq. 70.

(*g*) *Re Newman* (1876), 3 C. D. 494.

(*h*) *Re Black* (1887), 56 L. J. (Q. B.) 607; *Vint v. Hudspith* (1885), 30 C. D. 24; *Re a Debtor* (*No. 68 of 1911*), [1911] 2 K. B. 652.

(*i*) *British Gold Fields of West Africa*, [1899] 2 Ch. 7.

(*k*) *Emma Silver Mining Co. v. Grant* (1880), 17 C. D. 122.

(*l*) Cp. *Lowndes v. The Garnet and Moseley Gold Mining Co. of America* (1864), 33 L. J. (CH.) 418. It is thought, however, in spite of this case, there might be a good acknowledgment of a debt by a meeting of directors at which the creditor director was present, if there was a quorum without him.

(*m*) *General Rolling Stock Co.* (1872), 7 Ch. 646.

(*n*) *Ex parte Anderson* (1885), 14 Q. B. D. 606.

(*o*) *Ex parte Pottinger* (1878), 8 C. D. 621; *Re Whitaker*, [1901] 1 Ch. 9.

(*p*) *British and American Telegraph Co. v. Albion Bank* (1872), L. R. 7 Ex. 119; *Gray v. Lewis* (1873), *Parker v. Lewis* (1873), 8 Ch. 1035.

(*q*) *Great Berlin Steamboat Co.* (1884), 26 C. D. 616.

which the company had power to contract (r), and this, even though such last-mentioned loans were contracted after the *ultra vires* borrowing (s). In addition, the lender will be entitled to a lien on securities purchased with his moneys (t), and also to the extent of moneys he could prove for, to a lien on securities deposited to secure his debt (u). In ascertaining how far his moneys have been applied in paying off debts the company has validly contracted, a lender will not be entitled to claim the benefit of the rule in *Clayton's Case* (1 Mer. 572) (u), and if his moneys have been applied in paying off secured creditors he will not be entitled to the benefit of their security (x). Possibly an *ultra vires* lender may be entitled to participate in any surplus there may be after all creditors and members have received 20*s.* in the £, but he cannot maintain an action for money had and received (xx).

The rule in bankruptcy which prevents a partner proving in the bankruptcy of his firm in competition with other creditors, would not appear to apply in winding-up, so as to prevent a contributory who is also a creditor of the company, and whose debt is not due to him in his character of member by way of dividends, profits or otherwise (y) from proving for his debt in competition with other creditors and receiving dividends *pari passu* with them (z), for the company and its individual contributories are separate entities, and moreover, any other conclusion would make section 123 (1) (vii.) of the Act an entirely inoperative and misleading provision (a). The fact that a contributory has bought up debts of the company at a discount, will not prevent his proving for such debts at their full value (b).

PERSONS INDEBTED TO THE ESTATE.

Apart, however, from any rule of set-off there is a rule that a person who is a debtor to a fund, cannot receive any part of such fund without first making good his debt to it (c).

This rule may obviously prevent a contributory who is alike creditor of and debtor to a company from receiving any dividend.

(r) *Cork and Youghal Railway* (1869), 4 Ch. 748; *Cunliffe, Brooks & Co.* v. *Blackburn Building Society* (1884), 9 A. C. 857; *Bannatyne* v. *MacIver*, [1906] 1 K. B. 103; *Baroness Wenlock* v. *River Dee* (1883), 36 C. D. 675 n.; (1885), 10 A. C. 354; cp. also *Johnston's Foreign Patents Co.*, [1904] 2 Ch. 234; *German Mining Co.* (1853), 4 De G. M. & G. 19.

(s) *Baroness Wenlock* v. *River Dee* (1887), 19 Q. B. D. 155.

(t) *Blackburn Building Society* v. *Cunliffe, Brooks & Co.* (1885), 29 C. D. 902.

(u) *Blackburn Building Society* v. *Cunliffe, Brooks & Co.* (1882), 22 C. D. 61; (1884), 9 A. C. 857.

(x) *Wrexham Mold and Connah's Quay Railway*, [1899] 1 Ch. 440.

(xx) *Birkbeck Permanent Benefit Building Society*, Times Newspaper, May 20th, 1912, and see *supra*, pp. 448 and 451.

(y) See Companies (Consolidation) Act, 1908, s. 123 (1) (vii.); and see *supra*, p. 1153 and pp. 1158 and 1159, as to this provision.

(z) *West of England Bank, Ex parte Brown* (1879), 12 C. D. 823. The reasoning in this case seems inconsistent with *Re Whitaker*, [1901] 1 Ch. 9; [1904] 1 Ch. 299; *Re Leng*, [1895] 1 Ch. 652; and other cases. The decision itself, however, is, it is thought, good law for the reasons above stated.

(a) Cp. *Grissell's Case* (1866), 1 Ch. 528.

(b) *Humber Ironworks Co.* (1869), 8 Eq. 122.

(c) *Rhodesia Gold Fields*, [1910] 1 Ch. 239.

The rule is worked out thus. You first ascertain what dividend the debtor would receive if he had paid his debt in full. If that dividend would be greater than the amount of the debt, he will receive the difference between the two, otherwise he will receive nothing (*d*).

This rule applies where the debt is statute barred (*e*), and where the amount of it has not been ascertained (*f*), it applies where the debtor has assigned the debt due to him (*f*), unless either such debt results from a contract expressly providing that the resulting debt shall be free in the hands of an assignee from all claims between the company and any person previously entitled to the debt (*g*), or the company has received notice of the assignment before the debt to it has arisen (*h*), and it applies where the debtor is an insolvent company in the course of liquidation (*i*) or the estate of a bankrupt contributory seeking to participate in the surplus assets of the company, without having paid in full all the calls on the shares of the contributory (*k*).

Where, however, a debt is proved and the person who proves assigns his claim, and the assignee in turn assigns it to a third party, the rule will not be applied as against such third party in respect of moneys recovered from the intermediate assignee by misfeasance proceedings commenced after he has assigned (*l*).

Even prior to the Judicature Acts, a set off of a liquidated sum was allowed when an action was brought by a company or a proof carried in by a creditor of a company (*m*). Thus, where a debtor to a company was the holder of bills which had been accepted by the company and had been dishonoured prior to winding-up, he was allowed to set the amount of such bills off against his debt (*n*), and a man who had been given debentures in consideration of his making certain payments, was to the extent that he had failed to make such

(*d*) *Leeds and Hanley Theatre of Varieties*, [1904] 2 Ch. 45; *Re Mayne*, [1907] 2 K. B. 899.

(*e*) *Courtenay* v. *Williams* (1844), 3 Hare 539; (1846), 15 L. J. (CH.) 204; *Re Akerman*, [1891] 3 Ch. 212; and see also *Re Bruce*, [1908] 2 Ch. 682; *Re Wheeler*, [1904] 2 Ch. 66.

(*f*) *Rhodesia Gold Fields*, [1910] 1 Ch. 239; and cp. *Re Abrahams*, [1908] 2 Ch. 69.

(*g*) *Goy & Co.*, [1900] 2 Ch. 149; and see also *Brown and Gregory*, [1904] 1 Ch. 627; [1904] 2 Ch. 448; *Palmer's Decoration and Furnishing Co.*, [1904] 2 Ch. 743.

(*h*) *Taunton, Delmard, Lane & Co.*, [1893] 2 Ch. 175.

(*i*) *Auriferous Properties* (*No.* 2), [1898] 2 Ch. 428. See order, *infra*, pp. 1248 and 1249.

(*k*) *Rowe's Trustee's Claim*, [1906] 1 Ch. 1.

(*l*) *Ex parte Theys* (1884), 25 C. D. 587.

(*m*) *Progress Assurance Co.* (1870), 39 L. J. (CH.) 496; *Barrett's Case* (1865), 4 De G. J. & S. 756 (which, is, however, not law, as the debt due to the company was due from a contributory in his character of contributory); *Mersey Steel and Iron Co.* v. *Naylor* (1882), 9 Q. B. D. 648; (1884), 9 A. C. 434.

(*n*) *Anderson's Case* (1866), 3 Eq. 337.

payments bound to allow a set-off against his claim on his debentures (*o*).

Section 10 of the Judicature Act, 1875, now replaced by section 207 of the Companies (Consolidation) Act, 1908, introduced the law of bankruptcy on this point (*p*), except, of course, in the case of debts due from contributories as such which, as has already been seen, always have stood and still stand upon an entirely separate footing (*pp*). Where there is a right of set-off it will be allowed either on proof or in an action (*q*). Section 38 of the Bankruptcy Act, 1883, contains the following provisions :—

Where there have been mutual credits mutual debts or other mutual dealings between a debtor against whom a receiving order shall be made under this Act and any other person proving or claiming to prove a debt under such receiving order an account shall be taken of what is due from the one party to the other in respect of such mutual dealings and the sum due from the one party shall be set off against any sum due from the other party and the balance of the account and no more shall be claimed or paid on either side respectively ; but a person shall not be entitled under this Section 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.

In the case of a company the time when it must be ascertained whether dealings are mutual so as to be capable of set off is the date when the petition is presented if the winding-up is compulsory (*r*), and in other cases the date of the resolution, extraordinary or special, as the case may be.

Thus debts due from the company cannot be set off against sums due to the liquidator for goods purchased from him or against sums recovered by misfeasance proceedings under section 215 of the Act (*s*), and a claim in respect of bills drawn in favour of a company and accepted by a creditor of the company after the winding-up cannot be set off against the debt of such creditor (*t*). Similarly, it has been held, though possibly the decision is since the Judicature Acts a doubtful one, that the value of unmatured policies as arrived at in a winding-up cannot be set off against a debt from a debtor

(*o*) *Ex parte James* (1869), 8 Eq. 225.

(*p*) *Mersey Steel and Iron Co.* v. *Naylor* (1882), 9 Q. B. D. 648 ; (1884) 9 A. C. 434.

(*pp*) See *supra*, pp. 1159 *et seq.*

(*q*) *Mersey Steel and Iron Co.* v. *Naylor* (1882), 9 Q. B. D. 648 ; (1884) 9 A. C. 434 ; *Peat* v. *Jones* (1882), 8 Q. B. D. 147. For order as to set-off, *infra*, pp. 1248 and 1249.

(*r*) See *per* WRIGHT, J., in *Re Daintrey*, [1900] 1 Q. B. 546, at p. 556 ; *per* FRY, L.J., *Eberle's Hotels Co.* v. *Jonas* (1887), 18 Q. B. D. 459, at p. 463 ; *Sovereign Life Assurance Co.* v. *Dodd*, [1892] 1 Q. B. 405, affirmed [1892] 2 Q. B. 573.

(*s*) *Ex parte Pelly* (1882), 21 C. D. 492 ; *Leeds and Hanley Theatres of Varieties*, [1904] 2 Ch. 45.

(*t*) *Re Gillespie, Ex parte Reid* (1885), 14 Q. B. D. 963.

who had become bankrupt (*u*). On the other hand, where there were at the date of the winding-up certain premiums still payable in respect of a policy which became payable when such premiums had been paid, and they were paid after the winding-up, but before the action which was brought by the company in respect of advances on the policy, the sums payable on such policy were set off against the advances (*x*). The true rule in these cases would appear to be that though the line must be drawn at the commencement of the winding-up, this is true to the extent of excluding fresh transactions only, and not to the extent of excluding the consequences of previous transactions (*y*).

Thus, where there was a contract between a person who ultimately became bankrupt and his creditor, that the latter should take over the business of the former on the terms of making certain payments out of any profits there might be, it was held that profits which were earned after a receiving order had been made could be set off against the debt due prior to that date from the bankrupt to his creditor (*z*), and where specific performance of a contract to sell land was sought it was granted on the terms of a debt due from the bankrupt to the purchaser being set off against the purchase price (*a*).

On the same principle, where there was a contract of tenancy before bankruptcy and a debt from the landlord to the tenant also then existing, on the landlord executing a deed of inspectorship the tenant was allowed to set off rent including rent which accrued during the bankruptcy (*b*). In bankruptcy a landlord cannot set off against a claim against him under a valuation clause in the lease, claims for rent which accrued due before the receiving order if the claim under the valuation clause only arose after receiving order, the reason being that the lease has vested in the trustee who is in the same position as any other assignee and the money due under the valuation clause is therefore due to him, and not to the bankrupt (*c*).

On the winding-up of a company the lease does not, of course, vest in the liquidator, but possibly, should the point arise, it may be argued that as the only right of set-off is given by reference to the

(*u*) *Ex parte Price, Re Lankester* (1875), 10 Ch. 648.

(*x*) *Sovereign Life Assurance Co.* v. *Dodd*, [1892] 1 Q. B. 405; [1892] 2 Q. B. 573.

(*y*) See *per* BIGHAM, J., *Re Daintrey*, [1900] 1 Q. B. 546, at p. 560, citing CHARLES, J., in *Sovereign Life Assurance Co.* v. *Dodd*, [1892] 1 Q. B. 405, 411.

(*z*) *Re Daintrey*, [1900] 1 Q. B. 546.

(*a*) *Re Taylor*, [1910] 1 K. B. 562.

(*b*) *Booth* v. *Hutchinson* (1873), 15 Eq. 30.

(*c*) *Alloway* v. *Steere* (1883), 10 Q. B. D. 22; *Re Wilson, Ex parte Lord Hastings* (1893), 62 L. J. (Q. B.) 628, where, however, the landlord succeeded owing to the custom of the country; and as to this case, see *Re Howell*, [1895] 1 Q. B. 844; and *Rochester* v. *Le Fanu*, [1906] 2 Ch. 513, as to apportioning rent in these cases.

Bankruptcy Act, there can be no right of set-off where there is none in bankruptcy (*d*) ; it is submitted, however, that this is not the right view and that it is importing not merely the bankruptcy rule as to debts provable, but that rule and something more, viz. the rule as to vesting on a bankruptcy, it will be borne in mind that there are other cases where the rule as to set off in bankruptcy is not the same as in winding-up (*e*). These cases have no application where the lease itself provides for set-off (*f*). The section relating to set-off would appear to be applicable to all claims which must or may have a tendency to terminate in debts and which are capable of being proved in bankruptcy if they arise out of contract ; it therefore includes claims as well in respect of debts as of damages liquidated or unliquidated (*g*). Therefore, where a company undertook to pave a street and to keep it in repair for a certain period and went into liquidation before completing the paving, the other party to the contract was held to be entitled to set off damages for breach of the agreement to keep in repair even although the liquidator had completed the paving, and sought priority for the money he had expended in so doing ; but a person who, before winding up, had been given a charge on the interest of the company was allowed priority as to his claim, and there could be no set-off to his detriment (*h*). Again, where there had been non-delivery of goods under a contract made before winding-up, set-off of damages for failure to deliver was allowed in an action for the price of the goods (*i*), and where goods had been deposited with an auctioneer for the purpose of being sold, as the authority to sell was not revoked, the auctioneers were allowed to apply the proceeds of sale in satisfaction of their debt (*k*). With this case there must, however, be contrasted the case of goods deposited with no authority to sell, here there can be no set-off, for the right of the bankrupt is to the goods and not to any money, and his claim is therefore incapable of being converted into a debt (*l*).

Claims for misrepresentations on the sale of goods have been

(*d*) Possibly the case of *Kidsgrove Steel and Iron Co.*, [1894] W. N. 25, may have been decided on this ground ; but the case is very imperfectly reported.

(*e*) Cp. *Washington Diamond Mining Co.*, [1893] 3 Ch. 95.

(*f*) *Re Rushforth* (1906), 95 L. T. 807.

(*g*) *Palmer* v. *Day and Sons*, [1895] 2 Q. B. 618, citing *Rose* v. *Hart* (1818), 8 Taunt. 499.

(*h*) *Lee and Chapman's Case* (1885), 30 C. D. 216 ; and see also *Re a Debtor*, [1909] 1 K. B. 430.

(*i*) *Mersey Steel and Iron Co.* v. *Naylor* (1882), 9 Q. B. D. 648; (1884), 9 A. C. 434 ; *Peat* v. *Jones* (1882), 8 Q. B. D. 147. It would seem very doubtful whether *The Ince Hall Rolling Mills Co.* v. *The Douglas Forge Co.* (1882), 8 Q. B. D. 179, is consistent with these cases.

(*k*) *Palmer* v. *Day and Sons*, [1895] 2 Q. B. 618.

(*l*) *Eberle's Hotel Co.* v. *Jonas* (1887), 18 Q. B. D. 459 ; *Lord* v. *Great Eastern Railway*, [1908] 2 K. B. 54 ; and see also *Re Winter* (1878), 8 C. D. 225.

allowed to be set off against the purchase price of the goods (*m*), and where rescission owing to misrepresentation by a purchaser is obtained, the damage suffered by the vendor through such misrepresentation must be set off against moneys which have been paid by the purchaser under the contract, and which the vendor must repay owing to the order for rescission (*n*). A mortgagee who after liquidation has sold the property mortgaged cannot set off a debt due to him from the company against any surplus in his hands on such sale, for there is no mutuality, the surplus being a debt due to the liquidator and not to the company (*o*).

Further, where money has been deposited with a creditor by the company for some special purpose or on some special trust he cannot retain such money, or even the surplus thereof which remains after performing the special purpose or trust, as a set-off against his debt, unless he can show that the company has consented to his holding the money or surplus for general purposes (*p*). On somewhat the same principle brokers who have received moneys by way of salvage in respect of losses settled by an underwriter before bankruptcy, cannot at all events where such moneys were received after bankruptcy, claim to set off as against such moneys a debt due to them for other losses which have been insured with the bankrupt (*q*). The provisions as to set-off apply to secured debts (*r*).

PROOF OF DEBTS.

The rules with regard to proof, etc., of debts are as follows :—

In a winding-up by the Court every creditor shall prove his debt, unless the Judge in any particular winding-up shall give directions that any creditors or class of creditors shall be admitted without proof (*s*).

A debt may be proved in any winding-up by delivering or sending through the post an affidavit verifying the debt. In a winding-up by the Court the affidavit shall be so sent to the Official Receiver or, if a Liquidator has been appointed, to the Liquidator; and in any other winding-up the affidavit may be so sent to the Liquidator (*t*).

An affidavit proving a debt may be made by the creditor himself or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge (*u*).

An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers,

(*m*) *Jack* v. *Kipping* (1882), 9. Q. B. D. 113.

(*n*) *Tilley* v. *Bowman, Ltd.*, [1910] 1 K. B. 745.

(*o*) *Re Gedney*, [1908] 1 Ch. 804.

(*p*) *Mid Kent Fruit Factory*, [1896] 1 Ch. 567; *Re Pollitt*, [1893] 1 Q. B. 455.

(*q*) *Elgood* v. *Harris*, [1896] 2 Q. B. 491.

(*r*) *Ex parte Barnett* (1874), 9 Ch. 293.

(*s*) Companies (Winding-up) Rules, 1909, r. 88. See the provisions of the National Insurance Act, 1911, *supra*, pp. 1213, note (*oo*).

(*t*) *Ibid.*, r. 89. In *Nelson & Co.*, 00327 of 1904, WARRINGTON, J., January, 1907 (unreported), the Judge dispensed with these affidavits. There were between 30,000 and 40,000 claims.

(*u*) *Ibid.*, r. 90. For form of proof, *infra*, pp. 1245 and 1246

if any, by which the same can be substantiated. The Official Receiver or Liquidator to whom the proof is sent may at any time call for the production of the vouchers (*x*).

An affidavit proving a debt shall state whether the creditor is or is not a secured creditor (*y*).

An affidavit proving a debt may in a winding-up by the Court be sworn before an Official Receiver, or Assistant Official Receiver, or any officer of the Board of Trade or any clerk of an Official Receiver duly authorized in writing by the Court or the Board of Trade in that behalf (*z*).

A creditor shall bear the cost of proving his debt unless the Court otherwise orders (*a*).

A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash (*b*).

When any rent or other payment falls due at stated periods, and the order or resolution to wind-up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day. Provided that where the Liquidator remains in occupation of premises demised to a Company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the Company, or the Liquidator, of rent during the period of the Company's or the Liquidator's occupation (*c*).

On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order or resolution, the creditor may prove for interest at a rate not exceeding four per centum per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment (*d*).

A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted (*e*).

In any case in which it appears that there are numerous claims for

(*x*) Companies (Winding-up) Rules, 1909, r. 91.

(*y*) *Ibid.*, r. 92.

(*z*) *Ibid.*, r. 93.

(*a*) *Ibid.*, r. 94. This rule does not extend to the costs of an appeal from a liquidator expunging a proof: *National Wholemeal Bread and Biscuit Co., Ex parte Baines* (*No.* 2), [1892] 2 Ch. 457; and see *ibid.*, r. 114, as to the position of the official receiver as to such costs. *Ibid.*, r. 114, *post*, p. 1243.

(*b*) Companies (Winding-up) Rules, 1909, r. 95.

(*c*) *Ibid.*, r. 96.

(*d*) *Ibid.*, r. 97.

(*e*) *Ibid.*, r. 98.

wages by workmen and others employed by the Company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this Rule shall have the same effect as if separate proofs had been made by each of the said workmen and others (*f*).

Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the Company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, Chairman of a meeting or Liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose (*g*).

Where a Liquidator is appointed in a winding-up by the Court, all proofs of debts that have been received by the Official Receiver shall be handed over to the Liquidator, but the Official Receiver shall first make a list of such proofs, and take a receipt thereon from the Liquidator for such proofs (*h*).

Subject to the provisions of the Act and unless otherwise ordered by the Court, the Liquidator in any winding-up may from time to time fix a certain day, which shall be not less than fourteen days from the date of the notice, on or before which the Creditors of the Company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved, and the Liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding-up by the Court to every person mentioned in the Statement of Affairs as a creditor, and who has not proved his debt, and in any other winding-up to the last known address or place of abode of each person who, to the knowledge of the Liquidator, claims to be a creditor of the Company and whose claim has not been admitted (*i*).

The Liquidator shall examine every proof of debt lodged with him, 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 shall state in writing to the creditor the grounds of the rejection (*k*).

If a creditor or contributory is dissatisfied with the decision of the Liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the Court to extend the time, no application to reverse or vary the decision of the Liquidator in a winding-up by the Court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall

(*f*) Companies (Winding-up) Rules, 1909, r. 99. For form of proof in this case, see *infra*, p. 1246.

(*g*) *Ibid.*, r. 100.

(*h*) *Ibid.*, r. 101.

(*i*) *Ibid.*, r. 102.

(*k*) *Ibid.*, r. 103. For form of notice of rejection, *infra*, p. 1246. A liquidator may go into the debt of a person claiming to prove in order to arrive at the amount for which proof can be made: the Court will sometimes order him to admit a proof, but subject to his having liberty to apply to expunge it at a later date: *National Wholemeal Bread and Biscuit Co., Ex parte Baines* (No. 2), [1892] 2 Ch. 457.

be entertained, unless notice of the application is given before the expiration of twenty-one days from the date of the service of the notice of rejection (*l*).

If the Liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the Liquidator, after notice to the creditor who made the proof expunge the proof or reduce its amount (*m*).

The Court may also expunge or reduce a proof upon the application of a creditor or contributory if the Liquidator declines to interfere in the matter (*n*).

For the purpose of any of his duties in relation to proofs, the Liquidator, in a winding-up by the Court, may administer oaths and take affidavits (*o*).

In a winding-up by the Court the Official Receiver, before the appointment of a Liquidator, shall have all the powers of a Liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal (*p*).

In a winding-up by the Court the Official Receiver, where no other Liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding-up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected (*q*).

Every Liquidator in a winding-up by the Court other than the Official Receiver shall on the first day of every month, file with the Registrar a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the Registrar (*r*).

The Liquidator in a winding-up by the Court, including the Official Receiver when he is Liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the Registrar, with a memorandum thereon of his disallowance thereof (*s*).

Subject to the power of the Court to extend the time in a winding-up by the Court, the Official Receiver as Liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it (*t*).

Subject to the power of the Court to extend the time, the Liquidator in a winding-up by the Court, other than the Official Receiver, within twenty-eight days after receiving a proof, which has not previously been dealt with, shall in writing either admit or reject it wholly or in part, or require further evidence in support of it. Provided that where the Liquidator has given notice of his intention to declare a dividend, he shall within fourteen days after the date mentioned in the notice as the latest

(*l*) Companies (Winding-up) Rules, 1909, r. 104. For orders on appeals from a liquidator, *infra*, pp. 1247 *et seq.*

(*m*) *Ibid.*, r. 105.

(*n*) *Ibid.*, r. 106.

(*o*) *Ibid.*, r. 107.

(*p*) *Ibid.*, r. 108.

(*q*) *Ibid.*, r. 109.

(*r*) *Ibid.*, r. 110. For form, *infra*, p. 1249.

(*s*) *Ibid.*, r. 111.

(*t*) *Ibid.*, r. 112.

date up to which proofs must be lodged, examine, and in writing admit or reject, or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby. Where a creditor's proof has been admitted the notice of dividend shall be a sufficient notification of the admission (*u*).

The Official Receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part (*x*). No leave is required to appeal to the Court of Appeal from any decision determining the claim of any creditor (*y*).

DIVIDENDS IN A WINDING-UP BY THE COURT.

Not more than two months before declaring a dividend the Liquidator in a winding-up by the Court, shall give notice of his intention to do so to the Board of Trade in order that the same may be gazetted, and at the same time to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than fourteen days from the date of such notice (*yy*).

Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the Liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which the appeal is made, and the Liquidator may in such case make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this Rule, the Liquidator shall exclude all proofs which have been rejected from participation in the dividend.

Immediately after the expiration of the time fixed by this Rule for appealing against the decision of the Liquidator he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted (*yyy*).

If it becomes necessary, in the opinion of the Liquidator and the Committee of Inspection, to postpone the declaration of the dividend beyond the limit of two months, the Liquidator shall give a fresh notice of his intention to declare a dividend to the Board of Trade in order that the same may be gazetted; but it shall not be necessary for the Liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

Upon the declaration of a dividend the Liquidator shall forthwith transmit to the Board of Trade a list of the proofs filed with the Registrar under Rule 110, which list shall be in the Form 68 or 69 in the Appendix as the case may be (*yyyy*). If the winding-up is in a Court other than the High Court the list shall on payment of the prescribed fee be examined by the

(*u*) Companies (Winding-up) Rules, 1909, r. 113.

(*x*) *Ibid.*, r. 114.

(*y*) Judicature Act, 1893, s. 1 (1) (*b*) (iii.).

(*yy*) For form of notice to creditors, *infra*, pp. 1249 and 1251, and for form of notice for the *Gazette*, see Companies (Winding-up) Rules, 1909, Appendix Form 103 (4) set out in the Appendix to this book, p. 1492.

(*yyy*) For form of notice of dividend, *infra*, pp. 1251 and 1252, and for form of notice for *Gazette*, Companies (Winding-up) Rules, 1909, Appendix Form 103 (4) set out in the Appendix to this book, p. 1493.

(*yyyy*) For these forms, *infra*, pp. 1250 and 1251.

Registrar, with the proofs tendered for filing and if found correct shall be certified by the Registrar. If the winding-up is in the High Court the Liquidator shall, if so required by the Board of Trade, transmit to the Board of Trade office copies of all lists of proofs filed by him up to the date of the declaration of the dividend.

Dividends may at the request and risk of the person to whom they are payable be transmitted to him by post.

If a person to whom dividends are payable desires that they shall be paid to some other person he may lodge with the Liquidator a document in the Form 72 which shall be a sufficient authority for payment of the dividend to the person therein named (z).

A liquidator cannot, however, transmit a dividend to the executors of a person who dies domiciled abroad until the will has been proved here and an English probate has been produced to him (a).

REGULATIONS AS TO PAYMENT OF DIVIDENDS ISSUED BY THE BOARD OF TRADE UNDER THE PROVISIONS OF RULE 215 OF THE COMPANIES (WINDING-UP) RULES, 1909.

11. *Payment of Dividends.* The payment of dividends will in every instance, *except where a Special Bank Account has been authorized*, be made by cheques on the Bank of England, or money orders, which will be prepared by the Board of Trade on the application of the Liquidator, and will be transmitted to him for distribution amongst the Creditors. The application must be in the prescribed form (No. 68), and must be certified by the Registrar of the Court, if the proceedings are in a County Court and by the Liquidator if the proceedings are in the High Court, and in the latter case must be accompanied by office copies of the lists of proofs filed (Rule 150 (5)). The Board of Trade will require ten days' notice to enable them to prepare the cheques or money orders for dividends. Considerable inconvenience and increased labour has been caused by Liquidators transmitting imperfect and inaccurate lists of Creditors, and the Board of Trade request that great care may be exercised in the preparation of them, and that in all cases of payment to executors, trustees, representative officials, &c., the name or names should be inserted in the list.

The creditors in the lists should be numbered consecutively, so that for the purpose of identification corresponding numbers may be affixed to the cheques and money orders.

The total amount of the dividend payable should be charged in the cash book in one sum. If the dividend has been paid by cheques on the Companies' Liquidation Account, the Liquidator on the expiration of six months from the date of issue, or on application for his release, if that event occurs earlier, should return any cheques remaining in hand to the Accountant-General to the Board of Trade.

If the dividend is paid through a Special Bank, the Liquidator should, upon the declaration of the dividend, forward to the Comptroller of the

(z) Companies (Winding-up) Rules, 1909, r. 150. For form of authority for delivery to another person, *infra*, pp. 1252 and 1253.

(a) *Fernandes' Executors' Case* (1870), 5 Ch. 314.

Companies Department a certified list of the proofs filed in Form No. 69, together with an office copy of the list of proofs filed if the proceedings are in the High Court, and, at the expiry of six months from the date of the declaration of the dividend, should forward to the Comptroller, for audit vouchers for the dividends paid and a list of those remaining unclaimed.

The Liquidator will then be furnished with a Receivable Order for payment into the Bank of England of the amount of the dividends unclaimed. Under no circumstances should unclaimed dividends be credited to the Estate without the previous sanction of the Comptroller.

PROOF OF DEBT, GENERAL FORM (*b*).

(*Title.*)

I * of in the county of make oath and say :—

(*b*) That I am in the employ of the under-mentioned creditor, and that I am duly authorized by to make this affidavit, and that it is within my own knowledge that the debt hereinafter deposed to was incurred and for the consideration stated, and that such debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

(*c*) That I am duly authorized, under the seal of the Company hereinafter named, to make the proof of debt on its behalf.

1. That the above-named Company was, at the date of the order for winding-up the same, viz. the day of 19 , and still is justly and truly indebted to † in the sum of pounds shillings and pence for ‡ as shown by the account endorsed hereon, *or by* the following account, viz. :—

for which sum or any part thereof I say that I have not nor hath § or any person by ‖ order to my knowledge or belief for ‖ use had or received any manner of satisfaction or security whatsoever, save and except the following ¶ :—

Date.	Drawer.	Acceptor.	Amount	Due Date.
			£ s. d.	

Admitted to vote for £
the day of 19 .
Official Receiver
or Liquidator.

Admitted to rank for dividend for £ this day of 19 .
Official Receiver
or Liquidator.

* Fill in full name, address, and occupation of deponent. If proof made by creditor, strike out clauses (*b*) and (*c*). If made by clerk of creditor, strike out (*c*). If by clerk or agent of the company, strike out (*b*).

† Insert "me and to *C.D.* and *E.F.* my co-partners in trade (if any)," or, if by clerk or agent insert name, address, and description of principal.

‡ State consideration [as goods sold and delivered by me (and my said partner) to the Company between the dates of] [or moneys advanced by me in respect of the under-mentioned bill of exchange] (or as the case may be).

§ "My said partners or any of them" *or* "the above-named creditor" (as the case may be).

‖ "My," *or* "our," or "their," *or* "his" (as the case may be).

¶ Here state the particulars of all securities held, and where the securities are on the property of the Company, assess the value of the same, and if any bills or other negotiable securities be held, specify them in the schedule.

You should attend carefully to these directions.

(*b*) Companies (Winding-up) Rules, 1909, Appendix, Form 63. This must, if for a debt of above £2, bear a 1*s*. impressed or adhesive stamp: Order as to fees of July 31, 1908.

Sworn at in the county of this day of 19 .
Before me

[Deponent's signature.]

NOTE.—The proof cannot be admitted for voting at the first meeting unless it is properly completed and lodged with the Official Receiver before the time named in the notice convening the meeting.

PROOF OF DEBT OF WORKMEN (c).

(*Title.*)

* Fill in full name, address, and occupation of deponent.

† On behalf of the workmen and others employed by the above-named Company.

I * of † make oath and say :—

1. That the above-named Company was on the day of 19 , and still is justly and truly indebted to the several persons whose names, addresses, and descriptions appear in the schedule endorsed hereon in sums severally set against their names in the sixth column of such schedule for wages due to them respectively as workmen or others in the employ of the Company in respect of services rendered by them respectively to the Company during such periods as are set out against their respective names in the fifth column of such schedule, for which said sums, or any part thereof, I say that they have not, nor hath any of them had or received any manner of satisfaction or security whatsoever.

Sworn at in the county of this day of 19 .
Before me

Deponent's Signature.

SCHEDULE REFERRED TO ON THE OTHER SIDE.

1 No.	2 Full Name of Workman.	3 Address.	4 Description.	5 Period over which Wages due.	6 Amount due.		
					£	s.	d.

Signature of Deponent.

NOTICE OF REJECTION OF PROOF OF DEBT (d).

(*Title.*)

* If proof wholly rejected, strike out words underlined.

Take notice, that, as [Official Receiver and] Liquidator of the above-named Company, I have this day rejected your claim against the Company * [*to the extent of* £] on the following grounds :—

(c) Companies (Winding-up) Rules, 1909, Appendix, Form 64. No fee is payable; Order as to fees of July 31, 1908.

(d) *Ibid.*, Form 65.

And further take notice that subject to the power of the Court to extend the time, no application to reverse or vary my decision in rejecting your proof will be entertained after the expiration of † days from this date.

† 21 days or 7 days, as the case may be.

Dated this day of 19 .

Signature.
Address.
[Official Receiver and] Liquidator.

To

ORDER ALLOWING PART OF CLAIM OF CREDITOR AND DISALLOWING THE REST AND GIVING LIBERTY TO APPLY.

(*Title.*)

The application by Originating Summons dated the 22nd September 1911 of W.K.G.S. of formerly a but now of no occupation a Contributory of the above-named Company and claiming to be a Creditor thereof which upon hearing the Solicitors for the Applicant and Counsel for J.M.L. the Liquidator in the Voluntary Winding-up of the above-named Company the Respondent to the said Summons in Chambers was adjourned to be heard in Court coming on this day to be heard accordingly and upon hearing Counsel for the Applicant and for the said Respondent and upon reading the said Originating Summons the *London Gazette* dated the containing a notice of the passing of the Resolution for the Voluntary Winding-up of the above-named Company and for the appointment of the said Respondent as Liquidator thereof the affidavit of W.K.G.S. filed the 14th October 1911 the affirmation of J.M.L. filed the 29th November 1911 and the further affidavit of W.K.G.S. filed the 7th December 1911 and the exhibits in the said affidavits or some of them respectively referred to the Memorandum and Articles of Association the Minute Book the Ledger No. 1 and the Cash Book of the above-named Company.

THIS COURT DOTH ORDER that the applicant the said W.K.G.S. be admitted as a creditor in the Voluntary Winding-up of the said Company for the following sums :—

(1) £69 9*s.* in respect of fees due to the said W.K.S.G. as a Director of the said Company.

(2) £23 amount due for travelling expenses—and

(3) £37 10*s.* being the assessed damages at the rate of one quarter's salary in lieu of notice determining his engagement as technical adviser to the said Company.

AND IT IS ORDERED that the claim of the said W.K.G.S. for £93 14*s.* in respect of fees due to him as such technical adviser be disallowed.

AND IT IS ORDERED that the said J.M.L. as such Liquidator as aforesaid be at liberty to seal and do deliver up to the said W.K.G.S. the Certificate so sealed as aforesaid for the shares held by the applicant in the said Company.

AND IT IS ORDERED that the Liquidator the said J.M.L. do out of the assets of the said Company pay to the said W.K.G.S. his costs of the said application such costs to be taxed. AND IT IS ORDERED that the costs of the said Liquidator of the said application be included in his costs of

the Winding-up of the above-named Company. And the Liquidator and any Creditor or Contributory of the said Company is to be at liberty to apply to the Court to determine any question arising in the Voluntary Winding-up of the said Company as there may be occasion. [*The Rubber Corporation of Brazil, Ltd.*, 00344 of 1911. SWINFEN-EADY, J., December 12th, 1911.]

ORDER REFUSING SET-OFF OF CALLS DUE FROM A COMPANY IN WINDING-UP TO A COMPANY ALSO IN WINDING-UP AND DECLARING THE LATTER COMPANY'S RIGHT TO PROVE FOR SUCH CALLS.

No. 00271 of 1896.
No. 009 of 1898.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. JUSTICE WRIGHT.
Wednesday the 20th day of July 1898.
In the Matter of the Companies Acts 1862 to 1890
and
In the Matter of the Auriferous Properties Limited
and
In the Matter of the African Gold Properties Limited.

UPON the application by summons dated the 18th March 1898 of W.H.P. the Liquidator of the above-named African Gold Properties Limited which upon hearing Counsel for the applicant and for the respondent George Stapylton Barnes the Official Receiver and Liquidator of the above-named Auriferous Properties Limited in Chambers was adjourned to be heard in Court coming on on the 1st April 1898 to be heard accordingly. And upon hearing Counsel for the applicant and for the said respondent. And upon reading the Order to wind-up the above-named Auriferous Properties Limited dated the 19th December 1896 the Order to continue the winding-up of the above-named African Gold Properties Limited subject to the supervision of the Court dated 26th January 1898 and the Affidavit of W.H.P. filed the 26th March 1896. This Court did Order that the said application should stand for Judgment. And the said application standing for Judgment on the 4th of May 1898 in the paper in the presence of Counsel for the applicant and for the said respondent. THIS COURT DOTH DECLARE that the applicant as such Liquidator as aforesaid is not entitled to set off the whole or any part of the debt of £2868 19*s*. 4*d*. in the said summons mentioned owing to the said African Gold Properties Limited by the said Auriferous Properties Limited against the sum of £1481 11*s*. 4*d*. or any further sums as may be hereafter found due in respect of calls made upon the African Gold Properties Limited as holders of 2500 shares in the said Auriferous Properties Limited. And this Court doth also declare that the said respondent as such Liquidator of the Auriferous Properties Limited is entitled to prove in the winding-up of the said African Gold Properties Limited for the amount of the calls made on the shares in the said Auriferous Properties Limited held by the said African Gold Properties Limited but that the said applicant as such Liquidator of the

said African Gold Properties Limited cannot take any dividend declared or to be declared in the winding-up of the said Auriferous Properties Limited upon the debt of the said Auriferous Properties Limited to the said African Gold Properties Limited until the said respondent as such Liquidator of the said Auriferous Properties Limited has received from the said African Gold Properties Limited payment in full of all calls already made on the shares of the said Auriferous Properties Limited held by the said African Gold Properties Limited. And it is Ordered that the costs of the applicant and respondent of this application including the costs of an application to vary the minutes of this Order be taxed and respectively paid out of the assets of their respective Companies.

Liberty to the applicant and the respondent to appeal if so advised.

Registrar.

LIST OF PROOFS TO BE FILED UNDER RULES 110 AND 111 (*e*).

(*Title.*)

I hereby certify that the following is a correct list of all proofs tendered to me in the above matter during the past month.

Dated this day of 19 .

Liquidator.

Name of Creditor.	Proofs tendered.						
	Amount of Proof.			Whether admitted, rejected, or standing over for further Consideration.	If admitted, amount.		
	£	*s.*	*d.*		£	*s.*	*d.*

NOTICE TO CREDITORS OF INTENTION TO DECLARE DIVIDEND (*f*).

(*Title.*)

* Insert here "first," *or* "second," *or* "final," *or as the case may be.*

A (*a*) dividend is intended to be declared in the above matter. You are mentioned in the statement of affairs, but you have not yet proved your debt.

If you do not prove your debt by the day of 19 , you will be excluded from this dividend.

Dated this day of 19 .

Liquidator.

[Address.]

To X.Y.

(*e*) Companies (Winding-up) Rules, 1909, Appendix, Form 66.

(*f*) *Ibid.*, Form 67.

CERTIFIED LIST OF PROOFS UNDER RULE 150 (5) COMPANIES (WINDING-UP) RULES, AND APPLICATION FOR ISSUE OF CHEQUES FOR DIVIDEND ON COMPANIES LIQUIDATION ACCOUNT (*g*).

Companies Liquidation Account.

Ledger Folio .

Re Court No. 1.

I hereby certify that the following list has been compared with the proofs filed, and that the names of the Creditors and the amounts for which the proofs are admitted are correctly stated.

[Signature] *

Dated the day of 19 .

I certify that by my books the sum of £ stands to the credit of the above Company with the Companies Liquidation Account at the Bank of England, and that the sum of £ is required to meet the under-mentioned dividends, on proofs which have been duly made and admitted to rank for dividend upon the Company, and I have to request that orders for payment may be issued to me.

The dividend is payable on the day of 19 , and notice of declaration thereof was forwarded to the Board of Trade for insertion in *London Gazette*, on the day of 19 .

Date 19 .

Liquidator.

Address to which Cheques and Money Orders should be sent.

To the Board of Trade.

* If the proceedings are in a County Court, to be signed by the Registrar. If the proceedings are in the High Court, to be signed by the Liquidator.

No	Surname.	Christian Name.	Town on which Post Office Money Order should be drawn.	Amount of Proof.			Sums under £2.			Sums of £2 and above.		
				£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*

CERTIFIED LIST OF PROOFS FILED UNDER RULE 150 (5), COMPANIES (WINDING-UP) RULES, SPECIAL BANK CASE (*h*).

(*Title.*)

I hereby certify that the following list has been compared with the proofs filed, and that the names of the creditors and the amounts for which the proofs are admitted are correctly stated.

Dated the day of 19 .

[Signature] *

* If the proceedings are in a County Court, to be signed by the Registrar. If the proceedings are in the High Court, to be signed by the Liquidator.

(*g*) Companies (Winding-up) Rules, 1909, Appendix, Form 68.

(*h*) *Ibid.*, Form 69.

I hereby certify that a dividend of in the £ has been declared, and that the creditors whose names are set forth below are entitled to the amounts set opposite their respective names.

Dated the day of 19 .

Liquidator.

To the Board of Trade.

Surname.	Christian Name.	Amount of Proof.			Amount of Dividend.		
		£	*s.*	*d.*	£	*s.*	*d.*

NOTICE TO PERSONS CLAIMING TO BE CREDITORS OF INTENTION TO DECLARE FINAL DIVIDEND (*i*).

(*Title*)

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the Court on or before the day of 19 , or such later day as the Court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

Dated this day of 19 .

Liquidator.
[Address.]

To X.Y.

NOTICE OF DIVIDEND (*k*).

Dividend cheques are cancelled at the expiration of six months from date of issue and money orders at the expiration of twelve months from date of issue.

A fee of 1s. when the dividend does not exceed £1 and 2*s.* 6*d.* when the dividend exceeds £1 is chargeable on the re-issue, after cancellation, of dividend cheques and money orders, the fee being payable in Companies (Winding-up) Stamps.

[Please bring this Dividend Notice with you.]

(*Title.*)

Dividend of in the £.

[Address]
[Date]

Notice is hereby given that a dividend of in the pound has been declared in this matter, and that the same may be received at my office, as above, on the day of 19 , or on any subsequent , between the hours of and

(*i*) Companies (Winding-up) Rules, 1909, Appendix, Form 70.

(*k*) *Ibid.*, Form 71.

Upon applying for payment this notice must be produced entire, together with any bills of exchange, promissory notes or other negotiable securities held by you. If you desire the dividend to be paid to some other person you can sign and lodge with the Liquidator an authority in the prescribed Form No. 72. Otherwise if you do not attend personally you must fill up and sign the subjoined Forms of *Receipt and Authority*, when a cheque or money order payable to your order will be delivered in accordance with the *authority*.

(Signed) Liquidator.

To

NOTE.—The receipt or authority should, in the case of a firm, be signed in the firm's name.

RECEIPT.

19 .

Received of in this matter the sum of pounds shillings and pence, being the amount payable to $\frac{\text{me}}{\text{us}}$ in respect of the dividend of in the £ on $\frac{\text{my}}{\text{our}}$ claim against this Company.

Payee's Signature.

£ : :

AUTHORITY FOR DELIVERY.

SIR,

Please deliver to

(Insert the name of the person who is to receive the cheque or Money order, or the words "$\frac{\text{me}}{\text{us}}$ by post," "at $\frac{\text{my}}{\text{our}}$ risk," if you wish it sent to you in that way.)

the cheque or money order for the dividend payable to $\frac{\text{me}}{\text{us}}$ in this matter.

Payee's Signature.

To the [Official Receiver and] Liquidator.

AUTHORITY TO LIQUIDATOR TO PAY DIVIDENDS TO ANOTHER PERSON (*l*).

(*Title.*)

To the [Official Receiver and] Liquidator.

SIR,

$\frac{\text{I}}{\text{We}}$ hereby authorize and request you to pay to M

of

(A specimen of whose signature is given below), all dividends as they are declared in the above-named matter, and which may become due and payable to $\frac{\text{me}}{\text{us}}$ in respect of the proof of debt for the sum of £ , against the above-named Company, made [by Mr.] on $\frac{\text{my}}{\text{our}}$ behalf.

And $\frac{\text{I}}{\text{we}}$ further request that the cheque or cheques drawn in respect

(*l*) Companies (Winding-up) Rules, 1909, Appendix, Form 72.

of such dividends may be made payable to the order of the said M whose receipt shall be sufficient authority to you for the issue of such cheque or cheques in his name.

It is understood that this authority is to remain in force until revoked by $\frac{\text{me}}{\text{us}}$ in writing.

Signatures.

Witness to the Signature
of
Witness to the Signature
of

Date

Specimen of Signature of person appointed as above.

Witness to the Signature
of
Witness to the Signature of person appointed as above.

III. RIGHTS OF CONTRIBUTORIES.

Turning to the rights of contributories *inter se*, when all the costs, charges, and expenses of the liquidation and all the debts of the company have been paid, the duty of the liquidator is to adjust these rights (*m*), moreover, any provision contained in the articles for the purpose of avoiding such adjustment, and providing that shares shall not be called up to their full amount, even though limited to the case where calls are not necessary for payment of debts is void (*n*). Apart from any special provision in the articles the rule is that the property of the company, including its uncalled capital (*o*), is, if all the shares are of equal nominal value, divisible among the contributories as follows: that is to say (1) if such property is not sufficient to repay to the contributories the amounts paid up on their shares, then it will be divided among them so that the loss is borne by the shareholders in proportion to the number of shares held by them respectively (*p*); (2) if, on the other hand, such property is more than sufficient to repay to all shareholders the amounts paid up on their shares, the surplus after making such payments will be divided among the shareholders in proportion to the

(*m*) S. 170 of the Act provides that "the Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto." See also s. 186 (1): *Anglesea Colliery Co.* (1866), 1 Ch. 555. See *infra*, pp. 1259 and 1260, for form of notice of return to contributories and order as to distribution.

(*n*) *Welton* v. *Saffery*, [1897] A. C. 299; *Weymouth and Channel Islands Steam Packet Co.*, [1891] 1 Ch. 66; see also *Provision Merchants Co.* (1872), 26 L. T. 862.

(*o*) *Webb* v. *Whiffin* (1872), L. R. 5 H. L. 711.

(*p*) *Ex parte Maude* (1870), 6 Ch. 51; *Scinde, Punjaub, and Delhi Corporation* (1871), 6 Ch. 53 n. The principle was recognized, though in the special circumstances not applied in *Holyford Mining Co.* (1869), Ir. R. 3 Eq. 208. It is thought that *Eclipse Gold Mining Co.* (1874), 17 Eq. 490, was wrongly decided.

number of shares held by them respectively (*q*). In other words, every shareholder is entitled to a proportionate amount of the capital of the company, and therefore also to a proportionate part of the assets (*r*). Where the shares are of unequal nominal value the loss or the surplus, as the case may be, will be borne rateably or paid rateably in proportion to the nominal amount of the shares, or, in other words, if there are £5 and £1 shares, a £5 share will count as though it was five £1 shares (*s*). The same rules apply to unlimited companies which have a share capital (*t*). If shares have been issued at a premium the holder's rights will be regulated by the nominal amount of the shares alone, and no regard will be had to the premium paid (*t*). If a member becomes bankrupt and proof is made for the balance of his liability on his shares the shares will not count as fully paid if less than 20*s*. in the £ has been paid, and he will have no rights on an adjustment till the other members have been repaid such a sum as will make the amounts paid on their shares equal to the amounts actually paid on the bankrupt's shares (*u*). Amounts paid up in advance of calls will be entitled to payment in priority to other amounts paid up on shares, and if they have been paid up, as will usually be the case, on the footing that interest is to be paid on them until actually called up, such interest will continue to run during the winding-up until a call or repayment is made (*x*).

It is, however, competent for a company by apt provisions in its articles to vary the ordinary rules as to adjustment (*y*), and articles do, in fact, usually provide that losses are to be borne in proportion to amounts paid up on shares at the date of the winding-up, and that a surplus is to be distributed in a like manner. Various questions have arisen on articles of this nature. It would appear that the expression "surplus assets" which not infrequently occurs in such articles will always include uncalled capital (*z*), but it may refer to the surplus remaining after payment of the costs of liquidation and the debts of the company, and this is its usual meaning (*a*), or to

(*q*) *Birch* v. *Cropper* (1889), 14 A. C. 525, distinguishing *Sheppard* v. *Scinde, Punjaub, and Delhi Railway* (1887), 56 L. J. (CH.) 866; 60 L. T. 641, as having been decided on the special words of the special Act there in question.

(*r*) *Birch* v. *Cropper* (1889), 14 A. C. 525.

(*s*) *Wakefield Rolling Stock Co.*, [1892] 3 Ch. 165; *Espuela Land and Cattle Co.*, [1909] 2 Ch. 187.

(*t*) *Driffield Gas Light Co.*, [1898] 1 Ch. 451.

(*u*) *Rowe's Trustee's Claim*, [1906] 1 Ch. 1.

(*x*) *Exchange Drapery Co.* (1888), 38 C. D. 171; *Wakefield Rolling Stock Co.*, [1892] 3 Ch. 165; *United Provident Assurance Co.*, [1910] 2 Ch. 477.

(*y*) Companies (Consolidation) Act, 1908, s. 186 (1).

(*z*) *Ex parte Lowenfeld* (1893), 70 L. T. 3; *Anglo-Continental Corporation of Western Australia*, [1898] 1 Ch. 327; *Welton* v. *Saffery*, [1897] A. C. 299.

(*a*) *Crichton Oil Co.*, [1902] 2 Ch. 86. Possibly this will not be

the surplus remaining after paying these costs and debts and the amounts paid up on the shares (*b*). Light will sometimes be thrown on the meaning by articles regulating the distribution of profits: thus, where one article provided that after payment of a certain dividend on the ordinary shares the surplus should be divided among the ordinary and preference shares in certain proportions and the surplus assets were to be divided in like proportions it was held that the expression "surplus assets" must mean something in the nature of profits, and that such assets could therefore only arise after payment of the amounts paid on the shares (*c*). Another expression which frequently occurs in these articles is "the amount paid up on their shares." This expression will, apart from context, mean the amount paid up either before or during the winding-up (*d*). As a result of these decisions it was held that by an article which provided that on a winding-up if the surplus assets should be insufficient to repay the whole of the paid-up capital such surplus assets should be distributed among the members so that the loss should be borne by members in proportion to the capital paid on the shares held by them respectively at the commencement of the winding-up, but if there should be more than sufficient to repay the whole of the paid up capital the excess should be distributed among the members in proportion to the capital paid on the shares held by them respectively at the commencement of the winding-up, the rule in *Birch* v. *Cropper* (*e*) was excluded (*f*), but the rule in *Ex parte Maude* (*g*) was not (*h*). It is, therefore, more usual in both cases to provide that the proportion shall be according to the amount paid up at the commencement of the winding-up, and so both rules are excluded.

The fact that shares are entitled to a preferential dividend is no indication that they are also entitled to priority on a return of capital (*i*), and where shares are entitled to priority on a return of

so where there are two classes of shares, and the mode of distribution is not based on either the nominal amount of or the amount paid up on the shares: *Ramel Syndicate*, [1911] 1 Ch. 749.

(*b*) *Anglo-Continental Corporation of Western Australia*, [1898] 1 Ch. 327; *New Transvaal Co.*, [1896] 2 Ch. 750.

(*c*) *New Transvaal Co.*, [1896] 2 Ch. 750; *Ramel Syndicate*, [1911] 1 Ch. 749. The same conclusion was come to where the expression was "the surplus assets available for distribution among the holders of the shares": *Peabody Gold Mining Co.*, [1897] W. N. 170.

(*d*) *Ex parte Lowenfeld* (1893), 70 L. T. 3; *Anglo-Continental Corporation of Western Australia*, [1898] 1 Ch. 327; *Welsh Whisky Distillery Co.* (1900), 16 T. L. R. 246.

(*e*) (1889), 14 A. C. 525.

(*f*) *Mutoscope and Biograph Syndicate*, [1899] 1 Ch. 896; *Anglo-Continental Corporation of Western Australia*, [1898] 1 Ch. 327.

(*g*) (1870), 6 Ch. 51.

(*h*) *Anglo-Continental Corporation of Western Australia*, [1898] 1 Ch. 327.

(*i*) *London India Rubber Co.*

capital they will in the absence of anything to the contrary in the articles also be entitled to share in any surplus which remains after repayment of all amounts paid up on all the shares (*k*). A provision that interest shall be paid until repayment will be given effect to even though it is mentioned in the memorandum only, and the other rights conferred on the shares are mentioned in both memorandum and articles (*k*). Sometimes there is a provision that all arrears of dividends on preference shares shall be paid out of the assets available for distribution, such a provision will not entitle preference shareholders to dividends where there are no profits which are available for their dividend, for it does not alter the fund which they must look to for their dividend, but if there are profits the arrears will be payable notwithstanding the fact that no dividend was declared while the company was a going concern (*l*). The expression "profits" when used in regard to a company in liquidation, means any increase shown in the assets of the company (after allowing for capital introduced or withdrawn) at a later date as compared with an earlier date (*m*). It will not include profits made in the course of a winding-up (*n*), but it will include profits made before winding-up but not realized till afterwards, and any excess which the assets of a company show on realization over the value at which they have been estimated in the balance-sheets of the company, and assets which have been treated as without value in the profit and loss accounts, and prove to have a value on realization (*m*). It will also include any funds which have been carried to reserve out of profits to meet depreciation or insurance (*o*), or the fall in the value of securities (*p*), or for any other purpose, where such funds have not been required for such purposes or in the case of a depreciation of securities where the securities have subsequently risen to their original value, unless, indeed, such funds have been capitalized, which in the case of limited companies which can increase their capital, can only be done by issuing a share dividend under an article authorizing such a course (*q*). A sum arising from the sale of the goodwill of a business

(1867), 5 Eq. 519; *Griffith* v. *Paget* (1877), 6 C. D. 511; *Accrington Corporation Steam Tramways Co.*, [1909] 2 Ch. 40, a case under the Companies Clauses Acts. In *Bangor and Portmadoc State and Slab Co.* (1875), 20 Eq. 59, the resolution creating preference shares was held to give them priority on a return of capital.

(*k*) *Espuela Land and Cattle Co.*, [1909] 2 Ch. 187. In *Will* v. *United Lankat Plantations* (1912), 56 Sol. J. 379, the resolution and the articles were read together.

(*l*) *W. J. Hall & Co.*, [1909] 1 Ch. 521.

(*m*) *Spanish Prospecting Co.*, [1911] 1 Ch. 92.

(*n*) *Bishop* v. *Smyrna and Cassaba Railway (No. 2)*, [1895] 2 Ch. 596.

(*o*) *Bridgewater Navigation Co.*, [1891] 2 Ch. 317.

(*p*) *Bishop* v. *Smyrna and Cassaba Railway (No. 2)*, [1895] 2 Ch. 596.

(*q*) *Bouch* v. *Sproule* (1887), 12 A. C. 385; *Bridgewater Navigation Co.*, [1891] 2 Ch. 317; cp. also *Re Northage* (1891), 60 L. J. (CH.) 488; *Hume Nisbet's Settlement* (1911), 27 T. L. R. 461.

will not be profits, such a sum is an alternative to profits, and paid for the renunciation of future profits (*r*).

Except in very exceptional cases (*s*), contributories are not interested in whether there are or are not profits, for they will usually only be entitled to participate in profits *qua* profits where a dividend has been declared (*t*), and while they can claim a dividend which was declared on a *bonâ fide* but mistaken estimate immediately prior to winding-up, even after such estimate has, as the result of realization, proved to be excessive (*u*), they cannot usually claim a dividend out of profits where no dividend has been declared prior to winding-up (*t*).

The question of whether there are or are not profits does, however, become one of great importance where there are holders of income bonds, or directors who are entitled to be paid a commission on any profits that have been earned or other persons having similar rights. Such persons are not creditors of the company in a proper sense, they are persons entitled to be paid out of a particular fund, viz. profits, which, subject to dividends being declared and to the rights of the persons so entitled, belongs to the members (*x*), and as their rights rarely, if ever, depend on the declaration of a dividend, they are interested in making out that the profits are as large as possible. Except with the consent of all contributories, no part of the assets of a company may on a winding-up be applied in giving gratuities to servants (*y*), but the rights of contributories on a winding-up may be varied, if all the contributories agree, and such an agreement will sometimes be inferred if all acquiesce in the variation for a considerable period (*z*), but such an agreement will not be inferred in a reconstruction where the scheme is silent as to the mode of distribution, and the resolution provides for distribution in manner provided by the scheme, even if a circular has been issued before

(*r*) *Frames* v. *Bultfontein Mining Co.*, [1891] 1 Ch. 140, citing *Rishton* v. *Grissell* (1868), 5 Eq. 326; *Spanish Prospecting Co.*, [1911] 1 Ch. 92; *Espuela Land and Cattle Co.*, [1909] 2 Ch. 187.

(*s*) Such as *Bridgewater Navigation Co.*, [1891] 2 Ch. 317, where the articles provided that profits should "belong" to members: *W. J. Hall & Co.*, [1909] 1 Ch. 521; *Bishop* v. *Smyrna and Cassaba Railway*, [1895] 2 Ch. 265, can only be supported on this ground: see *Crichton Oil Co.*, [1902] 2 Ch. 86.

(*t*) *Crichton Oil Co.*, [1902] 2 Ch. 86; *Odessa Waterworks*, [1901] 2 Ch. 190 n.; *Accrington Corporation Steam Tramways*, [1909] 2 Ch. 40.

(*u*) *Peruvian Guano Co.*, [1894] 3 Ch. 690.

(*x*) *Famatina Development Corporation* v. *Bury*, [1910] A. C. 439.

(*y*) *Hutton* v. *West Cork Railway Co.* (1883), 23 C. D. 654; *Stroud* v. *Royal Aquarium and Summer and Winter Garden* (1903), 89 L. T. 243; and see *supra*, p. 341, and pp. 370 and 371, as to this.

(*z*) *Beeston Pneumatic Tyre Co.* (1898), 14 T. L. R. 338; *Somes* v. *Currie* (1855), 1 K. & J. 605, is also so explained in the case cited in the next note, and in *Driffield Gas Light Co.*, [1898] 1 Ch. 451.

the passing of the resolution stating that the assets to be acquired will be divided in a certain manner, which is not in accordance with the rights of the members (*a*). Fellows of a society who have certain rights of using a building belonging to the society will not be entitled to compensation on a winding-up (*b*).

It would appear to be beyond the scope of this work to consider the rights of the contributories of the various companies and societies which can be wound-up under the Act (*c*).

One word may, however, be said as to building societies, friendly societies, and industrial societies. The assets of such societies are not distributed according to the rules that govern commercial companies (*d*), each case would appear to be governed by its rules (*e*), but so far as one can speak generally, it would appear that apart from rules, the assets of a building society which are available will be distributed among the members partly according to their contributions, partly according to the length of their term of membership, or in other words, according to their interests in the capital and the profits (*f*).

Withdrawing members who have given notice of withdrawal before winding-up and the representatives of deceased members will have priority, because they have ceased to be members (*g*).

The funds of friendly societies and industrial and provident societies are distributed in a similar manner (*h*), but if there is more than sufficient to satisfy all claims for return of contributions and profits, and the rules contain no provision as to the manner in which a surplus is to be applied, any surplus will go to the Crown as *bonâ vacantia* (*i*). Every order by which the liquidator in a winding-up by the Court is authorized to make a return to contributories (*k*)

(*a*) *North West Argentine Railway Co.*, [1900] 2 Ch. 882.

(*b*) *Royal Aquarium and Summer and Winter Garden Society* (1904), 20 T. L. R. 35. It was also held in this case that the preference shares had no priority as to capital, and that those which were redeemable at a 10 per cent. premium were on the same footing as the others.

(*c*) See *Brown* v. *Dale* (1878), 9 C. D. 78. In *Alliance Society* (1885), 28 C. D. 559, the question turned on the construction of the articles.

(*d*) *Brownlie* v. *Russell* (1883), 8 A. C. 235.

(*e*) *West London Permanent Benefit Building Society* (1898), 78 L. T. 393.

(*f*) *Doncaster Permanent Building Society* (1867), 4 Eq. 579; 3 Eq. 158; *Middlesborough Redcar and Saltburn Building Society* (1889), 58 L. J. (CH.) 771.

(*g*) *Counties Conservative Permanent Benefit Building Society*, [1900] 1 Ch. 819.

(*h*) *Printers' and Transferers' Amalgamated Trade Protection*, [1899] 2 Ch. 184; *Lead Co.'s Workmen's Fund Society*, [1904] 2 Ch. 196.

(*i*) *Braithwaite* v. *Attorney-General*, [1909] 1 Ch. 510; *Cunnack* v. *Edwards*, [1896] 2 Ch. 679.

(*k*) Sums belonging to shareholders who cannot be found will have to be paid into the Bank of England Companies Liquidation account under s. 224 of the Act, see

must, unless the Court otherwise directs, contain or have appended thereto a schedule or list (which the liquidator must prepare) setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid and the amount of money payable to each person and particulars of the transfer of shares, if any, which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories. The schedule must be in the Form 74 in the Appendix to the Rules with such variations as circumstances require (*l*).

REGULATIONS AS TO RETURN TO CONTRIBUTORIES ISSUED BY THE BOARD OF TRADE UNDER THE PROVISIONS OF RULE 215 OF THE COMPANIES (WINDING-UP) RULES, 1909.

12. *Return to Contributories.* Applications for cheques for return to Contributories should be made on Form C, No. 6, which should give the name of each Contributory together with the amount for which he has been settled on the list; and, in cases where the amount payable is under £2, the place at which the money order should be made payable.

The total amount of each return to Contributories should be entered in the Cash Book in one sum as in the case of dividends.

NOTICE OF RETURN TO CONTRIBUTORIES (*m*).

Cheques are cancelled at the expiration of six months from date of issue and money orders at the expiration of twelve months from month of issue.

A fee of 1*s.* when the return does not exceed £1, and 2*s.* 6*d.* when the return exceeds £1 is chargeable on the re-issue, after cancellation, of cheques and money orders—the fee being payable in Companies (Winding-up) Stamps.

[Please bring this Notice with you.]

(*Title.*)

Return of £ per share.

[Address]

[Date]

Notice is hereby given that a return of per share has been declared in this matter, and that the same may be received at my office, as above, on the day of 19 , or on any subsequent day, except Saturday, between the hours of .

Upon applying for payment this notice must be produced entire, together with the share certificate. If you do not attend personally you must forward the share certificate and fill up and sign the subjoined Forms of

supra, pp. 970 *et seq.* Where a sum has been so paid in it is not a debt due to the shareholder, and a garnishee order cannot be made against it: *Spence* v. *Coleman*, [1901] 2 K. B. 199.

(*l*) Companies (Winding-up) Rules, 1909, r. 151. See p. 1260 for this form, and p. 1493 for the form of notice to be inserted in the *Gazette* on a return to contributories.

(*m*) *Ibid.*, Appendix, Form 73.

Receipt and *Authority*, when a cheque or money order payable to your order will be delivered in accordance with the *Authority*.

(Signed)

Liquidator.

NOTE.—The receipt should be signed by the contributory personally, or in the case of joint contributories by each.

RECEIPT.

No.

19 .

Received of the in this matter the sum of pounds shillings and pence, being the amount payable to in respect of the return of per share held by in this Company.

Contributory's signature.

£ : :

AUTHORITY FOR DELIVERY (*n*).

SIR,

Please deliver to

[Insert the name of the person who is to receive the cheque or money order, or the words "me/us by post," at "my/our risk," if you wish it sent to you in that way]

the cheque or money order for the return payable to me/us in this matter.

Contributory's signature.

To the [Official Receiver and] Liquidator.

SCHEDULE OR LIST OF CONTRIBUTORIES HOLDING PAID-UP SHARES, TO WHOM A DIVIDEND OR RETURN IS TO BE PAID (*o*).

In the Matter of No. of 19 .

Number in Settled List.	Name of Contributory as in Settled List.	Address.	Number of Shares held as per Settled List.	Total called-up Value.			Total paid-up Value.			Arrears of Calls and Date of Return.			Previous Returns of Capital appropriated by Liquidator for Arrears of Calls.			Amount of Return per payable at Share.			Net Return payable.			Date and Particulars of Transfer of Interest or other Variation in List
				£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*	

(*n*) Companies (Winding-up) Rules, 1909, Appendix, Form 73.

(*o*) *Ibid.*, Form 74.

ORDER DECLARING RIGHTS AS TO DISTRIBUTION OF SURPLUS ASSETS.

(*Title.*)

The application by summons dated the 14th December 1910 of T.B. of in the city of Chartered Accountant the Liquidator of the above-named Company which upon hearing the Solicitors for the Applicant and for H.R.C., C.E.B. and A.C.C.H., E.B.R. and E.M.C. (the Executors of W.H.C. deceased) C.C.B., N.G., H.C. and C.J.T-L., G.T.P. and S.C-H. (the executors of T.P. deceased) W.P.S., C.V.P. and M.R. the respective Respondents to the said Summons in Chambers was adjourned to be heard in Court coming on on the 23rd May and 21st November 1911 and this day to be heard accordingly and upon hearing Counsel for the Applicant and for the said Respondent and upon reading the said Originating Summons the *London Gazette* dated 27th November 1908 containing a notice of the passing of the resolution for the voluntary Winding-up of the above-named Company and of the appointment of the applicant as Liquidator thereof the three several orders dated respectively the 16th May 20th July and the 14th November 1911 whereby the said H.R.C. was appointed to represent the holders of Preference Stock converted from fully paid Preference Shares, the said C.E.B. was appointed to represent the holders of Preference Stock created and issued as such the said A.C.C.H., E.B.R. and E.M.C. were appointed to represent the holders of fully paid Ordinary Stock converted from fully paid Ordinary Shares the said C.C.B. was appointed to represent the holders of fully paid Ordinary Stock created and issued as Stock the said N.G. was appointed to represent the holders of partly paid Ordinary Stock created and issued as Stock the said H.C. was appointed to represent the holders of partly paid Ordinary Shares the said C.J.T-L., G.T.P. and S.C-H. were appointed to represent the Transferees of fully paid Preference Stock converted from fully paid preference shares the said W.P.S. was appointed to represent the Transferees of Fully Paid Preference Stock created and issued as such the said C.V.P. was appointed to represent the Transferees of fully paid Ordinary Stock created and issued as such and the said M.R. was appointed to represent the Transferees of partly paid Ordinary Stock created and issued as such of the above-named Company for the purposes of this application the three several affidavits of H.W.B. filed respectively the 21st December 1910 the 2nd February and 10th July 1911 the affidavit of W.H.C. filed the 6th March 1911 and the several exhibits in the said affidavits or some of them respectively referred to.

THIS COURT DOTH DECLARE that £5335 of the £7745 fully paid Preference Stock of the above-named Company representing fully paid Preference Shares converted and £865 of the £867 Preference Stock issued as such and all the £22,347 Ordinary Stock are to be treated as validly issued and held and as being paid up in full and entitled to share in the distribution of surplus assets accordingly the holders of Preference Stock not making any claim to rank in priority over the holders of Ordinary Stock or in respect of dividends on their stock.

AND THIS COURT DOTH DECLARE that the £1543 part of the fully paid Preference Stock of the above-named Company which was issued as bonus

stock was invalid and that the holders thereof are not entitled to participate in the surplus assets in respect thereof nor are they under any liability to contribute in respect thereof and are not creditors of the Company for the amount thereof.

AND THIS COURT DOTH DECLARE that the £4545 Ordinary Stock of the above-named Company with 50 per cent. paid up *thereon* was invalidly issued and the holders thereof are not entitled to participate in the surplus assets or liable to contribute in respect thereof and are not creditors of the Company for the amount thereof.

AND THIS COURT DOTH DECLARE that the last two declarations hereinbefore referred to apply not only to original allottees of stock but also to transferees thereof.

AND THIS COURT DOTH DECLARE that the holders of the 17111 Ordinary Shares with £2 10*s.* per share paid up thereon are liable to contribute so much of the amount unpaid on their shares as is required to adjust the rights of the holders of the said £5335 and £865 Preference Stock the £22347 Ordinary Stock and the said 17111 Ordinary Shares held by them.

AND THIS COURT DOTH ORDER that the applicant the Liquidator of the above-named Company do distribute the surplus assets of the above-named Company in accordance with the above declarations making such call on the holders of the partly paid Ordinary Shares as may be required for the purpose.

AND IT IS ORDERED that the Costs of the applicant the said T.B. and of the respective respondents the said H.R.C., C.E.B. and A.C.C.H., E.B.R. and E.M.C. (the Executors of W.H.C. deceased) C.C.B., N.G., H.C. and C.J.T-L., G.T.P. and S.C-H. (the Executors of T.P. deceased) W.P.S. C.V.P. and M.R. of this application be taxed as between Solicitor and Client and paid out of the assets of the above-named Company the Costs of the applicant to include the sum of £3 3*s.* to be paid by him to A.C.C. originally made a respondent to the said summons and since struck out and the Costs of the respondents the said A.C.C.H., E.B.R. and E.M.C. (the Executors of W.H.C. deceased) are to include the Costs of the Testator W.H.C. prior to his death and any of the parties are to be at liberty to apply as they may be advised. [*Re The Home and Foreign Investment and Agency, Ltd.*, 00442 of 1910. SWINFEN EADY, J., November 28th, 1911, [1912] 1 Ch. 72.]

CHAPTER XIV.

Voluntary Winding-up, including Winding-up under Supervision.

Hitherto the only sort of liquidation which has been considered is compulsory liquidation. There is, however, another sort of liquidation, viz. voluntary liquidation, which includes, (1) what may be called ordinary voluntary winding-up; and (2) voluntary winding-up subject to the supervision of the Court (*a*).

Voluntary liquidation is not applicable to all companies which can be wound up compulsorily.

It is applicable to companies registered under the Act of 1862 or the Companies (Consolidation) Act, it is also applicable to companies registered under the Act of 1856, whether also registered under the later Acts or not (*b*), to societies registered under the Industrial and Provident Societies Act, 1893 (*c*), and to building societies at all events as regards winding-up subject to supervision, and probably also as regards purely voluntary winding-up (*d*). It does not apply to friendly societies (*e*) or to companies or societies which can be wound-up as unregistered companies (*f*).

A company may be wound-up voluntarily—

(1) When the period (if any) fixed for the duration of the Company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound-up voluntarily:

(2) If the Company resolves by special resolution that the Company be wound-up voluntarily:

(*a*) As to these being simply variations of one sort of liquidation, see the judgment of Lindley, L.J., in *Taurine Co.* (1883), 25 C. D. 118.

(*b*) See Companies (Consolidation) Act, 1908, ss. 182, 285 (definition of the expression "company"), and 246: *London India Rubber Co.* (1866), 1 Ch. 329; *Beaujolais Wine Co.* (1867), 3 Ch. 15; *Torquay Bath Co.* (1863), 32 Beav. 581.

(*c*) *Belfast Tailors' Co. Partnership*, [1909] 1 Ir. 49; *Friendly Protestant Partnership Loan Fund Co.*, [1895] 1 Ir. 1; Industrial and Provident Societies Act, 1893, s. 58.

(*d*) Building Societies Act, 1874, s. 32, and Building Societies Act, 1894, s. 8; Buckley, 9th Ed. 313; *Sunderland 32nd United Building Society* (1888), 21 Q. B. D. 349.

(*e*) *Irish Mercantile Loan Society*, [1907] 1 Ir. 98; *Independent Protestant Loan Fund Society*, [1895] 1 Ir. 1.

(*f*) Companies (Consolidation) Act, 1908, s. 268 (1) (ii.).

(3) If the Company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business and that it is advisable to wind-up (*g*).

When a company has by special or extraordinary resolution resolved to wind-up voluntarily, the Court may, on application by petition, make an order that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just (*h*).

A voluntary winding-up is deemed to commence at the time of the passing of the resolution authorizing the winding-up (*i*), *i.e* in the case of a special resolution at the time of the confirmatory resolution (*k*). This is also the time when a voluntary winding-up under supervision commences even where a petition has been presented and a provisional liquidator has been appointed at an earlier date (*l*). But for certain purposes a winding-up subject to supervision starts at a different date, thus, the fraudulent preference section of the Act makes the date of the presentation of the petition the essential date (*m*), and section 213 of the Act, which relates to companies registered in Scotland looks to the same date. The Court will rarely, if ever, restrain shareholders from passing resolutions for voluntary liquidation (*n*).

DIFFERENCES BETWEEN ORDINARY VOLUNTARY WINDING-UP AND WINDING-UP SUBJECT TO SUPERVISION.

Ordinarily speaking, the distinctions between an ordinary voluntary winding-up and a voluntary winding-up subject to supervision (*nn*) are as follows :—

(1) A petition for a winding-up subject to supervision is for the purpose of giving jurisdiction to the Court over actions to be deemed to be a petition for winding-up by the Court (*o*), and on a winding-up subject to supervision, as in a compulsory winding-up, no proceeding may be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes (*p*), and attachments, sequestrations, distresses, or executions

(*g*) Companies (Consolidation) Act, 1908, s. 182.

(*h*) *Ibid.*, s. 199 ; and see as to this section *post*, pp. 1297 *et seq.*

(*i*) *Ibid.*, s. 183.

(*k*) *Hornby's Case* (1868), 37 L. J. (CH.) 929 ; *Dawes' Case* (1868), 6 Eq. 232.

(*l*) *West Cumberland Iron and Steel Co.* (1889), 40 C. D. 361 ; *Dry Docks Corporation of London* (1888), 39 C. D. 306 ; *Emperor Life Assurance Society* (1885), 31 C. D. 78 ; *Weston's Case* (1868), 4 Ch. 20 ; *Colborne and Strawbridge* (1870), 11 Eq. 478 ; *Hodgkinson* v. *Kelly* (1868), 6 Eq. 496. If *Colonial Trusts Corporation* (1879), 15 C. D. 465, decides anything contrary to those cases, it must be taken as being wrong.

(*m*) Companies (Consolidation) Act, 1908, s. 210 (2) ; *Russell Hunting Record Co.*, [1910] 2 Ch. 78.

(*n*) *British Water Gas Syndicate* v. *Notts and Derby Water Gas Co.* (1889), 1 Meg. 427 ; *Ellis* v. *Dadson* (1891), 60 L. J. (CH.) 353.

(*nn*) Except where otherwise provided the provisions of the Act as to winding-up apply to all kinds of winding-up, Companies (Consolidation) Act, 1908, s. 122.

(*o*) *Ibid.*, s. 200.

(*p*) *Ibid.*, s. 203 ; and see also s. 142 (as to the effect of a winding-up order), *supra*, pp. 890 *et seq.*

put into force against the estate or effects of the company after the commencement of the winding-up are void to all intents (q). An ordinary voluntary liquidation does not have this effect, but where a company is being wound-up voluntarily the liquidator or any contributory or creditor (r) may apply to the Court to determine any question arising in the winding-up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court. On such an application the Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just (s).

Acting under this section the Court will usually stay executions and other processes of a like nature in the same way, and on the same principles as it would in a compulsory winding-up or a liquidation under a supervision order (t), and this, though the sheriff has seized before the application to stay is made, as long as he has not sold and was not in possession at the time of the commencement of the winding-up (u). With regard to staying actions in a winding-up, there would appear to be this distinction between an application under section 193 in a purely voluntary winding-up, and an application where there has been a compulsory or supervision order, viz. that in the former case the onus is on the liquidator to show that the action should be stayed, at all events where he denies the claim *in toto*, while in the latter case the onus is on the person desiring to

(q) Companies (Consolidation) Act, 1908, s. 211. As stated, when dealing with compulsory liquidation this section must be read in connection with s. 142, and the Court can consequently give leave to proceed with an execution, etc. See also as to companies registered in Scotland, s. 213 of the Act, and see *supra*, pp. 890 *et seq.*

(r) Cp. *New de Kaap, Ltd.*, [1908] 9 Ch. 589. Prior to the Act of 1900, a creditor had no power to apply to the Court in a purely voluntary winding-up. When that Act came into force WRIGHT, J., said that there was no longer any real advantage in making a supervision order, and that he would in future not be disposed to allow the costs of such an order unless sufficient reason for making the order were shown: Practice Note, [1901] W. N. 14. It is thought, however, that this note does not represent the existing practice.

(s) Companies (Consolidation) Act, 1908, s. 193.

(t) *Poole Firebrick and Blue Clay Co.* (1873), 17 Eq. 268; *Peninsular, etc., Banking Co.* (1866), 35 Beav. 280; *Thurso New Gas Co.* (1889), 42 C. D. 486; *Roundwood Colliery Co.*, [1897] 1 Ch. 373; *Sablonière Hotel Co.* (1866), 3 Eq. 74. In *Shackell & Co.* v. *Chorlton and Sons*, [1895] 1 Ch. 378, a landlord who was not allowed to distrain was not given his costs, though not ordered to pay the liquidator's costs.

(u) *Westbury* v. *Twigg*, [1892] 1 Q. B. 77, not following the decision of ROMILLY, M.R., in *Hull Forge Co.* (1867), 36 L. J. (CH.) 337.

bring or proceed with the action (*x*). Where, however, the debt is to some extent admitted, and the question is merely one of amount which can conveniently be decided by proof (*y*), there the action will almost invariably be stayed, and the Court can and will in a proper case order the plaintiff in the action to pay the costs of the application (*z*). Of course, none of these remarks apply to cases where leave to proceed would be given in a compulsory liquidation, in such cases no stay will be given in a purely voluntary winding-up (*a*). Applications to stay proceedings in a pending action, including executions on a judgment obtained, must be made to the division of the High Court where the action is pending (*b*). If the winding-up is in the High Court and proceedings are pending in an inferior Court it would appear clear that the Court, having jurisdiction to wind-up the company, can stay them, as section 24 subsection 5 of the Judicature Act, 1873 does not apply.

(2) The second important distinction between an ordinary winding-up and a winding-up subject to supervision lies in the fact that a supervision order (*c*) always directs the liquidator to file with the Registrar once every three months (*d*) a report as to the position of and the progress made with the winding-up and the progress made with realization, and also directs all costs to be taxed (*e*). In Scotland the liquidator must submit the whole of his accounts, whether relating to legal proceedings or not, to the Court (*f*).

(3) In a voluntary winding-up every transfer of shares except transfers made to or with the sanction of the liquidator, and every alteration in the status of members of the company made after the commencement of the winding-up, is void. In a compulsory

(*x*) *Currie* v. *Consolidated Kent Coalfields Corporation*, [1906] 1 K. B. 134; and see also *Keynsham Co.* (1863), 33 Beav. 123; *Life Association of England* (1864), 34 L. J. (CH.) 64.

(*y*) Cp. *Currie* v. *Consolidated Kent Collieries Corporation*, [1906] 1 K. B. 134; and also the cases cited in the next note.

(*z*) *Freeman* v. *General Publishing*, [1894] 2 Q. B. 380; *Rose* v. *Gardden Lodge Coal and Coke Co.* (1878), 3 Q. B. D. 235.

(*a*) *Leviek's Case* (1867), 5 Eq. 69; *Ex parte Smith* (1867), 3 Ch. 125 (where the debts had arisen after winding-up); *Harpur's Cycle Fittings Co.*, [1900] 2 Ch. 731, where the assets were completely covered by debentures.

(*b*) *General Service Co-operative Stores*, [1891] 1 Ch. 496; *Artistic Colour Printing Co.* (1880), 14 C. D. 502; *Walker* v. *Banagher Distillery* (1876), 1 Q. B. D. 129; *Harrison* v. *Mortgage Insurance Corporation* (1893), 10 T. L. R. 141. These decisions are founded on the Judicature Acts.

(*c*) Cp. Companies (Winding-up) Rules, 1909, Appendix, Form 16, and see pp. 1314 *et seq.*

(*d*) *Pritchard, Offor & Co.*, [1893] W. N. 153, as varied by *Horner & Co.* (1898), 5 Mans. 355.

(*e*) *Civil Service Brewery Co.*, [1893] W. N. 5, as varied by *Waterproof Materials Co.*, [1893] W. N. 18.

(*f*) *Reekie* v. *Liquidator of Leith and East Coast Shipping Co.*, [1911] S. C. 809. For the practice in England, see *infra*, pp. 1301 and 1302.

winding-up or a winding-up subject to supervision not only alterations of status and transfers but also all dispositions of property including things in action made after the commencement of the winding-up are void unless the Court otherwise orders (*g*).

(4) In the case of companies registered in Scotland certain proceedings are avoided in the case of a winding-up by or under the supervision of the Court, but not in the case of a purely voluntary winding-up (*h*).

(5) With regard to the sanctioning of a general scheme of liquidation under section 214 of the Act the sanction required in the case of a winding-up by the Court in England is that of the Court or the committee of inspection. In the case of a winding-up under supervision or a winding-up by the Court in Scotland or Ireland the sanction of the Court must be obtained, in the case of an ordinary voluntary winding-up an extraordinary resolution must be passed (*i*).

(6) In a compulsory liquidation or a liquidation under supervision the Court may of its own motion or on the application of any person interested direct the prosecution of directors and others at the expense of the assets, in a voluntary liquidation a liquidator may prosecute at the expense of the assets if he has obtained the previous sanction of the Court (*k*).

(7) Where a company is about to be dissolved its books will be disposed of as the Court directs in the case of a winding-up by or subject to the supervision of the Court, and in the case of a voluntary winding-up as the company by extraordinary resolution directs (*l*).

DIFFERENCES BETWEEN COMPULSORY AND VOLUNTARY WINDING-UP.

The main distinctions between a voluntary winding-up whether under supervision or not and a compulsory winding-up are that in the former the official receiver is never liquidator and the liquidator is not usually appointed by the Court, there is usually no committee of inspection (*m*), no statement of affairs, no report or further report by the official receiver, and, most important of all, there can be no public examination.

The compulsory liquidation provisions as to meetings of creditors, information to be supplied to the official receiver, the payments to be made to the Bank of England, the audit of liquidator's accounts under section 155 of the Act (*mm*), the books to be kept by and the release of a liquidator, the control of the Board of Trade and the appointment of a special manager are also excluded in the case of a supervision order by section 203 (*n*) of the Act, which contains the following provisions :—

(*g*) Companies (Consolidation) Act, 1908, s. 205. See *supra*, pp. 887 *et seq.*

(*h*) *Ibid.*, s. 213.

(*i*) *Ibid.*, s. 214. In compromises or arrangements under s. 120 of the Act the sanction of the Court is always necessary.

(*k*) *Ibid.*, s. 217.

(*l*) *Ibid.*, s. 222.

(*m*) See now, however, s. 188 of the Act, referred to *post*, pp. 1272 and 1273; and see also *Watson and Sons*, [1891] 2 Ch. 55.

(*mm*) In a voluntary liquidation the Board of Trade audits the liquidator's accounts under s. 224 of the Act.

(*n*) These matters are also excluded in a purely voluntary

Where an order is made for a winding-up subject to supervision, the Liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the Company were being wound up altogether voluntarily.

A winding-up subject to the supervision of the Court is not a winding-up by the Court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, except sub-section (10), one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty one, one hundred and sixty-two, one hundred and seventy-three, and one hundred and seventy-five, but, subject as aforesaid, an order for a winding-up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, the power in Scotland to remit the winding-up to a permanent Lord Ordinary and the exercise of all other powers be deemed to be an order for winding-up by the Court.

It has been held that the power of transferring proceedings given by rule 42 of the Companies (Winding-up) Rules and by O. 49, r. 5, R. S. C. applies to a supervision case (*o*). The application being by summons before the winding-up Judge. The consent of the Lord Chancellor is apparently necessary in such cases.

The Court can in a proper case on making a supervision order give such directions as will render a winding-up subject to supervision more akin to a winding-up by the Court than to an ordinary winding-up subject to supervision (*p*). It has thus in effect appointed a committee of inspection (*q*) or advisory committee, and has directed the liquidator to "conduct the winding-up of the company subject to such restrictions as an official liquidator would in a compulsory winding-up be subject to except so far as the Court may upon an

winding-up, and it is thought that all the provisions of the Act with regard to a compulsory liquidation which are by this section made applicable to a winding-up subject to supervision except the automatic stay of proceedings, will also be applicable in a purely voluntary winding-up.

(*o*) By NEVILLE, J., in Chambers in *The Penge Perseverance Permanent Benefit Building Society*, 0097 of 1909, June 8, 1909, following certain cases mentioned in Palmer, 10th Ed. p. 611, and not following *Shingleton Ice Co.* (1897), 41 Sol. J. 705. EADY, J., also made an order for transfer on June 21, 1910, in the *Penge Perseverance Permanent Building Society*. See order below, pp. 1321 and 1322. There was, however, no discussion on the question of jurisdiction in this case as there was in the case before NEVILLE, J.

(*p*) Under the power to impose restrictions conferred by s. 203 (1) of the Act.

(*q*) *Watson and Sons*, [1891] 2 Ch. 55. The Court is, however, by no means bound to give any such special directions: *Owen's Patent Wheel and Tyre Co.* (1873), 29 L. T. 672. It will now usually not make such an order until the result of the meeting under s. 188 is known, see *infra*, p. 1299, and will then only make such an order as to a committee of inspection as is usual under that section; see *infra*, pp. 1319 and 1320, and order in *Wyvern Kid Co.*, 0050 of 1912. NEVILLE, J., March 12, 1912.

application for that purpose, modify or dispense with such restrictions in any case or class of cases" (*r*). There can, however, never be a public examination in a supervision case, as the official receiver cannot make a further report. A private examination may, however, and is sometimes heard in open Court (*rr*). The Court can in like manner by orders made on applications under section 193 of the Act, in effect alter a purely voluntary winding-up into something very like a winding-up under supervision (*s*). All applications to the Court in a purely voluntary winding-up must be made under this section (*t*). Such applications must usually be made by summons (*u*), and no doubt the Court has under the section a wider discretion than it would have under a compulsory or supervision order, for it must be "satisfied that the determination of the question or the required exercise of the power will be just and beneficial" (*x*), but the Court has declined to cut down the effect of the section, and it can be brought into play on any question which fairly arises in the course of a winding-up (*y*). Thus, under it misfeasance proceedings have been taken (*z*), and orders for production of documents under section 174 have been made (*a*). An inspection of books under section 221 can be ordered by virtue of this section (*b*), the rights of an alleged dissentient have been determined (*y*), and the winding-up of a company has been stayed (*c*), and also, as has been shown, a stay has been ordered of actions and executions against a company in voluntary winding-up. A Scotch Court has under this section approved of the manner in which the liquidator has dealt with all proofs sent in in the liquidation, the application being served on all persons who had questioned any decision of the liquidators with regard to a proof (*cc*). An additional liquidator has also been appointed under the section (*d*), even before a creditor could apply under the section

(*r*) *London Quays and Warehouses Co.* (1868), 3 Ch. 394. For the converse case, see *Rochdale Property and General Finance Co.* (1879), 12 C. D. 775, where on a compulsory order the Court declared "that all the acts required or authorized by the above statutes to be done by the official liquidator may be done by the official liquidator above appointed without the previous sanction or interference of this Court." This order was made before the Companies (Winding-up) Act, 1890.

(*rr*) See Companies (Winding-up) Rules, 5 (2).

(*s*) *Rance's Case* (1870), 6 Ch. 104, citing *Bank of Gibraltar and Malta* (1865), 1 Ch. 69; and *Beaujolais Wine Co.* (1867), 3 Ch. 15.

(*t*) *New de Kaap*, [1908] 1 Ch. 589.

(*u*) Companies (Winding-up) Rules, 1909, rr. 5, 6, 7, and 8.

(*x*) *Rance's Case* (1870), 6 Ch. 104; *Licensed Victuallers' General Plate Glass Insurance Co.* (1868), 17 L. T. 8; *Crawford* v. *M'Culloch*, [1909] S. C. 1063.

(*y*) *Union Bank of Kingston-upon-Hull* (1880), 13 C. D. 808: but cp. *Zoedone Co.* (1883), 53 L. J. (CH.) 465.

(*z*) *Rance's Case* (1870), 6 Ch. 104. Claims for negligence which do not come within the misfeasance section must be made by action, and not by summons under s. 193: *Hill's Waterfall Estate and Gold Mining Co.*, [1896] 1 Ch. 947.

(*a*) *Sir John Moore Gold Mining Co.* (1878), 37 L. T. 242.

(*b*) *Kent Coalfields Syndicate*, [1898] 1 Q. B. 754.

(*c*) *Titian Steamship Co.* (1888), 58 L. T. 178; *Eastern Investment Co.*, [1905] 1 Ch. 352, showing that this can only be done on the application of a creditor or contributory. See also the order on p. 1324, *infra*.

(*cc*) *Kosmoid Tubes* (1911), 49 S. L. R. 9.

(*d*) *Sunlight Incandescent Gas Lamp Co.*, [1900] 2 Ch. 728.

a contributory has been allowed to utilize it for his claim as a creditor (*e*). The Scotch Courts have, however, declined to try a question of wrongful dismissal under the section, on the ground that proceedings of this nature were not suitable to the trial of an issue of fact, and that probably no jury could be summoned (*f*). It was intimated in one case (*g*) that the Court in its discretion would not decide a question as to the remuneration a manager was entitled to, where it was of opinion that owing to the company having proved abortive he ought not in honesty to have claimed any remuneration, the case under consideration was, however, decided on the ground that the liquidator had decided the remuneration payable, and that it was unnecessary for him to come to the Court, as any contributory (or now creditor) could do so if he felt himself aggrieved. Where an application is made under this section it is usual to reserve liberty to apply so that future applications may be made by ordinary (and not originating) summons and consequently will not require personal service. A practice has grown up of taking out under the section an originating summons asking for liberty to apply only (*gg*). This course is usually taken to avoid expense or difficulty in effecting personal service of an originating summons for a balance order, or for some other order. The originating summons for liberty to apply is *ex parte*, and except for the purpose of proving that there is a voluntary winding-up no evidence will be required. A possible distinction between compulsory and voluntary liquidation on the question of dismissal of servants is discussed later. If a creditor who resides abroad makes an application under the section he will be required to give security for costs (*h*). A liquidator, on the other hand, will not have to give security (*i*).

RESOLUTIONS FOR VOLUNTARY WINDING-UP.

To return to the resolution for voluntary winding-up, it will be unnecessary here to recapitulate all the rules which govern meetings and notices of meetings (*ii*), but a voluntary winding-up resolution will be bad if the notice for the meeting to pass it was sent out by an unauthorized person (*k*). Further, where it is proposed to wind-up by extraordinary resolution on the ground that the company cannot by reason of its liabilities continue its business and that it is advisable to wind-up, it must be made clear by the notice summoning the meeting, that the resolution will not require confirmation at a second meeting (*l*). For this purpose it will be sufficient if the notice follows

(*e*) *Central de Kaap Gold Mines* (1899), 69 L. J. (CH.) 18.

(*f*) *Crawford* v. *M'Culloch*, [1909] S. C. 1063.

(*g*) *Licensed Victuallers' General Plate Glass Insurance Co.* (1868), 17 L. T. 8.

(*gg*) For such an order, see *infra*, p. 1318, where an application is made under section 188 of the Act; liberty to apply will be reserved by the order on such application.

(*h*) *Pretoria Pietersburg Railway* (*No.* 2), [1904] 2 Ch. 359.

(*i*) *Strand Wood Co.*, [1904] 2 Ch. 1.

(*ii*) See *supra*, pp. 381 *et seq.*, for writ where resolutions invalid, *infra*, p. 1314.

(*k*) *Haycraft Gold Reduction and Mining Co.*, [1900] 2 Ch. 230; *State of Wyoming Syndicate*, [1901] 2 Ch. 431; but cp. *Southern Counties Deposit Bank* v. *Rider and Kirkwood* (1895), 73 L. T. 374.

(*l*) *Bridport Old Brewery Co.* (1867), 2 Ch. 191; *National Savings Bank Association* (1866), 1 Ch. 547; *Silkstone Fall Colliery Co.* (1875), 1 C. D. 38; but cp. *London Flour*

the terms of section 182 (3) (*m*). It will not, however, it is thought, be sufficient for it to state that the resolution is to be extraordinary (*n*), for an extraordinary resolution will be necessary even where there is to be a confirmatory resolution (*o*). Where the liquidation is part of a scheme of reconstruction the winding-up will be valid, even though the reconstruction fail if the resolution for winding-up is entirely separate (*p*). Where, however, the resolution states that the winding-up is for the purpose of reconstruction, there is more difficulty, in such case it would appear that if the reconstruction scheme is *ultra vires*, the winding-up will fail with it (*q*). One of the consequences that follows on a voluntary winding-up, is that the company in general meeting appoints one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and it may also fix the remuneration to be paid to such liquidator or liquidators (*r*). The non-appointment of a liquidator will not invalidate a winding-up resolution (*s*). A liquidator cannot, where the resolution for winding-up is special, be validly appointed at the first meeting (*t*). If the resolution at such meeting purports to appoint a liquidator, the appointment will require confirmation at the second meeting (*u*), and at such second meeting, whether the notice of the meeting is silent on the point or not, it will be competent to appoint a totally different person liquidator (*x*). No notice of an intention to appoint a liquidator is necessary, for that is the necessary consequence of a winding-up resolution (*y*). As already stated in supervision cases, the order directs the remuneration of the liquidator to be taxed. If

Co. (1868), 19 L. T. 136. This last case shows that no special evidence is necessary to support such a resolution.

(*m*) *Stone* v. *City and County Bank* (1877), 3 C. P. D. 282.

(*n*) See, however, the remarks of LINDLEY, J., in *Stone* v. *City and County Bank* (1877), 3 C. P. D. 282.

(*o*) See s. 69 (1) and (2) of the Act. For forms of notices of meetings for voluntary winding-up, see *infra*, pp. 1307 and 1308.

(*p*) *Thomson* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 765, explaining *Imperial Bank of China, India, and Japan* (1866), 1 Ch. 339.

(*q*) *Teede and Bishop* (1901), 70 L. J. (CH.) 409, approved by COZENS-HARDY, M.R., and FLETCHER MOULTON, L.J., in *Thomson* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 765; see also *Ex parte Fox* (1871), 6 Ch. 176; *Stone* v. *City and County Bank* (1877), 3 C. P. D. 282. A contrary view was, however, taken in *Cleve* v. *Financial Corporation* (1873), 16 Eq. 363.

(*r*) Companies (Consolidation) Act, 1908, s. 186 (ii.).

(*s*) *Thomas* v. *Patent Lionite Co.* (1881), 17 C. D. 250.

(*t*) *Indian Zoedone Co.* (1884), 26 C. D. 70; *Trench Tubeless Tyre Co.*, [1900] 1 Ch. 408.

(*u*) *London and Australian Agency Corporation* (1873), 29 L. T. 417.

(*x*) *Trench Tubeless Tyre Co.*, [1900] 1 Ch. 408.

(*y*) *Welsh Flannel and Tweed Co.* (1875), 20 Eq. 360; *Oakes* v. *Turquand* (1867), L. R. 2 H. L. 325, 355; *Indian Zoedone Co.* (1884), 26 C. D. 70; *Trench Tubeless Tyre Co.*, [1900] 1 Ch. 408, not following *Stearic Acid Co.* (1863), 32 L. J. (CH.) 784; or *Anglo-Californian Mining Co.* v. *Lewis* (1860), 6 H. & N. 174.

the company does not fix the remuneration of a liquidator, the Court can, on an application under section 193 of the Act, fix such remuneration (*z*), and, at all events, it frequently does so by consent. In fixing such remuneration the Court will not always follow the analogy of the fees prescribed by the General Order of 1868, and will not allow each letter to be charged for as if it had taken half an hour of the principal's time (*a*). The practice is, however, to take such fees as a guide. Probably rule 186 of the Companies (Winding-up) Rules, 1909 (*b*), would apply by analogy to a voluntary winding-up. Where a liquidator has acted in all good faith on the strength of an appointment which is invalid the Court cannot fix his remuneration in the ordinary way, as it cannot imply any request by the company to the liquidator to act, but it will, it has been held, but in the exercise of what jurisdiction is not quite clear, allow him proper remuneration for any work he has done and of which the company has had the benefit for business purposes unconnected with the winding-up or of which the official receiver has availed himself in a subsequent compulsory liquidation (*c*). Where a company has resolved by special or extraordinary resolution to wind-up voluntarily, it must give notice of the resolution by advertisement in the *Gazette* (*d*).

A liquidator must within twenty-one days after his appointment, file with the Registrar of Joint Stock Companies a notice of his appointment in the form prescribed by the Board of Trade, and if any liquidator contravenes this provision he will be liable to a fine not exceeding five pounds for every day during which the contravention continues (*e*).

MEETING OF CREDITORS.

Every liquidator appointed by a company in a voluntary winding up must, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and must also advertise notice of the meeting once in the *Gazette* (*ee*) and once at least in two local newspapers circulating

(*z*) *Allison, Johnson, and Foster*, [1904] 2 K. B. 327; and see also Companies (Consolidation) Act, 1909, s. 149 (8); *Amalgamated Syndicates*, [1901] 2 Ch. 181; *Re Vimbos*, [1900] 1 Ch. 470. This will be done on *Ex parte* application.

(*a*) *Amalgamated Syndicates*, [1901] 2 Ch. 181.

(*b*) This rule provides that a person who receives remuneration as a liquidator is not to be allowed any sum in his accounts in respect of the performance by any other person of the ordinary duties of a liquidator, and enables a solicitor liquidator to contract that his remuneration shall include professional services.

(*c*) *Allison, Johnson, and Foster*, [1904] 2 K. B. 327.

(*d*) Companies (Consolidation) Act, 1908, s. 185. For form of advertisement, see *infra*, p. 1306.

(*e*) *Ibid.*, s. 187. In Scotland the fine can only be enforced at the instance of the Lord Advocate or a procurator fiscal, as the Lord Advocate directs. For form of notice, see *infra*, p. 1307.

(*ee*) For form of this advertisement, see *infra*, p. 1306.

in the district where the registered office or principal place of business of the company is situate.

At the meeting (*f*) to be held in pursuance of the foregoing provisions of this section the creditors must determine whether an application shall be made to the Court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the Court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just. Apparently on a change of liquidators the new liquidator will have to summon a meeting under the section (*g*), if he is appointed by the company.

No appeal lies from any order of the Court upon an application under this section.

The Court will make such order as to the costs of the application as it thinks fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant (*h*).

DELEGATION OF AUTHORITY TO APPOINT LIQUIDATORS.

A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement (*i*) with respect to the powers to be

(*f*) At such a meeting it would appear that proxies could not be used as there is no common law right to use them: cp. *Harben* v. *Phillips* (1883), 23 C. D. 14. It would also seem that the value of a creditor's debt should *not* be taken into account on a vote.

(*g*) Where it was desirable to re-summon a meeting, NEVILLE, J., reappointed the liquidator so as to enable this to be done: *Francis & Co.*, 00171 of 1911, NEVILLE, J., June 14, 1911; but query whether this had the desired effect as the liquidator ceased to be appointed by the company.

(*h*) Companies (Consolidation) Act, 1908, s. 188. For orders under this section, see *infra*, pp. 1318 *et seq.*

(*i*) See Companies (Consolidation) Act, 1908, s. 191, *post*, p. 1279, as to when arrangements are binding on

exercised by the liquidators and the manner in which they are to be exercised any act done by the liquidators in pursuance of any such delegated power will have the same effect as if it had been done by the company (*k*). The power given by this provision is never exercised.

POWER TO FILL VACANCY IN OFFICE OF LIQUIDATOR.

If a vacancy occurs by death, resignation, or otherwise in the office of liquidator in a voluntary winding-up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators, or liquidator.

The meeting must be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court (*l*).

If from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory appoint a liquidator, and it may on cause shown (*m*) remove a liquidator and appoint another liquidator (*n*). It would appear that the last preceding words enable the Court to appoint an additional liquidator in a purely voluntary winding up (*o*), and that it can also appoint a liquidator in place of one who has resigned (*p*). Applications of this sort must be made to the Companies (Winding-up) Court (*q*). Every liquidator appointed by the Court will have to give security unless, which very rarely happens, the order gives directions to the contrary. Usually the order does not go until security is given. Such security will be given to the Registrar in Companies (Winding-up) and one of the Bankruptcy Registrars, and not to the Board of Trade, where the liquidation is not compulsory, the practice is the same as when a receiver in a debenture-holder's action gives security (*r*). the recognizance bond or undertaking being *mutatis mutandis* in the same form, and for the same amounts.

CESSER OF BUSINESS AND POWERS OF COMPANY.

Where a company is being wound up voluntarily it ceases from the commencement of the winding-up to carry on its business,

a company and its creditors and as to appeals from them.

(*k*) Companies (Consolidation) Act, 1908, s. 190.

(*l*) *Ibid.*, s. 189.

(*m*) As to what will amount to "cause shown," see *supra*, pp. 952 *et seq.*, under compulsory winding-up, and s. 149 (6) of the Act.

(*n*) Companies (Consolidation) Act, 1908, s. 186 (viii.) and (ix.).

(*o*) *Sunlight Incandescent Gas Lamp Co.*, [1900] 2 Ch. 728.

(*p*) *Sheppey Portland Cement Co.* (1892), 68 L. T. 83.

(*q*) Cp. *Pearston's Application* (1911), 48 S. L. R. 755.

(*r*) The practice as to this is set out fully above, at pp. 570 *et seq.*, and it is not thought necessary to repeat it here. Sureties will remain liable even if the liquidator fails to pay his premiums, until, in the case of a bond, they have applied to the Court to be relieved. See the form of recognizance bond and undertaking, *supra*, pp. 585 *et seq.*

except so far as may be required for the beneficial winding-up thereof; but the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until it is dissolved (*s*).

It has been held that a voluntary winding-up unlike a compulsory winding-up, does not operate as a notice of dismissal to servants (*t*), the reasons assigned being that while a voluntary liquidator is the agent of the company, a liquidator appointed in a compulsory winding-up is an officer of the Court, and consequently in the latter, unlike the former case, there is a change of employment. This view, which is inconsistent with *Shireff's Case* (*u*) and *Ex parte Schumann* (*v*), the latter of which was not cited, is, it is respectfully submitted, wrong.

It is not correct to say that a liquidator in a compulsory winding-up is an officer of the Court for the purpose of carrying on the business of the company, he is only an officer of the Court for the purposes mentioned in section 173 of the Act (*w*), and carrying on the business of the company is not one of those purposes, and, moreover, a liquidator in a voluntary winding-up is for some purposes in the same position as an officer of the Court (*x*). An examination of *Chapman's Case* (*y*) which first decided that the advertisement of a winding-up order was notice of dismissal to servants shows, it is thought, that the ground of the decision was not a change of employment, but that such a rule would be convenient, as it would save giving formal notices in each case, and would not operate harshly as every one had notice of the winding-up order, and would know that *primâ facie* that would end the business. These grounds would seem to apply equally in a voluntary winding-up where, as already stated, the resolution must be advertised. It is no doubt true to say that a voluntary liquidator is in a sense the agent of the company (*z*), but the same may be said of a liquidator in a compulsory winding up (*a*), and in both cases if there is a deficiency of assets a creditor of the company while a going concern, is in an entirely different position to a person whose debt was contracted by the liquidator (*b*). The principle of the case now under consideration

(*s*) Companies (Consolidation) Act, 1908, s. 184.

(*t*) *Midland Counties District Bank* v. *Attwood*, [1905] 1 Ch. 357.

(*u*) (1872), 14 Eq. 417.

(*v*) (1887), L. R. 19 Ir. 240.

(*w*) *Hill's Waterfall Estate and Gold Mining Co.*, [1896] 1 Ch. 947.

(*x*) *E.g.*, he cannot retain moneys paid to him under a mistake of law: *Temple Fire and Accident Assurance Co.* (1910), 129 L. T. Jo. 115.

(*y*) (1866), 1 Eq. 346.

(*z*) *Knowles* v. *Scott*, [1891] 1 Ch. 717.

(*a*) *Anglo-Moravian Hungarian Junction Railway* (1875), 1 C. D. 130.

(*b*) *International Marine Hydropathic Co.* (1884), 28 C. D. 470; *National Arms and Ammunition Co.* (1885), 28 C. D. 474.

no doubt finds some support in *The Brighton Arcade Co.* v. *Dowling* (c), but the decision in this case would appear to be inconsistent alike with the reasoning in *Sankey Brook Coal Co.* (d), and with all the later cases (e). Nor does the decision in *Midland Counties District Bank* v. *Attwood* (f) find much support from the dicta of Lord Esher in *Reid* v. *Explosives Co.* (g), for these dicta only suggest that a voluntary liquidator can make a fresh contract to employ a servant, a proposition that may be readily admitted seeing that in a compulsory liquidation the liquidator has also got this power (h). In one case leave was given to a voluntary liquidator to file a contract which section 7 of the Companies Act, 1900, required to be filed (i), on the ground that if he failed to do so he might be liable as an officer of the company to penalties (k). *Primâ facie* a winding-up will not terminate ordinary trade contracts which the company has made previous to liquidation and which are not of a personal nature (l). On the appointment of a liquidator all the powers of the directors cease except so far as the company in general meeting or the liquidator sanctions the continuance thereof (m). Meetings have been summoned in a voluntary winding-up, to appoint directors, where it was desirable to forfeit shares and the articles of the company gave the directors power to forfeit shares (n).

APPLICATION OF PROPERTY OF COMPANY.

The property of the company must be applied in satisfaction of its liabilities *pari passu* and subject thereto must unless the articles otherwise provide, be distributed among the members according to their rights and interests (o). This provision, though only in terms applicable to a voluntary winding-up is in effect applicable also to every form of winding-up (p). The provision as to paying the liabilities of the company *pari passu* is the reason why, as has already been stated, the Court will step in and stay actions and other

(c) (1868), 3 C. P. 175.

(d) (1871), L. R. 6 Ex. 185.

(e) Cp. *Black & Co.'s Case* (1872), 8 Ch. 254; *Whitehouse & Co.* (1878), 9 C. D. 595.

(f) [1905] 1 Ch. 357.

(g) (1887), 19 Q. B. D. 264.

(h) *Ex parte Harding* (1867), 3 Eq. 341.

(i) Now replaced by s. 88 of the Act.

(k) *Re X.*, [1907] 2 Ch. 92.

(l) *Tolhurst* v. *Associated Portland Cement Manufacturers*, [1902] 2 K. B. 660; [1903] A. C. 414; *British Waggon Co.* v. *Lea* (1880), 5 Q. B. D. 149.

(m) Companies (Consolidation) Act, 1908, s. 186 (iii.); and see *ibid.*, s. 194, as to summoning meetings.

(n) *Ladd's Case*, [1893] 3 Ch. 450.

(o) Companies (Consolidation) Act, 1908, s. 186 (1).

(p) Cp. *Webb* v. *Whiffin* (1872), L. R. 5 H. L. 711; *Birch* v. *Cropper* (1889), 14 A. C. 525. It will therefore be unnecessary to go into these matters at any length here, as they have already been fully dealt with under compulsory winding-up. *Webb* v. *Whiffin* (1872), L. R. 5 H. L. 711, also shows that the expression "property" in s. 186 (1) means the free property after paying charges, having priority, and includes uncalled capital.

proceedings in a voluntary winding-up (*q*), and where the company is insolvent section 207 of the Act imports the bankruptcy rules in a voluntary winding-up just as it does in a compulsory liquidation (*r*). All costs, charges, and expenses properly incurred in the voluntary winding-up of a company including the remuneration of the liquidator are payable out of the assets of the company in priority to all other claims (*s*). Here again the rule is apparently similar to the rule in a compulsory winding-up which has already been considered. It would seem that the Court can also as in a compulsory liquidation, make a special order as to costs (*t*). As already stated, debts incurred by the liquidator have priority in the same way as in a compulsory winding up (*u*), and where proceedings have been unsuccessfully brought, defended or continued by a liquidator, any costs he or the company is ordered to pay will have priority (*x*) and be payable immediately (*y*), just as in a compulsory liquidation.

A liquidator who discontinues proceedings for calls commenced by the company before liquidation and then takes proceedings to enforce the same calls, will not be restrained from taking such proceedings until he has paid the costs of the action, but if he is successful such costs will be set off against the amount he recovers (*z*). If a supervision order is made the costs of the petitioner and of the liquidator's solicitor on the petition and for work done by the authority of the liquidator after the order will have priority to the remuneration of the liquidator for the period prior to the order (*a*). It has been held, however, that the costs of the liquidator prior to the supervision order have priority to the petitioner's costs (*b*). It may be doubted, however, whether this case will stand with *The Sanitary Burial Association* (*a*), which was a decision of the Court of Appeal, and which certainly seems to indicate that rule 187 of the Companies (Winding-up) Rules, 1909, applies in a voluntary as well as a compulsory winding-up, although it is in terms only applicable to a compulsory winding-up. Of course, certain of the costs mentioned in the rule could only arise in a compulsory winding-up. Apart from any special order, the costs of a purely voluntary liquidation

(*q*) Cp. *Sablonière Hotel Co.* (1866), 3 Eq. 74.

(*r*) *Thomas Salt & Co.* (1908), 98 L. T. 558.

(*s*) Companies (Consolidation) Act, 1908, s. 196.

(*t*) See *ibid.*, ss. 171 and 193.

(*u*) *National Arms and Ammunition Co.* (1885), 28 C. D. 474.

(*x*) *Wenborn & Co.*, [1905] 1 Ch. 413; *London Drapery Stores*, [1898] 2 Ch. 684; *Ex parte Smith* (1867), 3 Ch. 125; *Bailey and Leetham's Case* (1869), 8 Eq. 94; but see also *Thurso New Gas Co.* (1889), 42 C. D. 486; *Snyder Dynamite Projectile Co.*, [1893] W. N. 37.

(*y*) Cp. *London Metallurgical Co.*, [1895] 1 Ch. 758.

(*z*) *United Service Association*, [1901] 1 Ch. 97.

(*a*) *Sanitary Burial Association*, [1900] 2 Ch. 289.

(*b*) *New York Exchange*, [1893] 1 Ch. 371.

will not be taxed as a rule, but in supervision cases the order directs such taxation, and in such case a liquidator who wishes to appeal, and to get his costs out of the assets in any event, should apply to the Judge for leave to appeal from his decision (*c*).

POWERS OF LIQUIDATORS.

Where several liquidators are appointed every power given to liquidators may be exercised by such one or more of them as may be determined at the time of their appointment or in default of such determination by any number not less than two (*d*). It would seem that where there are several liquidators, they cannot authorize one of their number even to sign a specific bill or to do any single act in exercise of their powers as liquidators (*e*), and certainly where bills to a certain amount are to be renewed, and the old bills have to be handed over, and the dates and amounts of the new bills have to be settled these matters cannot be left to one liquidator, as they involve the exercise of a discretion (*e*). A director who is also one of several liquidators cannot, of course, accept a bill after the winding-up resolution, and if he does do so the company will in no way be liable (*f*).

The liquidator may, without the sanction of the Court, exercise all the powers by the Act given to the liquidator in a winding-up by the Court (*g*).

In a liquidation it is, apart from special provisions like section 192, the duty of the liquidator to sell the assets for cash (*h*).

His powers under the sub-section above-mentioned include in a purely voluntary liquidation (*i*) the powers conferred on a liquidator in a compulsory winding-up (*k*) by (1) section 151 of the Act; (2) presumably the power conferred by section 150 of the Act of taking into his custody or under his control all the property and things in action to which the company is or appears to be entitled (*l*); and a liquidator has also (3) power to summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purpose he thinks fit (*m*); (4) power with the sanction of an extraordinary resolution of the company to do any of the things authorized by section 214 of the Act, that is to say—

(*c*) *City and County Investment Bank* (1879), 13 C. D. 475.

(*d*) Companies (Consolidation) Act, 1908, s. 186 (vii.).

(*e*) *Re Metropolitan Bank and Jones* (1876), 2 C. D. 366; *Ex parte Agra and Masterman's Bank* (1871), 6 Ch. 206; *Birmingham Banking Co.* (1868), 3 Ch. 651; *Ex parte London and South Western Bank* (1867), 36 L. J. (CH.) 807.

(*f*) *Bolognesi's Case* (1870), 5 Ch. 567.

(*g*) Companies (Consolidation) Act, 1908, s. 186 (iv.).

(*h*) *Bisgood* v. *Henderson's Transvaal*, [1908] 1 Ch. 743.

(*i*) The cases where a voluntary winding-up is continued under supervision can be more conveniently considered later.

(*k*) See as to these *supra*, pp. 1004 *et seq.*, under compulsory liquidation.

(*l*) Cp. *Kent Coalfields Syndicate*, [1898] 1 Q. B. 754.

(*m*) Companies (Consolidation) Act, 1908, s. 194 (1).

(1) To pay any classes of creditors in full.

(2) To make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future certain or contingent ascertained or sounding only in damages against the company or whereby the company may be rendered liable.

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

These powers have already been considered so far as they affect liquidations under orders of the Court (*mm*); here it is only necessary to add that a creditor cannot impeach a compromise, on the ground that it has not been sanctioned by an extraordinary resolution, such resolution only being required for the purpose of protecting the company against its liquidator and the liquidator himself (*n*). A voluntary liquidator may not without the leave of the Court compromise a claim that has been submitted to the Court, but the onus of proof will lie on the person seeking to upset the compromise (*o*).

Any arrangement entered into between a company about to be, or in the course of being, wound-up voluntarily, and its creditors, will, subject to the right of appeal below mentioned, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

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

In addition, compromises or arrangements may be entered into as has already been stated, under section 120 of the Act with the sanction of the Court.

The liquidator in a voluntary winding-up may exercise the powers of the Court under the Act of settling the list of contributories and making calls, and must pay the debts of the company and adjust the rights of the contributories amongst themselves. The list of

(*mm*) *Supra*, pp. 1036 *et seq.*, and 1174 and 1175.

(*n*) *Cyclemakers' Co-operative Supply Co.* v. *Sims*, [1903] 1 K. B. 477; *English and Scottish Marine Insurance Co.* (1869), 20 L. T. 685.

(*o*) *Ex parte Miller* (1867), 2 Ch. 692.

(*p*) Companies (Consolidation) Act, 1908, s. 191.

contributories will be *primâ facie* evidence of the liability of the persons therein named to be contributories (*q*). The other powers of the Court, so far as they are exercisable in a voluntary liquidation (*r*), are exercisable by the Court on an application under section 193 of the Act.

The provisions contained in section 186 (v.) and (vi.) of the Act would, however, appear to give the liquidator the powers which the Court has on a compulsory winding-up under section 163 and 166 of the Act, except the power of rectifying the register (*s*). As to this the Act provides (*t*) that in the case of a voluntary winding-up every transfer of shares, except transfers made to or with the sanction of the liquidator and every alteration in the status of the members of the company made after the commencement of the winding-up will be void. A transfer authorized by a liquidator under this section will free the transferor from liability to be put on the A list of contributories, the transferee being put there in his place. If there have been several transfers sanctioned by the liquidator all the transferors will be placed on the B list of contributories (*u*). The Court has power to rectify the register for the purpose of settling the list of contributories (*x*), but it cannot do so in a voluntary, any more than in a compulsory, liquidation where there is a voidable contract with the contributory which he has not taken proceedings to repudiate before the commencement of the liquidation (*y*), or the stoppage of the business of the company (*z*), whichever happens first (*a*).

Rules 77 to 82 of the Companies (Winding-up) Rules, 1909, which relate to the settling of the list of contributories in a compulsory liquidation, are not in terms applicable to a voluntary winding-up, though, no doubt, the liquidator in such a winding-up will use them as a guide to his duties. With regard to the rules for making calls (*b*), these would, with the exception of rule 87, seem to have no application to a voluntary winding-up. In such case it would appear to be the duty of the liquidator to decide what call is to be made, and then to give notice to each contributory informing him of the call and requiring him to pay it. For this purpose he signs an instrument of call and sends it to all contributories affected by the call (*bb*).

(*q*) Companies (Consolidation) Act, 1908, s. 186 (v.) and (vi.).

(*r*) See *supra*, pp. 1269 and 1270, as to this.

(*s*) *I.e.* settling a list of contributories and making calls.

(*t*) Companies (Consolidation) Act, 1908, s. 205.

(*u*) *National Bank of Wales, Taylor's, Phillips's,* and *Richard's Cases*, [1897] 1 Ch. 298.

(*x*) Cp. *Sussex Brick Co.*, [1904] 1 Ch. 598.

(*y*) *Stone* v. *City and County Bank* (1877), 3 C. P. D. 282. This is the case even where the assets of the company are sufficient to pay all liabilities and the costs of winding-up: *Burgess's Case* (1880), 15 C. D. 507.

(*z*) *Tennent* v. *City of Glasgow Bank* (1879), 4 A. C. 615.

(*a*) For certain exceptions to this rule, see *supra*, p. 224 and pp. 233 and 234.

(*b*) Companies (Winding-up) Rules, 1909, rr. 83–87, *supra*, pp. 1166 and 1167 and 1170.

(*bb*) For form of instrument of call, *infra*, p. 1308.

The Court will in a proper case, make a balance order (c) under section 193 of the Act, and rule 87 (d) of the Companies (Winding-up) Rules, 1909, for payment of calls.

With regard to payment of debts it is not necessary for every debt to be strictly proved in a voluntary winding-up (e).

Debts may be proved in a voluntary winding-up by delivering or sending through the post to the liquidator an affidavit (f). The persons who may make and the contents of affidavits verifying debts are the same as in a compulsory winding-up (g), but affidavits may not in a voluntary winding-up be sworn before the persons named in rule 93 of the Companies (Winding-up) Rules, 1909. With regard to the rest of the rules relating to proofs in the Companies (Winding-up) Rules, 1909, all of them (h) except rule 101 relating to transmission of proofs by the official receiver to the liquidator, apply to a voluntary winding-up.

With regard to the admission and rejection of proofs subject to the provisions of the Act, and unless otherwise ordered by the Court, a voluntary liquidator may from time to time fix a certain day, not less than fourteen days from the notice, on or before which the creditors of the company are to prove their debts or claims or to be excluded from the benefit of any distribution made before such debts are proved and the liquidator must give notice in writing of the date so fixed by advertisement in such newspaper as he considers convenient and to the last known address or place of abode of each person who to the knowledge of the liquidator claims to be a creditor, and whose claim has not been admitted (i). The rules as to examination of proofs (k), as to appeals by creditors (l), and as to the power of the Court to expunge proofs (m) apply to a voluntary liquidation, but not the other rules comprised under the heading "admission and rejection of proofs and appeals to the Court" (n).

The rules as to "dividends in a winding-up by the Court" would

(c) See *supra*, pp. 1170 *et seq.*, as to the effect of a balance order. A liquidator may, however, apply to the Court for leave to make a call as was done in *The Law Guarantee Trust and Accident Society*, 00422 of 1909. See order, *infra*, p. 1321, a supervision case.

(d) Forms 60, 61, and 62 in the appendix to the Companies (Winding-up) Rules, 1909, would seem to be applicable to a voluntary winding-up. See *supra*, pp. 1180 and 1181, 1184 and 1186.

(e) See Companies (Winding-up) Rules, 1909, r. 88, as to proof in a compulsory winding-up.

(f) *Ibid.*, r. 89.

(g) See Companies (Winding-up) Rules, 1909, rr. 90, 91, and 92. For all these rules, *supra*, pp. 1239 *et seq.*

(h) They are rule 94 as to costs of proof, rule 95 as to discounts to be allowed on proofs, rule 96 as to periodical payments, rule 97 as to interest, rule 98 as to proofs for future debts, rule 99 as to workman's wages, rule 100 as to production of bills of exchange and promissory notes.

(i) Companies (Winding-up) Rules, 1909, r. 102. See also the remarks of FARWELL, J., in *Pulsford* v. *Devenish*, [1903] 2 Ch. 625. For form of advertisement, see *infra*, p. 1306.

(k) Companies (Winding-up) Rules, 1909, r. 103.

(l) *Ibid.*, r. 104.

(m) *Ibid.*, rr. 105 and 106.

(n) *Ibid.*, rr. 107–114. See *supra*, pp. 1242 and 1243 for these rules and those referred to in the preceding notes.

appear to have no application (*o*), and the same may be said in regard to the rules as to meetings (*p*).

RECONSTRUCTION.

Where a company is proposed to be or is in the course of being wound-up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in the section called the transferee company), the liquidator of the first-mentioned company (in the section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

Any sale or arrangement in pursuance of this section will be binding on the members of the transferor company.

If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by the section.

If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

A special resolution will not be invalid for the purposes of the section by reason that it is passed before or concurrently with a resolution for winding-up the company, or for appointing liquidators; but, if an order is made within a year for winding-up the company by or subject to the supervision of the Court, the special resolution will not be valid unless sanctioned by the Court.

For the purposes of an arbitration under the section the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding-up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, are incorporated with the Act; and in the construction of those provisions the Act will be deemed to be the special

(*o*) Companies (Winding-up) Rules, 1909, rr. 150 and 151.

(*p*) *Ibid.*, rr. 115–149.

Act, and "the company" will mean the transferor company, and any appointment by such incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made under the hand of the liquidator, or if there is more than one liquidator, then of any two or more liquidators (*q*).

Any agreement which provides for the sale of the assets of a company for shares or other interests in another company and for distribution in specie of the shares or other interests so acquired in the winding-up of the transferor company, and which is not made under the powers conferred by this section, will be *ultra vires* in the sense that it will only be binding if all the members of the transferor company agree to it (*r*). Such assent may in some cases be inferred from the acquiescence of such members (*s*), but the Court will be very slow to infer acquiescence from the mere fact that an agreement which does not deal with the distribution of the proceeds of sale has been sanctioned, even where prior to the resolution giving such sanction, a circular has been sent round showing that it is proposed to vary the rights of members (*t*).

Even since *Bisgood* v. *Henderson's Transvaal Estates* (*u*), it is a little difficult to say whether an agreement for sale which does not expressly mention either winding-up or distribution will be invalidated by the fact that contemporaneously or almost contemporaneously a scheme is put forward for winding-up and distribution in a manner not sanctioned by section 192. If the liquidator of the transferor company is selling, it would appear to be clear that the agreement will be invalid (*x*). Further, where there is a winding-up resolution passed at the same time or within a day or two of the resolution sanctioning the agreement, the agreement itself will fail (*y*). But where the agreement is sanctioned and it does not deal with either winding-up or distribution and there has been no further resolution, it may be that the Court will be slow to declare the agreement invalid, even where a circular has been sent round stating that liquidation, coupled with a distribution not

(*q*) Companies (Consolidation) Act, 1908, s. 192. For forms of agreement and circular under this section, *infra*, pp. 1309 *et seq.*, and see as to assurance companies, *supra*, pp. 752 *et seq.*

(*r*) *Bisgood* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 743; *Manners* v. *St. David's Gold and Copper Mines*, [1904] 2 Ch. 593; *Bisgood* v. *Nile Valley Co.*, [1906] 1 Ch. 747. See *supra*, pp. 724 *et seq.*, as to reconstructions with the sanction of the Court under s. 120 of the Act, and *General Motor Cab Co.*, [1912] 132 L. T. Jo. 534; 28 T. L. R. 352, *supra*, pp. 727 and 728.

(*s*) *Beeston Pneumatic Tyre Co.* (1898), 14 T. L. R. 338; *Somes* v. *Currie* (1855), 1 K. & J. 605; *Rivington's Case* (1873), 17 Sol. J. 403, 406.

(*t*) *North West Argentine Railway Co.*, [1900] 2 Ch. 882.

(*u*) [1908] 1 Ch. 743. For order in this case, *infra*, p. 1313.

(*x*) *Payne* v. *Cork Co.*, [1900] 1 Ch. 308.

(*y*) *Bisgood* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 743, overruling *Cotton* v. *Imperial and Foreign Agency and Investment Corporation*, [1892] 3 Ch. 454; *Doughty* v. *Lomagunda Reefs*, [1902] 2 Ch. 837; and *Fuller* v. *White Feather Reward Co.*, [1906] 1 Ch. 823.

sanctioned by section 192, will follow (*z*), the reason apparently being that in such case the shares acquired become assets of the transferor company, and may be dealt with as such (*z*).

Section 192 deals with a sale of part only of the assets (*a*), as well as with the sale of all the assets and it would therefore seem that *Wall* v. *London and Northern Assets* (*b*) would scarcely be followed now. Nor is the case of *Griffith* v. *Paget* (*c*), which was there cited, an authority for the proposition that an agreement for sale will be valid, even where it contains a clause as to a wrongful distribution, for in *Griffith* v. *Paget* (*c*) such clause was not in the agreement, and the person complaining was getting too much and not too little, and it was from the beginning obvious that as ultimately happened (*d*) the share-holders who were injured by the scheme might all consent to the proposed distribution and agree to give a bonus to the other shareholders. Section 192 then does not alter the rights of members except so far as it allows of a distribution in specie and not a sale of the shares acquired (*e*), and therefore, where there are preference and ordinary shares in the transferor company and the preference shares have no priority on a return of capital, the shares in the transferee company which form the consideration for the sale, must all rank *pari passu* (*f*). It has been held (*g*) that a clause in an agreement providing for a special payment by the transferee company to the directors of the transferor company did not vitiate the agreement because it was simply a subsidiary clause, apparently the clause in question did not in the particular facts of the case injure the applicant. A clause in the memorandum or articles of a company which purports to exclude dissentients from the rights conferred on them by section 192 will be simply bad, for it will not be such an agreement as is contemplated by section 192 (3). Such an agreement must probably be made either with the liquidator or with the company immediately before the resolutions for winding-up and reconstruction (*h*).

A liquidator may by his conduct waive (*i*) a benefit arising from

(*z*) *Mason* v. *Motor Traction Co.*, [1905] 1 Ch. 419, which is apparently not overruled by *Bisgood* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 743; see *per* BUCKLEY, L.J., at p. 752, and cp. *Archer* v. *Normanby Ironworks*, *Times* Newspaper, November 25th, 1911.

(*a*) *City and County Investment Co.* (1879), 13 C. D. 475.

(*b*) [1898] 2 Ch. 469.

(*c*) (1877), 5 C. D. 894.

(*d*) *Griffith* v. *Paget* (1877), 6 C. D. 511.

(*e*) See the cases above cited, and in particular *Griffith* v. *Paget* (1877), 5 C. D. 894.

(*f*) *Simpson* v. *Palace Theatre* (1893), 69 L. T. 70.

(*g*) *Southall* v. *British Mutual Life Assurance Society* (1871), 6 Ch. 614; see also *Kaye* v. *Croydon Tramways*, [1898] 1 Ch. 358 (which, however, does not turn on this section), and the judgment of VAUGHAN WILLIAMS, L.J., therein.

(*h*) *Baring Gould* v. *Sharpington Combined Pick and Shovel Syndicate*, [1899] 2 Ch. 80; *Payne* v. *Cork Co.*, [1900] 1 Ch. 308.

(*i*) As to the power of a liquidator to make such waiver, see

a condition of the section which was inserted for the benefit of the dissentient member, and so a notice of dissent which has not been left at the registered office of the company, but has been accepted by the liquidator, will be good (*k*), and likewise a notice given and accepted between the meetings for passing and confirming the special resolution, though possibly it would be otherwise in the case of a notice given before the first meeting (*l*). A person who wishes to dissent must not only give notice in writing of his dissent within the seven days allowed by section 192 (3), but he must also within that period require the liquidator in writing either to abstain from the agreement or to purchase his interest (*m*). The notice will not, however, be invalid if it requires the liquidator either to abstain or to purchase the dissentients' interest at a given price (*n*). Where the directors of a company wrongfully refused to register a transfer, the Court will rectify the register so as to make a notice of dissent given by the transferee, retrospectively good (*o*). Where a person has given notice of dissent he will still remain liable to the creditors of the company (*p*), except, of course, in cases where the new company is to pay the debts of the old company, and the creditors have done some act which precludes them from looking to any one but the new company for payment of their debts (*q*). And a liquidator should not in furtherance of a scheme take a transfer of the dissentients' shares, for section 192 does not contemplate such a transfer, and it will not relieve the dissentient from the debts of the old company (*r*), though it may possibly relieve him from debts incurred by the liquidator himself after the transfer, including debts in carrying out the scheme (*s*). Where a reconstruction is *bonâ fide* a holder of fully paid shares in the transferor company who has received shares in the transferee company will not be liable to be treated as though he had not paid for his shares in full on the ground that part of his paid-up capital

Companies (Consolidation) Act, 1908, ss. 151 (2) (*b*) and 186 (iv.).

(*k*) *Brailey* v. *Rhodesia Consolidated*, [1910] 2 Ch. 95.

(*l*) *London and Westminster Bread Co.* (1890), 59 L. J. (CH.) 155. Possibly the notice in this case was a continuing notice.

(*m*) *Union Bank of Kingston-upon-Hull* (1880), 13 C. D. 808.

(*n*) *Anglo-Italian Bank and de Rosaz* (1867), L. R. 2 Q. B. 452.

(*o*) *Sussex Brick Co.*, [1904] 1 Ch. 598. A person who has transferred shares, will be trustee of such shares for his transferee, and the latter will therefore be entitled to the benefit of any new shares issued in right of the shares transferred; *Rooney* v. *Stanton* (1900), 17 T. L. R. 28.

(*p*) *Part's Case* (1870), 10 Eq. 622; *Ex parte Jeaffreson* (1870), 19 W. R. 57, where calls on the shares in the new company had been paid.

(*q*) *St. Nazaire Co.* (1878), 37 L. T. 52; *Taurine Co., Anning and Cobb's Case* (1878), 38 L. T. 53, where a creditor who had without knowing of a reconstruction gone on dealing with the new company, and had treated payments by the new company as paying debts of the old company was held not to be entitled when he discovered the true state of facts to turn round and treat such payments as having been primarily made in respect of the new company's own debts.

(*r*) *Vining's Case* (1870), 6 Ch. 96.

(*s*) *Poole's Executor's Case* (1873), 8 Ch. 702.

has been returned to him (*t*). Notices for sanctioning a scheme under section 192 must show that it is proposed to carry out the scheme under that section (*u*).

Both amalgamations and reconstructions can be carried out under the section. An amalgamation involves the idea of two or more companies joining their businesses or part of their businesses together, it need not necessarily be carried out by both selling to a third company, a reconstruction involves the idea of the same business or part of the same business being carried on by a new company consisting of substantially the same persons as the members of the old company (*x*).

On a sale under section 192 (*y*)—

(1) The consideration to be received by the transferor company may consist of partly paid shares in the new company (*z*).

(2) Shareholders of the transferor company may be required to apply for shares in the transferee company within a given time (*a*). Indeed, if there is no such provision they will be bound to apply within a reasonable time (*b*), it would seem, however, that such time should not be made to run before the agreement with the transferee company is actually entered into (*c*).

(3) Shares which are not applied for by members of the transferor company within the time fixed or as the case may be within a reasonable time may be placed at the disposal of the transferee company (*d*).

(4) Shares which are not applied for within such time as above mentioned may be sold and the proceeds distributed among the members of the transferor company who have neither applied for

(*t*) *Ex parte Norton* (1863), 2 N. R. 562.

(*u*) *Imperial Bank of China, India, and Japan* v. *Bank of Hindustan, China, and Japan* (1868), 6 Eq. 91 ; *Ex parte Fox* (1871), 6 Ch. 176.

(*x*) *South African Supply and Cold Storage Co.*, [1904] 2 Ch. 268 ; *Hooper* v. *Western Counties and South Wales Telephone Co.* (1893), 41 W. R. 84 ; see also *New Zealand Gold Extraction Co. (Newbery Vantin) Process* v. *Peacock*, [1894] 1 Q. B. 622 ; *Wall* v. *London and Northern Assets*, [1898] 2 Ch. 469 ; *Ex parte Bagshaw* (1867), 4 Eq. 341.

(*y*) See *Bisgood* v. *Henderson's Transvaal Estates*, [1908] 1 Ch. 743, for the first four propositions set out below.

(*z*) *Postlethwaite* v. *Port Philip and Colonial Gold Mining Co.* (1889), 43 C. D. 452 ; *Mason* v. *Motor Traction Co.*, [1905] 1 Ch. 419.

(*a*) *Postlethwaite* v. *Port Philip and Colonial Gold Mining Co.* (1889), 43 C. D. 452 ; *Burdett-Coutts* v. *True Blue (Hannans) Gold Mines*, [1899] 2 Ch. 616 ; *Weston* v. *New Guston* (1890), 62 L. T. 275 ; (1891), 64 L. T. 815.

(*b*) *Zuccani* v. *Nacupai Gold Mining Co.* (1889), 61 L. T. 176.

(*c*) *South Australian Petroleum Fields*, [1894] W. N. 189.

(*d*) *Burdett-Coutts* v. *True Blue (Hannans) Gold Mines*, [1899] 2 Ch. 616 ; and see *Nicholl* v. *Eberhardt Co.* (1889), 61 L. T. 489.

shares in the transferee company nor dissented (*e*). If both agreement and scheme are silent on this point such shares should be sold and the net proceeds divided in this manner (*f*).

(5) Shares in the transferee company may be given direct to members of the transferor company (*g*).

(6) The scheme may provide for calls being made for the purpose of paying all or a part of the debts of the transferor company (*h*), or that calls shall be made by the transferor company and that the proceeds thereof shall be paid to the transferee company (*i*), but apparently it cannot provide for calls being made on all members of the transferor company, or it would seem even on such of them as take shares in the transferee company, in the event of the assets of the transferor company proving not to be of a certain value (*k*), nor can it require members of the transferor company to pay a sum for the privilege of having shares in the transferee company allotted to them (*l*).

(7) On such a scheme the transferee company may, subject to the provisions of section 89 of the Act, pay an underwriting commission to persons who agree to purchase such of their shares as are not applied for by members of the transferor company, even though such shares form part of the shares to which such members would have been entitled had they applied, and are partly or wholly paid up (*m*).

(8) The sale may be to a trustee for an intended company (*n*), but it cannot be to a speculator who is to form any sort of company he likes (*o*).

(9) The section applies to mutual assurance companies and to companies registered under Part VII. of the Act, even where they have only registered to get the benefit of its provisions (*p*).

(*e*) *Postlethwaite* v. *Port Philip and Colonial Gold Mining Co.* (1889), 43 C. D. 452.

(*f*) *Lake View Extended Gold Mine (Western Australia)*, [1900] W. N. 44.

(*g*) *City and County Investment Co.* (1879), 13 C. D. 475; *Postlethwaite* v. *Port Philip and Colonial Gold Mining Co.* (1889), 43 C. D. 452.

(*h*) *Bank of South Australia (No. 2)*, [1895] 1 Ch. 578.

(*i*) *New Zealand Gold Extraction Co. (Newbery-Vautin Process)* v. *Peacock*, [1894] 1 Q. B. 622.

(*k*) *Clinch* v. *Financial Corporation* (1868), 5 Eq. 450; (1869), 4 Ch. 117.

(*l*) *Imperial Bank of China, India, and Japan* v. *Bank of Hindustan, China, and Japan* (1868), 6 Eq. 91.

(*m*) *Barrow* v. *Paringa Mines*, [1909] 2 Ch. 659; *Booth* v. *New Afrikander Gold Mining Co.*, [1903] 1 Ch. 295, cannot be regarded as law since the Companies Act, 1907, altered the law as to underwriting. See also *Canning Jarrah Timber Co. (Western Australia)*, [1900] 1 Ch. 708.

(*n*) *Hester & Co.* (1875), 44 L. J. (CH.) 757; *Canning Jarrah Timber Co. (Western Australia)*, [1900] 1 Ch. 708.

(*o*) *Bird* v. *Bird's Patent Deodorizing and Utilizing Sewage Co.* (1874), 9 Ch. 358.

(*p*) *Southall* v. *British Mutual*

Members of the transferor company who do not dissent cannot be compelled to take shares in the transferee company (*q*), and if the directors of the transferee company proceed to put their names on its register, they will be entitled to have such register rectified (*r*). An application for shares in the transferee company which is forwarded to the liquidator of the transferor company can be withdrawn at any time before it is accepted by the transferee company (*s*), and where the contract is to allot the shares to the transferor company or its nominees, the transferee company may not put the transferor company on its register against its will except possibly in cases where there has been an unreasonable delay in furnishing a list of nominees, for the intention cannot have been to have a company which is to be deprived of its assets as a contributory (*t*). The section does not authorize a sale to a foreign company (*u*), or indeed to any company which is not a company within the definition contained in 285 of the Act (*x*), possibly this might in some cases be got over with the help of section 263 of the Act, by the transferee company registering under Part VII. of the Act, but, as stated in an earlier part of this work, a foreign company cannot register under the Act (*xx*).

The Court cannot under section 192 (5) and section 193 make an order validating a sale under the section unless either a compulsory or a supervision order has been made (*y*), and there have been cases where a supervision order has been obtained, in order that the Court might forthwith make an order which would be binding on creditors and contributories alike (*z*). The Court can where there is a compulsory liquidation (*a*), or a winding-up subject to supervision (*b*), sanction a scheme which, if the company was in purely voluntary liquidation, could be carried out under section 192. Where the Court is asked to do this a special resolution is not necessary (*b*).

Life Assurance Society (1871), 6 Ch. 614. Having regard to s. 263 of the Act, this case is, it is thought, in spite of *Thomas* v. *United Butter Companies of France*, [1909] 2 Ch. 484, still law.

(*q*) *Higgs' Case* (1865), 2 H. & M. 657; *Ex parte Bagshaw* (1867), 4 Eq. 341

(*r*) *Los's Case* (1865), 34 L. J. (CH.) 609.

(*s*) *Wallace's Case*, [1900] 2 Ch. 671.

(*t*) *National Standard Life Assurance Corporation* (1911), 27 T. L. R. 271.

(*u*) *Thomas* v. *United Butter Companies of France*, [1909] 2 Ch. 484. Since the Companies (Consolidation) Act, 1908, came into force, *Ex parte Fox* (1871), 6 Ch. 176, cannot be regarded as law.

(*x*) *I.e.* a company formed and registered under the Joint Stock Companies Acts, on the Companies Act, 1862, or the Companies (Consolidation) Act, 1908.

(*xx*) See *supra*, p. 25.

(*y*) *Callao Bis Co.* (1889), 42 C. D. 169. For a supervision order sanctioning such an agreement, see *The Vanguard Motorbus Co.*, 008 of 1909, set out *post*, pp. 1316 and 1317.

(*z*) *New Flagstaff Mining Co.*, [1889], W. N. 123.

(*a*) *Agra and Masterman's Bank* (1866), cited 12 Eq. 509 n.

(*b*) *Imperial Mercantile Credit Association* (1871), 12 Eq. 504;

A reconstruction scheme will in no way relieve the liquidator of the transferor company from the duties to creditors which fall on a liquidator in every winding-up, and he will have not only to advertise for such creditors, but to send notices to such of them as he knows of, even where the transferee company is liable under its contract with the transferor company to pay such debts (*c*). The shares to be acquired by members of a transferor company under a reconstruction scheme under the section do not form part of the assets of that company (*d*).

The proper course to be taken by creditors who conceive that they are aggrieved by a reconstruction scheme is to present a petition for a winding-up order or for the winding-up of the Court subject to supervision, so that the scheme, if it is to go through, shall at least require the sanction of the Court. A creditor who lies by for a year and omits to present a petition will not be able to go behind, and will be bound by the scheme (*e*). A contributory, too, may petition for a winding-up by or under the supervision of the Court, and will obtain an order if he can show that the scheme is an unfair one, and that the minority of the members of the company are being oppressed by the majority (*f*). As the transferee company cannot ordinarily (*g*) be a party to a petition for winding-up by or under the supervision, the Court will not on a contributory's petition inquire whether or no an agreement for reconstruction which has actually been entered into (*h*) between a transferor and transferee company is *ultra vires* of the former (*i*). The Court will, however, where a case has been made showing that the reconstruction scheme is not capable of being confirmed by the members of the transferor company (*k*), and is *ultra vires* of that company, give the petitioner leave to use that company's name in proceedings against the transferee company for setting aside the agreement, and stand the petition over pending such proceedings (*i*).

In all proceedings to invalidate a reconstruction scheme on the ground that it is *ultra vires* the transferor company the transferee

Cambrian Mining Co. (1883), 48 L. T. 114; *Wright's Case* (1870), 5 Ch. 437; but see *London and Exchange Bank* (1867), 16 L. T. 340.

(*c*) *Pulsford* v. *Devenish*, [1903] 2 Ch. 625; Companies (Winding-up) Rules, 1909, r. 102.

(*d*) *Hill's Waterfall Estate and Gold Mining Co.*, [1896] 1 Ch. 947.

(*e*) *City and County Investment Co.* (1879), 13 C. D. 475.

(*f*) *Consolidated South Rand Mines Deep*, [1909] 1 Ch. 491.

(*g*) For an exceptional case where the transferee company was entitled to petition: *Bank of South Australia (No. 2)*, [1895] 1 Ch. 578.

(*h*) It will be otherwise where no agreement has been entered into. See *Consolidated South Rand Mines Deep*, [1909] 1 Ch. 491.

(*i*) *Imperial Bank of China, India, and Japan* (1866), 1 Ch. 339; *International Life Assurance Society* (1869), 20 L. T. 433; *Financial Corporation*, [1866] W. N. 162; and see *Ex parte Dee* (1849), 3 De G. & Sm. 112.

(*k*) Cp. *Ex parte Fox* (1871), 6 Ch. 176.

company will be a necessary party (*l*), if the two companies have actually entered into an agreement. Where the case presented is, however, not that the agreement is *ultra vires*, but that it is unfair, it is thought that the Court can, and in a proper case will, make an order, although the transferee company is not and has not been in any sense a party to the petition or any other proceedings (*m*). Where a dissentient has given notice to a liquidator, the Court will not grant him an order for a private examination under section 174 of the Act so as to enable him to decide whether his best course is to petition for a compulsory or supervision order or to proceed as a dissentient, for by so doing it might put such dissentient in the position of deciding whether the scheme shall fall through or he shall be bought out, or, in other words, of exercising the option which is by the Act given to the liquidator. It will, however, possibly make such an order where there is a doubt as to whether a dissentient will get paid, for the purpose of assisting him to get his money (*n*).

A dissentient will, however, be entitled to present or to support (*o*) a petition for winding-up compulsorily or under supervision. In a proper case the Court will direct a commission to examine witnesses abroad on the application of a dissentient (*p*), but it has declined to give a dissentient leave to examine the books and papers of the company where he required to do so for the purpose of deciding whether or not to accept an offer made by a liquidator (*q*), and the Court declined in a reconstruction case decided before there were provisions similar to those contained in section 224 of the Act to order the liquidator to bring in his accounts on the ground that the matter was covered by the resolutions of the company (*r*). The costs of an arbitration under the section are no doubt in the discretion of the arbitrator, but where the liquidator has made no offer, the dissentient will usually not proceed at his peril (*r*), and where the liquidator has made an offer he will have to show that it was sufficient (*q*).

If the arbitrators appointed by the parties cannot agree as to who is to be umpire the Court can appoint an umpire under the powers conferred by section 5 of the Arbitration Act, 1889 (*s*), but it is submitted that the articles of the company cannot affect in any way

(*l*) *Doughty* v. *Lomagunda Reefs*, [1903] 1 Ch. 673. In *Manners* v. *St. David's Gold and Copper Mines*, [1904] 2 Ch. 593, the Court of Appeal declined to hear counsel for the transferee company, as it had already heard two counsel for the transferor company.

(*m*) Cp. *British Building Stone Co.*, [1908] 2 Ch. 450.

(*n*) *British Building Stone Co.*, [1908] 2 Ch. 450.

(*o*) *Consolidated South Rand Mines Deep*, [1909] 1 Ch. 491.

(*p*) *Mysore West Gold Mining Co.* (1889), 42 C. D. 535.

(*q*) *Morgan's Case* (1884), 28 C. D. 620.

(*r*) *Imperial Mercantile Credit Association* (1871), 12 Eq. 504.

(*s*) *Anglo-Italian Bank and De Rosaz* (1867), L. R. 2 Q. B. 452; *De Rosaz* v. *Anglo-Italian Bank* (1869), L. R. 4 Q. B. 462; *Re Lord* (1854), 1 K. & J. 90.

the question of what is the proper course of procedure on an arbitration for the purpose of ascertaining the value of a dissentient's interest (*t*). Where the arbitrators have been called on to appoint an umpire the three months given to them for making their award will commence to run from the date when they have been so called upon (*u*). An action will lie for the price agreed upon or awarded (*x*), but to such an action it will be no defence to show that the defendant agreed to vote for the scheme and failed to do so as this will be simply a matter for counterclaim (*y*). The price to be paid to shareholders who come into the scheme, is by no means conclusive as to the value of a dissentient's interest, for he is only entitled to be paid on the footing that the whole concern is coming to an end and not on the footing of its being sold as a going concern (*z*). Possibly the arbitrators ought in making their award to allow for the interest lost during the period in which the dissentient has been out of his money. After the award he can only claim interest at 4 per cent. from the time when he has demanded payment (*a*).

The Stannaries Act, 1887, provides (*b*) as follows :—

When the limits of any mine join those of any other mine the Companies respectively working the said mines may with the consent in writing of the respective lessors thereof in all cases where such consent is by law or custom necessary amalgamate and become one Company provided that no such amalgamation shall take place unless each of the said companies shall authorize the same by a special resolution to which two-thirds in value of the shareholders of the said Company shall consent in writing; such resolution shall be registered in the Court and the amalgamation shall not take effect until such registration and shall be advertised in such manner as the Court directs.

Liquidation for the purpose of reconstruction will work a forfeiture of a lease which provides for forfeiture on liquidation, and the Court cannot under the Conveyancing and Law of Property Act, 1881 (*c*), relieve against such forfeiture (*d*).

COMPULSORY WINDING-UP AFTER VOLUNTARY WINDING-UP COMMENCED.

The voluntary winding-up of a company will not bar the right of

(*t*) *Baring Gould* v. *Sharpington Combined Pick and Shovel Syndicate*, [1899] 2 Ch. 80, would seem to be inconsistent with and therefore to overrule the decision in *De Rosaz* v. *Anglo-Italian Bank* (1869), L. R. 4 Q. B. 462, on this point.

(*u*) *Baring Gould* v. *Sharpington Combined Pick and Shovel Syndicate*, [1899] 2 Ch. 80.

(*x*) *De Rosaz* v. *Anglo-Italian Bank* (1869), L. R. 4 Q. B. 462.

(*y*) *De Rosaz* v. *Anglo-Italian Bank* (1869), L. R. 4 Q. B. 462. It is not thought that the Judicature Acts would make any difference on the point of defence or counterclaim.

(*z*) *Mysore West Gold Mining Co.* (1889), 42 C. D. 535.

(*a*) *United States Direct Cable Co.* (1879), 48 L. J. (CH.) 665.

(*b*) S. 27.

(*c*) See s. 14, sub-s. (6). Relief can, however, usually be given under s. 2 of the Conveyancing and Law of Property Act, 1892.

(*d*) *Fryer* v. *Ewart*, [1902] A. C. 187; *Horsey Estate* v. *Steiger*, [1899] 2 Q. B. 79.

any creditor or contributory to have it wound up by the Court if the Court is of opinion in the case of an application by a creditor that the rights of the creditor, or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding-up (*e*).

This section applies even in cases where a petition for winding up has been presented before the resolution to wind up voluntarily has been passed (*f*). In such case the practice is to amend the petition so that it may speak to the winding-up and any matters which are likely to prejudice the petitioner if he be a creditor, or the contributories if the petitioner be a contributory. The amended petition will be verified by a fresh statutory affidavit and served on the liquidator (*g*), but no re-advertisement will be necessary where a supervision order is not asked for alternatively or otherwise. There can, it is thought, be no doubt that the winding-up will date as from the original petition (*h*). The section is, it appears, at all events where a creditor is petitioner directory, and the Court will read it with sections 145 and 201 of the Act, and will make an order if the great majority of the creditors desire it, and they are in the circumstances the persons really interested, even though the petitioner does not show that he will be prejudiced by the continuance of the winding-up (*i*). The section would clearly appear not to require a creditor who petitions to do more than show that he himself will be prejudiced by the continuance of the voluntary liquidation (*k*). But, where the great majority of the creditors are opposed to a compulsory winding up the Court will be slow to make an order (*l*),

(*e*) Companies (Consolidation) Act, 1908, s. 197.

(*f*) *New York Exchange Co.* (1888), 39 C. D. 415; *Medical Battery Co.*, [1894] 1 Ch. 444. In *Gold Co.* (1879), 11 C. D. 701, at p. 717, BAGGALLAY, L.J., suggests that the Court will make a compulsory order more easily where at the date of the petition there is no effectual winding-up.

(*g*) Companies (Winding-up) Rules, 1909, r. 28. Service on the liquidator will, however, not be necessary where the company is petitioner: *Edward Chester & Co.* (1903), 52 W. R. 189.

(*h*) Cp. *Londonderry (Marquis of)* v. *Rhoswydol Lead Mining Co.*, [1879] W. N. 136; *Weldon* v. *Neal* (1887), 19 Q. B. D. 394; *Sneade* v. *Wotherton Barytes and Lead Mining Co.*, [1904] 1 K. B. 295; *Jamaica Railway* v. *Colonial Bank*, [1905] 1 Ch. 677; Daniell's Chancery Practice, 7th Ed. vol. i. p. 277.

(*i*) *E. Bishop and Sons*, [1900] 2 Ch. 254; *Hermann Lichtenstein & Co.* (1907), 23 T. L. R. 424; *A. B. Cycle Co.* (1902), 19 T. L. R. 84.

(*k*) *Greenwood & Co.*, [1900] 2 Q. B. 306, the only authority to the contrary seems clearly wrong: see Buckley, 9th Ed. p. 301; Lindley on Companies, 6th Ed. vol. ii. p. 876; *Ilfracombe Permanent Mutual Benefit Building Society*, [1901] 1 Ch. 102, at p. 109.

(*l*) *West Hartlepool Ironworks Co.* (1875), 10 Ch. 618; *Langley Mills Steel and Ironworks Co.* (1871), 12 Eq. 26; *Universal Drug Supply Association* (1874), 22 W. R. 675; but cp. *General Rolling Stock Co.*

except in cases where the petitioner can show clearly that there is a case which requires a public examination (*m*), or that the creditors opposing are in reality the persons incriminated, and that they are not acting in the interest of their class as a whole (*n*). With regard to a contributory petitioning, although section 194 for the first time expressly provides that a contributory shall not be barred by a voluntary winding-up, it would seem not to alter the law as laid down in the cases which preceded the passing of the Companies (Consolidation) Act, 1908 (*o*). Where a creditor is petitioner, not much weight will, as a rule, be given to the views of contributories, unless it is clear that there will be assets for distribution among the contributories (*p*), and on a contributory's petition the opposition of the great bulk of the creditors, unless they are likely to be paid in full, will usually be fatal to success. Where the majority of contributories oppose, and there is no question of creditors, the Court will act on much the same principles as in the case of a creditor's petition opposed by the majority of the creditors (*q*).

Turning to the circumstances which have been held to be sufficient to show prejudice. The case of reconstructions has already been considered to a certain extent, but it may be added here that where a voluntary winding-up resolution has been passed for the purpose of carrying out a reconstruction scheme which fails, the Court will usually make a winding-up order, at all events, in cases where the petitioner is a contributory (*r*). But the usual case for a winding-up

(1865), 34 Beav. 314, where the voluntary winding-up resolution had not actually been passed. It will be noted that all these cases were decided before the Companies (Winding-up) Act, 1890, which for the first time allowed of a public examination in a compulsory liquidation.

(*m*) Cp. *Doré Gallery*, [1891] W. N. 98; *Russell, Cordner & Co.*, [1891] 3 Ch. 171; *Medical Battery Co.*, [1894] 1 Ch. 444, which last case shows that charges of fraud on the outside world will not support a case for a petition, as they are not matters for a public examination.

(*n*) *Varieties, Ltd.*, [1893] 2 Ch. 235; *Haycraft Gold Reduction and Mining Co.*, [1900] 2 Ch. 230; *Re Bamford*, [1910] 1 Ir. 390.

(*o*) *National Co. for the Distribution of Electricity by Secondary Generators*, [1902] 2 Ch. 34; *Haycraft Gold Reduction and Mining Co.*, [1900] 2 Ch. 230; *Gutta Percha Corporation*, [1900] 2 Ch. 665. These cases certainly seem to go a great deal further than *Gold Co.* (1879), 11 C. D. 701; see also *Fire Annihilator Co.* (1863), 32 Beav. 561; *West Surrey Tanning Co.* (1866), 2 Eq. 737.

(*p*) Cp. *Chillington Iron Co.* (1885), 29 C. D. 159; *Russell, Cordner & Co.*, [1891] 3 Ch. 171.

(*q*) Cp. *Varieties, Ltd.*, [1893] 2 Ch. 235; *Doré Gallery*, [1891] W. N. 98; *M'Donald Gold Mines* (1898), 14 T. L. R. 204; *Hadleigh Castle Gold Mines*, [1900] 2 Ch. 419; *Ex parte Fox* (1871), 6 Ch. 176, and the cases below cited, which seem to establish the proposition stated above.

(*r*) *Gutta Percha Corporation*, [1900] 2 Ch. 665; and cp. *Thomson v. Henderson's Transvaal Estates*, [1908] 1 Ch. 765, where BUCKLEY, L.J., explained *Imperial Bank of China, India, and Japan* (1866),

order is that there is a case for investigation which cannot be properly considered without first having a public examination (*s*). The facts that go to make such a case must be clearly alleged in the petition, and must be proved (*t*), and it will not be enough to make out a case of fraud on the general public which can in no way add to the assets, and is therefore not a proper matter for a public examination (*u*). Other cases where a compulsory order will be made are cases where a liquidator who for some reason or other is undesirable has been appointed (*x*), or where the voluntary winding-up has been conducted in a suspicious way, *e.g.* with great celerity and with the intention of prematurely destroying the company's books and so preventing misfeasance claims (*y*), or where there has been great delay (*a*) or irregularity (*b*) in the conduct of the voluntary winding-up, and where it is important to ante-date the winding-up for some particular reason (*e.g.* in a case of fraudulent preference), and a compulsory order will have that effect owing to the petition having been presented before the resolution for voluntary winding-up was passed (*c*). Where contributories are the petitioners an order may be made on the ground that the majority of the company are acting fraudulently or oppressively towards the minority (*d*). In all these cases it will be necessary not so much to make a case for winding-up, as for one particular kind of winding-up (*e*).

A difficulty that sometimes occurs where it is sought to substitute a compulsory winding-up for a voluntary winding-up is that this will post-date the winding-up. Section 198 of the Act contains the following provisions :—

Where a Company is being wound-up voluntarily and an order is made for a winding-up by the Court, the Court may if it thinks fit by the same

1 Ch. 339, and EVE, J., explained *Teede and Bishop* (1901), 70 L. J. (CH.) 409, on this ground, and *Stone* v. *City and County Bank* (1877), 3 C. P. D. 282. In *Ex parte Fox* (1871), 6 Ch. 176, the Court declined to make such an order, as the scheme complained of was one which the company was willing and able to alter, being only bad in minor matters.

(*s*) *Russell, Cordner & Co.*, [1891] 3 Ch. 171; *Varieties, Ltd.*, [1893] 2 Ch. 235; *Medical Battery Co.*, [1894] 1 Ch. 444; *Gutta Percha Co.*, [1900] 2 Ch. 665; *A. B. Cycle Co.* (1902), 19 T. L. R. 84; *Doré Gallery*, [1891] W. N. 98.

(*t*) *Doré Gallery Co.*, [1891] W. N. 98.

(*u*) *Medical Battery Co.*, [1894] 1 Ch. 444.

(*x*) *Medical Battery Co.*, [1894] 1 Ch. 444; *E. Bishop and Sons*, [1900] 2 Ch. 254; *New York Exchange Co.* (1888), 39 C. D. 415.

(*y*) *Haycraft Gold Reduction and Mining Co.*, [1900] 2 Ch. 230.

(*a*) *Fire Annihilator Co.* (1863), 32 Beav. 561.

(*b*) *Littlehampton Havre and Honfleur Co.* (1865), 2 De G. J. & S. 521.

(*c*) Cp. *New York Exchange Co.* (1888), 39 C. D. 415.

(*d*) *Consolidated South Rand Mines Deep*, [1909] 1 Ch. 491; *Gold Co.* (1879), 11 C. D. 701; *West Surrey Tanning Co.* (1866), 2 Eq. 737.

(*e*) *General Rolling Stock Co.* (1865), 34 Beav. 314.

or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding-up.

The section does not enable the Court to provide that a compulsory liquidation shall commence at the time when a previous voluntary winding up commenced. Thus, a person who has ceased to be on the register of shareholders more than a year before the commencement of the compulsory but less than a year before the commencement of a previous voluntary winding-up, cannot be put on the B list in the compulsory liquidation, but if he has been put on the B list in the previous voluntary liquidation, the Court can adopt that list in the compulsory liquidation and he will remain liable (*f*). This principle would, it is submitted, go even further, and if moneys paid away in a manner that amounts to a fraudulent preference have been recovered under section 210, or debentures have been set aside under section 212 in the voluntary winding-up it would appear that the Court could adopt these proceedings in the compulsory liquidation. If proceedings had during the voluntary liquidation been taken in either of such cases, possibly the Court might be able to adopt them and proceed on the same footing as if the voluntary liquidation were still continuing, but it cannot allow such proceedings to be commenced after the winding-up order unless the compulsory winding-up commenced within the three months mentioned in the section (*g*). Where an order restraining a distress has been improperly obtained in a voluntary winding-up, it would appear that the landlord will not be allowed to proceed with the distress in a subsequent compulsory liquidation (*h*). It is thought that persons to whom debts have been incurred in the voluntary winding-up will, unless the transactions out of which such debts arose are adopted by the order, be relegated to the same position as creditors of the company (*hh*). An attempt to make a compulsory winding-up date back to the commencement of a voluntary winding-up which had previously commenced was made in *United Service Company* (*i*), in which case there were two petitions, one asking for a supervision, and the other for a compulsory order, and Lord Romilly, M.R., being anxious to make a compulsory order and also to date the compulsory winding-up back so as to commence at the date of the voluntary winding-up, directed that a supervision order should be made and drawn up, and that on the following day a compulsory order should be drawn up; it is highly doubtful whether this expedient had the desired effect of ante-dating the commencement of the compulsory liquidation (*k*).

(*f*) *Taurine Co.* (1883), 25 C. D 118.

(*g*) *Russell Hunting Record Co.*, [1910] 2 Ch. 78.

(*h*) *Thomas* v. *Patent Lionite Co.* (1881), 17 C. D. 250. In this case the injunction restraining the distress was made on an application in a debenture-holder's action, and immediately after such application a receiver and manager was appointed in the same action. Some weight is put on these additional facts by LINDLEY, L.J., in commenting on the case in *Taurine Co.* (1883), 25 C. D. 118, at p. 140.

(*hh*) *Taurine Co.* (1883), 25 C. D. 118. Such persons will clearly be able to prove as creditors: *Bank of South Australia* (*No.* 2), [1895] 1 Ch. 578.

(*i*) (1868), 7 Eq. 76.

(*k*) See *Taurine Co.* (1883), 25 C. D. 118, at pp. 128 and 140.

In one case (*l*) where a supervision order was subsequently found to be invalid the Court in making a compulsory order adopted all proceedings in the voluntary winding-up. The order in this case was made less than a year after the commencement of the winding-up. Where a supervision order has been made the Court of Appeal can in some cases date the commencement of the winding-up back to the petition on which such order was made by extending the time for appeal and then discharging the supervision order and granting a compulsory order on such petition, but the Judge who made the supervision order cannot even if he had no jurisdiction to make it, do this (*m*).

It would appear to be clear that the Court can make a compulsory order after it has made a supervision order, but a strong case will be required (*n*).

The Court can stay all further proceedings in a compulsory winding-up, so as to enable a previous voluntary winding-up to be continued (*o*). A petition for compulsory winding-up can be presented by a person who only became a creditor in the voluntary liquidation (*oo*), by the liquidator (*p*) in the name of the company, or by any other person who would be entitled to present a petition if there were no voluntary liquidation (*q*). Moreover, where a company is being wound-up voluntarily or subject to supervision in England a petition may be presented by the official receiver attached to the Court, but the Court cannot make a winding-up order on such a petition unless it is satisfied that the voluntary winding-up or winding-up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories (*q*). An order will not be made as a matter of course on the petition of an official receiver, indeed, a strong case will be required, but it will be enough if he succeeds in making out that it is desirable for the liquidator or the Court to

(*l*) *Hertfordshire Brewery Co.* (1874), 43 L. J. (CH.) 440. It is difficult to see how there could have been a valid voluntary winding-up in this case, or what jurisdiction the Court had to make a compulsory order under Part VIII. of the Act, as the company consisted of more than twenty members and was treated as not having registered.

(*m*) *Manchester Economic Building Society* (1883), 24 C. D. 488.

(*n*) *London and Mediterranean Bank* (1866), 15 L. T. 153; *Orrell Colliery and Fire Brick Co.* (1879), W. N. 106; *United Service Co.* (1868), 7 Eq. 76; *New Oriental Bank Corporation*, [1892] 3 Ch. 563; and see also Companies (Consolidation) Act, 1908, s. 137 (2), and s. 204.

(*o*) *Bristol Victoria Potteries Co.* (1872), 20 W. R. 569, citing *General Exchange Bank*, an unreported case; and cp. *Taurine Co.* (1883), 25 C. D. 118, at p. 138.

(*oo*) *Bank of South Australia* (*No.* 2), [1895] 2 Ch. 578.

(*p*) Cp. *Bank of South Australia* (*No.* 1), [1894] 1 Ch. 722, and ss. 186 (iv.) and 151 (1) (*a*) of the Act.

(*q*) Companies (Consolidation) Act, 1908, s. 137 (2).

exercise some power, such as that of a public examination, which the liquidator or the Court would have in a compulsory, but not in any other form of liquidation (*r*).

WINDING-UP SUBJECT TO SUPERVISION.

When a company has by special or extraordinary resolution resolved to wind-up voluntarily, the Court may make an order that the voluntary winding-up shall continue, but subject to such supervision of the Court and with such liberty for creditors, contributories or others to apply to the Court and generally on such terms and conditions as the Court thinks just (*s*). The application is by petition, and the same rules as to the form of the petition and as to its advertisement, service and verification apply as in the case of a compulsory winding-up (*t*), as also do the rules as to attending before the Registrar on the presentation of the petition, as to notices to be given by persons who intend to appear, as to supplying a list of such persons, as to affidavits in opposition and reply, and as to substituting petitioners (*x*).

Vaughan Williams, J., described this form of liquidation as the best form of liquidation if it could be made as effective for investigation as for administration (*y*). Owing to the fact that no public examination can be ordered, this form of liquidation is not usually very effective for investigation, and Wright, J., after the Companies Act, 1900, came into force intimated that as section 25 of that Act empowered creditors to apply to the Court in a purely voluntary liquidation, there was little point in making a supervision order, and he would in future not be disposed to allow the costs of a petition for supervision except in special cases (*z*). This view has, however, not prevailed. The great advantage which a supervision order gives is that it stops all actions and executions, and under it, moreover, costs will always be taxed, and there will be periodical reports to the Court. These matters and the other matters which distinguish a voluntary winding-up under supervision from a purely voluntary winding-up, have already been mentioned (*a*).

The Court has no power to make such an order unless the resolutions for voluntary winding-up have been validly passed and supervision orders have been held to be invalid, where the notices summoning the meetings which passed such resolutions were bad (*b*), and where the persons who voted for them were not entitled to

(*r*) *Jubilee Sites Syndicate*, [1899] 2 Ch. 204.

(*s*) Companies (Consolidations) Act, 1908, s. 199.

(*t*) Companies (Winding-up) Rules, 1909, rr. 25–30, *supra*, pp. 837 *et seq.*, and 845 *et seq.*

(*x*) *Ibid.*, rr. 32–36, *supra*, pp. 846 and 847, 853 and 854 and 865 *et seq.* The evidence in such cases should, however, strictly prove the voluntary winding-up by showing that the meetings were duly convened and held, and that the resolution was passed by the requisite majority.

(*y*) *Land Securities Co.* (1894), 1 Mans. 349; 42 W. R. 624.

(*z*) Practice Note, [1901] W. N. 14.

(*a*) *Supra*, pp. 1264 *et seq.*

(*b*) *Bridport Old Brewery Co.* (1867), 2 Ch. 191; *Patent Floor Cloth Co.* (1869), 8 Eq. 664; *Sheffield Mortgage and Estates Co.*, [1887] W. N. 218.

vote (*c*). The resolutions may, however, be passed after the presentation of the petition (*d*). Where no proper resolution has been passed the supervision order is bad, and nothing can be done under it, but a Court of first instance cannot make a compulsory order on the same petition as that on which it originally made a supervision order (*e*), but it can do so on another petition, and the Court of Appeal can treat the matter as an appeal and make an order on the original petition (*e*). Section 201 of the Act contains the only provision which in any way indicates the circumstances which are to guide the Court in exercising its discretion as to granting or refusing a supervision order (*f*).

That section provides that the Court may, in deciding between a winding-up by the Court and a winding-up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Primâ facie a contributory who petitions for a supervision order will be acting against the wishes of the majority of the contributories who have voted for an ordinary voluntary winding-up (*g*), and in cases where the petitioner is in a minority it would appear that the question for the Court is whether, having regard to the facts which have been alleged and proved, a case is made out rendering it proper to make a supervision order with a view to putting in force provisions of the Act which would be available if such an order were made, but would not be available in an ordinary voluntary winding-up (*h*).

Some of the older cases indicate that a supervision order will only be made on the application of a contributory where either the application is supported by a majority of the contributories or it is shown that the resolution for voluntary liquidation was passed either fraudulently or by the majority of the company using their voting power in an improper or oppressive way (*i*). This view also, it must be borne in mind, prevailed in the case where a contributory petitioned for a compulsory order while there was a voluntary winding-up current, but was ultimately displaced by the rule, which has

(*c*) *Manchester Economic Building Society* (1883), 24 C. D. 488.

(*d*) *Simons' Reef Consolidated Gold Mining Co.* (1883), 31 W. R. 238; *Electrical Engineering Co.* (1891), 64 L. T. 658; *Medical Battery Co.*, [1894] 1 Ch. 444.

(*e*) *Manchester Economic Building Society* (1883), 24 C. D. 488.

(*f*) *Bank of Gibraltar and Malta* (1865), 1 Ch. 69; *Beaujolais Wine Co.* (1867), 3 Ch. 15.

(*g*) *Bank of Gibraltar and Malta* (1865), 1 Ch. 69; *Beaujolais Wine Co.* (1867), 3 Ch. 15.

(*h*) *Bank of Gibraltar and Malta* (1865), 1 Ch. 69; *Beaujolais Wine Co.* (1867), 3 Ch. 15.

(*i*) *London and Mercantile Discount Co.* (1865), 1 Eq. 277; *Star and Garter Hotel Co.* (1873), 42 L. J. (CH.) 374; *Ex parte Fox* (1871), 6 Ch. 176; *Sir John Moore Gold Mining Co.*, [1877] W. N. 183.

now found a place in the Act, that a contributory need only show that the contributories will be injured if the voluntary winding-up continues (*k*). It is submitted that a contributory who can show this will also be entitled to a supervision order, but it must of course be borne in mind in considering this question that the advantage of a public examination under section 175 of the Act will not be given by a supervision order. It has been held (*l*) that where there is no question of impropriety or preferences a creditor is not entitled to a supervision order *ex debito justitiæ*; but in the case under consideration there were no very special circumstances, and all the creditors except the petitioner opposed a supervision order. A supervision order was made in one case on the petition of a lessor whose debt was admitted to the extent of £700, his case being that the company were seeking to drive him to litigation for the balance and were declining the arbitration proceedings he was urging them to consent to (*m*). A supervision order has been made in a reconstruction case on the ground that the persons who controlled the new company were also the persons who controlled the liquidation of the old one (*n*), and such an order has also been made on the petition of the liquidator in a voluntary liquidation, such liquidator being also a shareholder, where proceedings were threatened to impeach an agreement for sale, and it was considered that the question in dispute could not conveniently be tried under section 193, and that it was desirable that the onus of showing that it was right that proceedings should be brought should be on the person threatening to bring them (*o*). Not infrequently supervision orders are taken with the consent of all parties in order to prevent unnecessary actions being brought in future against the company (*p*). The Court will usually not make a supervision order until the meeting of creditors required by section 188 of the Act has been held (*pp*). At the same time it may be desirable even in a hostile case, where it is not considered desirable to throw forward the commencement of the winding-up, to take a supervision and not a compulsory order, and in this connection the powers conferred by section 202 of the Act are important. That section provides that where an order is made for a winding-up subject to supervision the Court may by the same or any subsequent order appoint any additional liquidator (*q*); and that a liquidator so appointed by the Court shall have the same powers, be subject

(*k*) *National Society for the Distribution of Electricity by Secondary Generators*, [1902] 2 Ch. 34.

(*l*) *Crawford* v. *A. R. Cowper* (1902), 4 Fra. 849.

(*m*) *Yniscedwyn Iron Co.* (1871), 19 W. R. 194.

(*n*) *Donald* v. *Eglinton Chemical Co.* (1900), 2 Fra. 402.

(*o*) *Zoedone Co.* (1883), 53 L. J. (CH.) 465.

(*p*) Very frequently, too, a supervision order is taken as a compromise between a compulsory and a purely voluntary liquidation.

(*pp*) Neville, J., took this course in *Wyvern Kid Co.*, 0050 of 1912, February 20th and March 12th, 1912—the object of this is that the Court may ascertain the wishes of the creditors.

(*q*) An additional liquidator is rarely appointed by the supervision order except in cases where such an appointment is one of the terms of a compromise.

to the same obligations, and in all respects stand in the same position as if he had been appointed by the company. The section also provides that the Court may remove any liquidator so appointed by the Court, or any liquidator continued under the supervision order, and may fill any vacancy occasioned by the removal or by death or resignation. An additional liquidator appointed under these provisions will, as is the case with all liquidators appointed by the Court, have to give security, even where the original liquidators appointed by the company are continued and have not been required to give security (*r*).

It is thought that the persons, other than the official receiver, who are by section 137 of the Act authorized to petition for a compulsory order, will also be entitled to petition for a supervision order, though it will be noticed that that section speaks of "the winding-up of a company," and not as section 82 of the Act of 1862 of "the winding-up of a company under this Act" (*s*). The voluntary liquidator can also petition for a supervision order (*t*) presumably in the name of the company, and in spite of a decision to the contrary (*t*) it is thought that a debt which arose in the course of the voluntary liquidation will be sufficient to support a petition (*u*). Where a petitioner at the hearing asks for a supervision and not a compulsory order, he cannot be forced to take a compulsory order (*x*), but if the petition asks for a compulsory order, the Court may in such case upon such terms as it may think just substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition and who is desirous of prosecuting the petition (*y*). An order for winding-up a company subject to supervision must before the expiration of twelve days from its date be advertised by the petitioner once in the *Gazette*, and must be served on such persons (if any) and in such manner as the Court directs (*z*).

Where an order has been made in Scotland or Ireland for winding-up a company subject to supervision, and an order is afterwards made for winding-up by the Court, the Court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with

(*r*) *Hampshire Land Co.*, [1894] 2 Ch. 632.

(*s*) *Pen-y-van Colliery Co.* (1887), 6 C. D. 477, where some stress is laid on the words "under this Act": *Bank of South Australia*, [1894] 3 Ch. 722.

(*t*) *Bank of South Australia*, [1894] 3 Ch. 722.

(*u*) *Bank of South Australia* (*No.* 2), [1895] 1 Ch. 578.

(*x*) *Chepstow Bobbin Mills Co.* (1887), 36 C. D. 563; and see *supra*, pp. 840 and 841, under compulsory winding-up, as to readvertising the petition in such case.

(*y*) Companies (Winding-up) Rules, 1909, r. 36. See *supra*, pp. 866 and 867, as to the practice under this rule.

(*z*) Companies (Winding-up) Rules, 1909, r. 41 (2). For form of advertisement, *infra*, p. 1318.

or without any other person, to be liquidator in the winding-up by the Court (*a*).

REPORTS BY LIQUIDATOR IN SUPERVISION CASES.

As already stated, the supervision order requires a report to be filed every three months, and the taxation or allowance of costs, charges, remunerations, and other expenses payable out of the assets of the company (*b*). When a supervision order is made the Registrar sends to the liquidator a document showing what his report must contain. Such document is headed "Liquidator's Reports in Supervision Cases," and runs as follows:—

These Reports should comprise the following matters, and should treat them with approximate accuracy:—

Estimated amount of claims by unsecured Creditors.
,, ,, other claims (general).
,, ,, Preferential claims.
,, ,, Debentures issued and presumed to be valid (or otherwise).
General statement as to assets.
Estimate of value of property.
Statement as to unpaid Capital and to what extent considered good.
Estimate of value of Book debts.
Amount of unpaid Calls (if any) and estimate of amount likely to be realized.
Number and nominal value of issued Founder's shares.
,, ,, ,, Ordinary shares.
,, ,, ,, Preference shares.
,, ,, ,, Deferred shares.
Work done by Liquidator to date of Report.
Steps proposed with view to carrying Liquidation to conclusion.
The names of the Solicitors, if any, employed by the Liquidator for purposes of the Liquidation.

The above particulars are not exhaustive, but they should be included in the Liquidator's Report.
A copy of all Circulars sent to the Creditors or Shareholders should be filed with the Reports.
Reports should be numbered consecutively, and each should show the date of its immediate predecessor.

TAXATION OF COSTS, CHARGES, AND EXPENSES.

With a view to enforcing the provisions of the supervision order as to taxation and allowance of costs, charges, remuneration, etc., the Registrar Companies (Winding-up), as soon as a supervision order is made, sends a sealed copy of such order to the Board of Trade, and when the liquidator sends in his accounts to the Registrar of Joint Stock Companies under section 224 of the Act and the rules made under that section, such last-mentioned Registrar files one copy of such accounts and sends the other to the Board of Trade to be audited; on such audit no items which should have been taxed or allowed by the Registrar Companies (Winding-up) (*c*), will, unless and until they have been so taxed or allowed, be allowed

(*a*) Companies (Consolidation) Act, 1908, s. 204.

(*b*) For exact form of order, see forms of supervision orders, *post*, pp. 1314 *et seq.*

(*c*) Companies (Winding-up) Rules, 1909, rr. 188–196 (both inclusive). *Supra*, pp. 970 *et seq.* and *infra*, p. 1305.

in the accounts. The usual order as to costs in a supervision case made on a petition for a compulsory order gives one set of costs to the petitioner, one to the company and its liquidator, one to the creditors, whether supporting or opposing, and one to the contributories, whether supporting or opposing, creditors or contributories appearing by the same solicitor as the petitioner not to share in costs attributed to their class (*d*).

To sum up the position in a liquidation subject to supervision, section 203 has already been mentioned and set out.

Under the provisions incorporated by that section it would appear that the acts of a liquidator will be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification (*e*), and that he will take into his custody or under his control all the property to which the company is or appears to be entitled (*f*), and he can, subject to any restrictions imposed by the Court, exercise all the powers conferred by section 151 of the Act. It would appear that, subject always to any special restriction, section 203, though in some ways differently worded to section 151 of the Companies Act, 1862, will have the same effect as that section, and consequently except as to reconstruction (*g*) the liquidator would seem to have the same powers as in a purely voluntary winding-up (*h*), but no doubt the Court will have concurrent powers as to settling the list of contributories and the making and enforcement of calls and the Court will in such a winding-up also have the powers conferred by sections 163 to 172 (both inclusive) of the Act and the provisions of sections 174, and 176 to 181 (both inclusive) would also appear to be applicable (*i*).

The position as to staying actions, etc. (*k*), as to disposal of property and transfers (*l*), and as to executions, etc. (*m*), would, where a supervision order has been made, appear to be precisely the same as in the case where a compulsory order has been made; and the same remark applies to the prosecution of directors and others (*n*) and as to the inspection of the company's books (*o*) and the disposal thereof when the liquidation is complete (*p*).

With regard to compromises under section 214, that section would appear to place the case of a supervision order in the same position as the case where a compulsory order has been made, except that in a supervision case the sanction of the committee of inspection

(*d*) *Vanguard Motorbus Co.*, EADY, J., February 16, 1909. See *infra*, pp. 1316 and 1317.

(*e*) Companies (Consolidation) Act, 1908, s. 149 (10).

(*f*) *Ibid.*, s. 150.

(*g*) See Companies (Consolidation) Act, 1908, s. 192 (5).

(*h*) *Wright's Case* (1870), 5 Ch. 437.

(*i*) This would appear to be the effect of s. 203.

(*k*) Companies (Consolidation) Act, 1908, ss. 200 and 203.

(*l*) *Ibid.*, s. 205.

(*m*) *Ibid.*, s. 211.

(*n*) *Ibid.*, s. 217.

(*o*) *Ibid.*, s. 221.

(*p*) *Ibid.* s. 222.

will not suffice; but it has been held (*q*) that a compromise under the section will be binding in a supervision case, even where the sanction of the Court has not been obtained, the ground being that a liquidator has after a supervision order the same powers as he had before, as such powers are preserved by section 203. If this decision is correct there would certainly appear to be no reason why the powers conferred by section 191 of the Act should not also survive a supervision order (*r*). With regard to the dissolution of a company being wound up subject to supervision, the Registrar of Joint Stock Companies requires the same returns as if there were no supervision order, and it is the universal practice to do this. At the same time, section 203 (2) of the Act, while expressly excluding many sections which apply to a compulsory winding-up, does not exclude section 172, and it would certainly appear that the proper mode of dissolution of a company is the same in a supervision as in a compulsory case (*s*). In other matters the position will be the same in a supervision case as in a purely voluntary winding-up.

FINAL MEETING AND DISSOLUTION.

In the case of every voluntary liquidation as soon as the affairs of the company are fully wound up the liquidator must make up an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of; and thereupon he must call a general meeting of the company for the purpose of laying before it the account and giving any explanation thereof.

The meeting must be called by advertisement in the *Gazette* (*ss*), specifying the time, place, and object thereof, and published one month at least before the meeting.

Within one week after the meeting the liquidator must make a return to the Registrar of Joint Stock Companies of the holding of the meeting and of its date, and in default of so doing he will be liable to a fine not exceeding £5 for every day during which the default continues.

The Registrar on receiving the return must forthwith register it, and on the expiration of three months from the registration of the return the company will be deemed to be dissolved.

The Court may, however, on the application of the liquidator or any other person who appears to the Court to be interested, make an

(*q*) *Wright's Case* (1870), 5 Ch. 437; but cp. *James* v. *May* (1873), L. R. 6 H. L. 328, where, however, the question was as to the validity of a release by directors after a winding-up.

(*r*) As already stated, the Court can in a supervision case confirm a scheme for reconstruction, and a special resolution will in such case be unnecessary.

(*s*) See *supra*, pp. 992 *et seq.*

(*ss*) For form of advertisement, see *infra*, p. 1307.

order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

It will be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to file with the Registrar an office copy of the order, and if that person fails so to do he will be liable to a fine not exceeding £5 for every day during which the default continues (*t*).

Prior to the Companies Act, 1907, the Court had no power to defer the date at which the dissolution took effect if once the final meeting had been held and the return had been registered (*u*). The only thing that it could do was to stay all further proceedings in the winding-up, and this it could only do on the application of a creditor or contributory (*x*).

After dissolution no winding-up order can be made against a company except possibly in cases where the dissolution can be set aside on the ground of fraud (*y*), and probably not even in this case (*z*); but these remarks must now be taken to be subject to the power of the Court at any time within two years of the date of the dissolution to declare the dissolution void (*a*). Moreover, if proceedings are taken against a company even after the return has been registered and are delayed solely by the state of the business of the Court dissolution will make no difference (*b*). It will be otherwise, however, if the delay has arisen partly owing to the fact that the parties were not ready for a hearing (*c*), and in such latter case a solicitor who acts for the company after dissolution, whether he knows or ought to have known of the dissolution or not, will be personally liable to the other party for costs (*d*). Dissolution will, moreover, subject always to the above remarks, be a bar to the claims of creditors (*e*), and it will not in any way vest in creditors the rights which prior to dissolution the company or its liquidator had. Thus

(*t*) Companies (Consolidation) Act, 1908, s. 195. The application is by summons. See order deferring dissolution, *infra*, p. 1322.

(*u*) *Scottish Fluid Beef Co.* v. *Auld* (1898), 25 Rettie, 1056.

(*x*) *Eastern Investment Co.*, [1905] 1 Ch. 352; and see Companies (Consolidation) Act, 1908, ss. 144 and 193. For such an order, *infra*, p. 1324.

(*y*) *Pinto Silver Mining Co.* (1878), 8 C. D. 273; *London and Caledonian Marine Insurance Co.* (1879), 11 C. D. 140, the latter of which cases shows that the fact that the liquidator has assets in his hands makes no difference.

(*z*) *Schooner Pond Coal Co.*, [1888] W. N. 70.

(*a*) Companies (Consolidation) Act, 1908, s. 223; see *ante*, pp. 994 *et seq.* as to this; and for orders, *infra*, pp. 1322 *et seq.*

(*b*) *Crookhaven Mining Co.* (1866), 3 Eq. 69; *Whiteley Exerciser* v. *Gamage*, [1898] 2 Ch. 405; *Watchmakers' Alliance* v. *Ernest Goode's Stores* (1905), 5 Tax Cases, 117.

(*c*) *Salton* v. *New Beeston Cycle Co.*, [1900] 1 Ch. 43.

(*d*) *Yonge* v. *Toynbee*, [1910] 1 K. B. 215, overruling *Salton* v. *New Beeston Cycle Co.*, [1900] 1 Ch. 43, on this point.

(*e*) *Westbourne Grove Drapery Co.* (1878), 39 L. T. 30; and see *supra*, pp. 993 and 994, as to other cases on the effect of a dissolution.

a creditor cannot bring proceedings after dissolution against directors for misfeasances which they have committed prior to dissolution (*f*). It has been held, (*g*) indeed, that a creditor can bring proceedings against a liquidator for acts done by him in the winding-up, even where no fraud is alleged, but this case was a case which very nearly though apparently not quite, amounted to fraud, and it has already been submitted that apart from fraud it cannot be supported.

MEETING WHERE WINDING-UP CONTINUES MORE THAN ONE YEAR.

In the event of the winding-up continuing for more than one year, the liquidator must summon a general meeting of the company at the end of the first year from the commencement of the winding-up and of each succeeding year or as soon thereafter as may be convenient and must lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year (*h*).

INFORMATION AS TO PENDING LIQUIDATIONS.

It will be borne in mind that section 224 of the Act applies to a voluntary winding-up as well as to a compulsory winding-up, and that consequently where the liquidation is not concluded within the year the voluntary liquidator will have to comply with the requirements of the section and of rules 189 and 190 the Companies (Winding-up) Rules, 1909 (*i*), as to the statements to be made to the Registrar of Joint Stock Companies. For the purpose of section 224 a winding-up is to be deemed to be concluded in the case of a company wound up voluntarily or under the supervision of the Court at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator, or any person who has acted as liquidator, in which case the winding-up will not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies' liquidation account at the Bank of England (*k*).

In short, the statement required by section 224 will have to be made by the liquidator unless the final meeting has not been held and the return required by section 195 registered within nine months of the commencement of the winding-up, and even where these things have been done, if at the end of the year the liquidator has in his hands or under his control assets or funds of the company which have not been distributed or paid into the company's liquidation account. It is thought that section 194 (2) ceases to be applicable after the final meeting has been held (*l*).

(*f*) *Coxon* v. *Gorst*, [1891] 2 Ch. 73.

(*g*) *Pulsford* v. *Devonish*, [1903] 2 Ch. 625.

(*h*) Companies (Consolidation) Act, 1908, s. 194 (2).

(*i*) See *supra*, pp. 970 *et seq.*, and pp. 1301 and 1302 as to this.

(*k*) Companies (Winding-up) Rules, 1909, r. 188 (6).

(*l*) A winding-up can scarcely be said to continue after the affairs of the company are fully wound-up.

ADVERTISEMENTS.

1. OF VOLUNTARY WINDING-UP FOR *Gazette*.

In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the A.B. Company Limited.

NOTICE IS HEREBY GIVEN that at an extraordinary general meeting of the members of the above-named Company duly convened and held at on the 19 the resolution firstly below mentioned was duly passed as an extraordinary resolution and that at a subsequent extraordinary general meeting also duly convened and held at the same place on 19 that same resolution was duly confirmed as a special resolution and the resolution secondly below mentioned was at the same meeting passed as an ordinary resolution.

(1) That the Company be wound-up voluntarily.

(2) That Mr. X.Y. of be and he is hereby appointed liquidator for the purpose of such winding-up.

X.Y. Liquidator

2. ADVERTISEMENT UNDER SECTION 188 OF THE ACT.

In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the A.B. Company Limited.

NOTICE IS HEREBY GIVEN pursuant to Section 188 of the Companies (Consolidation) Act 1908 that a meeting of the creditors of the above-named Company will be held at on at o'clock in the afternoon

Dated

X.Y. Liquidator.

3. ADVERTISEMENT FOR CREDITORS.

In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the A.B. Company Limited.

NOTICE IS HEREBY GIVEN that the creditors of the above-named Company which is being wound-up voluntarily are required on or before the day of 19 (*m*) to send their names and addresses and the particulars of their debts or claims and the names and addresses of their solicitors (if any) to the undersigned the solicitors for X.Y. the Liquidator of the said Company and if so required by notice in writing from the said Liquidator are by their solicitors or personally to come in and prove the said debts or claims at such time and place as shall be specified in such notice or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved

Dated 19

K. & Co. No. Street, E.C.
Solicitors for the above-named Liquidator.

(*m*) This must be not less than fourteen days after the date when the advertisement appears: Companies (Winding-up) Rules, 1909, r. 102.

4. ADVERTISEMENT OF FINAL MEETING UNDER SECTION 195 OF THE COMPANIES (CONSOLIDATION) ACT 1908.

In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the A.B. Company Limited.

NOTICE IS HEREBY GIVEN that a general meeting of the above-named Company will be held at on 19 at o'clock in the afternoon for the purpose of having an account laid before the Company of the winding-up showing how the winding-up has been conducted and the property of the Company has been disposed of and for the purpose of hearing any explanation that may be given by the Liquidator and for the purpose of passing an extraordinary resolution directing how the books and papers of the Company and of the Liquidator are to be disposed of.

NOTICE OF APPOINTMENT OF VOLUNTARY LIQUIDATOR TO BE FILED WITH THE REGISTRAR OF JOINT STOCK COMPANIES (n).

Certificate No. Form No. 39a.

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

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Notice of Appointment of Liquidator.

(*Pursuant to Section* 187.)

NOTE.—In a voluntary winding-up, this notice must be filed with the Registrar within 21 days of the appointment, in default of which a penalty not exceeding £5 for every day the default continues is incurred.

Presented for filing by ____________________

To the Registrar of Joint Stock Companies.

I, the undersigned ____________________

of ____________________ hereby give notice that, by *

____________________ I have been appointed Liquidator of the ________

____________________ Company Limited.

Signature ____________________

Date ____________________

* State how appointed, whether by Resolution of the Company, or how otherwise.

NOTICE OF EXTRAORDINARY RESOLUTION FOR VOLUNTARY WINDING-UP WHICH WILL REQUIRE CONFIRMATION AS A SPECIAL RESOLUTION.

THE A.B. COMPANY LIMITED.

NOTICE IS HEREBY GIVEN that an extraordinary general meeting of the above-named Company will be held at on the 19 at o'clock in the noon for the purpose of considering

(n) Form prescribed by the order of the Board of Trade of March 29, 1909.

and if thought fit passing the following resolution as an extraordinary resolution—that is to say:—

That the Company be wound-up voluntarily.

Should the above-mentioned resolution be passed by the requisite majority it will be submitted for confirmation at a second extraordinary general meeting to be subsequently convened [or if the articles make special provision allowing of the calling of the two meetings by one notice to be held at the same time and place on the 19].

X.Y. Secretary.
By Order of the Board.

NOTICE OF CONFIRMATORY RESOLUTION.

NOTICE IS HEREBY GIVEN that an extraordinary general meeting of the above-named Company will be held at on the at o'clock in the noon for the purpose of considering and if thought fit of confirming as a special resolution the following resolution which was passed as an extraordinary resolution at an extraordinary general meeting held on the 19 . that is to say:—

That the Company be wound-up voluntarily

and for the purpose of the appointment of a Liquidator.

X.Y. Secretary
By order of the Board.

NOTICE OF EXTRAORDINARY RESOLUTION FOR VOLUNTARY WINDING-UP WHICH WILL NOT REQUIRE CONFIRMATION AS A SPECIAL RESOLUTION (o).

(*Formal parts as above in first notice.*)

That the Company cannot by reason of its liabilities continue its business and that it is advisable to wind-up voluntarily and that the Company be wound up voluntarily and that a liquidator be appointed.

X.Y. Secretary.
By order of the Board.

INSTRUMENT OF CALL.

To Mr.

The A.B. Company Limited.

I X.Y. the Liquidator appointed in the voluntary winding-up of the above-named Company hereby make a call of per share on all the contributories of the Company. The sum payable by you in respect of the shares registered in your name is £ . Such sum will be payable at my office No. Street E.C. on the day of 19

X.Y. Liquidator.

(o) For notices of resolutions for voluntary winding-up with a view to reconstruction, see the recitals to the reconstruction agreement, *post*, p. 1310.

CIRCULAR TO ACCOMPANY NOTICE OF RESOLUTION FOR WINDING-UP AND RECONSTRUCTION.

THE A.B. COMPANY LIMITED.

(*Proposed scheme for reconstruction.*)

1. The above-mentioned Company (hereinafter called the old Company) to go into voluntary Liquidation.

2. A new Company (hereinafter called the new Company) to be formed under the name of the C.D. Company Limited or some similar name with a Memorandum and Articles of Association in a form which has already been prepared and which has for the purpose of identification been signed by S.H. a solicitor of the Supreme Court.

3. The new Company forthwith to acquire the undertaking business and except as hereinafter mentioned the assets of the old Company and for that purpose to enter into an agreement in the form of a draft agreement which has already been prepared and which is expressed to be made between the old Company and its Liquidator of the first part the new Company of the second part and E.F. of the third part and which has for the purpose of identification been signed by the said S.H.

4. The consideration for the said sale to be 60,000 shares of £1 each in the capital of the new Company credited as paid up to the extent of 15*s.* per share to be allotted to the Liquidator of the old Company or his nominees.

5. The Liquidator of the old Company to select and retain out of the assets of the old Company assets to the value of £ and thereout to pay the debts and liabilities of the old Company the costs charges and expenses properly incurred in the Liquidation of the old Company including any moneys payable to persons who have expressed their dissent in manner provided by section 192 (3) of the Companies (Consolidation) Act 1908 and the costs charges and expenses of and incidental to the above-mentioned agreement or arising thereout and of the formation and promotion of the new Company.

6. Each member of the old Company (other than a dissentient member) to be entitled to one share in the new Company with 15*s.* paid up thereon for every share registered in his name in the capital of the old Company; but any member who fails to apply for the shares to which he is so entitled or any of them or to enclose a remittance of 1*s.* per share applied for with his application within the time and in manner to be mentioned in a notice to be sent by the Liquidator of the old Company to its members to be taken to have waived all right to the shares to which he is entitled or such of them as he shall not have applied for and enclosed a remittance in respect of.

7. E.F. to subscribe or find responsible subscribers for the shares in the new Company which are to be allotted to the Liquidator or his nominees and which members of the old Company shall have waived their title to or which dissentients would but for their dissent have been entitled to. A sum of at least 1*s.* per share to be paid to the new Company for each of such shares and the persons subscribing for them to pay a further sum of 1*s.* per share on application and the remaining 4*s.* per share as and when called up. The new Company to pay a commission of 5 per cent. (£3000) on the 60,000 shares so underwritten to the said E.F. in consideration of his so subscribing or finding responsible subscribers as aforesaid.

NOTE.—Copies of the draft agreement and Memorandum and Articles

of Association above referred to may be seen on application at the registered office of the old Company during business hours on any day prior to the day on which the confirmatory resolution is passed.

RECONSTRUCTION AGREEMENT (*p*).

AN AGREEMENT made the day of 1911. BETWEEN THE A.B. COMPANY LIMITED a Company having its registered office at in the county of (hereinafter called the old Company) and X.Y. of in the county of its Liquidator (hereinafter called the Liquidator) of the first part, The C.D. COMPANY LIMITED a Company having its registered office at in the county of (hereinafter called the new Company) of the second part and E.F. of in the county of (hereinafter called the underwriter) of the third part. WHEREAS the old Company was registered on the 16th day of June 1902 under the Companies Acts 1862 to 1900 with a capital of £100,000 divided into 100,000 shares of £1 each and 60,000 of such shares have been issued and all such issued shares are fully paid up. AND WHEREAS at extraordinary general meetings of the old Company held respectively on the 1st day of May 1911 and the 18th day of May 1911 the following resolutions were respectively passed and confirmed as special resolutions :—

(1) That the Company be wound-up voluntarily.

(2) That pursuant to the powers in that behalf conferred by section 192 of the Companies (Consolidation) Act 1908 the whole of the business assets of the Company except such part of such assets as are to be retained for the purpose of paying certain debts and liabilities be transferred and sold to a new Company to be formed and that the Liquidator appointed in such voluntary winding-up be and he is hereby authorized to receive in compensation for such sale and transfer shares in such new Company.

(3) That a new Company be registered under the Companies (Consolidation) Act 1908 under the name of the C.D. Company Limited or some other similar name with a capital of £100,000 divided into 100,000 shares of £1 each and with a Memorandum and Articles of Association in the form of a draft Memorandum and Articles of Association which have already been prepared and have for the purpose of identification been signed by S.H. of in the county of a solicitor of the Supreme Court.

(4) That the said Liquidator be authorized on behalf of the Company to enter into an agreement in the form of a draft agreement which has already been prepared and has for the purposes of identification been signed by the said S.H. AND WHEREAS at the meeting held on the 18th day of May 1911 as aforesaid immediately after the said resolutions were confirmed as special resolutions the Liquidator was appointed Liquidator of the old

(*p*) The authorities are satisfied with a 10*s.* stamp on these agreements, where (1) the members of the new Company are identical with those of the old, and they hold their shares in the same proportions *inter se* ; and (2) there are no dissentient members ; and (3) no shares are allotted to persons other than members of the old Company ; and (4) the whole of the shares in the capital of the new Company are allotted and there is no provision in the instrument for an increase of capital : Alpe on Stamp Duties, 12th Ed. p. 132 ; and (5) where the capital of the new company is not greater than that of the old company : Highmore's Stamp Duties, 3rd Ed. p. 192.

Company. AND WHEREAS on the day of 1911 the new Company was registered under the Companies (Consolidation) Act 1908 with a capital of £100,000 divided into 100,000 shares of £1 each and with a Memorandum and Articles of Association in the form of the draft Memorandum and Articles of Association above referred to. AND WHEREAS one of the objects for which the new Company was formed as set out in its Memorandum of Association was to acquire the business assets and property of the old Company and for that purpose to enter into an agreement in the form of a draft agreement which had already been prepared and had for the purpose of identification been signed by the said S.H. and which was expressed to be made between the old Company and its Liquidator of the first part the new Company of the second part and the underwriter of the third part. AND WHEREAS by the Articles of Association of the new Company it is provided that the new Company may pay a commission at a rate not exceeding 20 per cent. to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares in the new Company or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the new Company. AND WHEREAS the parties hereto have agreed to enter into this agreement which is in the same form as the draft agreement referred to in the said resolution and in the Memorandum of Association of the new Company.

Now it is hereby agreed between the parties hereto as follows :—

1. Subject to the provisions hereinafter contained the old Company shall sell and the new Company shall purchase :—

(*a*) The freehold and leasehold hereditaments specified in the first and second parts of the schedule hereto.

(*b*) The goodwill of the business heretofore carried on by the old Company at the said freehold and leasehold premises.

(*c*) All fixtures and fittings in or about the same premises.

(*d*) All book and other debts now due or to become due to the old Company and the benefit of all now existing contracts with the old Company.

(*e*) All loose plant stock-in-trade and other chattels now belonging to the old Company.

2. As the consideration for the said sale the new Company shall allot to the liquidator or his nominees 60,000 shares of £1 each in the capital of the new Company, and such shares shall be credited as paid up to the extent of 15s. per share.

3. The Liquidator shall forthwith serve on each member of the old Company who has not dissented in manner provided by Section 192 (3) of the Companies (Consolidation) Act 1908 a notice in writing informing him of the number of shares in the capital of the new Company to which he is entitled of the amount credited as paid up on each such share of the time within which he must apply for such shares, and of the amount payable on application in respect of each share applied for.

4. Each member of the old Company other than a member who has dissented in manner aforesaid shall be entitled to one share in the new Company with 15*s*. credited as paid up thereon for every share registered in his name in the capital of the old Company but no allotment shall be made of any of such shares to any member of the old Company who does not within 14 days after service of such notice as aforesaid on him make an

application in writing to the Liquidator for the shares to which he is so entitled or such of them as he requires or does not enclose with such application a remittance of 1*s.* for every share applied for. And every member who fails to make such application for any shares he is so entitled to or to enclose such remittance in respect of any shares he has so applied for shall be deemed to have waived all right to the shares in respect of which he has made such default or failure as aforesaid.

5. The underwriter hereby agrees that he will forthwith when called on by the Liquidator so to do subscribe or procure responsible persons who will subscribe for such of the said 60,000 shares in the new Company with 15*s.* per share credited as paid up thereon as members of the old Company are deemed to have waived all right to under the last preceding clause hereof and all shares which dissentient members of the old Company would but for their dissent have been entitled to hereunder. A sum of at least 1*s.* per share shall be paid in respect of each share subscribed for under this clause and such sum and also the sum of 1*s.* per share payable on application shall be paid to the new Company within one week after the Liquidator shall have notified to the underwriter the number of shares he is required to subscribe or procure responsible subscribers for—and the underwriter or the persons so to be procured shall pay the balance of 4*s.* per share as and when the same is called up. In consideration of the premises the Company shall pay to the underwriter the sum of £3000 being a commission at the rate of 5 per cent. on the shares which he has agreed to subscribe or procure responsible subscribers for, such sum shall be payable as soon as the underwriter has fulfilled his obligations under this clause but the new Company may retain the said sum or any part thereof against any sums not exceeding 2*s.* per share payable in respect of the shares which the underwriter has been called on to subscribe or procure responsible subscribers for under this clause.

6. The Liquidator shall select and retain out of the assets of the old Company assets to the value of £ and shall thereout pay and satisfy all debts and liabilities of the old Company and all costs charges and expenses properly incurred in the liquidation of the old Company including any sums payable to members of the old Company who have dissented in manner provided by Section 192 (3) of the Companies (Consolidation) Act 1908 and all costs charges and expenses of and incident to or arising out of this agreement or the formation or promotion of the new Company.

7. The Liquidator shall on or before the day of 19 inform the new Company of what assets he has selected under the last preceding clause of this agreement and he shall on or before the day of 19 transfer and pay to the new Company any of such assets or the proceeds of sale of any of such assets which are not required for the purposes mentioned in the said clause.

8. The new Company shall accept without any investigation requisition or objection as to title conveyance or otherwise such title as the old Company has to the freehold and leasehold hereditaments comprised in this agreement.

9. The purchase shall be completed at the office of the solicitors of the old Company Messrs. S.H. & Co. No. Street in the city of London on the day of and subject to the provisions of Clause 7 of this agreement the old Company and all other necessary parties shall execute and do all deeds documents and things which may be necessary for effectually vesting in the new Company the property comprised in this agreement and thereupon the new Company shall allot to the Liquidator or his nominees the shares in the new Company which form the consideration for this agreement or such of them as he may require.

10. Until completion the Liquidator shall at all reasonable times allow the new Company or its nominees access to all books papers and documents of the old Company and shall carry on the business of the old Company.

11. For the purpose of stamp duty the purchase consideration shall be apportioned as follows that is to say £ to the goodwill of the said business £ to the fixtures and fittings comprised in this agreement £ to the book and other debts and the benefit of all contracts comprised in this agreement and the residue of the said purchase consideration to the remaining property comprised in this agreement.

12. Any notices to be served on members of the old Company under this agreement may be served in any manner in which notices under the Articles of Association of the old Company may be served.

IN WITNESS etc.

THE SCHEDULE HEREINBEFORE REFERRED TO.

PART I.

[Description of freehold hereditaments.]

PART II.

[Description of leasehold hereditaments.]

ORDER OF THE COURT OF APPEAL RESTRAINING THE CARRYING OUT OF A REORGANIZATION SCHEME WHICH IS *ULTRA VIRES*.

IN THE COURT OF APPEAL,

Between A.B. on behalf of himself and all other shareholders of the first defendant Company

Plaintiff,

and

The C.D. Company Ltd. (*q*) and the E.F. Company Ltd. (*r*).

Defendants.

Upon motion etc., and the plaintiffs and the defendants by their counsel agreeing to treat the hearing of this motion as the trial of the action. This Court doth order that the defendant the C.D. Company Ltd., be perpetually restrained from in any way acting upon or carrying into effect the reorganization scheme submitted to the general meeting of the shareholders of the said defendant Company held on the 19 and it is ordered that the defendants do pay to the plaintiff his costs of this action and occasioned by this appeal to be taxed by the Taxing Master. [*Bisgood* v. *Henderson's Transvaal Estates, Ltd.*, 1908, B. 611. Court of Appeal April 3rd, 1908, [1908] 1 Ch. 743.]

(*q*) The old company. (*r*) The new company.

WRIT OF SUMMONS WHERE IT IS SOUGHT TO ESTABLISH THAT A RESOLUTION FOR VOLUNTARY WINDING-UP HAS NOT BEEN PROPERLY PASSED.

IN THE HIGH COURT OF JUSTICE.
Chancery Division.
MR. JUSTICE

Between X.Y. suing on behalf of himself and all other shareholders of the defendant Company
Plaintiff,
and
The A.B. Company Ltd. and C.D.
Defendants.

GEORGE V. BY THE GRACE OF GOD, ETC.

The plaintiff claims:—

(1) A declaration that a resolution for the voluntary winding-up of the defendant Company alleged to have been passed as an extraordinary resolution and to have been confirmed as a special resolution at extraordinary general meetings of the defendant Company held on the 19 and the 19 and an ordinary resolution appointing the defendant C.D. Liquidator of the defendant Company alleged to have been passed at such last-mentioned meeting were invalid and that the defendant Company is not in liquidation.

(2) An injunction restraining the defendant C.D. from acting as such Liquidator and from dealing and intermeddling with the assets of the defendant Company.

(3) An injunction restraining both the defendants from giving notice of the said resolutions by advertisement in the *London Gazette* or otherwise and from summoning or advertising in the *London Gazette* or otherwise a meeting of the creditors of the defendant Company.

(4) Further and other relief.

(5) Costs.

X.Y. Liquidator.

ORDER FOR WINDING-UP SUBJECT TO SUPERVISION (*s*).

(*Title.*)

Upon the petition etc. this Court doth order that the voluntary winding-up of the said Company Limited be continued but subject to the supervision of this Court, and any of the proceedings under the said voluntary winding-up may be adopted as the Court shall think fit; and it is ordered that the Liquidator appointed in the voluntary winding-up of the said Company do on the day of next and thenceforth every three months file with the Registrar Companies (Winding-up) a report in writing as to the position of and the progress made with the winding-up of the said Company and with the realization of the assets thereof and as to any other matters connected with the winding-up as the Court may from time to time direct and it is ordered that no bills of costs charges or expenses or special remuneration of any solicitor employed by the Liquidator of the said Company or any remuneration charges or expenses of such Liquidator

(*s*) Appendix to the Companies (Winding-up) Rules, 1909, Form 16.

or of any manager accountant auctioneer broker or other person be paid out of the assets of the said Company unless such costs charges expenses or remuneration shall have been taxed or allowed by the said Registrar Companies (Winding-up) and it is ordered that all such costs charges expenses and remuneration be taxed and ascertained accordingly and it is ordered that the costs of the Petitioner and of [here insert any directions as to allowance of costs of petitioner and of persons appearing] and the creditors contributories and Liquidator of the said Company and all other persons interested are to be at liberty to apply generally or as there may be occasion.

FORM OF SUPERVISION ORDER WITH ONE SET OF COSTS BETWEEN ALL CREDITORS SUPPORTING.

(*Title.*)

UPON THE PETITION of W G.A. A.H.A. and G.F.A. carrying on business in partnership as at in the City of under the style of C——— and A——— Creditors of the above-named Company on the 28th December 1910 preferred unto this Court and upon hearing Counsel for the Petitioner ——— for the above-named Company and W.P. the Liquidator in the voluntary winding-up thereof for S. Brothers Limited and another The S. M. G. Company The A.-A. O. Company Limited all creditors of the above-named Company supporting the said petition and upon reading the said petition the affidavit of G.F.A. filed the 30th December 1910 (verifying the said petition) the *London Gazette* and *The Times* newspaper both dated 6th January 1911 each containing an advertisement of the said petition—the *London Gazette* dated the 31st January 1911 containing a notice of the passing of the Resolution for the voluntary winding-up of the said Company and of the appointment of W.P. of in the City of as Liquidator thereof the affidavit of S.J.W. and the affidavit of G.H.R. both filed the 21st day of January 1911 and the affidavit of W.P. filed the 27th day of February 1911 and the several exhibits in the said affidavits or some of them respectively referred to.

THIS COURT DOTH ORDER that the voluntary winding-up of the said Waring and Gillow Limited be continued, but subject to the supervision of this Court; and any of the proceedings under the said voluntary winding-up may be adopted as the Court shall think fit.

AND IT IS ORDERED that the said W.P. the Liquidator appointed in the voluntary winding-up or other the Liquidator for the time being of he said Company do every three months file with the Registrar Companies (Winding-up) a report in writing as to the position of and the progress made with the winding-up of the said Company and with the realization of the assets thereof and as to any other matters connected with the winding-up as the Court may from time to time direct the first of such reports to be filed on the 28th day of May 1911.

AND IT IS ORDERED that no Bills of costs charges or expenses or special remuneration of any Solicitor employed by the Liquidator of the said Company or any remuneration charges or expenses of such Liquidator or of any Manager Accountant Auctioneer Broker or other person be paid out of the assets of the said Company unless such costs charges expenses or

remuneration shall have been taxed or allowed by the said Registrar Companies (Winding-up).

AND IT IS ORDERED that all such costs charges expenses and remuneration be taxed and ascertained accordingly.

AND IT IS ORDERED that the costs of the Petitioner of the said Company and of the said creditors supporting the said Petition be taxed and paid out of the assets of the said Company, but on such taxation only one set of costs is to be allowed between the said creditors supporting.

And the Creditors Contributories and Liquidator of the said Company and all other persons interested are to be at liberty to apply as there may be occasion. [*Re Waring and Gillow Co., Ltd.*, 00461 of 1910. SWINFEN EADY, J., 28th February, 1911.]

SUPERVISION ORDER AN AGREEMENT UNDER SECTION 161 OF THE COMPANIES ACT, 1862 (SECTION 192 OF THE COMPANIES (CONSOLIDATION) ACT, 1908), BEING SANCTIONED AND THE TIME FOR ADVERTISEMENT OF THE ORDER EXTENDED.

(*Title.*)

Upon the Petition of A.H.M. of in the County of E. R. of in the County of N.C.G. of in the County of W.E.N. of in the County of and C.W. of in the County of all Contributories of the above-named Company on the 6th January 1909 preferred unto this Court and upon hearing Counsel for the Petitioners for the above-named Company and W.B.P. the Liquidator in the Voluntary Winding-up thereof for B.R.A. and 67 others all Creditors of the above-named Company for H.A. and 1681 others all Contributories of the above- named Company all supporting the said Petition for the L.G.O. Company Limited for J.F.A. and 62 others for the U. of L. and S.B. Limited and W.H.K. and A.H. for A.H.S. all Creditors opposing for H.S.K. and for H.T.H. and four others all Creditors and Contributories opposing and for E.H.B. and 6 others and for A.E.H. and 17 others all contributories opposing and upon reading the said Petition the affidavit of A.H.M. filed the 8th January 1909 (verifying the said Petition) the *London Gazette* the *Daily Telegraph* and the *Daily Mail* newspapers all dated the 8th January 1909 each containing an advertisement of the said Petition the *London Gazette* dated 9th October 1908 containing a notice of the passing of the Resolutions for the Voluntary Winding-up of the said Company and of the appointment of W.B.P. of in the City of London Chartered Accountant as Liquidator thereof the affidavit of R.M. and the Affidavit of E.H.T. both filed the 13th January 1909 the two several affidavits of W.B.P. filed respectively the 23rd January and the 3rd February 1909 the affidavit of J.C.M. filed the 25th January 1909 the affidavit of S.D.G. the affidavit of M.J. the affidavit of H.G.B. and the affidavit of S.W. all filed the 3rd February 1909 the affidavit of A.H.M. and the affidavit of D.D.C. both filed the 8th February 1909 and the several Exhibits in the said Affidavits or some of them respectively referred to,

THIS COURT DOTH ORDER that the Voluntary Winding-up of the said Vanguard Motorbus Company Limited be continued but subject to the supervision of this Court and any of the proceedings under the said Voluntary Winding-up may be adopted as the Court shall think fit. And the said L.G.O. Company Limited by its Counsel at the Bar consenting that the misfeasance and other claims referred to in the said Petition shall be excluded from the agreement dated 22nd June 1908 referred to in paragraph 70 of the said Petition provided it is to be under no responsibility in respect of any costs incurred or to be incurred in respect of inquiry into and the prosecution of any such claims or in respect of the costs of the said petition. And the above-named Vanguard Motorbus Company Limited by its Counsel consenting to such modification.

THIS COURT DOTH HEREBY sanction the said agreement dated the 22nd June 1908 as so modified so as to give validity thereto under section 161 of the Companies Act 1862 and doth order the same to be carried into effect forthwith.

AND IT IS ORDERED that the said W.B.P. the Liquidator appointed in the Voluntary Winding-up of the said Company or other the Liquidator for the time being do every three months file with the Registrar Companies (Winding-up) a Report in writing as to the position of and the progress made with the winding-up of the said Company and with the realization of the assets thereof and as to any other matters connected with the winding-up as the Court may from time to time direct the first of such reports to be filed on the 11th May 1909.

AND IT IS ORDERED that no Bills of Costs charges or expenses or special remuneration of any Solicitor employed by the Liquidator of the said Company or any remuneration charges or expenses of such Liquidator or of any Manager Accountant Auctioneer Broker or other person be paid out of the assets of the said Company unless such costs charges expenses or remuneration shall have been taxed or allowed by the Registrar Companies (Winding-up).

AND IT IS ORDERED that all such costs charges expenses and remuneration be taxed and ascertained accordingly.

AND IT IS ORDERED that the Costs of the Petitioners of the said Company and of the said Creditors (other than the said L.G.O. Company Limited) and Contributories of the said Petition be taxed and paid out of the assets of the above-named Company but on such taxation only one set of Costs is to be allowed between the said Creditors and one set between the said Contributories and only one set between the Petitioners and the said B.R.A. and sixty-seven Creditors and H.A. and 1681 Contributories.

And the Creditors Contributories and Liquidator of the said Company and all other persons interested are to be at liberty to apply as there may be occasion.

And the time for the advertisement of this Order in the *London Gazette* is hereby extended to the 26th February 1909. [*Re The Vanguard Motorbus Co., Ltd.*, 008 of 1909. SWINFEN EADY, J., February 11th, 1909.]

FORM OF ADVERTISEMENT OF SUPERVISION ORDER PURSUANT TO RULE 41 (2) OF THE COMPANIES (WINDING-UP) RULES, 1909.

IN THE HIGH COURT OF JUSTICE,
Companies (Winding-up).
MR. JUSTICE NEVILLE.
In the Matter of the Companies (Consolidation) Act 1908
and
In the Matter of the A.B. Company Ltd.

By an order made by Mr. Justice Neville in the above matters dated the day of 19 upon the petition of X.Y. of in the county of Gentleman a creditor of the above-named Company it was ordered that the voluntary winding-up of the said A.B. Company Limited be continued but subject to the supervision of the Court and that any of the proceedings under the said voluntary winding-up might be adopted as the Court should think fit and the creditors contributories and Liquidator of the said Company and all other persons interested were to be at liberty to apply as there might be occasion [and the time for the advertisement of the said order in the *London Gazette* was by the said order extended to the day of 19].

Dated this day of 19 .

K. & Co. No. Street in the City of London,
Solicitor for the petitioner.

ORDER ON SUMMONS UNDER SECTION 193 OF THE ACT FOR LIBERTY TO APPLY.

(*Title.*)

Upon the application by originating summons dated the 15th day of August 1907 of A.B. of in the County of the Liquidator in the voluntary winding-up of the above-named Company and upon hearing the Solicitors for the applicant and upon reading the originating summons the *London Gazette* of the 14th November 1905 containing an advertisement of the passing of a special resolution for the voluntary winding-up of the said Company and for the appointment of the said A.B. as Liquidator thereof. It is ordered that the said Liquidator or any creditor or contributory of the said Company be at liberty from time to time to apply to this Court to determine any question arising in the voluntary winding-up of the said Company and generally as they may be advised. [*Re Britannia Motor Garage, Ltd.*, 00217 of 1907. Mr. Registrar HOOD, August 20th, 1907.]

ORDER UNDER SECTION 188 OF THE ACT, APPOINTING JOINT LIQUIDATOR AND GIVING GENERAL LIBERTY TO APPLY.

(*Title.*)

UPON the application by Originating Summons dated the 12th day of October 1911 of L.B. & T. Ltd. (proprietors of B. & M.) whose registered office is at in the County of the creditors appointed for this purpose by the Creditors of the

above-named Company under Section 188 of the above-mentioned Act and upon hearing the Solicitors for the applicants and the respondent G.M. the Liquidator in the voluntary winding-up of the said Company appearing in person and upon reading the said Originating Summons the *London Gazette* dated the 3rd of October 1911 containing a notice of the passing of the Resolution for the voluntary winding-up of the above-named Company and of the appointment of the said Respondent as Liquidator thereof the Affidavit of W.L.B. filed the 2nd day of November 1911 and the Affidavit of A.J.F. (as to fitness of the Liquidator hereinafter appointed) filed this day.

AND H.J.G. hereinafter named together with the B.L.F.I. Company Limited having given an undertaking to the Court in the sum of £100 dated 7th of November 1911 pursuant to Order 50 Rule 16*a* of the Rules of the Supreme Court as his surety. And the said H.J.G. having undertaken to apply to the Court for the purpose of having his security increased if he at any time should become Sole Liquidator of the above-named Company. IT IS ORDERED that H.J.G. of in the City of London Chartered Accountant be and he is hereby appointed Liquidator to act jointly with the said G.M. in the Voluntary Winding-up of the above-named Heston Motor Manufacturing Company Limited. AND IT IS ORDERED that the costs of the Applicants the said L.B. & T. Limited and the proper costs of the Respondent the said G.M. of this application be taxed as between Solicitor and Client and paid out of the assets of the above Company.

AND the Liquidators or any creditor or contributory of the above-named Company are to be at liberty to apply to the Court with reference to any matter arising in the Voluntary Winding-up of the above-named Company as they may be advised. [*Heston Motor Manufacturing Company, Ltd.*, 00354 of 1911. Mr. Registrar HOOD, November 13th, 1911.]

ORDER UNDER SECTION 188 OF THE ACT; REMOVING LIQUIDATOR AND APPOINTING A NEW LIQUIDATOR AND COMMITTEE OF INSPECTION AND GIVING GENERAL LIBERTY TO APPLY.

(*Title.*)

Upon the application by Originating summons dated the 9th day of August 1911 of G.A.B. of in the county of a creditor appointed for this purpose by the creditors of the above-named Company under Section 188 of the above-mentioned Act—and upon hearing Counsel for the applicant and the solicitors for J.W.C. the Liquidator in the Voluntary Winding-up of the above-named Company the respondent and upon reading the said originating Summons the *London Gazette* dated 18th July 1911 containing a notice of the passing of a resolution for the Voluntary Winding-up of the above-named Company and of the appointment of the respondent the said J.W.C. as Liquidator thereof the affidavit of G.A.B. filed the 28th day of August 1911 the affidavit of J.W.C. filed the 5th day of September 1911 the affidavit of A.L.L. filed the 13th day of September 1911 (as to fitness of W.D. the Liquidator hereinafter appointed) the affidavit of F.W.M. filed the 20th day of September 1911 and the several exhibits in the said affidavits or some of

them respectively referred to the bond dated the 19th September 1911 entered into by the said W.D. and the L. and L.F.I. Company as his surety and the receipt of the Filing and Record Department of the Central Office dated this day of the filing of the said Bond and the said W.D. having undertaken to apply to the Court for directions as to giving further security if at any time the assets coming to his hands exceed the sum of £100.

IT IS ORDERED that the said J.W.C. be and he is hereby removed from his office as Liquidator in the Voluntary Winding-up of the above-named E. Slater and Sons Limited. And W.D. of in the County of York Chartered Accountant having given security by entering into the said Bond which Bond has been approved by the Court and duly filed.

IT IS ORDERED that the said W.D. be and he is hereby appointed Liquidator in the Voluntary Winding-up of the above-named Company in the place of the said J.W.C.

AND IT IS ORDERED that the said J.W.C. do forthwith deliver up to the said W.D. all assets books papers and documents of the said Company in his possession or power or under his control as such Liquidator as aforesaid. AND IT IS ORDERED that the following persons be appointed a Committee of Inspection to act with the said Liquidator namely: G.A.B. of G.H. of near W.R.W. of P.M. of and E.B. of

AND IT IS ORDERED that the costs of the applicant and of the respondent of this application be taxed as between Solicitor and Client and paid out of the assets of the said Company.

AND the Liquidator or any creditor or contributory of the above-named Company is to be at liberty to apply to the Court in this proceeding with reference to any matter arising in the Voluntary Winding-up of the said E. Slater and Sons Ltd. as there may be occasion. AND notice of the appointment of the said Liquidator and Committee of Inspection is to be forthwith advertised once in the *London Gazette.* [*E. Slater and Sons*, 00304 of 1911. Mr. Registrar GIFFARD, September 22nd, 1911.]

ORDER REMOVING ONE OF TWO JOINT LIQUIDATORS AND CONTINUING THE OTHER AS SOLE LIQUIDATOR.

(*Title.*)

The application by summons dated the 7th February 1911 of E.J.P. of in the City of which upon hearing the Solicitors for the Applicant and for A.C. the Respondent to the said summons in Chambers was adjourned to be heard in Court coming on this day to be heard accordingly and upon hearing Counsel for the Applicant and for the said Respondent and upon reading the order dated the 18th July 1910 the three several affidavits of E.J.P. filed respectively the 14th February the 20th March and the 11th April 1911 and the two several affidavits of A.C. filed respectively the 6th March and the 6th April 1911 and the several exhibits in the said affidavits or some of them respectively referred to.

THIS COURT DOTH ORDER that A.C. of in the County of one of the joint Liquidators in the voluntary winding-up of the

above-named Company be and he is hereby removed from such office and that the said E.J.P. the other joint Liquidator be continued and he is hereby appointed sole Liquidator of the above-named Company.

And it is Ordered that the said A.C. do forthwith hand over to the said E.J.P. as such sole Liquidator all property cash books of account and other papers and documents in his possession custody or power as such Liquidator as aforesaid.

And it is Ordered that the costs of the Applicant and of the said Respondent of this application be taxed and paid out of the assets of the above-named Company. [*Re A. Carter & Co., Ltd.*, 00213 of 1910. Neville, J., April 25th, 1911.]

ORDER GIVING LIQUIDATORS LEAVE TO MAKE A CALL—SUCH CALL TO CARRY INTEREST.

(*Title.*)

Upon the Application by Summons dated the 21st day of April 1911 of W.B.P. and W.H. the Liquidators of the above-named Company. And upon hearing Counsel for the Applicants and upon reading the Order dated the 14th December 1909 directing the voluntary winding-up of the above-named Company to be continued subject to the supervision of the Court the Affidavit of W.B.P. and W.H. filed the 26th April 1910 and the exhibit therein referred to.

It is Ordered that the said Liquidators be at liberty to make a call of £5 per share on all the holders of Ordinary Shares in the above-named Company, such call to be payable on the 1st day of July 1910 and to carry interest from that date until payment at the rate of £5 per centum per annum on the amount from time to time remaining unpaid.

And it is Ordered that the Costs of the Applicants of this application are to be included in their costs of the winding-up of the above-named Company. [*Re Law Guarantee Trust and Accident Society, Ltd.*, 00422 of 1909. Swinfen Eady, J., April 25th 1911.]

ORDER TRANSFERRING ACTIONS IN A WINDING-UP SUBJECT TO SUPERVISION TO THE WINDING-UP COURT.

(*Title.*)

Upon the application (by summons dated the 8th day of June 1910) of H.S.S. the Liquidator of the above-named Society. And upon hearing the Solicitors for the Applicant and for the Respondents. H.G. (widow) W.F. E.F. and R.R.F. on the 14th June 1910 and Counsel for the Applicant this day. And upon reading the Order dated the 23rd March 1909 directing the voluntary winding-up of the above-named Society to be continued but subject to the supervision of the Court the Order dated the 31st August 1909 appointing the said H.S.S. Liquidator of the above-named Society and the Affidavit of the said H.S.S. filed the 13th day of June 1910.

It is Ordered that subject to the consent of The Lord Chancellor the Actions of *R.R.F.* v. *The Penge Perseverance Permanent Benefit Building Society* (a Building Society incorporated under The Building

Societies Act 1874) 1909 F. No. 113 *E.F.* v. *The Penge Perseverance Permanent Benefit Building Society* (a Building Society incorporated under the Building Societies Act 1874) 1909 F. No. 114 and *W.F.* v. *The Penge Perseverance Permanent Benefit Building Society* (a Building Society incorporated under The Building Societies Act 1874) 1909 F. No. 115 all commenced in the King's Bench Division be transferred to the Chancery Division of this Court and be assigned to Mr. Justice Swinfen Eady and Mr. Justice Neville the Judge's exercising Jurisdiction in Companies Winding-up. [*Re The Penge Perseverance Building Society*, 0097 of 1909. SWINFEN EADY, J., June 21st, 1910.]

ORDER FURTHER DEFERRING DATE OF DISSOLUTION OF COMPANY.

(*Title.*)

UPON the application by Summons dated the 8th day of November 1910 of A.W.B. (the Liquidator appointed in the voluntary winding-up of the above-named Company) and the L. and H. G. R. Company Limited of
in the City of and upon hearing Counsel for the applicants and upon reading the Orders dated respectively the 4th day of December 1908 and the 18th day of November 1909 and the Affidavit of A.W.B. filed the 10th day of November 1910.

IT IS ORDERED that the date at which the dissolution of the above-named Gold Ore Treatment Company of Western Australia Limited is to take effect be further deferred until the 5th day of December 1911 or further Order and that the applicants be at liberty to apply for such further extension of the above-mentioned date as they may be advised.

AND IT IS ORDERED that the costs of the said Liquidator of the said application be included in the costs of the liquidation of the above-named Company.

AND IT IS ORDERED that this Order be produced to the Registrar of Companies and that an Office Copy thereof be filed with the said Registrar within seven days from the date hereof. [*Re The Gold Ore Treatment Company of Western Australia, Ltd.*, No. 00364 of 1908. Mr. Registrar HOOD, November 16th, 1910.]

ORDER DECLARING DISSOLUTION OF COMPANY VOID.

(*Title.*)

THE APPLICATION by Originating Summons dated the 1st March 1910 of G.S.G. of in the County of Chartered Accountant the Liquidator in the voluntary winding-up of the above-named Company which upon hearing the Solicitors for the Applicant and for His Majesty's Attorney-General the Respondent to the said Summons in Chambers was adjourned to be heard in Court coming on this day to be heard accordingly and upon hearing Counsel for the Applicant and for the said Respondent and upon reading the said Originating Summons the *London Gazette* dated the 20th August 1907 containing a notice of the passing of the Resolution for the voluntary winding-up of the above-named Company and for the

appointment of the Applicant as Liquidator thereof the *London Gazette* dated the 29th June 1909 containing a notice of the convening by the said Liquidator of the Final Meeting of the above-named Company and the affidavit of G.S.G. filed the 9th March 1910 and the exhibits therein referred to and it appearing from the said affidavit that the final Meeting of the above-named Company was duly held on the 30th July 1909 and that the said Company became dissolved in due course pursuant to Section 143 of the Companies Act 1862 the order dated the 24th July 1902 made in the matter of The U.W.S.T. Company Limited *R.* v. *U.W.S.T. Company Limited*, 1901 U. No. 170 and the order dated the 10th February 1909 made in the matter of M. Sons and F. Limited *M.* v. *M. Sons and F. Limited and others* 1899 M. No. 2901.

THIS COURT DOTH DECLARE the dissolution of the above-named Company to have been void.

AND IT IS ORDERED that the Liquidator the said G.S.G. do pay to His Majesty's Attorney-General his costs of the said application such costs to be taxed with liberty to the said Liquidator to reimburse himself out of the assets of the said Company the amount of such taxed costs and to retain out of the said assets his costs of the said Application.

AND IT IS ORDERED that this order be produced to the Registrar of Companies and that an office copy of this order be filed with the said Registrar within 7 days from the date hereof. [*Re The Universal Tube Company*, 0085 of 1910. SWINFEN EADY, J., April 19th, 1910.]

ORDER DECLARING DISSOLUTION VOID AND GIVING DIRECTIONS AS TO CERTAIN ASSETS OF THE COMPANY.

(*Title.*)

The application by originating Summons dated 13th November 1911 of G.H.J. of   in the City of   lately the Liquidator of the above-named Company which upon hearing Counsel for the Applicant in Chambers was adjourned to be heard in Court coming on this day to be heard accordingly (and the application being treated as a Motion made to this Court) and upon hearing Counsel for the Applicant and upon reading the said Originating Summons, the *London Gazette* dated 25th February 1910 containing a notice of the passing of the Resolution for the voluntary winding-up of the above-named Company and for the appointment of the Applicant as Liquidator thereof the *London Gazette* dated 27th December 1910 containing a notice of the convening by the said Liquidator of the Final Meeting of the above-named Company and the Affidavit of G.H.J. filed 25th November 1911 and the several exhibits therein referred to.

And it appearing from the said affidavit that the Final Meeting of the above-named Company was duly held on the 15th February 1911 and that the said Company became dissolved as from the 16th May 1911.

THIS COURT DOTH DECLARE the dissolution of the above-named Boston Consolidated Copper and Gold Mining Company Limited to have been void.

AND IT IS ORDERED that this order be produced to the Registrar of

Companies and that an office copy thereof be filed with the said Registrar within seven days from the date hereof.

And this Court doth order that the applicant G.H.J. do procure the 184 shares of the U.C. Company (of the United States of America) referred to in the said Originating Summons to be transferred to him and that he do obtain new Certificates therefor in his own name.

IT IS ORDERED that the said G.H.J. do sell the said shares and forthwith pay the proceeds thereof into the Bank of England to the credit of the Companies Liquidation account.

AND IT IS ORDERED that the Costs of the applicants of this application and the Costs Charges and Expenses of the applicant properly incurred by him as Liquidator in the voluntary winding-up of the above-named Company subsequent to the said 16th of May 1911 including in such Costs the carrying out of this Order and the subsequent dissolution of the above-named Company be taxed and paid out of the said proceeds of such sale. [*Re The Boston Consolidated Copper and Gold Mining Co., Ltd.*, 00405 of 1911. SWINFEN EADY, J., December 5th, 1911.]

ORDER STAYING PROCEEDINGS IN VOLUNTARY WINDING-UP.

(*Title.*)

UPON MOTION this day made unto this Court by Counsel on behalf of A.C.K. of No. in the County of a Creditor and Contributory of the above-named Company and H.A.K. of in the County of the Liquidator in the voluntary winding-up thereof and upon hearing Counsel for the Applicants and upon reading the *London Gazette* of the 8th February 1911 containing a notice of the passing of the resolution for the voluntary winding-up of the above-named Company and for the appointment of the applicant H.A.K. as Liquidator thereof and the affidavit of the said H.A.K. filed the 14th day of February 1911 and the Exhibits therein referred to. THIS COURT DOTH ORDER that the Liquidator the said H.A.K. do forthwith summon a General Meeting of the Shareholders of the above-named Company for the purpose of appointing Directors thereof and that thereupon all further proceedings in the voluntary winding-up of the above-named Company be stayed. [*Re W. Griggs and Sons* (1906), *Ltd.*, 0057 of 1911. SWINFEN EADY, J., February 11th, 1911.]

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COMPANIES (CONSOLIDATION) ACT, 1908.

[8 Ed. 7: ch. 69.]

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An Act to consolidate the Companies Act, 1862, and the Acts amending it. [21st December 1908.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part I.

Constitution and Incorporation.

Prohibition of Large Partnerships.

Prohibition of partnerships exceeding certain number.

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

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

Memorandum of Association.

Mode of forming incorporated company.

2. Any seven or more persons (or, where the company to be formed will be a private company within the meaning of this Act, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

(i) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or

(ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or

(iii) A company not having any limit on the liability of its members (in this Act termed an unlimited company).

Memorandum of company limited by shares.

3. In the case of a company limited by shares—

(1) The memorandum must state—

(i) The name of the company, with "Limited" as the last word in its name;

(ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;

(iii) The objects of the company;

(iv) That the liability of the members is limited;

(v) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

(2) No subscriber of the memorandum may take less than one share:

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

Memorandum of company limited by guarantee.

4. In the case of a company limited by guarantee—

(1) The memorandum must state—

(i) The name of the company, with "Limited" as the last word in its name;

(ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;

(iii) The objects of the company;

(iv) That the liability of the members is limited;

(v) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) If the company has a share capital—

(i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

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

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

Memorandum of unlimited company.

5. In the case of an unlimited company—

(1) The memorandum must state—

(i) The name of the company;

(ii) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate;

(iii) The objects of the company.

(2) If the company has a share capital—

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

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

Stamp and signature of memorandum.

6. The memorandum must bear the same stamp as if it were a deed, and must be signed by each subscriber in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

Restriction on alteration of memorandum.

7. A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

Name of company and change of name.

8.—(1) A company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

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(3) Any company may, by special resolution and with the approval of the Board of Trade signified in writing, change its name.

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

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

Alteration of objects of company.

9.—(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

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

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

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

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

(*e*) to restrict or abandon any of the objects specified in the memorandum.

(2) The alteration shall not take effect until and except in so far as it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied—

(*a*) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and

(*b*) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court:

Provided that the court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.

(7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default.

Articles of Association.

Registration of articles.

10.—(1) There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A. in the First Schedule to this Act.

(3) In the case of an unlimited company or a company limited by guarantee the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

Application of Table A.

11. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A. in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Form, stamp, and signature of articles.

12. Articles must—

(*a*) be printed ;

(*b*) be divided into paragraphs numbered consecutively ;

(*c*) bear the same stamp as if they were contained in a deed ; and

(*d*) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature, and that attestation shall be sufficient in Scotland as well as in England and Ireland.

Alteration of articles by special resolution.

13.—(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles ; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of an unlimited company formed and registered under the Joint Stock Companies Acts, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

General Provisions.

Effect of memorandum and articles.

14.—(1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and in England and Ireland be of the nature of a specialty debt.

Registration of memo-

15. The memorandum and the articles (if any) shall be delivered to the registrar of companies for that part of the United Kingdom

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randum and articles.

in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

Effect of registration.

16.—(1) On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Conclusiveness of certificate of incorporation.

17.—(1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A statutory declaration by a solicitor of the High Court, and in Scotland by an enrolled law agent, engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Copies of memorandum and articles to be given to members.

18.—(1) Every company shall send to every member, at his request, and on payment of one shilling or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding one pound.

Associations not for Profit.

Restriction on charitable and other companies holding land.

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

Power to dispense with "Limited" in name of charitable and other companies.

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

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

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

(4) A licence under this section may at any time be revoked by

the Board of Trade, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section :

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

Companies limited by Guarantee.

Provision as to companies limited by guarantee.

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

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

PART II.

DISTRIBUTION AND REDUCTION OF SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

Nature of shares.

22.—(1) The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

Certificate of shares or stock.

23. A certificate under the common seal of the company, specifying any shares or stock held by any member, shall be primâ facie evidence of the title of the member to the shares or stock.

Definition of member.

24.—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Register of members.

25.—(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

(i) The names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;

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

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

(2) If a company fails to comply with this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues ; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

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Annual list of members and summary.

26.—(1) Every company having a share capital shall once at least in every year make a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars :—

(*a*) The amount of the share capital of the company, and the number of the shares into which it is divided ;

(*b*) The number of shares taken from the commencement of the company up to the date of the return ;

(*c*) The amount called up on each share ;

(*d*) The total amount of calls received ;

(*e*) The total amount of calls unpaid ;

(*f*) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return ;

(*g*) The total number of shares forfeited ;

(*h*) The total amount of shares or stock for which share warrants are outstanding at the date of the return ;

(*i*) The total amount of share warrants issued and surrendered respectively since the date of the last return ;

(*k*) The number of shares or amount of stock comprised in each share warrant ;

(*l*) The names and addresses of the persons who at the date of the return are the directors of the company, or occupy the position of directors, by whatever name called ; and

(*m*) The total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July nineteen hundred and eight.

(3) The summary must also (except where the company is a private company) include a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities, and its 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 the balance sheet need not include a statement of profit and loss.

(4) The above list and summary must be contained in a separate part of the register of members, and must be completed within seven days after the fourteenth day aforesaid, and the company must forthwith forward to the registrar of companies a copy signed by the manager or by the secretary of the company.

(5) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Trusts not to

27. No notice of any trust, expressed, implied, or constructive,

shall be entered on the register, or be receivable by the registrar, in the case of companies registered in England or Ireland.

be entered on register.

Registration of transfer at request of transferor.

28. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Transfer by personal representative.

29. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Inspection of register of members.

30.—(1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of sixpence, or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding two pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director and manager of the company who knowingly authorises or permits the refusal shall be liable to the like penalty; and, as respects companies registered in England or Ireland, any judge of the High Court, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the register.

Power to close register.

31. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Power of court to rectify register.

32.—(1) If—

(*a*) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.

(2) The application may be made, as respects companies registered in England or Ireland, by motion in the High Court, or by application to a judge of the High Court sitting in chambers, or by application to the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, and, as respects companies registered in Scotland, by summary petition to the Court of Session, or in such other manner as the said courts may respectively direct; and the court may either refuse the application, or may order rectification of the register, and payment by the company of any damages sustained by any party aggrieved.

(3) On any application under this section the court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one

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hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

Register to be evidence.

33. The register of members shall be primâ facie evidence of any matters by this Act directed or authorised to be inserted therein.

Power for company to keep colonial register.

34.—(1) A company having a share capital, whose objects comprise the transaction of business in a colony, may, if so authorised by its articles, cause to be kept in any colony in which it transacts business a branch register of members resident in that colony (in this Act called a colonial register).

(2) The company shall give to the registrar of companies notice of the situation of the office where any colonial register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued.

(3) For the purpose of the provisions of this Act relating to colonial registers the term "colony" includes British India and the Commonwealth of Australia.

Regulations as to colonial register.

35.—(1) A colonial register shall be deemed to be part of the company's register of members (in this and the next following section called the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the colonial register is kept, and that any competent court in the colony may exercise the same jurisdiction of rectifying the register as is under this Act exerciseable by the High Court, and that the offences of refusing inspection or copies of a colonial register, and of authorising or permitting the refusal may be prosecuted summarily before any tribunal in the colony having summary criminal jurisdiction.

(3) The company shall transmit to its registered office a copy of every entry in its colonial register as soon as may be after the entry is made; and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its colonial register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of colonial registers.

Stamp duties in case of shares registered in colonial registers.

36. In relation to stamp duties the following provisions shall have effect:—

(*a*) An instrument of transfer of a share registered in a colonial register shall be deemed to be a transfer of property situate out of the United Kingdom, and, unless executed in any part of the United Kingdom, shall be exempt from British stamp duty:

(*b*) On the death of a member registered in a colonial register the shares of the deceased member shall, if he died domiciled in the United Kingdom, but not otherwise, be deemed, so far as relates to British duties, to be part of his estate and effects situate in the United Kingdom for or in respect

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of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded, in like manner as if he were registered in the principal register.

Issue and effect of share warrants to bearer.

37.—(1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share warrant.

(2) A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

(3) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

(4) The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles; except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

(5) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:—

(i) The fact of the issue of the warrant;

(ii) A statement of the shares or stock included in the warrant, distinguishing each share by its number; and

(iii) The date of the issue of the warrant.

(6) Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member.

Forgery, personation, unlawfully engraving plates, &c.

38.—(1) If any person—

(i) with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act; or by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered; or

(ii) falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner,

he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years.

(2) If any person without lawful authority or excuse, proof whereof shall lie on him, engraves or makes on any plate, wood,

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stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of this Act, or to be a blank share warrant or coupon so issued or made, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, he shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years.

Power of company to arrange for different amounts being paid on shares.

39. A company, if so authorised by its articles, may do any one or more of the following things; namely,—

(1) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares:

(2) Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up:

(3) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Power to return accumulated profits in reduction of paid-up share capital.

40.—(1) When a company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount.

(2) The resolution shall not take effect until a memorandum, showing the particulars required by this Act in the case of a reduction of share capital, has been produced to and registered by the registrar of companies, but the other provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid-up share capital under this section.

(3) On a reduction of paid-up capital in pursuance of this section any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone or jointly with any other person, which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in such securities authorised for investment by trustees as the company may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the securities.

(4) The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call.

(5) On a reduction of paid-up share capital in pursuance of this section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction.

(6) After any reduction of share capital under this section the company shall specify in the annual list of members required by this

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Act the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section.

Power of company limited by shares to alter its share capital.

41.—(1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—

(*a*) increase its share capital by the issue of new shares of such amount as it thinks expedient;

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

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

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

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

(2) The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution.

(3) Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

If a company makes default in complying with this provision it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

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

Notice to registrar of consolidation of share capital, conversion of shares into stock, &c.

42. Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or reconverted stock into shares, it shall give notice to the registrar of companies of the consolidation, division, conversion, or reconversion specifying the shares consolidated, divided, or converted, or the stock reconverted.

Effect of conversion of shares into stock.

43. Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the registrar of companies, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be forwarded to the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

Notice of increase of share capital or of members.

44.—(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall give to the registrar of companies, in the case of an increase of share capital within fifteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

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(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Reorganisation of share capital.

45.—(1) A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions, contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes:

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section an office copy thereof shall be filed with the registrar of companies within seven days after the making of the order, or within such further time as the court may allow, and the resolution shall not take effect until such a copy has been so filed.

Reduction of Share Capital.

Special resolution for reduction of share capital.

46.—(1) Subject to confirmation by the court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

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

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

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

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act called a resolution for reducing share capital.

Application to court for confirming order.

47. Where a company has passed and confirmed a resolution for reducing share capital it may apply by petition to the court for an order confirming the reduction.

Addition to name of company of "and reduced."

48. On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the court may fix, the words "and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company:

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

Objections by creditors, and settlement of list of objecting creditors.

49.—(1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

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

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

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

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

Order confirming reduction.

50. The court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

Registration of order and minute of reduction.

51.—(1) The registrar of companies on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the court), showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

Minute to form part of memorandum.

52.—(1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein; and must be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Liability of members in respect of reduced shares.

53. A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute:

Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning

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of the provisions of this Act with respect to winding up by the court, to pay the amount of his debt or claim, then—

(i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and

(ii) if the company is wound up, the court, on the application of any such creditor, and proof of his ignorance as aforesaid may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor.

54. If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour.

Publication of reasons for reduction.

55. In any case of reduction of share capital, the court may require the company to publish as the court directs the reasons for reduction, or such other information in regard thereto as the court may think expedient with a view to give proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

56. A company limited by guarantee and registered on or after the first day of January nineteen hundred and one, may, if it has a share capital, and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

Registration of Unlimited Company as Limited.

Registration of unlimited company as limited.

57.—(1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, or any company already registered as a limited company, may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of the company before the registration, and those debts, liabilities, obligations, and contracts may be enforced in manner provided by Part VII. of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

Power of unlimited company to provide for reserve share capital on re-registration.

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

(*a*) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the

event and for the purposes of the company being wound up;

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

Reserve Liability of Limited Company.

Reserve liability of limited company.

59. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Unlimited Liability of Directors.

Limited company may have directors with unlimited liability.

60.—(1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the persons holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, manager, or secretary makes default in giving such a notice, he shall be liable to a fine not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Special resolution of limited company making liability of directors unlimited.

61.—(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors, or managers, or of any managing director.

(2) Upon the confirmation of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum; and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director or manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Part III.

Management and Administration.

Office and Name.

Registered office of company.

62.—(1) Every company shall have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given to the registrar of companies, who shall record the same.

(3) If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which it so carries on business.

Publication of name by a limited company.

63.—(1) Every limited company—

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible:

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(b) shall have its name engraven in legible characters on its seal :

(c) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding five pounds for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(3) If any director, manager, or officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Meetings and Proceedings.

Annual general meeting.

64.—(1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every director, manager, secretary, and other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds.

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

First statutory meeting of company.

65.—(1) Every company limited by shares and registered on or after the first day of January nineteen hundred and one shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company which shall be called the statutory meeting.

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, and shall state—

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

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

(c) an abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive

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headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company ;

(d) the names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company ; and

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

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

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

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

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

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

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

(10) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company.

Convening of extraordinary general meeting on requisition.

66.—(1) Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

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

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

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution ; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

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

Provisions as to meetings and votes.

67. In default of, and subject to, any regulations in the articles—

(i) A meeting of a company may be called by seven days' notice in writing, served on every member in manner in which notices are required to be served by Table A. in the First Schedule to this Act :

(ii) Five members may call a meeting :

(iii) Any person elected by the members present at a meeting may be chairman thereof :

(iv) Every member shall have one vote.

Representation of companies at meetings of other companies of which they are members.

68. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

Definitions of extraordinary and special resolution.

69.—(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been—

(*a*) passed in manner required for the passing of an extraordinary resolution ; and

(*b*) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company.

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

Registration and copies of special resolutions.

70.—(1) A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the registrar of companies, who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his

request, on payment of one shilling or such less sum as the company may direct.

(4) If a company makes default in printing or forwarding a copy of a special or extraordinary resolution to the registrar it shall be liable to a fine not exceeding two pounds for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made.

(6) Every director and manager of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Minutes of proceedings of meetings and directors.

71.—(1) Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have deen duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

Appointment, Qualification, &c. of Directors.

Restrictions on appointment or advertisement of director.

72.—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, or in any statement in lieu of prospectus filed by or on behalf of a company, unless before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(i) Signed and filed with the registrar of companies a consent in writing to act as such director; and

(ii) Either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

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

(3) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

Qualification of director.

73.—(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

(2) The office of director of a company shall be vacated, if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his

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qualification; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

Validity of acts of directors.

74. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

List of directors to be sent to registrar.

75.—(1) Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and send to the registrar of companies a copy thereof, and from time to time notify to the registrar any change among its directors or managers.

(2) If default is made in compliance with this section, the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Contracts, &c.

Form of contracts.

76.—(1) Contracts on behalf of a company may be made as follows (that is to say):—

(i) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged:

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

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

(2) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators as the case may be.

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

Bills of exchange and promissory notes.

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

Execution of deeds abroad.

78. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company, and under his seal, shall bind the company, and have the same effect as if it were under its common seal.

Power for company to

79.—(1) A company whose objects require or comprise the transaction of business in foreign countries may, if authorised by

its articles, have for use in any territory, district, or place not situate in the United Kingdom, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district, or place not situate in the United Kingdom, to affix the same to any deed or other document to which the company is party in that territory, district, or place.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

have official seal for use abroad.

Prospectus.

80.—(1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

Filing of prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar of companies on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so filed.

81.—(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

Specific requirements as to particulars of prospectus.

(*a*) the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and

(*b*) the number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and

(*c*) the names, descriptions, and addresses of the directors or proposed directors; and

(*d*) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted; and

(*e*) the number and amount of shares and debentures which

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

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

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

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

(*i*) the amount or estimated amount of preliminary expenses; and

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

(*k*) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and

(*l*) the names and addresses of the auditors (if any) of the company; and

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

(*n*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

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

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

(*b*) the purchase money is to be paid or satisfied wholly or in part

out of the proceeds of the issue offered for subscription by the prospectus ; or

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

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

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

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.

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

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

(*b*) the non-compliance arose from an honest mistake of fact on his part :

Provided that in the event of non-compliance with the requirements contained in paragraph (*m*) of subsection (1) of this section no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

(8) The requirements of this section as to the memorandum and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

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

Obligations of companies where no prospectus is issued.

82.—(1) A company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar of companies a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Second Schedule to this Act.

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the first day of July nineteen hundred and eight.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

83. A company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

84.—(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus,

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Liability for statements in prospectus.

and every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

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

(*b*) With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the reports or valuation. Provided that the director, person named as director, promoter, or person who authorised the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

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

or unless it is proved—

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

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

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

(2) Where a company existing on the eighteenth day of August one thousand eight hundred and ninety, has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus, or has adopted or ratified it.

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

(4) Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as

in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section—

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

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

Allotment.

Restriction as to allotment.

85.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely:—

(*a*) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(*b*) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

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

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say):—

(*a*) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(*b*) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash,

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

This subsection shall not apply to a private company or to a

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company which has allotted any shares or debentures before the first day of July nineteen hundred and eight.

Effect of irregular allotment.

86.—(1) An allotment made by a company to an applicant in contravention of the provisions of the last foregoing section shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of the last foregoing section with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

Restrictions on commencement of business.

87.—(1) A company shall not commence any business or exercise any borrowing powers unless—

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(*b*) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, or in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and

(*c*) there has been filed with the registrar of companies a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and

(*d*) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar of companies a statement in lieu of prospectus.

(2) The registrar of companies shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:

Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the first day of January nineteen hundred and one, or to a company registered before the first day of July nineteen hundred and eight which does not issue a prospectus inviting the public to subscribe for its shares.

Return as to allotments.

88.—(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the registrar of companies—

(*a*) a return of the allotments, stating the number and nominal

amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share ; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment file with the registrar of companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

54 & 55 Vict. c. 39.

(3) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues :

Provided that, in case of default in filing with the registrar of companies within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the court may think proper.

Commissions and Discounts.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, &c.

89.—(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent. of the commission paid or agreed to be paid is—

(*a*) In the case of shares offered to the public for subscription, disclosed in the prospectus ; or

(*b*) In the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar of companies, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

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(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Statement in balance sheet as to commissions and discounts.

90. Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

Payment of Interest out of Capital.

Power of company to pay interest out of capital in certain cases.

91. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

(1) No such payment shall be made unless the same is authorised by the articles or by special resolution:

(2) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Board of Trade:

(3) Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry:

(4) The payment shall be made only for such period as may be determined by the Board of Trade; and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided:

(5) The rate of interest shall in no case exceed four per cent. per annum or such lower rate as may for the time being be prescribed by Order in Council:

(6) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid:

(7) The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate:

(8) Nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies.

57 & 58 Vict. c. 12.

Certificates of Shares, &c.

Limitation of time for issue of certificates.

92.—(1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred,

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unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Information as to Mortgages, Charges, &c.

Registration of mortgages and charges in England and Ireland.

93.—(1) Every mortgage or charge created after the first day of July nineteen hundred and eight by a company registered in England or Ireland and being either—

(*a*) a mortgage or charge for the purpose of securing any issue of debentures; or

(*b*) a mortgage or charge on uncalled share capital of the company; or

(*c*) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or

(*d*) a mortgage or charge on any land, wherever situate, or any interest therein; or

(*e*) a mortgage or charge on any book debts of the company; or

(*f*) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable:

Provided that—

(i) in the case of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar; and

(ii) where the mortgage or charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and

(iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and

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(iv) the holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.

(2) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the first day of July nineteen hundred and eight and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled pari passu is created by a company, it shall be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

(*a*) the total amount secured by the whole series ; and

(*b*) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined ; and

(*c*) a general description of the property charged ; and

(*d*) the names of the trustees, if any, for the debenture holders ;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4) Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with.

(6) The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered :

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(7) It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such

mortgage or charge may be effected on the application of any person interested therein.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(8) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(9) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

Registration of enforcement of security.

94.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment under the powers contained in the instrument give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Filing of accounts of receivers and managers.

95.—(1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half year while he remains in possession, and also on ceasing to act as receiver or manager, file with the registrar of companies an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding fifty pounds.

Rectification of register of mortgages.

96. A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

Entry of satisfaction.

97. The registrar of companies may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

Index to register of mortgages and charges.

98. The registrar of companies shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Penalties.

99.—(1) If any company makes default in sending to the registrar of companies for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series, requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a

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fine not exceeding fifty pounds for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

Company's register of mortgages.

100.—(1) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

101.—(1) The copies of instruments creating any mortgage or charge requiring registration under this Act with the registrar of companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues; and, in addition to the above penalty as respects companies registered in England or Ireland, any judge of the High Court sitting in chambers, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the copies or register.

Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed.

102.—(1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded the company shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding two pounds for every day during

which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.

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Debentures and Floating Charges.

Perpetual debentures.

103. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Power to re-issue redeemed debentures in certain cases.

104.—(1) Where either before or after the passing of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the Company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture reissued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) Nothing in this section shall prejudice—

(*a*) the operation of any judgment or order of a court of competent jurisdiction pronounced or made before the seventh day of March nineteen hundred and seven as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or

(*b*) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished,

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reserved to a company by its debentures or the securities for the same.

Specific performance of contract to subscribe for debentures.

105. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Validity of debentures to bearer in Scotland.

106. Notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are declared to be valid and binding according to their terms.

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

107.—(1) Where, in the case of a company registered in England or Ireland, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Part IV. of this Act relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part IV. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Statement to be published by Banking and certain other Companies.

Certain companies to publish statement in schedule.

108.—(1) Every company being a limited banking company or an insurance company or a deposit, provident, or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form marked C. in the First Schedule to this Act, or as near thereto as circumstances will admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

(4) If default is made in compliance with this section, the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) For the purposes of this Act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

33 & 34 Vict. c. 61. 34 & 35 Vict. c. 58. 35 & 36 Vict. c. 41.

(6) This section shall not apply to any life assurance company nor any other assurance company to which the provisions of the Life Assurance Companies Acts, 1870 to 1872, as to the annual statements to be made by such a company, apply with or without modifications, if the company complies with those provisions.

Inspection and Audit.

Investigation of affairs of company by Board of Trade inspectors.

109.—(1) The Board of Trade may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Board direct—

(i) In the case of a banking company having a share capital, on the application of members holding not less than one third of the shares issued:

(ii) In the case of any other company having a share capital,

on the application of members holding not less than one tenth of the shares issued:

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

(2) The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation; and the Board of Trade may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

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

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Board of Trade, and a copy of the report shall be forwarded by the Board to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

The report shall be written or printed, as the Board direct.

(7) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Board of Trade direct the same to be paid by the company, which the Board is hereby authorised to do.

Power of company to appoint inspectors.

110.—(1) A company may by special resolution appoint inspectors to investigate its affairs.

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

(3) Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Board of Trade.

Report of inspectors to be evidence.

111. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Appointment and remuneration of auditors.

112.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

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

(3) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

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Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

(5) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors.

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

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

Powers and duties of auditors.

113.—(1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(*a*) whether or not they have obtained all the information and explanations they have required; and

(*b*) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) The balance sheet shall be signed on behalf of the board by two of the directors of the company, or if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder.

Any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

(5) In the case of a banking company registered after the fifteenth day of August eighteen hundred and seventy-nine—

(*a*) if the company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the United Kingdom; and

(*b*) the balance sheet must be signed by the secretary or manager

(if any), and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors.

Rights of preference shareholders, &c. as to receipt and inspection of reports, &c.

114.—(1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company, nor to a company registered before the first day of July nineteen hundred and eight.

Carrying on Business with less than the Legal Minimum of Members.

Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members.

115. If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months, and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same, without joinder in the action of any other member.

Service and Authentication of Documents.

Service of documents on company.

116. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

Authentication of documents.

117. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

Tables and Forms.

Application and alteration of tables and forms.

118.—(1) The forms in the Third Schedule to this Act or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The Board of Trade may alter any of the tables and forms in the First Schedule to this Act, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and may alter or add to the forms in the said Third Schedule.

(3) Any such table or form, when altered, shall be published in the London Gazette, and thenceforth shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Board of Trade in Table A. in the said First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

Arbitrations.

Arbitration between companies and others.

22 & 23 Vict. c. 59.

119.—(1) A company may by writing under its common seal agree to refer and may refer to arbitration, in accordance with the Railway Companies Arbitration Act, 1859, any existing or future difference between itself and any other company or person.

(2) Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(3) All the provisions of the Railway Companies Arbitration Act, 1859, shall apply to arbitrations between companies and persons in pursuance of this Act; and in the construction of those provisions "the companies" shall include companies under this Act.

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Power to Compromise.

Power to compromise with creditors and members.

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

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

(3) In this section the expression "company" means any company liable to be wound up under this Act.

Meaning of "Private Company."

Meaning of "private company."

121.—(1) For the purposes of this Act the expression "private company" means a company which by its articles—

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

(*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.

(2) A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the registrar of companies such a statement in lieu of prospectus as the company, if a public company, would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would have had to file before commencing business, turn itself into a public company.

(3) Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

PART IV.

WINDING UP.

Preliminary.

Modes of winding up.

122.—(1) The winding up of a company may be either—

(i) by the court; or

(ii) voluntary; or

(iii) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories.

Liability as contributories of present and past members.

123.—(1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say):—

(i) A past member shall not be liable to contribute if he has

ceased to be a member for one year or upwards before the commencement of the winding up:

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(ii) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member:

(iii) A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(iv) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(v) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up:

(vi) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract:

(vii) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or manager, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company: Provided that

(i) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up:

(ii) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office:

(iii) Subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of contributory.

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

Nature of liability of contributory.

125. The liability of a contributory shall create a debt (in England and Ireland of the nature of a specialty) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case

126.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives

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of death of member.

and his heirs and devisees, shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but, except in the case of heirs or devisees of any such real estate in England, they may be added as and when the court thinks fit.

(3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment thereout of the money due.

Contributories in case of bankruptcy of member.

127. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories, then—

(1) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(2) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Provision as to married women.

45 & 46 Vict. c. 15.

44 & 45 Vict. c. 21.

128.—(1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881, as the case may be, shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882, or the Married Women's Property (Scotland) Act, 1881.

Winding up by Court.

Circumstances in which company may be wound up by court.

129. A company may be wound up by the court—

(i) if the company has by special resolution resolved that the company be wound up by the court:

(ii) if default is made in filing the statutory report or in holding the statutory meeting:

(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year:

(iv) if the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven:

(v) if the company is unable to pay its debts:

(vi) if the court is of opinion that it is just and equitable that the company should be wound up.

Company when deemed unable to pay its debts.

130. A company shall be deemed to be unable to pay its debts—

(i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(ii) if, in England or Ireland, execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(iii) if, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract

registered protest have expired without payment being made; or

(iv) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Jurisdiction to wind up companies in England.

131.—(1) The courts having jurisdiction to wind up companies registered in England shall be the High Court, the chancery courts of the counties palatine of Lancaster and Durham, and the county courts.

(2) Where the amount of the share capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company shall be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.

(3) Where the amount of the share capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situated within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company shall be presented to that county court.

(4) Where a company is formed for working mines within the stannaries and is not shown to be actually working mines beyond the limits of the stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company shall be presented to the court exercising the stannaries jurisdiction whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.

(5) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of that jurisdiction may attach its district, or any part thereof, to the High Court or any other county court, and may revoke or vary any such order or any like order made under the Companies (Winding Up) Act, 1890. – 53 & 54 Vict. c. 63.

In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

An order made under this provision shall not affect any jurisdiction or powers vested in any county court under or by virtue of the Stannaries Jurisdiction (Abolition) Act, 1896. 59 & 60 Vict. c. 45.

(6) Every court in England having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(8) For the purposes of this section the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

Conduct of winding-up business in High Court in England.

132. Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction to wind up companies of the High Court in England under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court. 36 & 37 Vict. c. 66.

Transfer of proceedings.

133.—(1) The winding up of a company by the court in England

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or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3) If any question arises in any winding-up proceeding in a county court which all the parties to the proceeding, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Jurisdiction to wind up companies in Ireland.

134. The court having jurisdiction to wind up companies registered in Ireland shall be the High Court:

Provided that where the High Court in Ireland makes an order for winding up a company it may, if it thinks fit, direct that all subsequent proceedings in the winding up be had in the court of bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon those proceedings shall be taken in that court of bankruptcy accordingly, and that court shall, for the purposes of the winding up, have all the powers of the High Court in Ireland.

Jurisdiction to wind up companies in Scotland.

135. The court having jurisdiction to wind up companies registered in Scotland shall be the Court of Session in either division thereof, or, in the event of a remit to a permanent Lord Ordinary, that Lord Ordinary during session, and in time of vacation the Lord Ordinary on the bills.

Power in Scotland to remit winding up to Lord Ordinary.

136. Where the court in Scotland makes a winding-up order, it may, if it thinks fit, at any time direct all subsequent proceedings in the winding up to be taken before one of the permanent Lords Ordinary, and remit the winding up to him accordingly, and thereupon that Lord Ordinary shall, for the purposes of the winding up, have all the powers and jurisdiction of the court:

Provided that the Lord Ordinary may report to the division of the court any matter which may arise in the course of the winding up.

Provisions as to applications for winding up.

137.—(1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately: Provided that

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

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

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

(*b*) A petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen

days after the last day on which the meeting ought to have been held; and

(c) The court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a primâ facie case for winding up has been established to the satisfaction of the court.

(2) Where a company is being wound up voluntarily or subject to supervision in England, a petition may be presented by the official receiver attached to the court, as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

Effect of winding-up order.

138. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Commencement of winding up by court.

139. A winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Power to stay or restrain proceedings against company.

140. At any time after the presentation of a petition for winding up, and before a winding-up order has been made, the company, or any creditor or contributory, may—

(a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England or Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and

(b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

and the court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

Powers of court on hearing petition.

141.—(1) On hearing the petition the court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it deems just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the court may order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

Actions stayed on winding-up order.

142. When a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.

Copy of order to be forwarded to registrar.

143. On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the registrar of companies, who shall make a minute thereof in his books relating to the company.

Power of court to stay winding up.

144. The court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the

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proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

Court may have regard to wishes of creditors or contributories.

145. The court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Official Receiver.

Definition of official receiver.

146.—(1) For the purposes of this Act so far as it relates to the winding up of companies by the court in England, the term "official receiver" shall mean the official receiver, if any, attached to the court for bankruptcy purposes, or, if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade.

(2) Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

Statement of company's affairs to be submitted to official receiver.

147.—(1) Where the court in England has made a winding-up order, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the court, may require to submit and verify the same.

(3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

Report by official receiver.

148.—(1) Where the court in England has made a winding-up order, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court—

(*a*) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and

(*b*) if the company has failed, as to the causes of the failure; and

(*c*) whether in his opinion further inquiry is desirable as to

any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

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(2) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

Liquidators.

Appointment, remuneration, and title of liquidators.

149.—(1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

(2) The court may make such an appointment provisionally at any time after the presentation of a petition and before (where the proceedings are in England) the making of an order for winding up, or (where the proceedings are in Scotland or Ireland) the first appointment of liquidators.

(3) Where the proceedings are in England—

(*a*) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed :

(*b*) On a winding-up order being made the official receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such :

(*c*) When a person other than the official receiver is appointed liquidator he shall not be capable of acting as liquidator until he has notified his appointment to the registrar of companies and given security in the prescribed manner to the satisfaction of the Board of Trade.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) In a winding up in Scotland or Ireland the court may determine whether any and what security is to be given by a liquidator on his appointment.

(6) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(7) A vacancy in the office of a liquidator appointed by the court shall be filled by the court.

In a winding up in England the official receiver shall by virtue of his office be the liquidator during the vacancy.

(8) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct ; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(9) A liquidator shall be described as follows (that is to say) :—

(*a*) in a winding up in England, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, and

(*b*) in a winding up in Scotland or Ireland, by the style of the official liquidator,

of the particular company in respect of which he is appointed, and not by his individual name.

(10) The acts of a liquidator shall be valid notwithstanding

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any defects that may afterwards be discovered in his appointment or qualification.

Custody of company's property.

150.—(1) In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland or Ireland, if and so long as there is no liquidator, all the property of the company shall be deemed to be in the custody of the court.

Powers of liquidator.

151.—(1) The liquidator in a winding up by the court shall have power, in the case of a winding up in England with the sanction either of the court or of the committee of inspection, and in the case of a winding up in Scotland or Ireland with the sanction of the court—

(*a*) to bring or defend any action or other legal proceeding in the name and on behalf of the company:

(*b*) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof:

(*c*) in the case of a winding up in England, to employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction:

(*d*) in the case of a winding up in Scotland or Ireland, to appoint a solicitor or law agent to assist him in the performance of his duties.

(2) The liquidator in a winding up by the court shall have power, but (subject to the provisions of this section) in the case of a winding up in Scotland or Ireland only with the sanction of the court,—

(*a*) To sell the real and personal property, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:

(*b*) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal:

(*c*) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors:

(*d*) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business:

(*e*) To raise on the security of the assets of the company any money requisite:

(*f*) To take out in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

(*g*) To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the court in England of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply

to the court with respect to any exercise or proposed exercise of any of those powers.

(4) In the case of a winding up in Scotland or Ireland the court may provide by any order that the liquidator may exercise any of the above powers, except the power to appoint a solicitor or law agent, without the sanction or intervention of the court.

(5) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

(6) In a winding up by the court in Scotland the liquidator shall, subject to rules made under this Act, have the same powers as a trustee on a bankrupt estate.

Meetings of creditors and contributories in English winding up.

152.—(1) When a winding-up order has been made by the court in England, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

(*a*) determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver; and

(*b*) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

(2) The court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section, the court shall decide the difference and make such order thereon as the court may think fit.

(3) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company.

Liquidator to give information to official receiver.

153. Where in the winding up of a company by the court in England a person other than the official receiver is appointed liquidator he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Act.

Payments of liquidator in English winding up into bank.

154.—(1) Every liquidator of a company which is being wound up by the Court in England shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board shall furnish him with a certificate of receipt of the money so paid:

Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court in England shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidator's accounts in

155.—(1) Every liquidator of a company which is being wound up by the court in England shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, send

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English winding up.

to the Board of Trade, or as they direct, an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board shall cause the account to be audited and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The Board shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

Books to be kept by liquidator in English winding up.

156. Every liquidator of a company which is being wound up by the court in England shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Release of liquidators in England.

157.—(1) When the liquidator of a company which is being wound up by the court in England has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Board of Trade releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Exercise and control of liquidator's powers in England.

158.—(1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court in England shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of Board of Trade over liquidators in England.

159.—(1) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by the court in England, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as they may think expedient.

(2) The Board may at any time require any liquidator of a company which is being wound up by the court in England to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Board think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator.

Committee of Inspection, Special Manager, Receiver.

Committee of inspection in English winding up.

160.—(1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors), or of contributories (if he represents contributories) of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

(9) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

Power in England to

161.—(1) Where the official receiver becomes the liquidator of

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appoint special manager.

a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power in England to appoint official receiver as receiver for debenture holders or creditors.

162. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court in England, the official receiver may be so appointed.

Ordinary Powers of Court.

Settlement of list of contributories and application of assets.

163.—(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others.

Power to require delivery of property.

164. The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is primâ facie entitled.

Power to order payment of debts by contributory.

165.—(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) But in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of court to make calls.

166.—(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

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167.—(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

Power to order payment into bank.

(2) All moneys and securities paid or delivered into the Bank of England or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

168.—(1) An order made by the court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

Order on contributory conclusive evidence.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order shall be only primâ facie evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

169. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

Power to exclude creditors not proving in time.

170. The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Adjustment of rights of contributories.

171. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

Power to order costs.

172.—(1) When the affairs of a company have been completely wound up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

Dissolution of company.

(2) The order shall be reported by the liquidator to the registrar of companies who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which he is in default.

173. General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England by this Act, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court; that is to say, the powers and duties of the court in respect of—

Delegation to liquidator of certain powers of court in England.

(*a*) holding and conducting meetings to ascertain the wishes of creditors and contributories;

(*b*) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;

(*c*) requiring delivery of property or documents to the liquidator;

(*d*) making calls;

(*e*) fixing a time within which debts and claims must be proved:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Extraordinary Powers of Court.

174.—(1) The court may, after it has made a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, affairs, or property of the company.

Power to summon persons suspected of having property of company.

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(2) The court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed, not having a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended, and brought before the court for examination.

Power in England to order public examination of promoters, directors, &c.

175.—(1) When an order has been made in England for winding up a company by the court, and the official receiver has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

(2) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory, may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, or registrar in bankruptcy, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or, in the case of companies being wound up by a palatine court, before a registrar of that court, and the powers of the court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

Power to

176. The court, at any time either before or after making a

winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court may order.

arrest absconding contributory.

Powers of court cumulative.

177. Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Enforcement of and Appeal from Orders.

Power to enforce orders.

178.—(1) Orders made by the High Court in England or Ireland under this Act may be enforced in the same manner as orders made in any action pending therein.

(2) For the purposes of this Part of this Act the court exercising the stannaries jurisdiction shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the High Court in England has in relation to matters within its jurisdiction; and, for the last-mentioned purposes, the jurisdiction of the judge of the court exercising the stannaries jurisdiction shall be deemed to be co-extensive in local limits with the jurisdiction of the High Court in England.

Order for calls on contributories in Scotland.

179. Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the court, it shall be competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when the same became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from the said date till payment, at the rate of five per cent. per annum in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay those calls and interest; and the decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the court.

Enforcement of orders throughout United Kingdom.

180.—(1) Any order made by the court in England for or in the course of winding up a company shall be enforced in Scotland and Ireland in the courts that would respectively have jurisdiction in respect of that company if registered in Scotland or Ireland, and in the same manner in all respects as if the order had been made by those courts.

(2) In like manner orders, interlocutors, and decrees made by the court in Scotland for or in the course of winding up a company shall be enforced in England and Ireland, and orders made by the court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland, by the courts which would respectively have jurisdiction in respect of that company if registered in that part of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if the order had been made by those courts.

(3) Where any order, interlocutor, or decree made by one court is required to be enforced by another court, an office copy of the order, interlocutor, or decree shall be produced to the proper officer of the court required to enforce the same, and the production of an office copy shall be sufficient evidence of the order, interlocutor, or decree, and thereupon the last-mentioned court shall take the requisite steps in the matter for enforcing the order, interlocutor, or decree, in the same manner as if it had been made by that court.

Appeals from order.

181.—(1) Subject to rules of court, an appeal from any order or decision made or given in the winding up of a company by the

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court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

(2) Provided, in regard to orders or judgments pronounced in Scotland by the Lord Ordinary on the Bills in vacation, that—

(i) No order or judgment under the provisions of this Act specified in the First Part of the Fourth Schedule to this Act shall be subject to review, reduction, suspension, or stay of execution ; and

(ii) Every other order or judgment (except as herein-after mentioned) shall be subject to review only by reclaiming note, in common form, presented within fourteen days from the date of the order or judgment :

Provided that orders or judgments under the provisions of this Act specified in the Second Part of the Fourth Schedule to this Act shall, from the dates of those orders or judgments, and notwithstanding any reclaiming note against them, be carried out and receive effect until the reclaiming note is disposed of by the court.

(3) Provided also, in regard to orders or judgments pronounced in Scotland by a permanent Lord Ordinary to whom a winding-up has been remitted, that any such order or judgment shall be subject to review only by reclaiming note in common form, presented within fourteen days from the date of the order or judgment, but, should a reclaiming note not be presented and moved during session, the provisions of this section in regard to orders or judgments pronounced by the Lord Ordinary on the bills in vacation shall apply to the order or judgment.

(4) Nothing in this section shall affect the provisions of this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntarily or by or subject to the supervision of the court.

Voluntary Winding Up.

Circumstances in which company may be wound up voluntarily.

182. A company may be wound up voluntarily—

(1) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily :

(2) If the company resolves by special resolution that the company be wound up voluntarily :

(3) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

Commencement of voluntary winding up.

183. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

Effect of voluntary winding up on status of company.

184. When a company is wound up voluntarily the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof :

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Notice of resolution to wind up voluntarily.

185. When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the Gazette.

Consequences of voluntary winding up.

186. The following consequences shall ensue on the voluntary winding up of a company :—

(i) The property of the company shall be applied in satisfaction of its liabilities pari passu, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company :

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(ii) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them :

(iii) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof :

(iv) The liquidator may, without the sanction of the court, exercise all powers by this Act given to the liquidator in a winding up by the court :

(v) The liquidator may exercise the powers of the court under this Act of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves :

(vi) The list of contributories shall be primâ facie evidence of the liability of the persons named therein to be contributories :

(vii) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two :

(viii) If from any cause whatever there is no liquidator acting, the court may, on the application of a contributory, appoint a liquidator :

(ix) The court may, on cause shown, remove a liquidator, and appoint another liquidator.

Notice by liquidator of his appointment.

187.—(1) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the registrar of companies a notice of his appointment in the form prescribed by the Board of Trade.

(2) If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Rights of creditors in a voluntary winding up.

188.—(1) Every liquidator appointed by a company in a voluntary winding up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

(3) On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.

(4) No appeal shall lie from any order of the court upon an application under this section.

(5) The court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to

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the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

Power to fill vacancy in office of liquidator.

189.—(1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Delegation of authority to appoint liquidators.

190.—(1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

Arrangement when binding on creditors.

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

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

Power of liquidator to accept shares, &c. as consideration for sale of property of company.

192.—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company), the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes

of this section by reason that it is passed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section the provisions of the Companies Clauses Consolidation Act, 1845, or, in the case of a winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of those provisions this Act shall be deemed to be the special Act, and "the company" shall mean the transferor company, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

8 & 9 Vict. c. 16.
8 & 9 Vict. c. 17.

Power to apply to court.

193.—(1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the court thinks fit, or may make such other order on the application as the court thinks just.

Power of liquidator to call general meeting.

194.—(1) Where a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution, or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

Final meeting and dissolution.

195.—(1) In the case of every voluntary winding up, as soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall make a return to the registrar of companies of the holding of the meeting, and of its date, and in default of so doing shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(4) The registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(5) It shall be the duty of the person on whose application an order of the court under this section is made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if that person fails so to do he shall be liable to a

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fine not exceeding five pounds for every day during which the default continues.

Costs of voluntary liquidation.

196. All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Saving for rights of creditors and contributories.

197. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, if the court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

Power of court to adopt proceedings of voluntary winding up.

198. Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding Up subject to Supervision of Court.

Power to order winding up subject to supervision.

199. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just.

Effect of petition for winding up subject to supervision.

200. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

Court may have regard to wishes of creditors and contributories.

201. The court may, in deciding between a winding up by the court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Power for court to appoint or remove liquidators.

202.—(1) Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of supervision order.

203.—(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, except subsection (10), one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, one hundred and sixty-two, one hundred and seventy-three, and one hundred and seventy-five, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, the power in Scotland to remit the winding up to a permanent Lord Ordinary, and the exercise of all other powers, be deemed to be an order for winding up by the court.

Appointment of voluntary liquidator as liquidator in winding up by court in Scotland or Ireland.

204. Where an order has been made in Scotland or Ireland for winding up a company subject to supervision, and an order is afterwards made for winding up by the court, the court may by the last-mentioned or by any subsequent order appoint any person who is then liquidator, either provisionally or permanently, and either with or without any other person, to be liquidator in the winding up by the court.

Supplemental Provisions.

Avoidance of transfers, &c. after commencement of winding up.

205.—(1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Debts of all descriptions to be proved.

206. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent English and Irish companies.

207. In the winding up of an insolvent company registered in England or Ireland the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy in England or Ireland, as the case may be, with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Ranking of claims in Scotland. 19 & 20 Vict. c. 79.

208. In the winding up of a company registered in Scotland, the general and special rules in regard to voting and ranking for payment of dividends provided by sections forty-nine to sixty-six of the Bankruptcy (Scotland) Act, 1856, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as is consistent with this Act, apply to creditors of the company voting in matters relating to the winding up, and ranking for payment of dividends; and for this purpose sequestration shall be taken to mean winding up, trustee to mean liquidator, and sheriff to mean the court.

Preferential payments.

209.—(1) In a winding up there shall be paid in priority to all other debts—

(*a*) All parochial or other local rates due from the company at the date hereinafter mentioned, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property or income tax assessed on the company up to the fifth day of April next before that date, and not exceeding in the whole one year's assessment;

(*b*) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding fifty pounds; and

(*c*) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the said date: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end

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of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the said date ; and

(*d*) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before the said date, subject nevertheless to the provisions of section five of that Act.

6 Edw. 7, c. 58.

(2) The foregoing debts shall—

(*a*) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions ; and

(*b*) In the case of a company registered in England or Ireland, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof :

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date herein-before in this section referred to is—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order ; and

(*b*) in any other case, the date of the commencement of the winding up.

Fraudulent preference.

210.—(1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of bankruptcy in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Avoidance of certain attachments, executions, &c. in case of company registered in England or Ireland.

211. Where any company (being a company registered in England or Ireland) is being wound up by or subject to the supervision of the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Effect of

212. Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge

was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

floating charge.

Effect in case of company registered in Scotland of diligence within 60 days of winding up by or subject to supervision of court.

213. In the winding up, by or subject to the supervision of the court, of a company registered in Scotland, the following provisions shall have effect :—

(1) The winding up shall, in the case of a winding up by the court as at its commencement, and in the case of a winding up subject to supervision as at the date of the presentation of the petition on which the supervision order is pronounced, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding of the funds or effects of the company executed, on or after the sixtieth day prior to the commencement of the winding up by the court, or to the presentation of the petition on which a supervision order is made, as the case may be, shall be effectual; and those funds or effects, or the proceeds of those effects, if sold, shall be made forthcoming to the liquidator: Provided that any arrester or poinder before the date of the winding up, or of the petition, as the case may be, who is thus deprived of the benefit of his diligence, shall have preference out of those funds or effects for the expense bonâ fide incurred by him in such diligence:

(2) The winding up shall, as at the respective dates aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said dates respectively, subject to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground herein-after provided:

(3) The provisions of sections one hundred and twelve to one hundred and seventeen, and of section one hundred and twenty, of the Bankruptcy (Scotland) Act, 1856, shall, so far as is consistent with this Act, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "sequestration" and "trustee" occurring in those sections shall mean respectively "winding up" and "liquidator"; and the expression "the Lord Ordinary or the court" shall mean "the court" as defined by this Act with respect to Scotland:

19 & 20 Vict. c. 79.

(4) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the respective dates aforesaid shall, except to the extent herein-after provided, be available in any question with the liquidator: Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the respective dates aforesaid, but that poinding shall in competition with the liquidator be available only for the interest on the debts for the current half-yearly term and for the arrears of interest for one year immediately before the commencement of that term.

General scheme of liquidation may be sanctioned.

214.—(1) The liquidator may, with the sanction following (that is to say)—

(*a*) in the case of a winding up by the court in England with the sanction either of the court or of the committee of inspection;

(*b*) in the case of a winding up by the court in Scotland or Ireland, and in the case of any winding up subject to supervision, with the sanction of the court; and

(*c*) in the case of a voluntary winding up, with the sanction of an extraordinary resolution of the company,

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do the following things or any of them :—

(i) Pay any classes of creditors in full ;

(ii) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable ;

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

(2) In the case of a winding up by the court in England the exercise by the liquidator of the powers of this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Power of court to assess damages against delinquent directors, &c.

215.—(1) Where in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

(3) Where in the case of a winding up in England an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (*g*) of subsection (1) of section four of the Bankruptcy Act, 1883.

46 & 47 Vict. c. 52.

(4) So much of this section as refers to promoters, and to property of a company other than money, shall not apply to a winding up in Scotland or Ireland.

Penalty for falsification of books.

216. If any director, officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanor, and be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Prosecution of delinquent directors, &c.

217.—(1) If it appears to the court in the course of a winding up by or subject to the supervision of the court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the court may on the application of any person interested in the winding up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation

to the company for which he is criminally responsible, the liquidator, with the previous sanction of the court may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

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Penalty on perjury.

[218. *If any person, on examination on oath authorised under this Act, or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties for wilful perjury.*] (*a*).

Meetings to ascertain wishes of creditors or contributories.

219.—(1) Where by this Act the court is authorised, in relation to winding up, to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

Books of company to be evidence.

220. Where any company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be primâ facie evidence of the truth of all matters purporting to be therein recorded.

Inspection of books.

221. After an order for a winding up by or subject to the supervision of the court, the court may make such order for inspection by creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Disposal of books and papers of company.

222.—(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows (that is to say) :—

(*a*) In the case of a winding up by or subject to the supervision of the court in such way as the court directs ;

(*b*) In the case of a voluntary winding up in such way as the company by extraordinary resolution directs.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

Power of court to declare dissolution of company void.

223.—(1) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the registrar of companies an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

Information as to pending liquidations in England.

224.—(1) Where a company is being wound up in England, if the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his

(*a*) Repealed by the Perjury Act, 1911.

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agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3) If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

(4) If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England, and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(5) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exerciseable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

46 & 47 Vict. c. 52.

(6) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(7) Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

Judicial notice of signature of officers.

225. In all proceedings under this Part of this Act, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the High Court in England or Ireland, or of the Court of Session in Scotland, or of the registrar of the court exercising the stannaries jurisdiction, and also of the official seal or stamp of the several offices of the High Court in England or Ireland, Court of Session, or court exercising the stannaries jurisdiction, appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

Special commission for receiving evidence.

226.—(1) The judges of the county courts in England who sit at places more than twenty miles from the General Post Office, and the judge exercising the Bankruptcy jurisdiction of the High Court in Ireland and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act, where a company is wound up in any part of the United Kingdom, and the court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although he is out of the jurisdiction of the court that made the winding-up order.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a judge of a county court, judge of the High Court, assistant barrister or recorder, or sheriff, have in the matter so referred to him all the same powers of summoning and examining witnesses, or requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

(3) The examination so taken shall be returned or reported to the court which made the order in such manner as that court directs.

Court may order examination of

227.—(1) The court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the trade, dealings, affairs, or

property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested therein by reason of his being a contributory; and the order or commission to take the examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and the sheriff shall summon that person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

persons in Scotland.

(2) The sheriff may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court; and shall transmit with the report the books and papers produced, if the originals thereof are required and specified by the order or commission, or otherwise copies thereof or extracts therefrom authenticated by the sheriff.

(3) If any person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff shall proceed against him as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(4) The sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(5) If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

Affidavits, &c. in United Kingdom and colonies.

228.—(1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in Great Britain or Ireland, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

Companies Liquidation Account defined.

229.—(1) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board in respect of proceedings under this Act in connexion with the winding up of companies in England shall be paid to that account.

(2) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

Investment of surplus funds on general account.

230.—(1) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board shall notify the excess to the Treasury, and shall pay over the whole or any part of that excess as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the sums paid over, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2) When any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board such sum as may be required to the credit of the Companies

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Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies in England.

Separate accounts of particular estates.

231.—(1) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company in England, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the Board of Trade shall, on the request of the committee, raise such sums as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

(4) When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board that the excess is not required for the purposes of the liquidation, the company shall be entitled to interest on the excess at the rate of two per cent. per annum.

Certain receipts and fees to be applied in aid of expenditure.

232. The Treasury may issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising in respect of the winding up of companies in England from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board in respect of salaries and expenses under this Act in relation to the winding up of companies in England.

Officers and remuneration.

233.—(1) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution as respects England of this Part of this Act, and may remove any person so appointed.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board performing any duties under this Part of this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as they think fit.

(3) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act in relation to the winding up of companies in England, and may vary, increase, or diminish that remuneration as he thinks fit.

Annual accounts of English winding up.

38 & 39 Vict. c. 77.

234.—(1) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act in relation to the winding up of companies in England, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

(2) The accounts of the Board of Trade under this Act in relation to the winding up of companies in England shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board shall make such returns and give such information as the Treasury direct.

Returns by officers in

235. The officers of the courts acting in the winding up of companies in England shall make to the Board of Trade such returns of

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the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from those returns the Board shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

English winding up.

Proceedings of Board of Trade.

236.—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade for the purposes of this Act and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board, shall be conclusive evidence of the fact so certified.

Rules and Fees.

Rules and fees for winding up in England.

237.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act so far as relates to the winding up of companies in England.

(2) All general rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and, if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) There shall be paid in respect of proceedings under this Act in relation to the winding up of companies in England such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(4) All rules made and directions given by the Lord Chancellor under this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the chancery court of the county palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and of the word "registrar" for the word "master," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

(5) The authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules made and directions given by the like authority under the Companies (Winding Up) Act, 1890, which are in force at the commencement of this Act.

53 & 54 Vict. c. 63.

Powers to make rules of procedure.

238.—(1) Subject to the provisions of this Act with respect to rules and fees in relation to the winding up of companies in England, rules of procedure for the purposes of this Act, including rules as to costs and fees, may be made—

(*a*) As regards the High Court in England, by the authority having power to make rules for the Supreme Court in England:

(*b*) As regards the Court of Session, by act of sederunt:

(*c*) As regards the High Court in Ireland, by the authority having power to make rules for the Supreme Court in Ireland:

(*d*) As regards the court exercising the stannaries jurisdiction, by the authority having power to make rules for county courts in England.

(2) The authority having power to make rules under this section may by any such rules repeal, alter, or amend any rules made

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by the like authority under the Companies Act, 1862, or any Act amending the same, which are in force at the commencement of this Act.

25 & 26 Vict. c. 89.

Special Provisions as to Stannaries.

Attachment of debt due to contributory on winding up in stannaries court.

239. When several companies are in course of liquidation by or under the superintendence of the Court exercising the stannaries jurisdiction and acting under that jurisdiction, if it appears to the judge that a person who is a contributory of one of the companies is also a creditor claiming a debt against one of the other companies, the judge may (if after inquiry he thinks fit) direct that the debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain as a security for payment of any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applied to such payment in due course:

Provided that such an order of attachment shall not prejudice any claim which the company so indebted to the creditor may have against him by way of set off, counterclaim, or otherwise, or any lawful claim or lien or specific charge on the debt in favour of any third person.

Preferential payments in stannaries cases.

240. In the application to companies within the stannaries of the provisions of this Act with respect to preferential payments, the following modifications shall be made:—

(1) In the case of a clerk or servant of such a company, the priority with respect to wages and salary given by this Act shall be given to the extent of three months only, instead of four months, and shall not extend to the principal agent, manager, purser, or secretary:

(2) All wages in relation to the mine of a miner, artizan, or labourer employed in or about the mine, including all earnings by a miner arising from any description of piece or other work, or as a tributer or otherwise, but not exceeding an amount equal to three months' wages, shall be included amongst the payments which are, under this Act, to be made in priority to other debts:

(3) Wages of any miner, artizan, or labourer unpaid at the commencement of the winding up, and, subject to the provisions of section five of the Workmen's Compensation Act, 1906, all amounts (not exceeding in any individual case one hundred pounds) due in respect of compensation under that Act payable to a miner or the dependants of a miner the liability wherefor accrued before the commencement of the winding-up, shall, to the extent aforesaid, be paid by the liquidator forthwith in priority to all costs, except (in the case of a winding-up by the court) such costs of and incidental to the making of the winding-up order as in the opinion of the court have been properly incurred, and to all claims by mortgagees, execution creditors, or any other persons, except the claims of clerks and servants in respect of their wages or salary, and, subject as aforesaid, the court may, by order, charge the whole or any part of the assets of the company, in priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the said wages and amounts due in respect of compensation, with interest at a rate not exceeding five per cent. per annum, and this charge may be made in favour of any person who is willing to advance the requisite amount or any part thereof; and as soon as the said sum has been so advanced, the said wages and amounts due in respect of compensation shall be paid without delay so far as the amount advanced extends, and in such order of payment as the court directs.

6 Edw. 7, c. 58.

Provisions as to mine club funds.

241.—(1) On the winding up of a company within the stannaries, contributions of the miners, artizans, or labourers for the purpose

of a mine club, or accident, or sick, or benefit fund shall not be deemed to be, or be applied as, part of the assets of the company in liquidation of the debts of the company or otherwise, but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and be applied in accordance with the rules of the club.

(2) Where the company is being wound up voluntarily, the liquidator or any person claiming to be entitled to any such contributions or fund may apply to the court for directions, or to determine any question arising in the matter in the same manner as if the company were being wound up by the court.

Removal of Defunct Companies from Register.

Registrar may strike defunct company off register.

242.—(1) Where the registrar of companies has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the Gazette and send to the company a like notice as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on the application of the company or member or creditor may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company,

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PART V.

REGISTRATION OFFICE AND FEES.

Registration offices in England, Scotland, and Ireland.

243.—(1) For the purposes of the registration of companies under this Act, there shall be offices in England, Scotland, and Ireland, at such places as the Board of Trade think fit.

(2) The Board of Trade may appoint such registrars, assistant registrars, clerks, and servants as the Board think necessary for the registration of companies under this Act, and may make regulations with respect to their duties; and may remove any persons so appointed.

(3) The salaries of the persons appointed under this section shall be fixed by the Board of Trade with the concurrence of the Treasury, and shall be paid out of money provided by Parliament.

(4) The Board of Trade may require that the office of the registrar of the court exercising in respect of the winding up of companies the stannaries jurisdiction shall be one of the offices for the registration of companies within that jurisdiction.

(5) The Board may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(6) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar, on payment for the certificate, certified copy, or extract, of such fees as the Board of Trade may appoint, not exceeding five shillings for a certificate of incorporation, and not exceeding sixpence for each folio of a certified copy or extract, or in Scotland for each sheet of two hundred words.

(7) A copy of or extract from any document kept and registered at any of the offices for the registration of companies in England, Scotland, or Ireland, certified to be a true copy under the hand of the registrar or an assistant registrar (whose official position it shall not be necessary to prove) shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(8) Whenever any act is by this Act directed to be done to or by the registrar of companies, it shall, until the Board of Trade otherwise directs, be done in England to or by the existing registrar of joint stock companies, or in his absence to or by such person as the Board may for the time being authorise; in Scotland to or by the existing registrar of joint stock companies in Scotland; and in Ireland to or by the existing assistant registrar of joint stock companies for Ireland, or to or by such person as the Board may for the time being authorise in Scotland or Ireland, in the absence of the registrar or assistant registrar; but, in the event of the Board altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the Board may appoint.

Fees.

244.—(1) There shall be paid to the registrar in respect of the several matters mentioned in Table B. in the First Schedule to this Act the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct.

(2) All fees paid to the registrar in pursuance of this Act shall be paid into the Exchequer.

Part VI.

Application of Act to Companies formed and registered under former Companies Acts.

Application of Act to companies formed under former Companies Acts.

245. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and in the case of a company other than a limited company, as if the company had been formed and registered under this Act as an unlimited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, as the case may be.

Application of Act to companies registered under former Companies Acts.

246. This Act shall apply to every company registered, but not formed under the Joint Stock Companies Acts, or the Companies Act, 1862, in the same manner as it is herein-after in this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Joint Stock Companies Acts, or the Companies Act, 1862, as the case may be.

Application of Act to companies re-registered under Companies Act, 1879. 42 & 43 Vict. c. 76.

247. This Act shall apply to every unlimited company registered in pursuance of the Companies Act, 1879, as a limited company, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the Companies Act, 1879.

Mode of transferring shares.

248. A company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

Part VII.

Companies authorised to register under this Act.

Companies capable of being registered.

249.—(1) With the exceptions and subject to the provisions mentioned and contained in this section,—

(i) Any company consisting of seven or more members, which was in existence on the second day of November eighteen hundred and sixty-two, including any company registered under the Joint Stock Companies Acts; and

(ii) Any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company within the stannaries, or being otherwise duly constituted by law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up.

(2) Provided as follows:—

(*a*) A company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as herein-after defined, shall not register in pursuance of this section:

(*b*) A company having the liability of its members limited by Act of Parliament or letters patent shall not register

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in pursuance of this section as an unlimited company or as a company limited by guarantee :

(*c*) A company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares :

(*d*) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose :

(*e*) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting :

(*f*) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(3) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(4) A company registered under the Companies Act, 1862, shall not be registered in pursuance of this section.

Definition of joint stock company.

250. For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Liability of bank of issue unlimited in respect of notes.

251.—(1) A bank of issue registered under this Act as a limited company shall not be entitled to limited liability in respect of its notes; and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited; but if, in the event of the company being wound up, the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets.

(2) For the purposes of this section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder.

(3) Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its notes, and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

Requirements for registration by joint stock companies.

252. Before the registration in pursuance of this Part of this Act of a joint stock company there shall be delivered to the registrar the following documents (that is to say) :—

(1) A list showing the names, addresses, and occupations of

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all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number ;

(2) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company ; and

(3) If the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say) :—

(*a*) The nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists ;

(*b*) The number of shares taken and the amount paid on each share ;

(*c*) The name of the company, with the addition of the word "limited" as the last word thereof ; and

(*d*) In the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Requirements for registration by other than joint stock companies.

253. Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the registrar—

(1) A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company ; and

(2) A copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost book regulations, or other instrument constituting or regulating the company ; and

(3) In the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Authentication of statements of existing companies.

254. The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

255. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined.

On registration of banking company with limited liability, notice to be given to customers.

256. (1) Where a banking company which was in existence on the seventh day of August eighteen hundred and sixty-two proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain companies from payment of fees.

257. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

Addition of "limited" to name.

258. When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form and be registered as part of its name.

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Certificate of registration of existing companies.

259. On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are payable under Table B. in the First Schedule to this Act, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated shall be deemed to be a bank incorporated, constituted, or established by or under Act of Parliament.

Vesting of property on registration.

260. All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving for existing liabilities.

261. Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation of existing actions.

262. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree or order, an order may be obtained for winding up the company.

Effect of registration under Act.

263. When a company is registered in pursuance of this Part of this Act—

(i) All provisions contained in any Act of Parliament, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles:

(ii) All the provisions of this Act shall apply to the company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—

(*a*) The regulations in Table A. in the First Schedule to this Act shall not apply unless adopted by special resolution;

(*b*) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(*c*) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(*d*) Subject to the provisions of this section, the company shall not have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company;

(*e*) The company shall not have power to alter any

provision contained in a royal charter or letters patent with respect to the objects of the company;

(*f*) In the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and, in the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply:

(iii) The provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company:

(iv) Nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost book regulations, letters patent, or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act:

(v) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company, be vested in the company.

Power to substitute memorandum and articles for deed of settlement.

264.—(1) Subject to the provisions of this section, a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:—

(*a*) There shall be substituted for the printed copy of the altered memorandum required to be delivered to the registrar of companies a printed copy of the substituted memorandum and articles; and

(*b*) On the registration of the alteration being certified by

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the registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament, a royal charter, or letters patent.

Power of court to stay or restrain proceedings.

265. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

266. Where an order has been made for winding up a company registered in pursuance of this Part of this Act no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

PART VIII.

WINDING UP OF UNREGISTERED COMPANIES.

Meaning of unregistered company.

13 & 14 Vict. c. 83.

32 & 33 Vict. c. 114.

26 & 27 Vict. c. 87.

267. For the purposes of this Part of this Act the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament (except in so far as is provided by the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and any Acts amending them), nor a company registered under the Joint Stock Companies Acts, or under the Companies Act, 1862, or under this Act, but, save as aforesaid, shall include any partnership, association, or company consisting of more than seven members, and any trustee savings bank certified under the Trustees Savings Banks Act, 1863, and any limited partnership.

Winding up of unregistered companies.

268.—(1) Subject to the provisions of this Part of this Act, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions :—

(i) An unregistered company shall, for the purpose of determining the court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate ; or if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business ; and the principal place of business situate in that part of the United Kingdom in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company :

(ii) No unregistered company shall be wound up under this Act voluntarily or subject to supervision :

(iii) The circumstances in which an unregistered company may be wound up are as follows (that is to say) :—

(*a*) If the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;

(*b*) If the company is unable to pay its debts ;

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(c) If the court is of opinion that it is just and equitable that the company should be wound up :

(iv) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts :—

(a) If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor ;

(b) If any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court may approve or direct, the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, amd expenses to be incurred by him by reason of the same ;

(c) If in England or Ireland execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied ;

(d) If in Scotland the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made ;

(e) If it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts :

(v) The court having jurisdiction to wind up a railway company under the Abandonment of Railways Act, 1850, and the Abandonment of Railways Act, 1869, and the Acts amending them, shall be the High Court in England or Ireland, or the Court of Session in Scotland, according as the railway was authorised to be made in England, Ireland, or Scotland, and the special provisions of those Acts shall apply to the winding up with the substitution of references to this Act for references to the Companies Acts, 1862 and 1867 :

Provided that, subject to general rules and to orders of transfer made, as respects England, under the authority of the Supreme Court of Judicature Act, 1873, and, as respects Ireland, under the authority of the Supreme Court of Judicature (Ireland) Act, 1877, the jurisdiction of the High Court in England or Ireland under this provision shall be exercised by the Chancery Division of that Court :

36 & 37 Vict. c. 66.
40 & 41 Vict. c. 57.

(vi) A petition for winding up a trustee savings bank may be presented by the National Debt Commissioners, or by a commissioner appointed under the Trustee Savings

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50 & 51 Vict. c. 47.

Banks Act, 1887, as well as by any person authorised under the other provisions of this Act to present a petition for winding up a company:

(vii) In the case of a limited partnership the provisions of this Act with respect to winding up shall apply with such modifications (if any) as may be provided by rules made by the Lord Chancellor with the concurrence of the President of the Board of Trade, and with the substitution of general partners for directors.

(2) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company, being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

Contributories in winding up of unregistered company.

269.—(1) In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid:

Provided that, in the case of an unregistered company within the stannaries, a past member shall not be liable to contribute to the assets of the company if he has ceased to be a member for two years or more either before the mine ceased to be worked or before the date of the winding-up order.

(2) In the event of the death, bankruptcy, or insolvency, of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively, shall apply.

Power of court to stay or restrain proceedings.

270. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed on winding-up order.

271. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

Directions as to property in certain cases.

272. If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the winding-up order, or by any subsequent order, direct that all or any part of the property, real and personal (including things in action), belonging to the company, or to trustees on its behalf, is to vest in the liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Provisions of Part of Act cumulative.

273. The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions herein-before in this Act contained with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding

up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

PART IX.

COMPANIES ESTABLISHED OUTSIDE THE UNITED KINGDOM.

Requirements as to companies established outside the United Kingdom.

274.—(1) Every company incorporated outside the United Kingdom which establishes a place of business within the United Kingdom shall within one month from the establishment of the place of business file with the registrar of companies—

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

(*b*) a list of the directors of the company;

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

and, in the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar such a statement in the form of a balance sheet as would, if it were a company formed and registered under this Act and having a share capital, be required under this Act to be included in the annual summary.

(4) Every company to which this section applies, and which uses the word "Limited" as part of its name, shall—

(*a*) in every prospectus inviting subscriptions for its shares or debentures in the United Kingdom state the country in which the company is incorporated; and

(*b*) conspicuously exhibit on every place where it carries on business in the United Kingdom the name of the company and the country in which the company is incorporated; and

(*c*) have the name of the company and of the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company.

(5) If any company to which this section applies fails to comply with any of the requirements of this section the company, and every officer or agent of the company, shall be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

(6) For the purposes of this section—

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

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

The expression "director" includes any person occupying the position of director, by whatever name called; and

The expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

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(7) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five shillings or such smaller fee as may be prescribed.

Power of companies incorporated in British possessions to hold lands.

275. A company incorporated in a British possession which has filed with the registrar of companies the documents and particulars specified in paragraphs (*a*), (*b*), and (*c*) of subsection (1) of the last foregoing section shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under this Act.

PART X.

SUPPLEMENTAL.

Legal Proceedings, Offences, &c.

Prosecution of offences.

276.—(1) All offences under this Act made punishable by any fine may be prosecuted under the Summary Jurisdiction Acts.

(2) In Scotland all prosecutions for offences or fines under the provisions of this Act relating to—

(*a*) the appointment of directors ;
(*b*) the restrictions on commencement of business by a company ;
(*c*) returns as to allotments ;
(*d*) false statements in respect of which a penalty is provided by this Part of this Act ;
(*e*) the filing of copies of a prospectus, and order revoking the dissolution, or an order sanctioning the reorganisation of the share capital of a company ;
(*f*) the filing of notice of appointment of a liquidator or of the accounts of a receiver or manager ;
(*g*) general meetings ;
(*h*) companies established outside the United Kingdom ;
(*i*) the issue of debentures and certificates of shares and debenture stock ;
(*j*) the issue, circulation, and publication of balance sheets ;
(*k*) unqualified persons acting as directors ;
(*l*) the inspection of registers of debenture holders and the furnishing of copies of trust deeds ;

shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.

Applications of fines.

277. The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information at or whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Exchequer.

Costs in actions by certain limited companies.

278. Where a limited company is plaintiff or pursuer in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of court to grant relief in certain cases.

279. If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think proper.

Jurisdiction of stannaries court.

280.—(1) In the case of a company subject to the stannaries jurisdiction, the court exercising the stannaries jurisdiction shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, as the Court of the Vice-Warden of the stannaries possessed before the commencement of

the Stannaries Court (Abolition) Act, 1896, by custom, usage, or statute in the case of unincorporated companies, but only so far as is consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act.

59 & 60 Vict. c. 45.

(2) For the purpose of giving fuller effect to that jurisdiction, all process issuing out of the said court, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the court to be served on any company, whether registered or not registered, or on any member or contributory thereof, or on any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the judge for that purpose, or by such special order may be served in any part of the British Islands, on such terms and conditions as the court may think fit:

Provided that no such service of process out of the limits of the stannaries in any suit or plaint on the common law side of the court shall be effected without the special order of the judge made on a statement of the nature and object of the suit or plaint.

(3) All decrees, orders, and judgments of the said court may be enforced in the same manner in which decrees, orders, and judgments of the Court of the Vice-Warden of the stannaries could before its abolition have been by law enforced, whether within or beyond the stannaries.

Penalty for false statement.

281. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Act specified in the Fifth Schedule hereto, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable [*on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and*] (*a*) on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and [*in either case*] (*a*) to a fine in lieu of or in addition to such imprisonment as aforesaid:

Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

Penalty for improper use of word "Limited."

282. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding five pounds for every day upon which that name or title has been used.

Report by Board of Trade.

Annual report by Board of Trade.

283. The Board of Trade shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament.

Authentication of Documents issued by Board of Trade.

Authentication of documents issued by Board of Trade.

284. Any approval, sanction, or licence, or revocation of licence, which under this Act may be given or made by the Board of Trade may be under the hand of a secretary or assistant secretary of the Board, or of any person authorised in that behalf by the President of the Board.

Interpretation, &c.

Interpretation.

285. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):—

"Existing company" means a company formed and registered under the Joint Stock Companies Acts, or under the Companies Act, 1862;

"Company" means a company formed and registered under this Act or an existing company;

"Articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the

(*a*) These words are repealed by the Perjury Act, 1911.

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19 & 20 Vict. s. 47.

regulations contained (as the case may be) in Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or in Table A. in the First Schedule annexed to the Companies Act, 1862, or in that Table as altered in pursuance of section seventy-one of that Act, or in Table A. in the First Schedule to this Act ;

"Memorandum" means the memorandum of association of a company, as originally framed or as altered in pursuance of the provisions of this Act ;

"Document" includes summons, notice, order, and other legal process, and registers ;

"Share" means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied ;

"Debenture" includes debenture stock ;

"Books and papers" and "books or papers" include accounts, deeds, writings, and documents ;

"The registrar of companies," or, when used in relation to registration of companies, "the registrar," means the registrar or other officer performing under this Act the duty of registration of companies in England, Scotland, or Ireland, or in the stannaries, as the case requires ;

"The court" used in relation to a company means the court having jurisdiction to wind up the company ;

"Joint Stock Companies Acts" means the Joint Stock Companies Act, 1856, the Joint Stock Companies Acts, 1856, 1857, the Joint Stock Banking Companies Act, 1857, and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability, or any one or more of those Acts, as the case may require ; but does not include the Act passed in the eighth year of the reign of Her Majesty Queen Victoria, chapter one hundred and ten, intituled An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies ;

"The Gazette" means, as respects companies registered in England, the London Gazette ; as respects companies registered in Scotland, the Edinburgh Gazette ; and, as respects companies registered in Ireland, the Dublin Gazette ;

"Real and personal," as respects Scotland, means heritable and moveable ;

"General rules" means general rules made under this Act, and includes forms ;

"Prescribed" means, as respects the provisions of this Act relating to the winding-up of companies, prescribed by general rules, and as respects the other provisions of this Act, prescribed by the Board of Trade ;

"Company within the stannaries" means a company engaged in or formed for working mines within the stannaries ;

"The court exercising the stannaries jurisdiction" used in relation to any proceedings means the county court in which the jurisdiction formerly exercised by the court of the vice-warden of the stannaries in respect of those proceedings is for the time being vested ;

"Director" includes any person occupying the position of director by whatever name called ;

"Prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

Repeal of Acts and Transitional Provisions.

Repeal of Acts and savings.

286.—(1) The Acts mentioned in the First Part of the Sixth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part :

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Provided that the repeal shall not affect—

(a) The incorporation of any company registered under any enactment hereby repealed; nor

(b) Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor

(c) Table A. in the First Schedule annexed to the Companies Act, 1862, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section seventy-one of that Act) so far as the same applies to any company existing at the commencement of this Act; nor

(d) The continuance in force of the enactments set out in the Second Part of the Sixth Schedule to this Act, being the enactments continued in force by section two hundred and five of the Companies Act, 1862.

52 & 53 Vict. c. 63.

(2) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals.

Saving of pending proceedings for winding up.

287. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed, and, for the purposes of the winding up, the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

Saving of deeds.

288. Every conveyance, mortgage, or other deed, made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force.

Former registration offices, registers, official receivers, &c. continued.

289.—(1) The offices existing at the commencement of this Act in England, Scotland, and Ireland for registration of joint stock companies shall be continued as if they had been established under this Act.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(3) The existing registrars, assistant registrars, officers, clerks, and servants in those offices shall during the pleasure of the Board of Trade hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the Board of Trade with regard to the execution of their duties.

(4) The existing official receivers and officers of the Board of Trade appointed for the execution of the Companies (Winding Up) Act, 1890, shall during the pleasure of the Board of Trade hold the offices and receive the salaries or remuneration hitherto held and received by them.

(5) Persons, other than officers of the Board of Trade, performing any duties under the Companies (Winding Up) Act, 1890, and receiving therefor any salary or remuneration by the direction of the Lord Chancellor, shall during his pleasure receive the salaries or remuneration hitherto received by them.

(6) The Companies Liquidation Account under this Act shall be deemed to be in continuation of the Companies Liquidation Account under the Companies (Winding Up) Act, 1890.

Saving for existing rules of procedure, &c.

290. Until revoked and except as varied under the powers of this Act, the general rules and orders, and scales of fees, under the Companies (Winding Up) Act, 1890, in force at the commencement of this Act, and the rules of court in force at the commencement of this Act in England, Scotland, and Ireland respectively with respect to the procedure for reduction of capital, and to winding up companies, and the practice and procedure for winding up companies in England, Scotland, and Ireland respectively in force

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at the commencement of this Act, shall, so far as they are not inconsistent with this Act, continue in force.

Substitution of provisions of this Act for provisions of repealed Acts.

291. Where any enactment repealed by this Act is mentioned or referred to in any document, that document shall be read as if the corresponding provision (if any) of this Act were therein mentioned or referred to and substituted for the repealed enactment.

Saving for 28 & 29 Vict. c. 79, s. 3.

292. Nothing in this Act shall affect the power of a company to alter its memorandum under the provisions of section three of the Mortgage Debenture Act, 1865.

Saving for Life Assurance Companies Acts. 33 & 34 Vict. c. 61. 34 & 35 Vict. c. 58. 35 & 36 Vict. c. 41.

293. Nothing in this Act shall affect the provisions of the Life Assurance Companies Acts, 1870 to 1872, except that references in those Acts to any provision of the Companies Act, 1862, shall be read as references to the corresponding provision of this Act.

Saving for 34 & 35 Vict. c. 31, s. 5.

294. Nothing in this Act shall affect the provisions of section five of the Trade Union Act, 1871, except that the reference in that section to the Companies Acts, 1862 and 1867, shall be read as a reference to this Act.

Short title.

295. This Act may be cited as the Companies (Consolidation) Act, 1908.

Commencement of Act.

296. This Act shall come into operation on the first day of April nineteen hundred and nine.

SCHEDULES.

FIRST SCHEDULE.

Sections 10, 11, 67, 263, 285.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies (Consolidation) Act, 1908, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and vice versâ, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section eighty-seven of the Companies (Consolidation) Act, 1908, if, and so far as, those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the

provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections eighty-five and eighty-eight of the Companies (Consolidation) Act, 1908, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists, is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or bankruptcy to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

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13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, A.B. of   in consideration of the sum of £   paid to me by C.D. of   (hereinafter called " the said transferee ") do hereby transfer to the said transferee the share [*or* shares] numbered   in the undertaking called the   Company Limited, to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution thereof: and I, the said transferee, do hereby agree to take the said share [*or* shares] subject to the conditions aforesaid. As witness our hands the   day of   .

Witness to the signatures of, &c.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(*a*) a fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

23. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of nonpayment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

29. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

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Conversion of Shares into Stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stock-holder."

Share Warrants.

35. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons, or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other

privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

44. The company may, by special resolution—

(*a*) Consolidate and divide its share capital into shares of larger amount than its existing shares:

(*b*) By subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (*d*) of subsection (1) of section forty-one of the Companies (Consolidation) Act, 1908:

(*c*) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person:

(*d*) Reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section sixty-five of the Companies (Consolidation) Act, 1908.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any

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two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section sixty-six of the Companies (Consolidation) Act, 1908. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Proceedings at General Meeting.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

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

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

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

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

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

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

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a

declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

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

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

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

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

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

62. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

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

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

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

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

Company, Limited.

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

Signed this   day of   .

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

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69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section seventy-three of the Companies (Consolidation) Act, 1908.

Powers and Duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

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

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

74. The directors shall duly comply with the provisions of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the directors, and to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.

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

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

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

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

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign

every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

77. The office of director shall be vacated, if the director—
   (*a*) ceases to be a director by virtue of section seventy-three of the Companies (Consolidation) Act, 1908; or
   (*b*) holds any other office of profit under the company except that of managing director or manager; or
   (*c*) becomes bankrupt; or
   (*d*) is found lunatic or becomes of unsound mind; or
   (*e*) is concerned or participates in the profits of any contract with the company:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

Rotation of Directors.

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

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

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

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

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

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

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

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

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

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of

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votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

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

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

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

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

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

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

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

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividend shall be paid otherwise than out of profits.

98. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint holders of any share

any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have deen declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true accounts to be kept—

Of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place, and

Of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

107. A balance sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

108. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

Audit.

109. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force.

Notices.

110. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address in the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

111. If a member has no registered address in the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbour-

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hood of the registered office of the company, shall be deemed to be duly given to him on the day on which the advertisement appears.

112. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

113. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, in the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

114. Notice of every general meeting shall be given in some manner hereinbefore authorised to (*a*) every member of the company (including bearers of share warrants) except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

Sections 244, 259.

TABLE B.

TABLE OF FEES to be paid to the REGISTRAR OF COMPANIES.

I.—By a company having a share capital.

	£	s.	d.
For registration of a company whose nominal share capital does not exceed 2,000*l*. – – – – – –	2	0	0
For registration of a company whose nominal share capital exceeds 2,000*l*., the following fees, regulated according to the amount of nominal share capital (that is to say); £ s. d.			
For every 1,000*l*. of nominal share capital, or part of 1,000*l*., up to 5,000*l*. – – 1 0 0			
For every 1,000*l*. of nominal share capital, or part of 1,000*l*., after the first 5,000*l*. up to 100,000*l*. – – – – – 0 5 0			
For every 1,000*l*. of nominal share capital, or part of 1,000*l*., after the first 100,000*l*. 0 1 0			
For registration of any increase of share capital made after the first registration of the company, the same fees per 1,000*l*., or part of a 1,000*l*., as would have been payable if the increased share capital had formed part of the original share capital at the time of registration:			
Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than 50*l*., taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding-up in England – – – – –	0	5	0

	£	s.	d.
For making a record of any fact by this Act required or authorised to be recorded by the registrar – –	0	5	0

II.—By a company not having a share capital.

	£	s.	d.
For registration of a company whose number of members, as stated in the articles, does not exceed 20 – –	2	0	0
For registration of a company whose number of members, as stated in the articles, exceeds 20, but does not exceed 100 – – – – – – – –	5	0	0
For registration of a company whose number of members, as stated in the articles, exceeds 100, but is not stated to be unlimited, the above fee of 5*l.*, with an additional 5*s.* for every 50 members or less number than 50 members after the first 100.			
For registration of a company in which the number of members is stated in the articles to be unlimited –	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of that increase – – – – – –	0	5	0
Provided that no company shall be liable to pay on the whole a greater fee than 20*l.* in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document by this Act required or authorised to be registered, other than the memorandum or the abstract required to be filed with the registrar by a receiver or manager or the statement required to be sent to the registrar by the liquidator in a winding-up in England – – – – – –	0	5	0
For making a record of any fact by this Act required or authorised to be recorded by the registrar – – –	0	5	0

FORM C.

Section 108.

FORM OF STATEMENT to be published by BANKING and INSURANCE COMPANIES, and DEPOSIT, PROVIDENT, or BENEFIT SOCIETIES.

* The share capital of the company is , divided into shares of each.

The number of shares issued is

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (*or* July) were—

Debts owing to sundry persons by the company.

On judgment, £

On specialty, £

On notes or bills, £

On simple contracts, £

On estimated liabilities, £

The assets of the company on that day were—

Government securities [*stating them*]

Bills of exchange and promissory notes, £

Cash at the bankers, £

Other securities, £

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* If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

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Section 82.

SECOND SCHEDULE.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

STATEMENT IN LIEU OF PROSPECTUS.

filed by

LIMITED

pursuant to section eighty-two of the Companies (Consolidation) Act, 1908.

Presented for filing by

THE COMPANIES (CONSOLIDATION) ACT, 1908.

LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal share capital of the company – – – – – –	£
Divided into – – – – –	Shares of £ each. ,, ,, ,, ,, ,, ,,
Names, descriptions, and addresses of directors or proposed directors.	
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash. The consideration for the intended issue of those shares and debentures.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid. 3. debenture £ 4. Consideration.
Names and addresses of (a) vendors of property purchased or acquired, or proposed to be (b) purchased or acquired by the company. Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £ Cash – – – – £ Shares – – – £ Debentures – – £ Goodwill – – – £
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company, or Rate of the commission – – –	Amount paid. ,, payable. Rate per cent.
Estimated amount of preliminary expenses – – – – – –	£

(a) For definition of vendor, *see* Section 81 (2) of the Companies (Consolidation) Act, 1908.
(b) *See* Section 81 (3) of the Companies (Consolidation) Act, 1908.

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Amount paid or intended to be paid to any promoter. Consideration for the payment.	Name of promoter. Amount £ Consideration :—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.	Nature of the provisions.

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

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THIRD SCHEDULE.

FORM A.

Memorandum of Association of a company limited by shares. Section 118.

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the "conveyance of passengers and goods in ships or boats between such "places as the company may from time to time determine, and the "doing all such other things as are incidental or conducive to the "attainment of the above object."

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand

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pounds divided into one thousand shares of two hundred pounds each.

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 Shares taken by each Subscriber.
" 1. John Jones of in the county of merchant	200
" 2. John Smith of in the county of –	25
" 3. Thomas Green of in the county of –	30
" 4. John Thompson of in the county of –	40
" 5. Caleb White of in the county of –	15
" 6. Andrew Brown of in the county of –	5
" 7. Cæsar White of in the county of –	10
Total shares taken – – – –	325

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

FORM B.

Memorandum and Articles of Association of a company limited by Guarantee, and not having a share capital.

Memorandum of Association.

1st. The name of the company is " The Mutual London Marine Association, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, " the " mutual insurance of ships belonging to members of the company, " and the doing all such other things as are incidental or conducive " to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

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.

Names, Addresses, and Descriptions of Subscribers.

" 1. John Jones of in the county of merchant.
" 2. John Smith of in the county of
" 3. Thomas Green of in the county of
" 4. John Thompson of in the county of
" 5. Caleb White of in the county of
" 6. Andrew Brown of in the county of
" 7. Cæsar White of in the county of

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

ARTICLES of ASSOCIATION to accompany preceding MEMORANDUM of ASSOCIATION.

Number of Members.

1. The company, for the purpose of registration, is declared to consist of five hundred members.

2. The directors herein-after mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations herein-after contained.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to convene a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members, may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members herein-after mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say), if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; it they exceed ten there shall be added to the above quorum

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one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened on the requisition of the members, shall be dissolved ; in any other case it shall stand adjourned to the same day in the following week at the same time and place ; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned sine die.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he may vote by his committee curator bonis, or other legal curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

23. No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form :—

Company, Limited.

of in the county of being a member of the Company, Limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this day of .

Directors.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall for all the purposes of the Companies (Consolidation) Act, 1908, be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are

not by the Companies (Consolidation) Act, 1908, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Election of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

[*Here insert Rules as to Mode in which Business of Insurance is to be conducted.*]

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twelve and one hundred and thirteen of the Companies (Consolidation) Act, 1908, or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders," and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of in the county of merchant.
"2. John Smith of in the county of
"3 Thomas Green of in the county of
"4. John Thompson of in the county of
"5. Caleb White of in the county of
"6. Andrew Brown of in the county of
"7. Cæsar White of in the county of

Dated the day of 19 .

Witness to the above signatures,
A.B., No. 13, Hute Street, Clerkenwell, London.

FORM C.

MEMORANDUM and ARTICLES of ASSOCIATION of a company limited by guarantee, and having a share capital.

Memorandum of Association.

1st. The name of the company is "The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are "the "facilitating travelling in the Highlands of Scotland, by providing "hotels and conveyances by sea and by land for the accommodation "of travellers, and the doing of all such other things as are incidental "or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts

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and liabilities of the company, contracted before he ceases to be a member, and the costs, charges, and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

6th. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

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 Shares taken by each Subscriber.
"1. John Jones of in the county of –	200
"2. John Smith of in the county of –	25
"3. Thomas Green of in the county of –	30
"4. John Thompson of in the county of –	40
"5. Caleb White of in the county of –	15
"6. Andrew Brown of in the county of –	5
"7. Cæsar White of in the county of –	10
Total shares taken – – –	325

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

Articles of Association to accompany preceding Memorandum of Association.

1. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company,

2. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

3. All the articles of Table A. of the Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses, and Description of Subscribers.

"1. John Jones of in the county of merchant.
"2. John Smith of in the county of
"3. Thomas Green of in the county of
"4. John Thompson of in the county of
"5. Caleb White of in the county of
"6. Andrew Brown of in the county of
"7. Cæsar White of in the county of

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 13, Hute Street, Clerkenwell, London.

FORM D.

MEMORANDUM and ARTICLES of ASSOCIATION of an unlimited company having a share capital.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are "the "working of a patent method of founding and casting stereotype "plates, of which method John Smith, of London, is the sole "patentee."

WE, the several persons whose names 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 Shares taken by each Subscriber.
"1. John Jones of in the county of –	3
"2. John Smith of in the county of –	2
"3. Thomas Green of in the county of –	1
"4. John Thompson of in the county of –	2
"5. Caleb White of in the county of –	2
"6. Andrew Brown of in the county of –	1
"7. Abel Brown of in the county of –	1
Total shares taken – –	12

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 20, Bond Street, London.

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

2. All the articles of Table A. of the Companies (Consolidation) Act, 1908, shall be deemed to be incorporated with these articles, and to apply to the company.

Names, Addresses, and Description of Subscribers.

"1. John Jones of in the county of merchant.
"2. John Smith of in the county of
"3. Thomas Green of in the county of
"4. John Thompson of in the county of
"5. Caleb White of in the county of
"6. Andrew Brown of in the county of
"7. Abel Brown of in the county of

Dated the day of 19 .

Witness to the above signatures,

A.B., No. 20, Bond Street, London.

FORM E. as required by Part II. of the Act. Section 26.

SUMMARY of SHARE CAPITAL and SHARES of the COMPANY, LIMITED, made up to the day of 19 (being the fourteenth day after the date of the first ordinary general meeting in 19).

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Nominal share capital £ divided into[1]	shares of £ each.	
	shares of £ each.	
Total number of shares taken up[1] to the day of 19 (which number must agree with the total shown in the list as held by existing members).		
Number of shares issued subject to payment wholly in cash		
Number of shares issued as fully paid up otherwise than in cash		
Number of shares issued as partly paid up to the extent of per share otherwise than in cash		
[2]There has been called up on each of shares, £	.	
There has been called up on each of shares, £	.	
[2]There has been called up on each of shares, £	.	
[3]Total amount of calls received, including payments on application and allotment	£	
Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash	£	.
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share	£	.
Total amount of calls unpaid	£	.
Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary ...	£	.
Total amount (if any) paid on[4] shares forfeited ...	£	.
Total amount of shares and stock for which share warrants are outstanding	£	.
Total amount of share warrants issued and surrendered respectively since date of last summary	£	
Number of shares or amount of stock comprised in each share warrant		
Total amount of debt due from the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies, or which would require registration if created after the first day of July nineteen hundred and eight	£	.

STATEMENT in the form of a balance sheet made up to the day of 19 containing the particulars of the capital, liabilities, and assets of the company.

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[1] When there are shares of different kinds or amounts (*e.g.* Preference and Ordinary, or 10*l.* or 5*l.*) state the numbers and nominal values separately.

[2] Where various amounts have been called or there are shares of different kinds state them separately.

[3] Include what has been received on forfeited as well as on existing shares.

[4] State the aggregate number of shares forfeited (if any).

The Return must be signed at the end by the manager or secretary of the company.

Presented for filing by ____________________

LIST OF PERSONS holding shares in the Company, Limited, on the day of 19 , and of persons who have held shares therein at any time since the date of the

last return, showing their names and addresses and an account of the shares so held.

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Folio in Register Ledger containing Particulars.	Names, Addresses, and Occupations.				Account of Shares.					
	Surname.	Christian Name.	Address.	Occupation.	† Number of Shares held by existing Members at Date of Return.	§ Particulars of Shares transferred since the Date of the last Return by Persons who are still Members.		§ Particulars of Shares transferred since the Date of the last Return by Persons who have ceased to be Members.		Remarks.
						‡ Number.	Date of Registration of Transfer.	‡ Number.	Date of Registration of Transfer.	

† The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

‡ When the shares are of different classes these columns may be subdivided so that the number of each class held or transferred may be shown separately.

§ The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

NAMES AND ADDRESSES of the persons who are the Directors of the Limited on the day of 19 .

Names.	Addresses.

NOTE.—Banking companies must add a list of all their places of business.

(Signature)

(State whether manager or secretary)

FORM F.

LICENCE TO HOLD LANDS.

Section 20.

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

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

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FOURTH SCHEDULE.

Section 181.

PART I.

ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO BE FINAL.

Orders :—

s. 169. As to time for proving claims.

s. 174. As to the attendance of, and production of documents by, persons indebted to, or having property of, or information as to the affairs or property of, a company.

s. 219. As to meetings for ascertaining wishes of creditors or contributories.

s. 120. As to summoning meetings of creditors or contributories where a compromise is proposed.

s. 227. As to the examination of witnesses in regard to the property or affairs of a company.

PART II.

ORDERS PRONOUNCED IN VACATION IN SCOTLAND WHICH ARE TO TAKE EFFECT UNTIL RECLAIMING NOTE DISPOSED OF.

Orders :—

ss. 140, 142, 144, 266, 270, 271. Restraining or permitting commencement or continuance of legal proceedings.

ss. 149, 186, 202. Appointing an official liquidator to fill a vacancy, or appointing (except to fill a vacancy caused by the removal of a liquidator by the court) a liquidator for a winding up voluntarily or under supervision.

s. 151. Sanctioning the exercise of any power by an official liquidator other than the power to appoint a law agent or to sell property.

s. 164. Requiring the delivery of property or documents to the official liquidator.

s. 176. As to the arrest and detention of an absconding contributory and his property.

s. 151 (5). Limiting the powers of provisional official liquidators.

s. 199. For continuance of winding up under supervision.

FIFTH SCHEDULE.

Section 281.

PROVISIONS REFERRED TO IN SECTION 281 OF THE ACT.

Provisions relating to—

- s. 17. The conclusiveness of certificates of incorporation ;
- s. 72. Restrictions on appointments or advertisement of directors ;
- s. 87. Restrictions on commencement of business ;
- s. 88. Returns as to allotments ;
- s. 65. Statutory meetings ;
- s. 26. The particulars as to directors and mortgage debt and the statement in the form of a balance sheet in the annual summary ;
- ss. 112, 113. The appointment and remuneration, and powers and duties, of auditors ;
- s. 82. Obligations of companies where no prospectus is issued ;
- s. 93. Registration of mortgages and charges in England and Ireland ;
- s. 95. Filing of accounts of receiver and manager ;
- s. 187. Notice by liquidator in voluntary winding up of his appointment ;
- s. 188. Rights of creditors in a voluntary winding up ;
- s. 274. Requirements as to companies established outside the United Kingdom ; and
- s. 283. Annual report by Board of Trade.

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SIXTH SCHEDULE.

PART I.

ENACTMENTS REPEALED.

Section 286.

Session and Chapter.	Short Title of Act.	Extent of Repeal.
25 & 26 Vict. c. 89.	The Companies Act, 1862	The whole Act.
27 Vict. c. 19.	The Companies Seals Act, 1864.	The whole Act.
30 & 31 Vict. c. 131.	The Companies Act, 1867	The whole Act.
32 & 33 Vict. c. 19.	The Stannaries Act, 1869	Sections twenty-five, twenty-six, and thirty-four.
33 & 34 Vict. c. 104.	The Joint Stock Companies Arrangement Act, 1870.	The whole Act.
37 & 38 Vict. c. 94.	Conveyancing (Scotland) Act, 1874.	Section fifty-six.
38 & 39 Vict. c. 77.	The Supreme Court of Judicature Act, 1875.	Section ten, so far as relates to the winding up of companies.
40 & 41 Vict. c. 26.	The Companies Act, 1877	The whole Act.
40 & 41 Vict. c. 57.	The Supreme Court of Judicature (Ireland) Act, 1877.	Subsection (1) of section twenty-eight, so far as relates to the winding up of companies.
42 & 43 Vict. c. 76.	The Companies Act, 1879	The whole Act.
43 Vict. c. 19.	The Companies Act, 1880	The whole Act.
46 & 47 Vict. c. 30.	The Companies (Colonial Registers) Act, 1883.	The whole Act.
49 Vict. c. 23.	The Companies Act, 1886	The whole Act.
50 & 51 Vict. c. 43.	The Stannaries Act, 1887	Sections nine and ten, section thirteen from "Upon the winding up" to the end of the section (being paragraph (2)); and section thirty-one.
50 & 51 Vict. c. 47.	The Trustee Savings Banks Act, 1887.	Section three.
51 & 52 Vict. c. 62.	The Preferential Payments in Bankruptcy Act, 1888.	Sections one, two, and three, so far as they relate to companies.
52 & 53 Vict. c. 42.	The Revenue Act, 1889 -	Section eighteen.

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Session and Chapter.	Short Title of Act.	Extent of Repeal.
52 & 53 Vict. c. 60.	The Preferential Payments in Bankruptcy (Ireland) Act, 1889.	Section four, so far as relates to companies.
53 & 54 Vict. c. 62.	The Companies (Memorandum of Association) Act, 1890.	The whole Act.
53 & 54 Vict. c. 63.	The Companies (Winding up) Act, 1890.	The whole Act.
53 & 54 Vict. c. 64.	The Directors' Liability Act, 1890.	The whole Act.
56 & 57 Vict. c. 58.	The Companies (Winding up) Act, 1893.	The whole Act.
60 & 61 Vict. c. 19.	The Preferential Payments in Bankruptcy Amendment Act, 1897.	The whole Act.
61 & 62 Vict. c. 26.	The Companies Act, 1898	The whole Act.
63 & 64 Vict. c. 48.	The Companies Act, 1900	The whole Act.
7 Edw. 7. c. 24.	The Limited Partnerships Act, 1907.	Subsection (4) of section six.
7 Edw. 7. c. 50.	The Companies Act, 1907	The whole Act.
8 Edw. 7. c. 12.	The Companies Act, 1908	The whole Act.

PART II.

Section 286.

AN ACT TO REGULATE JOINT STOCK BANKS IN ENGLAND (7 & 8 VICT. c. 113), s. 47.

Existing companies to have the powers of suing and being sued.

Every company of more than six persons established on the sixth day of May one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed in the session of the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, intituled "An Act to regulate Joint Stock Banks in England," shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of the Country Bankers Act, 1826, provided that such first-mentioned company shall make out and deliver from time to time to the Commissioners of Inland Revenue the several accounts or returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such accounts or returns shall

be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

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THE JOINT STOCK BANKING COMPANIES ACT, 1857, PART OF S. 12.

Power to form banking partnerships of ten persons.

Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of Queen Victoria, chapter one hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of the Joint Stock Banking Companies Act, 1857, have carried on such business.

I.

STATUTORY RULES AND ORDERS, 1909.

No. 324 / L. 11.

COMPANY.

Companies (Consolidation) Act, 1908.

ORDER OF THE BOARD OF TRADE, DATED MARCH 29, 1909, MAKING REGULATIONS UNDER SECTIONS 93 (1) AND 274 OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (8 EDW. 7. C. 69), AND PRESCRIBING FORMS FOR THE PURPOSES OF THAT ACT.

Whereas by section 93 of the Companies (Consolidation) Act, 1908, it is provided that copies of certain mortgages or charges created out of the United Kingdom to be delivered to the Registrar under that section shall be verified in the prescribed manner;

And whereas by section 274 of the Companies (Consolidation) Act, 1908, notice of any alteration in certain instruments and particulars filed with the Registrar by companies incorporated outside the United Kingdom is required to be filed with the Registrar within the prescribed time;

And whereas by section 118 of the Companies (Consolidation) Act, 1908, it is provided that the forms set forth in the Third Schedule thereto, or forms as near thereto as circumstances admit, shall be used in all matters to which those forms refer and that the Board of Trade may alter or add to the forms in the said Third Schedule;

And whereas by the Companies (Consolidation) Act, 1908, certain documents are required to be filed with the Registrar in the prescribed form;

And whereas by section 285 of the Companies (Consolidation) Act, 1908, "prescribed" means as respects the provisions of that Act other than those relating to the winding up of companies prescribed by the Board of Trade;

Now therefore the Board of Trade do hereby prescribe that—

1. A copy of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom delivered to the Registrar under the provisions of section 93 (1) of the Companies (Consolidation) Act, 1908, shall be certified to be a true copy under the seal of the company, or under the hand of some person interested therein otherwise than on behalf of the Company;

2. Notice of any alteration required to be filed with the Registrar by a company incorporated outside the United Kingdom under the provisions of section 274 (1) of the Companies (Consolidation) Act, 1908, shall be filed within twenty-one days after the date on which particulars of the alteration could, in due course of post and if despatched with due diligence, have been received in the United Kingdom from the place where the company is incorporated.

The Board of Trade further prescribe and direct that the Forms hereinafter set forth shall be used for the purposes of the Companies (Consolidation) Act, 1908.

Winston S. Churchill.

Board of Trade,
The 29th day of March, 1909.

The Forms above referred to are—

Form 41. Declaration of compliance with the requirements of the Act in respect of registration, etc. . . see pp. 14 and 15.
Form 42. Consent to act as director . . see pp. 349 and 350.
Form 43. List of Persons who have consented to act as directors see p. 15.
Form 44. Declaration of compliance with the conditions of s. 87 (1) of the Act . . . . see pp. 330 *et seq.*
Form 44A. Declaration of compliance with the provisions of section 87 (1) of the Act in the case of a company which has filed a statement in lieu of a prospectus see pp. 332 and 333.
Form 45. Return of allotments . . . see pp. 269 and 270.
Form 52. Particulars prescribed by section 88, sub-section 2 of the Act . . . . see pp. 270 and 271.
Form 58. Statement as to amount paid or agreed to be paid by way of commission in respect of shares . . see p. 182.
Form 47. Particulars of mortgage or charge to be supplied to the Registrar of Joint Stock Companies . see pp. 541 and 542.
Form 47A. Particulars of a series of debentures to be delivered to the Registrar of Joint Stock Companies . see pp. 542 and 543.
Form 48. Particulars where more than one series of debentures is issued . . . . see pp. 543 and 544.
Form 91. Register of mortgages or charges . . see p. 544
Form 53. Notice of appointment of Receiver or Manager see p. 567.
Form 57A. Notice on Receiver or Manager ceasing to act see p. 476.
Form 57. Receiver or Manager's abstract of payments see p. 476.
Form 49. Declaration verifying Memorandum of satisfaction of charge . . . . see pp. 544 and 546.
Form 39A. Notice of appointment of Liquidator . see p. 1307.
Form 1 F. List of documents presented for filing by foreign company . . . . see p. 35.
Form 2 F. Return of list of directors by foreign company see p. 36.
Form 3 F. List of names and addresses of persons authorised to accept service on behalf of foreign company see pp. 36 and 37.
Form 4 F. Notice of alteration of charter, etc., of foreign company see pp. 37 and 38.
Form 5 F. Notice of alteration of list of directors of foreign company . . . . see pp. 38 and 39.
Form 6 F. Notice of alteration in names or addresses of persons authorised to accept service on behalf of foreign company see pp. 39 and 40.
Form 7 F. Statement in form of balance sheet to be filed by foreign company . . . . . . see pp. 40 and 41.

STATUTORY RULES AND ORDERS, 1909.

No. 326/L. 13.

COMPANY.

Companies (Consolidation) Act, 1908.

Fees.

ORDER OF THE BOARD OF TRADE, DATED MARCH 29, 1909, PRESCRIBING FEES ON REGISTRATION OF CERTAIN DOCUMENTS, &C., AND FOR INSPECTING REGISTER OF MORTGAGES, UNDER SECTIONS 93 AND 94 OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (8 EDW. 7. C. 69).

Whereas by Section 93 of the Companies (Consolidation) Act, 1908, it is provided that the Registrar of Joint Stock Companies shall, on payment of the prescribed fee, enter in the register certain particulars with respect to every mortgage or charge created by any Company after the commencement of the said Act and requiring registration under the said section, and that the register shall be open to inspection by any person on payment of the prescribed fee not exceeding 1*s*. for each inspection.

And whereas by Section 94 of the said Act it is provided that the said Registrar shall on payment of the prescribed fee enter in the register of mortgages and charges the fact of an order having been obtained for the appointment of a receiver or manager of the property of a company.

And whereas by Section 285 of the said Act the expression "prescribed" as used in Sections 93 and 94 means prescribed by the Board of Trade.

Now therefore the Board of Trade do hereby prescribe that the following fees shall be payable :—

	£	s.	d.
For registering under Section 93 (1) and 93 (2) of the Companies (Consolidation) Act, 1908, any mortgage or charge created by a company—			
Where the amount of the mortgage or charge does not exceed £200	0	10	0
Where it does exceed £200	1	0	0
For registering particulars of a series of Debentures under Section 93 (3) of the Companies (Consolidation) Act, 1908—			
Where the total amount secured by the whole series does not exceed £200 . . .	0	10	0
Where it does exceed £200	1	0	0
For registering the appointment of a receiver or manager of the property of a company under Section 94 of the Companies (Consolidation) Act, 1908	0	5	0
For inspecting the Register of Mortgages and charges—			
For each inspection	0	1	0

Winston S. Churchill.

Board of Trade,
The 29th day of March, 1909.

STATUTORY RULES AND ORDERS, 1909.

No. 325 / L. 12.

COMPANY.

Companies (Consolidation) Act, 1908.

REGULATIONS OF THE BOARD OF TRADE, DATED MARCH 29, 1909, AS TO THE CERTIFICATION OF COPIES AND TRANSLATIONS OF DOCUMENTS REQUIRED BY SECTION 274 OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (8 EDW. 7, C. 69), TO BE LODGED WITH THE REGISTRAR OF JOINT STOCK COMPANIES.

In regard to certified copies and certified translations of documents required by section 274 of the Companies (Consolidation) Act, 1908, to be filed with the Registrar, the Board of Trade do hereby prescribe as in manner following, that is to say :—

(1.) A certified copy of the Charter, Statutes, or Memorandum and Articles of Association, or other Instrument constituting or defining the constitution of a Company in the case of a Company incorporated in a Foreign Country required to be filed with the Registrar under section 274 of the Companies (Consolidation) Act, 1908, shall be deemed to be certified as a true copy if in such Foreign Country it is—

(*a*) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by any of the British Officials mentioned in section 6 of the Commissioners of Oaths Act, 1889, or in any Act amending the same, or

(*b*) duly certified as a true copy by a Notary of such Foreign Country, the certificate of the Notary being authenticated by any of the British Officials mentioned in section 6 of the said Act or in any Act amending the same, or

(*c*) duly certified as a true copy on oath by some Officer of the Company before a person having authority to administer an oath as provided by section 3 of the said Act, the status of the person administering the oath being authenticated by any of the British Officials mentioned in section 6 of the said Act, or in any Act amending the same.

(2.) A certified copy of the Charter, Statutes, or Memorandum and Articles of Association, or other Instrument constituting or defining the constitution of a Company, in the case of a Company incorporated in the Channel Islands, Isle of Man, or in any Colony, Island, Plantation, or place under the Dominion of His Majesty in Foreign Parts, required to be filed with the Registrar under section 274 aforesaid, shall be deemed to be certified as a true copy if in the Channel Islands, Colony, Island, Plantation, or places under the Dominion of His Majesty it is—

(*a*) duly certified as a true copy by an official of the Government to whose custody the original is committed ;

(*b*) duly certified as a true copy by a Notary Public of such Colonies, Islands, or places aforesaid ;

(*c*) duly certified as a true copy on oath by some Officer of the Company before some person having authority to administer an oath as provided by section 3 of the Commissioners of Oaths Act, 1889.

(3.) In the case of a company in which the Charter, Statutes, or Memorandum and Articles of Association, or other Instrument constituting or defining the constitution of the Company is not written in the English language a certified translation thereof required to be filed with the Registrar shall be deemed to be certified as a correct translation if certified to be a correct translation,

(*a*) when such translation is made out of the United Kingdom by

(1) an official having custody of the original ; or

(2) a Notary Public of the country or place where the Company is incorporated,

the signature or seal of the person so certifying where the Company is incorporated in a Foreign Country being authenticated in either case by any of the British Officials mentioned in section 6 of the Commissioners of Oaths Act, 1889, or in any Act amending the same ;

(b) where such translation is made within the United Kingdom

(1) In the case of a translation made in regard to a Company whose place of business is established in England by

(1) a Notary Public in England, or

(2) a Solicitor of the Supreme Court in England.

(2) In the case of a translation made in regard to a Company whose place of business is established in Ireland by

(1) a Notary Public in Ireland, or

(2) a Solicitor of the Supreme Court in Ireland.

(3) In the case of a translation made in regard to a Company whose place of business is established in Scotland, by

(1) a Notary Public in Scotland,

(2) an Enrolled Law Agent.

(4) The Board of Trade may in any particular case, if they think fit to do so and upon such conditions as they think fit, permit certified copies or translations though not certified in accordance with the above requirements to be filed with the Registrar.

Winston S. Churchill.

Board of Trade,
The 29th day of March, 1909.

II.

STATUTORY RULES AND ORDERS, 1909.

No. $\frac{505}{L.\ 16}$.

COMPANY, ENGLAND.

Reduction of Capital.

RULES OF THE SUPREME COURT, DATED MAY 3, 1909, AS TO PROCEDURE ON APPLICATIONS FOR CONFIRMATION BY THE COURT OF THE REDUCTION OF THE CAPITAL OF COMPANIES UNDER THE COMPANIES (CONSOLIDATION) ACT, 1908 (8 EDW. 7, c. 69).

Preliminary.

Commencement of Order.

1. This Order shall take effect and come into operation on the 1st day of June, 1909, and shall apply to all proceedings in the High Court of Justice with relation to the confirmation by the Court of the reduction of the capital of Companies whether commenced before or after that day, but every such proceeding taken before that day shall have the same validity as it would have had if this Order had not been made.

Revocation of former Orders.

2. The General Orders of the Court of Chancery of the 21st day of March, 1868, and the 2nd day of March, 1869, and the forms thereby prescribed are hereby revoked and annulled provided that such revocation and annulment shall not prejudice or affect anything done or suffered before the date on which this Order comes into operation under any Order or Rule which is hereby revoked and annulled.

3. In this Order—

Interpretation.

"The Act" means the Companies (Consolidation) Act, 1908, and Sections 46 to 56 thereof are particularly referred to.

"The Court" includes any Judge of the High Court of Justice having for the time being jurisdiction to confirm the reduction of the capital of Companies.

"Judge" means any Judge of the High Court having for the time being jurisdiction to confirm the reduction of the capital of Companies and includes any Registrar, Master, or other Officer exercising the powers of any such Judge.

"The Petition" means the petition presented by the Company for the confirmation by the Court of the reduction of the capital of the Company.

"The Company" means the Company which presents the petition for reduction of its capital.

Application of Rules of Supreme Court.

4. The Rules of the Supreme Court for the time being in force and the general practice of that Court including the course of procedure and practice in Chambers shall apply as regards all proceedings in relation to the confirmation of any reduction of capital by the Court so far as may be practicable except if and so far as by the Act or this Order otherwise provided. In particular if and when the Court is for the time being a Judge of the Chancery Division the provisions of Order 5, Rule 9 (A), shall apply to all such proceedings as being business assigned within the meaning of that Rule.

Title of petition.

5. The petition and all notices, affidavits and other proceedings under the petition shall be intituled in the matter of the Company, and in the matter of "The Companies (Consolidation) Act, 1908."

Summons for directions.

6.—(1) When the petition has been presented, an application shall, in every case, be made, *ex parte*, by summons in chambers, to the judge, for directions as to the proceedings to be taken preliminary to the hearing of the petition or otherwise with reference thereto.

(2) Upon the hearing of the summons, or upon any adjourned hearing or hearings thereof or any subsequent application, the Judge may make such order or orders and give such directions as he may think fit as to all the proceedings to be taken on and with reference to the petition, and more particularly with respect to the following matters, that is to say—

(*a*.) The publication of notice of the presentation of the petition;

(*b*.) In cases within section 49 (1) of the Act, the proceedings to be taken for settling the list of creditors entitled to object to the proposed reduction; fixing the date with reference to which the list of such creditors is to be made out, pursuant to that section; and generally fixing a time for and giving directions as to all other necessary or proper steps in the matter of the petition whether expressly mentioned in any of the Rules of this Order or not.

(3) In cases within section 49 (1) of the Act, the first insertion in a newspaper of the notice of presentation of the petition and fixing the date with reference to which the list of creditors is to be made out, shall be directed to be made at such time before the date so fixed as the Judge shall think fit, not being, unless for special reasons shewn to the satisfaction of the Judge, less than one calendar month before the date so fixed, and in such cases the first order upon the summons for directions may be in the Form No. 1 in the Schedule hereto, with such variations as the circumstances of the case may require.

Advertisement of petition.

7. Notice of the presentation of the petition shall be published at such times, and in such newspapers as the judge shall direct, and may be in the Form No. 2 in the Schedule hereto, with such variations as the circumstances of the case may require.

Affidavit as to creditors.

8. In cases within Section 49 (1) of the Act the company shall within such time as the judge shall direct, file in the Central Office of the High Court of Justice, or if the petition is pending before a Judge to whom the jurisdiction to wind up companies is assigned in the office of the Registrar Companies (Winding-up) as the case

may be, an affidavit made by some officer or officers of the company competent to make the same, verifying a list containing so far as possible the names and addresses of the creditors of the company as defined by that Section at the date fixed as mentioned in Rule 6 (2) (*b*) of this Order, and the amounts due to them respectively, or in the case of any debt payable on a contingency or not ascertained or any claim admissible to proof in a winding up of the company the value, so far as can be justly estimated of such debt or claim, and leave the said list and an office copy of such affidavit at the chambers of the judge.

Form of affidavit.

9. The person making such affidavit shall state therein his belief that such list is correct and that there was not at the date so fixed as aforesaid any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, except the debts and claims set forth in such list, and shall state his means of knowledge of the matters deposed to in such affidavit Such affidavit may be in the Form No. 3 in the schedule hereto, with such variations as the circumstances of the case may require.

Inspection of list of creditors.

10. Copies of such list containing the names and addresses of the creditors, and the total amount due to them (including the value of any debts or claims estimated as aforesaid), but omitting the amounts due to them respectively or (as the judge shall think fit) complete copies of such list, shall be kept at the registered office of the company and at the offices of their solicitors and London Agents (if any) and any person desirous of inspecting the same may at any time during the ordinary hours of business inspect and take extracts from the same on payment of the sum of one shilling.

Notice to creditors.

11. The company shall, within seven days after the filing of such affidavit, or such further or other time as the judge may allow, send to each creditor whose name is entered in the said list a notice stating the amount of the proposed reduction of capital, and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor is entered in the said list, and the time (such time to be fixed by the judge) within which, if he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his solicitor (if any) to the solicitor of the company; and such notice shall be sent through the post in a prepaid letter addressed to each creditor at his last known address or place of abode, and may be in the form or to the effect of the Form No. 4 set forth in the schedule hereto, with such variations as the circumstances of the case may require.

Advertisement as to list of creditors.

12. Notice of the list of creditors shall, after the filing of the affidavit mentioned in Rule 8 of this Order be published at such times, and in such newspapers, as the judge shall direct. Every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of creditors may be inspected, and the time within which creditors of the company who are not entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the solicitor of the company; and such notice may be in the Form No. 5 set forth in the schedule hereto, with such variations as the circumstances of the case may require.

Affidavit as to result of Rules 11 and 12.

13. The Company shall, within such time as the judge shall direct, file in the Central Office of the High Court of Justice, or in the office of the Registrar Companies (Winding-up) as the case may be, an affidavit made by the person to whom the particulars of debts or claims are by such notices as are mentioned in Rules 11 and 12 of this Order, required to be sent in, stating the result of such notices respectively, and verifying a list containing the names and addresses of the persons (if any) who shall have sent in the particulars of their debts or claims in pursuance of such notices

respectively, and the amounts of such debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit may be in the Form No. 6 in the schedule hereto, with such variations as the circumstances of the case may require; and such list and an office copy of such affidavit shall, within such time as the judge shall direct be left at the chambers of the judge.

Proceedings where claim not admitted.

14. If any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then and in every such case, unless the company are willing to appropriate in such manner as the judge shall direct the full amount of such claim or debt, the company shall, if the judge think fit so to direct, send to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the company, by a day to be therein named, being not less than four clear days after such notice, and being the time appointed by the judge for adjudicating upon such debts and claims, and such notice shall be sent in the manner mentioned in Rule 11 of this Order, and may be in the Form No. 7 in the schedule hereto, with such variations as the circumstances of the case may require.

Costs of proof.

15. Such creditors as come in to prove their debts or claims in pursuance of any such notice as is mentioned in Rule 14 of this Order shall be allowed their costs of proof against the company, and be answerable for costs, in the same manner as in the case of persons coming in to prove debts under an administration judgment.

Certificate as to creditors.

16. The result of the settlement of the list of creditors shall be stated in a certificate by the Master in the case of an application to the Chancery Division or by the Registrar in the case of an application to the Judge in Companies Winding-up, and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the company are willing to appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by Section 49 (3) of the Act, and this Order, and the debts or claims (if any) the full amount of which is not admitted by the company, nor such as the company are willing to appropriate and the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been secured in manner provided by Section 49 (3) of the Act and the persons to or by whom the same are due or claimed; but it shall not be necessary to show in such certificate the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid.

Evidence of consent of creditor.

17. The consent of any creditor, whether in respect of a debt due or presently due or a debt payable on a contingency or not ascertained or a claim admissible to proof in a winding-up of the company, may be evidenced in any manner which the Judge shall think reasonably sufficient having regard both to the amount of his debt or claim and all the circumstances of the case.

Certificate before hearing of petition.

18. In any case within section 49 (1) of the Act, the petition shall not be heard until the expiration of at least eight clear days from the filing of such certificate as is mentioned in Rule 16 of this Order.

Advertisement of hearing.

19. Before the hearing of the petition notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers as the judge shall direct.

Such notices may be in the Form No. 8 in the schedule hereto, with such variations as the circumstances of the case may require.

Who may appear.

20. Any creditor settled on the said list whose debt or claim has not before the hearing of the petition, been discharged or determined, or been secured in manner provided by Section 49 (3) of the Act, and who has not before the hearing consented to the proposed reduction of capital, may, if he think fit, upon giving two clear days' notice to the solicitor of the company of his intention so to do, appear at the hearing of the petition and oppose the application.

Costs of appearance.

21. Where a creditor who appears at the hearing under the last preceding Rule is a creditor the full amount of whose debt or claim is not admitted by the company, and the validity of such debt or claim has not been inquired into and adjudicated upon under Section 49 (3) of the Act, the costs of and occasioned by his appearance shall be dealt with as to the Court shall seem just, but in all other cases a creditor appearing under the last preceding Rule shall be entitled to the costs of such appearance, unless the Court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed.

Directions at the hearing.

22. When the petition comes on to be heard the Court may, if it shall so think fit, give such directions as may seem proper with reference to the securing in manner mentioned in Section 49 (3) of the Act the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, if the Court shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

Order confirming reduction.

23. Where the Court makes an order confirming a reduction, such order shall give directions in what manner, and in what newspapers, and at what times, notice of the registration of the order and of such minute as mentioned in Section 51 of the Act is to be published; and (unless it shall have dispensed altogether with the addition of the words "and Reduced" or shall then dispense with any further use thereof) shall fix the date until which the words "and Reduced" are to be deemed part of the name of the company as mentioned in Section 48 of the Act.

Fees.

Solicitors' fees.

Court fees.

24. Solicitors shall be entitled to charge and be allowed for duties performed under the Act in relation to matters dealt with by this Order the same fees as they have heretofore been entitled to charge and be allowed for the like duties performed under the Companies Acts, 1862 to 1907, unless the Court or Judge shall otherwise specially direct.

Court fees.

25. The same fees of Court shall be paid in relation to proceedings dealt with by this Order as have heretofore been paid in relation to like proceedings dealt with by the General Orders of the 21st day of March, 1868, and the 2nd day of March, 1869, and such fees shall be collected by stamps in the like manner as the same have heretofore been collected or in such other manner as may from time to time be directed by the Lords Commissioners of His Majesty's Treasury in pursuance of the powers vested in them by the Public Officers' Fees Act, 1879.

The Schedule.

No. 1. FORM OF ORDER. [RULE 6 (3).

[For this form see p. 654.]

No. 2. [*See* RULE 7.]

[For this form see p. 654.]

No. 3. AFFIDAVIT VERIFYING LIST OF CREDITORS.

[RULE 9.]

[For this form see pp. 654 *et seq.*]

No. 4. [*See* RULE 11.]

[For this form see pp. 656 and 657.]

No. 5. [*See* RULE 12.]

[For this form see p. 657.]

No. 6. [RULE 13.]

[For this form see pp. 659 *et seq.*]

No. 7. [*See* RULE 14.]

[For this form see pp. 661 and 662.]

No. 8. [*See* RULE 19.]

[For this form see p. 668.]

The 3rd of May, 1909.

Loreburn, C.
Herbert H. Cozens Hardy, M.R.
R. L. Vaughan Williams, L.J.
R. J. Parker, J.
Christopher James.
James S. Beale, Pres. Law Soc.

III.

STATUTORY RULES AND ORDERS, 1909.

No. $\frac{323}{\text{L. } 10}$.

COMPANY, ENGLAND.

Companies (Winding-up).

THE COMPANIES (WINDING-UP) RULES, 1909, DATED MARCH 29, 1909, MADE PURSUANT TO THE COMPANIES (CONSOLIDATION) ACT, 1908 (8 EDW. 7, c. 69), AND THE JUDICATURE ACT, 1881 (44–5 V. c. 68).

PRELIMINARY.

Application of rules.

1. Subject to the limitation hereinafter mentioned these Rules shall apply to the proceedings in every Winding-up under the Act of a Company, which shall commence on and after the date on which these Rules come into operation, and they shall also, so far as practicable, and subject to any general or special order of the Court, apply to all proceedings which shall be taken or instituted after the said date, in the Winding-up of a Company which commenced on or after the first day of January, 1891. Rules which from their nature and subject matter are, or which by the head lines above the group in which they are contained or by their terms are made applicable only to the proceedings in a Winding-up by the Court, shall not apply to the proceedings in a Voluntary Winding-up, or Winding-up under the Supervision of the Court.

Interpretation of terms.

2. In these Rules, unless the context or subject-matter otherwise requires :—

"The Act" means the Companies (Consolidation) Act, 1908.

"The Company" means a company which is being wound-up, or against which proceedings to have it wound-up have been commenced.

"Court" means the Court which has jurisdiction to wind-up the Company.

"Creditor" includes a corporation, and a firm of creditors in partnership.

"Gazetted" means published in the *London Gazette*.

"Judge" means in the High Court the Judge who for the time being exercises the jurisdiction of the High Court to wind-up Companies, and in any Court the Judge thereof, or officer who exercises the powers of the Judge thereof.

"Liquidator" includes an Official Receiver when acting as Liquidator.

"Official Receiver" includes any officer appointed by the Board of Trade to discharge the duties of Official Receiver under the Act.

"Palatine Court" means one of the Chancery Courts of the counties Palatine of Lancaster and Durham.

"Proceedings" means the proceedings in the winding-up of a Company under the Act.

"Registrar" means in the High Court any of the Registrars in Bankruptcy of the High Court, and any person who shall be appointed to fill the office of Registrar under these Rules, and where a winding-up of a Company is in the District Registry of Liverpool or Manchester means the District Registrar; and in a County Court, where there are joint Registrars means either of such Registrars, or a Deputy Registrar, and in any Court other than the High Court, means the officer of the Court whose duty it is to exercise in relation to a winding-up the functions which in the High Court are exercised by a Registrar or Master.

"The Rules" means these Rules, and includes the prescribed Forms.

"Sealed" means sealed with the seal of the Court.

"Taxing Officer" means the officer of the Court whose duty it is to tax costs in the proceedings of the Court under its ordinary jurisdiction.

Words importing the masculine gender shall include females.

Words in the singular shall include the plural and words in the plural shall include the singular.

The expression "person" shall include any body of persons corporate or unincorporate.

Expressions referring to writing shall include printing, lithography, photography, and other methods of representing or reproducing words in a visible form.

Use of forms in Appendix.

3.—(1) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct.

(2.) Provided that the Board of Trade may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof. Where the Board of Trade alters any form, or substitutes any new form in lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the *London Gazette*.

COURT AND CHAMBERS.

Office of Registrar in High Court.

4.—(1.) All proceedings in the winding-up of Companies in the High Court shall from time to time be attached to one or more of the Registrars, who shall, together with the necessary clerks and

officers, and subject to the Act and Rules, act under the general or special directions of the Judge.

(2.) Every other Registrar may act for and in place of such Registrar as above-mentioned in all proceedings under the Acts and Rules, including the holding of public examinations, and when so acting such other Registrar shall be deemed to be the Registrar for the purposes of the Act and Rules.

(3.) In every cause or matter within the jurisdiction of the Judge, whether by virtue of the Act, or by transfer, or otherwise, the Registrar shall, in addition to his powers and duties under the Rules, have all the powers and duties of a Master, Registrar, or Taxing Master.

Matters in High Court to be heard in Court and Chambers.

5.—(1.) The following matters and applications in the High Court shall be heard before the Judge in open Court :—

(*a.*) Petitions.

(*b.*) Appeals to the High Court from the Board of Trade and from the Official Receiver when acting as Official Receiver and not as Liquidator.

(*c.*) Applications under section 223 of the Act.

(*d.*) Applications by the Board of Trade under section 224 of the Act.

(*e.*) Applications for the committal of any person to prison for contempt.

(*f.*) Such matters and applications as the Judge may from time to time by any general or special orders direct to be heard before him in open Court.

(2.) Examinations of persons summoned before the High Court under section 174 of the Act, shall be held in Court or in Chambers as the Court shall direct.

(3.) Every other matter or application in the High Court under the Act to which the Rules apply may be heard and determined in Chambers.

Proceedings in Courts other than High Court.

6.—(1.) In Courts other than the High Court the following matters and applications to the Court shall be heard in open Court :—

(*a.*) Petitions.

(*b.*) Public Examinations.

(*c.*) Applications under sub-section (1) of section 217 of the Act.

(*d.*) Applications to rectify the Register.

(*e.*) Appeals from the Official Receiver and Board of Trade.

(*f.*) Appeals from any decision or act of the Liquidator.

(*g.*) Applications relating to the admission or rejection of proofs.

(*h.*) Proceedings under section 215 of the Act.

(*i.*) Applications under section 223 of the Act.

(*j.*) Applications for the committal of any person to prison for contempt.

(*k.*) Such matters and applications as the Judge may from time to time by any general or special orders direct to be heard before him in open Court.

(2.) Any other matter or application may be heard and determined in Chambers.

Applications in Chambers.

7. Subject to the provisions of the Act and Rules in every Court :—

(1.) The Registrar may under the general or special directions of the Judge hear and determine any application or matter which under the Act and Rules may be heard and determined in Chambers.

(2.) Any matter or application before the Registrar may at any time be adjourned by him to be heard before the Judge either in Chambers or in Court.

(3.) Any matter or application may, if the Judge or as the case may be, the Registrar, thinks fit be adjourned from Chambers to Court, or from Court to Chambers.

Motions and

8.—(1.) Every application in Court other than a petition, shall

be made by motion, notice of which shall be served on every person against whom an order is sought, not less than two clear days before the day named in the notice for hearing the motion, which day must be one of the days appointed for the Sittings of the Court.

Summonses. Form 3.

(2.) Every application in Chambers shall be made by summons, which, unless otherwise ordered, shall be served on every person against whom an order is sought, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons.

Place of Sitting of County Court.

9. Subject to the orders of the Lord Chancellor the place of Sitting of each County Court having jurisdiction under the Act shall for the purposes of such jurisdiction, be the town and place in which the Court holds its Sittings for the general business of the Court, under the County Courts Acts.

Times for holding Courts other than the High Court.

10. Subject to the provisions of the Act, the times of the Sitting of each Court, other than the High Court in matters of the winding-up of Companies shall be those which are appointed for the transaction of the general business of the Court, unless the Judge of any such Court shall otherwise order.

PROCEEDINGS.

Title of proceedings. Forms 1 and 2.

11.—(1.) Every proceeding in a winding-up matter shall be dated, and shall with any necessary additions, be intituled as follows:—

IN THE COURT
COMPANIES (WINDING-UP)
In the Matter of the Companies (Consolidation) Act, 1908.

with the name of the matter to which it relates. Numbers and dates may be denoted by figures.

(2.) The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the office of the Registrar, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

Written or printed proceedings.

12. All proceedings shall be written or printed, or partly written or partly printed on paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts, and must have a stitching margin; but no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size.

Process to be sealed.

13. All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the Court) and office copies in any winding-up matter shall be sealed.

Issue of Summonses.

14. Every summons in a winding-up matter in the High Court shall be prepared by the Applicant or his Solicitor, and issued from the office of the Registrar. A summons, when sealed, shall be deemed to be issued. The person obtaining the summons shall leave in the Registrar's office a duplicate which shall be stamped with the prescribed stamp and filed.

Orders.

15. Every order, whether made in Court or in Chambers in the winding-up of a Company shall be drawn up by the Registrar, unless in any proceeding, or classes of proceedings, the Judge or Registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the Judge or the Registrar making the order, shall be sufficient evidence of the order having been made.

File of proceedings in office of Registrar (High Court).

16. All petitions, affidavits, summonses, orders, proofs, notices, depositions, bills of costs and other proceedings in the High Court in a winding-up matter shall be kept and remain of record in the office of the Registrar and, subject to the directions of the Court, shall be placed in one continuous file, and no proceeding in any winding-up matter shall be filed in the Central Office.

File of pro-

17. In Courts other than the High Court a file of proceedings

ceedings in Courts other than High Court.

in every winding-up matter shall be kept on which, subject to the directions of the Court, all petitions, affidavits, summonses, orders, proofs, notices, depositions, and other proceedings in the matter shall be placed and remain of record as far as possible in continuous order.

Office copies.

18. In every Court all office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the Official Receiver or any liquidator, contributory, creditor, officer of a Company, or other person entitled thereto, shall be provided by the Registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay, and in the order in which they shall have been bespoken.

Inspection of file.

19. Every person who has been a director or officer of a Company which is being wound up, and every duly authorised officer of the Board of Trade, shall be entitled, free of charge, and every contributory and every creditor whose claim or proof has been admitted, shall be entitled on payment of a fee of one shilling for each hour or part of an hour occupied, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any document therein, or to be furnished with such copies or extracts at a rate not exceeding fourpence per folio of seventy-two words.

Use of file by Board of Trade and Official Receiver.

20. Where, in the exercise of their functions under the Act or Rules, the Board of Trade or the Official Receiver requires to inspect or use the file of proceedings the Registrar shall (unless the file is at the time required for use in Court or by him) on request, transmit the file of proceedings to the Board of Trade or Official Receiver, as the case may be.

Defacement of stamps.

21. Every officer of a Court who shall receive any document to which an adhesive stamp shall be affixed, shall immediately upon receipt of the document deface the stamp thereon, in the High Court in such manner as the Commissioners of Inland Revenue may from time to time direct, and in any other Court by writing partly on the stamp and partly on the document the name of the matter, or in such other manner as the Commissioners of Inland Revenue may from time to time direct, and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid; and it shall be the duty of the party presenting or receiving such document to see that the defacement hereby prescribed has been duly made.

Service and Execution of Process and Enforcement of Orders.

Duties of Bailiff in County Court.

22.—(1) It shall be the duty of the High Bailiff of a County Court to serve such orders, summonses, petitions and notices as the Court may require him to serve; to execute warrants and other process; to attend any sittings of the Court (but not sittings in Chambers); and to do and perform all such things as may be required of him by the Court.

(2.) But this rule shall not be construed to require any order, summons, petition, or notice to be served by a bailiff or officer of the Court which is not specially by the Act or Rules required to be so served, unless the Court in any particular proceeding by order specially so directs.

Service.

23.—(1.) All notices, summonses, and other documents other than those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith; and the notice, summons, or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post office, and notwithstanding the same may be returned by the post office.

(2.) No service shall be deemed invalid by reason that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the

person's name, provided that the Court is satisfied that in other respects the service of the document has been sufficient.

Enforcement of Orders.

24.—(1.) Every order of a Court having jurisdiction to wind up a Company, made in the exercise of the powers conferred by the Acts and Rules, may be enforced by such Court as if it were a judgment or order of the Court made in the exercise of its ordinary jurisdiction.

(2.) Every such order of a County Court, and every process issued therein may be enforced, executed and dealt with not only by such Court, but by any County Court, whether such County Court has or has not jurisdiction to wind up a Company, as if such order or process were made or issued for the enforcement of a judgment or order made by such last mentioned Court in the exercise of its ordinary jurisdiction.

PETITION.

Form of petition. Forms 4 and 5.

25. Every petition for the winding-up of a Company by the Court, or subject to the supervision of the Court, shall be in the Forms Nos. 4 and 5 in the Appendix with such variations as circumstances may require.

Presentation of petition.

26. A petition shall be presented at the office or chambers of the Registrar, who shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof, and the Registrar may at any time before the Petition has been advertised, alter the time appointed, and fix another time.

Advertisement of petition. Form 6.

27. Every petition shall be advertised seven clear days before the hearing as follows:—

(1.) In the case of a Company whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles of the principal entrance of the Royal Courts of Justice once in the *London Gazette*, and once at least in one London daily morning newspaper, or in such other newspaper as the Court directs.

(2.) In the case of any other Company, once in the *London Gazette*, and once at least in one local newspaper circulating in the district where the registered office, or principal or last known principal place of business, as the case may be, of such Company is or was situate, or in such other newspaper as shall be directed by the Court.

(3.) The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any), and shall contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his solicitors or London agent, within the time and manner prescribed by Rule 33, and an advertisement of a petition for the winding-up of a Company by the Court which does not contain such a note shall be deemed irregular.

And if the Petitioner or his Solicitor does not within the time hereby prescribed or within such extended time as the Registrar may allow duly advertise the Petition in the manner prescribed by the said Rule the appointment of the time and place at which the Petition is to be heard shall be cancelled by the Registrar and the Petition shall be removed from the file in the Companies (Winding-up) Office unless the Judge or the Registrar shall otherwise direct.

Service of petition. Forms 7 and 8.

28. Every petition shall, unless presented by the Company, be served upon the Company at the registered office, if any, of the Company, and if there is no registered office, then at the principal or last known principal place of business of the Company, if any such can be found, by leaving a copy with any member, officer, or

servant of the Company there, or in case no such member, officer, or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member or members of the Company as the Court may direct; and where the Company is being wound up voluntarily, the petition shall also be served upon the Liquidator (if any), appointed for the purpose of winding-up the affairs of the Company.

Verification of petition. Form 9.

29. Every petition for the winding-up of a Company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a corporation, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *primâ facie* evidence of the statements in the petition.

Copy of petition to be furnished to creditor or contributory.

30. Every contributory or creditor of the Company shall be entitled to be furnished, by the solicitor of the petitioner with a copy of the petition, within 24 hours after requiring same, on paying the rate of 4*d.* per folio of 72 words for such copy.

Official Receiver as Provisional Liquidator.

Appointment of Provisional Liquidator.

31.—(1.) After the presentation of a petition, upon the application of a creditor, or of a contributory, or of the Company, and upon proof by affidavit of sufficient grounds for the appointment of the Official Receiver as Provisional Liquidator, the Court, if it thinks fit, and upon such terms as in the opinion of the Court shall be just and necessary, may make the appointment.

Form 10.

(2.) The Order appointing the Official Receiver to be Provisional Liquidator, shall bear the number of the petition, and shall state the nature and a short description of the property of which the Official Receiver is ordered to take possession, and the duties to be performed by the Official Receiver.

(3.) Subject to any Order of the Court, if no order for the winding-up of the Company is made upon the Petition, or if an order for the winding-up of the Company on the Petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made continuing the voluntary winding-up of the Company subject to the supervision of the Court, the Official Receiver as Provisional Liquidator shall be entitled to be paid, out of the property of the Company, all the costs, charges, and expenses properly incurred by him as Provisional Liquidator, including the fees payable to the Board of Trade under the scale of fees in force for the time being, and may retain out of such property the amounts of such costs, charges, expenses, and fees.

Hearing of Petitions and Orders Made Thereon.

Attendance before hearing to show compliance with rules.

32. After a petition has been presented, the petitioner, or his Solicitor, shall, on a day, to be appointed by the Registrar, attend before the Registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein and the affidavit of service (if any) have been duly filed, and that the provisions of the Rules as to petitions for winding-up Companies have been duly complied with by the petitioner. No order for the winding-up of a Company shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the Registrar at the time appointed, and satisfied him in manner required by this Rule.

Notice by persons who intend to appear.

33. Every person who intends to appear on the hearing of a petition shall serve on, or send by post to, the petitioner, or his solicitor or London agent, at the address stated in the advertisement of the petition, notice of his intention. The notice shall contain the address of such person, and shall be signed by him or by his solicitor or London agent, and shall be served, or if sent by post shall be posted in such time as in ordinary course of post to reach the address not later than six o'clock in the afternoon of the day

previous to the day appointed for the hearing of the petition. The notice may be in Form 11 with such variations as circumstances may require. A person who has failed to comply with this Rule shall not, without the special leave of the Court, be allowed to appear on the hearing of the petition.

Form 11.

34. The petitioner, or his solicitor or London agent, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in Form 12. On the day appointed for hearing the petition a fair copy of the list (or if no notice of intention to appear has been given a statement in writing to that effect) shall be handed by the petitioner, or his solicitor or London agent, to the Court prior to the hearing of the petition.

List of names and addresses of persons who appear on the petition. Form 12.

35.—(1). Affidavits in opposition to a petition that a Company may be wound up under the order or subject to the supervision of the Court shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or the solicitor or London agent of the petitioner, on the day on which the affidavit is filed.

Affidavits in opposition and reply.

(2.) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within three days of the date on which notice of such affidavit is received by the petitioner or the solicitor or London agent of the petitioner.

36. When a petitioner consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned, or, if appearing, does not apply for an order in the terms of the prayer of his petition, the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition, and who is desirous of prosecuting the petition.

Substitution of creditor or contributory for withdrawing petitioner.

ORDER TO WIND-UP A COMPANY.

37. When an order for the winding-up of a Company, or for the appointment of the Official Receiver as Provisional Liquidator prior to the making of an order for the winding-up of the Company, has been pronounced in Court, the Registrar shall, on the same day, send to the Official Receiver a notice informing him that the order has been pronounced.

The notice may be in Forms 13 and 14 respectively, with such variations as circumstances may require.

Notice that winding-up order has been pronounced to be given to Official Receiver. Forms 13 and 14.

38. It shall be the duty of the petitioner, or his solicitor or London agent, and of all other persons who have appeared on the hearing of the petition, at latest on the day following the day on which an order for the winding-up of a Company is pronounced in Court, to leave at the Registrar's office all the documents required for the purpose of enabling the Registrar to complete the order forthwith.

Documents for drawing up order to be left with Registrar.

39. It shall not be necessary for the Registrar to make an appointment to settle the order, unless in any particular case the special circumstances make an appointment necessary.

No appointment for settling order.

40. An order to wind up a Company shall contain at the foot thereof a notice stating that it will be the duty of the person who is at the time Secretary or chief officer of the Company, and of such of the persons who are liable to make out or concur in making out the Company's statement of affairs as the Official Receiver may require, to attend on the Official Receiver forthwith on the service of the order at the place mentioned therein.

Contents of winding-up order. Forms 15.

41.—(1.) When an order that a Company be wound up, or for the appointment of the Official Receiver as Provisional Liquidator has been made :—

Transmission and advertisement of

winding-up order.

(a.) Three copies of the order sealed with the seal of the Court shall forthwith be sent by post or otherwise by the Registrar to the Official Receiver.

(b.) The Official Receiver shall cause a sealed copy of the order to be served upon the Secretary or other Chief Officer of the Company at the registered office of the Company (if any), or upon such other person or persons, or in such other manner as the Court may direct, and if the order is that the Company be wound up by the Court, shall forward to the Registrar of Companies the copy of the order which by Section 143 of the Act is directed to be so forwarded by the Company.

(c.) The Official Receiver shall forthwith give notice of the order to the Board of Trade, who shall forthwith cause the notice to be gazetted.

Form 17.

(d.) The Official Receiver shall forthwith send notice of the order to such local paper as the Board of Trade may from time to time direct, or, in default of such direction, as he may select.

Form 16.

(2.) An order for the winding-up of a Company, subject to the supervision of the Court, shall before the expiration of twelve days from the date thereof be advertised by the petitioner, once in the *London Gazette*, and shall be served on such persons (if any) and in such manner as the Court shall direct.

TRANSFERS OF ACTIONS AND PROCEEDINGS.

Transfer of actions.

42.—(1.) Where an order has been made in the High Court for the winding-up of a Company the Judge shall have power, without further consent, to order the transfer to him of any action, cause or matter pending in any other Court or Division brought or continued by or against the Company, and any action or proceeding by a mortgagee or debenture holder of the Company against the Company, for the purpose of realising his security, or by any other person for the purpose of enforcing a claim against the Company's assets or property, which is pending in the High Court or before any Judge thereof shall without further order be transferred to the Judge of the High Court. In the case of applications in Chambers in actions so transferred where the practice in winding-up is different from the practice in the Chancery Division the practice in winding-up shall prevail.

(2.) Where any action brought by or against a Company against which a winding-up order has been made is transferred to the Judge of the High Court, the Registrar may, under the general or special directions of the Judge, hear, determine and deal with any application, matter, or proceeding which, if the action had not been transferred, would have been determined in Chambers. These provisions shall apply to the proceedings in any action in which by the Rules of the Supreme Court or otherwise the Chamber proceedings are directed to be dealt with by the Registrar.

Transfer of proceedings by Judge of High Court. Form 18.

43. The Judge of the High Court may at any time, for good cause shown, order the proceedings in any Court other than the High Court to be transferred to the High Court, or any proceedings in the High Court to be transferred from the High Court to any other Court.

Transfer of proceedings by Judge of Court other than High Court or Palatine Court. Form 18.

44. The Judge of any Court, other than the High Court or a Palatine Court, may at any time, for good cause shown, order any proceedings which have been commenced or are pending in his Court to be transferred to any Court which has jurisdiction to order the winding-up of a Company, not being the High Court or a Palatine Court.

Notice of application to Official Receiver.

45. In a winding-up by the Court, notice of an application for a transfer of proceedings shall before the hearing thereof, be served by the applicant on the Official Receiver of the Court in which the proceedings are pending and on the Official Receiver of the Court to which the proceedings are sought to be transferred.

46. When an order for the transfer of proceedings has been made :— Procedure where proceedings transferred.

(1.) The person on whose application the transfer has been made shall lodge with the Registrar of the Court to which the proceedings are transferred a sealed copy of the order of transfer. Form 19.

(2.) In a winding-up by the Court the Official Receiver of the Court to which the proceedings are transferred shall become the Official Receiver in the proceedings.

(3.) The records of the proceedings shall be transmitted to the Registrar of the Court to which the proceedings are transferred, and in a winding-up by the Court such Registrar, as soon as he has received the records, shall give notice of the transfer to the Official Receiver of his Court, who shall give notice of the transfer to the Board of Trade.

(4.) The proceedings shall receive a new distinctive number.

47. Whenever the Lord Chancellor, by order under his hand, shall exclude any County Court from having jurisdiction under the Act, or shall attach the district or any part of the district of a County Court to the High Court, or any other County Court, or shall detach the district or any part of the district of any County Court from the district and jurisdiction of the High Court, any winding-up matters pending in the Court or district to which the order relates shall become transferred to such Court as shall be mentioned for the purpose in the order; and, thereupon, the Rules as to transfer of proceedings shall apply to the transfer of such pending proceedings in all respects as if the proceedings had been transferred by order of a Court having power to transfer proceedings. Transfer of jurisdiction of County Court.

SPECIAL MANAGER.

48.—(1.) An application by the Official Receiver for the appointment of a special manager shall be supported by a report of the Official Receiver, which shall be placed on the file of proceedings, and in which shall be stated the amount of remuneration which, in the opinion of the Official Receiver, ought to be allowed to the special manager. No affidavit by the Official Receiver in support of the application shall be required. Appointment of Special Manager.

(2.) The remuneration of the special manager shall, unless the Court otherwise in any special case directs, be stated in the order appointing him, but the Court may at any subsequent time for good cause shown make an order for payment to the special manager of further remuneration.

(3.) A copy of the order appointing a special manager shall be transmitted to the Board of Trade by the Official Receiver.

49. Every special manager shall account to the Official Receiver, and the Special Manager's accounts shall be verified by affidavit, and, when approved by the Official Receiver, the totals of the receipts and payments shall be added by the Official Receiver to his accounts. Accounting by Special Manager. Form 20.

STATEMENT OF AFFAIRS.

50.—(1.) Every person who under section 147 of the Act, has been required by the Official Receiver to submit and verify a statement as to the affairs of the Company, shall be furnished by the Official Receiver with forms and instructions for the preparation of the statement. The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The Official Receiver shall cause to be filed with the Registrar the verified statement of affairs. Preparation of statement of affairs. Form 26.

(2.) The Official Receiver may from time to time hold personal interviews with every such person for the purpose of investigating the Company's affairs, and it shall be the duty of every such person to attend on the Official Receiver at such time and place as the

Official Receiver may appoint and give the Official Receiver all information that he may require.

Extension of time for submitting statement of affairs.

51. When any person requires any extension of time for submitting the statement of affairs, he shall apply to the Official Receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings in the winding-up and shall render an application to the Court unnecessary.

Information subsequent to statement of affairs.

52. After the statement of affairs of a Company has been submitted to the Official Receiver it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the Official Receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the Official Receiver in relation to the Statement of Affairs.

Default.

53. Any default in complying with the requirements of section 147 of the Act, may be reported by the Official Receiver to the Court.

Expenses of statement of affairs.

54. A person who is required to make or concur in making any statement of affairs of a Company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the Official Receiver for his sanction, and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the Court, no person shall be allowed out of the assets of the Company any costs or expenses which have not before being incurred been sanctioned by the Official Receiver.

APPOINTMENT OF LIQUIDATOR IN A WINDING-UP BY THE COURT.

Appointment of Liquidator on report of meetings of creditors and contributories.

55.—(1.) As soon as possible after the first meetings of creditors and contributories have been held the Official Receiver, or the Chairman of the meeting, as the case may be, shall report the result of each meeting to the Court.

Form 27.

(2.) Upon the result of the meetings of creditors and contributories being reported to the Court, the Court may, if the meeting of creditors and the meeting of contributories have each passed the same resolutions, or if the resolutions passed at the two meetings are identical in effect, upon the application of the Official Receiver, forthwith make the appointments necessary for giving effect to such resolutions. In any other case the Court shall, on the application of the Official Receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences (if any), and making such order as shall be necessary.

(3.) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the Official Receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.

(4.) Upon the consideration of the resolutions and determinations of the meetings the Court shall hear the Official Receiver and any creditor or contributory.

Forms 28 and 103 (7).

(5.) If a Liquidator is appointed a copy of the order appointing him shall be transmitted to the Board of Trade by the Official Receiver, and the Board of Trade shall, as soon as the Liquidator has given security, cause notice of the appointment to be gazetted. The expense of gazetting the notice of the appointment shall be paid by the Liquidator, but may be charged by him on the assets of the Company.

Form 30.

(6.) Every appointment of a Liquidator or Committee of Inspection shall be advertised by the Liquidator in such manner as the Court directs immediately after the appointment has been made, and the Liquidator has given the required security.

(7.) If a Liquidator in a winding-up by the Court shall die, or resign, or be removed, another Liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the Official Receiver shall, on the request of not less than one-

tenth in value of the creditors or contributories summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this Rule shall apply where the Liquidator is released under section 157 of the Act in which case the Official Receiver shall remain Liquidator.

Style of Official Receiver when he is Liquidator.

56. When the Official Receiver is Liquidator of a Company he shall be styled "Official Receiver and Liquidator."

SECURITY BY LIQUIDATOR OR SPECIAL MANAGER IN A WINDING-UP BY THE COURT.

Standing Security to Board of Trade.

57. In the case of a Special Manager or a Liquidator other than the Official Receiver, the following provisions as to security shall have effect, namely:—

(1.) The security shall be given to such officers or persons, and in such manner as the Board of Trade may from time to time direct.

(2.) It shall not be necessary that security shall be given in each separate winding-up; but security may be given either specially in a particular winding-up, or generally, to be available for any winding-up in which the person giving security may be appointed, either as Liquidator or Special Manager.

(3.) The Board of Trade shall fix the amount and nature of such security, and may from time to time, as they think fit, either increase or diminish the amount of special or general security which any person has given.

Form 29.

(4.) The certificate of the Board of Trade that a Liquidator or Special Manager has given security to their satisfaction shall be filed with the Registrar.

(5.) The cost of furnishing the required security by a Liquidator or Special Manager, including any premiums which he may pay to a Guarantee Society, shall be borne by him personally, and shall not be charged against the assets of the Company as an expense incurred in the winding-up.

Failure to give or keep up security.

58.—(1.) If a Liquidator or Special Manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the Official Receiver shall report such failure to the Court, who may thereupon rescind the order appointing the Liquidator or Special Manager.

(2.) If a Liquidator or Special Manager fails to keep up his security, the Official Receiver shall report such failure to the Court, who may thereupon remove the Liquidator or Special Manager, and make such order as to costs as the Court shall think fit.

(3.) Where an order is made under this Rule rescinding an order for the appointment of or removing a Liquidator, the Court may direct that another Liquidator is to be appointed and thereupon the same meetings shall be summoned and the same proceedings may be taken as in the case of a first appointment of a Liquidator.

PUBLIC EXAMINATION.

Report of Official Receiver to be filed.

59. A report made by the Official Receiver pursuant to Section 148 of the Act shall state, in a narrative form, the facts and matters which the Official Receiver desires to bring to the notice of the Court, and his opinion as required by the said section.

Appointment of time for consideration of report.

60. The Official Receiver may apply to the Court to fix a day for the consideration of the report, and on such application the Court shall appoint a day on which the report shall be considered.

Consideration of report.

61. The consideration of the report shall be before the Judge of the Court personally in Chambers, and the Official Receiver shall personally, or by Counsel or Solicitor, attend the consideration of the report, and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require.

Procedure

62. Where the Judge makes an order under section 175 of

consequent on order for public examination. Form 31.

the Act, directing any person or persons to attend for public examination :—

(*a*.) The examination shall be held before the Judge. Provided that in the High Court the Judge may direct that the whole or any part of the examination of any such person or persons be held before the Registrar, or before any of the persons mentioned in sub-section 9 of the said section.

(*b*.) The Judge may, if he thinks fit, either in the order for examination, or by any subsequent order, give directions as to the special matters on which any such person is to be examined.

(*c*.) Where on an examination held before the Registrar, or one of the persons mentioned in sub-section 9 of the said section, he is of opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person, or any part of the examination, to be held before the Judge.

Application for day for holding examination.

63. Upon an order directing a person to attend for public examination being made, the Official Receiver shall apply for the appointment of a day on which the public examination is to be held.

Appointment of time and place for public examination. Forms 32 and 33.

64. A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the Official Receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

Notice of public examination to creditors and contributories.

65.—(1.) The Official Receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such newspapers as the Board of Trade from time to time direct, or in default of any such direction as the Official Receiver thinks fit, and shall also forward notice of the appointment to the Board of Trade to be gazetted.

(2.) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the Court, be advertised in any newspaper, but it shall be sufficient to publish in the gazette a notice of the time and place fixed for the adjourned examination.

Default in attending. Form 40.

66.—(1.) If any person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the Official Receiver satisfies the Court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the Court, upon its being proved to the satisfaction of the Court that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the Court shall think just.

Warrants of arrest.

(2.) A warrant of arrest issued by the High Court under this Rule shall be issued in the Central Office of the Supreme Court pursuant to an order of the Court directing such issue.

Notes of examination to be filed. Forms 36 and 37.

67. The notes of every public examination shall, after being signed as required by Section 175 (7) of the Act, be filed with the Registrar.

PROCEEDINGS AGAINST DELINQUENT DIRECTORS, PROMOTERS, AND OFFICERS.

Application against delinquent directors, officers, and promoters.

68.—(1.) An application under section 215 of the Act shall in any Court other t n the High Court be made by motion to the Court. In the High Court the application shall be made by a summons returnable in the first instance in Chambers, in which summons shall be stated the nature of the declaration or order for

which application is made, and the grounds of the application, and which summons, unless otherwise ordered by the Court, shall be served, in the manner in which an originating summons is required by the Rules of the Supreme Court to be served, on every person against whom an order is sought, not less than eight days before the day named in the summons for hearing the application. Where the application is made by the Official Receiver or Liquidator he may make a report to the Court stating any facts and information on which he proceeds which are verified by affidavit, or derived from sworn evidence in the proceedings. Where the application is made by any other person it shall be supported by affidavit to be filed by him.

(2.) On the return of the summons the Court may give such directions as it shall think fit for the hearing of the summons before the Judge in Court, the taking of evidence wholly or in part by affidavit or orally, and the cross-examination either before the Judge on the hearing in Court or in Chambers of any deponents to affidavits in support of or in opposition to the application.

Notice of application.

69. Where the application is made by motion, notice of the intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given not less than four days before the hearing of the motion.

Use of depositions taken at public examinations.

70. Where in the course of the proceedings in a winding-up by the Court an order has been made for the public examination of persons named in the order pursuant to section 175 of the Act, and it appears from the examination that the persons examined, or some of them, have misapplied, or retained, or become liable, or accountable for moneys or property of the Company, or been guilty of misfeasance or breach of trust in relation to the Company then in any proceedings subsequently instituted under section 215 of the Act, for the purpose of examining into the conduct of the said persons, or any of them, and compelling repayment or restoration to the Company of any moneys or property, or contribution by way of compensation to the assets of the Company by such persons or any of them, the verified notes of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the Court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made, who, under section 175 of the Act, and the order for the public examination, was or had the opportunity of being present at and taking part in the examination. Provided that before any such notes of a public examination shall be used on any such application, the person intending to use the same shall, not less than fifteen days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to read against him, and furnish him with copies of such notes, or parts of notes (except notes of the person's own depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

Witnesses and Depositions.

Shorthand notes.

71. If the Court or the officer of the Court before whom any examination under the Act and Rules is directed to be held shall in any case, and at any stage of the proceedings, be of opinion that

Forms 34 and 35.

it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined in shorthand or otherwise, it shall be competent for the Court or officer aforesaid to make such appointment. The person at whose instance the examination is taken shall nominate a person for the purpose, and the person so nominated shall be appointed, unless the Court or officer holding the examination shall otherwise order. Every person so appointed shall be paid a sum not exceeding one guinea a day, and a sum not exceeding 8*d*. per folio of 90 words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the assets of the Company as may be directed by the Court.

Committal of contumacious witness.

Form 38.

72.—(1.) If a person examined before a Registrar or other officer of the Court who has no power to commit for contempt of Court, refuses to answer to the satisfaction of the Registrar or officer any question which he may allow to be put, the Registrar or officer shall report such refusal to the Judge, and upon such report being made the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the Judge.

(2.) The report shall be in writing, but without affidavit and shall set forth the question put, and the answer (if any) given by the person examined.

(3.) The Registrar or other officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the Judge, and upon receiving the report the Judge may take such action thereon as he shall think fit. If the Judge is sitting at the time when the default in answering is made, such default may be reported immediately.

Depositions at private examinations.

73.—(1.) The Official Receiver may attend in person, or by an assistant Official Receiver, any examination of a witness under section 174 of the Act, on whosesoever application the same has been ordered, and may take notes of the examination for his own use, and put such questions to the persons examined as the Court may allow.

(2.) The notes of the depositions of a person examined under section 174 of the Act, or under any order of the Court before the Court, or before any officer of the Court, or person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 175 of the Act) shall not be filed, or be open to the inspection of any creditor, contributory, or other person, except the Official Receiver or Liquidator, unless and until the Court shall so direct, and the Court may from time to time give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom.

Arrangements with Creditors and Contributories in a Winding-up by the Court.

Report by Official Receiver on arrangements and compromises.

74. In a winding-up by the Court if application is made to the Court to sanction any compromise or arrangement the Court may, before giving its sanction thereto, hear a report by the Official Receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the Company, and as to any other matters which, in the opinion of the Official Receiver or the Board of Trade, ought to be brought to the attention of the Court. The report shall not be placed upon the file, unless and until the Court shall direct it to be filed.

Collection and Distribution of Assets in a Winding-up by the Court.

Collection and distribution of

75.—(1.) The duties imposed on the Court by section 163 (1) of the Act, in a winding-up by the Court with regard to the collection of the assets of the Company and the application of the assets

in discharge of the Company's liabilities shall be discharged by the Liquidator as an officer of the Court subject to the control of the Court.

Company's assets by Liquidator.

(2.) For the purpose of the discharge by the Liquidator of the duties imposed by section 163 (1) of the Act, and Sub-rule (1) of this Rule, the Liquidator in a winding-up by the Court shall for the purpose of acquiring or retaining possession of the property of the Company, be in the same position as if he were a Receiver of the property appointed by the High Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

Power of Liquidator to require delivery of property. Form 41.

76. The powers conferred on the Court by section 164 of the Act shall be exercised by the Liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a Company which is being wound up under order of the Court shall, on notice from the Liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the Liquidator any sum of money or balance, books, papers, estate or effects which happen to be in his hands for the time being and to which the Company is *primâ facie* entitled.

LIST OF CONTRIBUTORIES IN A WINDING-UP BY THE COURT.

Liquidator to settle list of contributories. Form 42.

77. The Liquidator shall with all convenient speed after his appointment settle a list of contributories of the Company, and shall appoint a time and place for that purpose. The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and shall distinguish the several classes of contributories. As regards representative contributories, the Liquidator shall, so far as practicable, observe the requirements of section 163 (2) of the Act.

Appointment of time and place for settlement of list. Forms 43 and 44.

78. The Liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list.

Settlement of list of contributories. Form 45.

79. On the day appointed for settlement of the list of contributories the Liquidator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which when so settled shall be the list of contributories of the Company.

Notice to contributories. Form 46.

80. The Liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list, and in the notice inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the Court by summons within 21 days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.

Application to the Court to vary the list. Form 49.

81.—(1.) Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the Liquidator shall be entertained after the expiration of 21 days from the date of the service on such person of notice of the settlement of the list.

(2.) The Official Receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a Company.

Variation of or addition to

82. The Liquidator may from time to time vary or add to the list of contributories, but any such variation or addition shall be

list of contributories. Form 47. made in the same manner in all respects as the settlement of the original list.

CALLS.

Calls by Liquidator. 83. The powers and duties of the Court in relation to making calls upon contributories conferred by section 166 of the Act, shall and may be exercised, in a winding-up by the Court, by the Liquidator as an officer of the Court subject to the proviso to section 173 of the Act, and to the following regulations :—

Form 50. (1.) Where the Liquidator desires to make any call on the contributories, or any of them for any purpose authorised by the Act, if there is a Committee of Inspection he may summon a meeting of such Committee for the purpose of obtaining their sanction to the intended call.

Form 51. (2.) The notice of the meeting shall be sent to each member of the Committee of Inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notice of the intended call and the intended meeting of the Committee of Inspection shall also be advertised once at least in a London newspaper, or, where the winding-up is not in the High Court, in a newspaper circulating in the district of the Court in which the proceedings are pending. The advertisement shall state the time and place of the intended meeting of the Committee of Inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the Liquidator or members of the Committee of Inspection to be laid before the meeting, in reference to the said intended call.

(3.) At the meeting of the Committee of Inspection any statements or representations made either to the meeting personally or addressed in writing to the Liquidator or members of the Committee by any contributory shall be considered before the intended call is sanctioned.

Form 52. (4.) The sanction of the Committee shall be given by resolution, which shall be passed by a majority of the members present.

(5.) Where there is no Committee of Inspection, the Liquidator shall not make a call without obtaining the leave of the Court.

Application to the Court for leave to make a call. Forms 54 to 57. 84. In a winding-up by the Court an application to the Court for leave to make any call on the contributories of a Company, or any of them, for any purpose authorised by the Acts, shall be made by summons stating the proposed amount of such call, which summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the Court so directs, notice of such intended call may be given by advertisement, without a separate notice to each contributory.

Document making the call. Form 58. 85. When the Liquidator is authorised by resolution or order to make a call on the contributories he shall file with the Registrar a document in the Form 58 with such variations as circumstances may require making the call.

Service of notice of a call. Forms 52, 53, and 59. 86. When a call has been made by the Liquidator in a winding-up by the Court, a copy of the resolution of the Committee of Inspection or order of the Court (if any), as the case may be, shall forthwith after the call has been made be served upon each of the contributories included in such call, together with a notice from the Liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs.

Enforcement of call. Forms 60, 61, and 62. 87. The payment of the amount due from each contributory on a call may be enforced by order of the Court, to be made in Chambers on summons by the Liquidator.

PROOFS.

88. In a winding-up by the Court every creditor shall prove his debt, unless the Judge in any particular winding-up shall give directions that any creditors or class of creditors shall be admitted without proof. — Proof of debt.

89. A debt may be proved in any winding-up by delivering or sending through the post an affidavit verifying the debt. In a winding-up by the Court the affidavit shall be so sent to the Official Receiver or, if a Liquidator has been appointed, to the Liquidator; and in any other winding-up the affidavit may be so sent to the Liquidator. — Mode of proof.

90. An affidavit proving a debt may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge. — Verification of proof.

91. An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Official Receiver or Liquidator to whom the proof is sent may at any time call for the production of the vouchers. — Contents of proof. Form 63.

92. An affidavit proving a debt shall state whether the creditor is or is not a secured creditor. — Statement of security.

93. An affidavit proving a debt may in a winding-up by the Court be sworn before an Official Receiver, or Assistant Official Receiver, or any officer of the Board of Trade or any clerk of an Official Receiver duly authorised in writing by the Court or the Board of Trade in that behalf. — Proof before whom sworn.

94. A creditor shall bear the cost of proving his debt unless the Court otherwise orders. — Costs of proof.

95. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash. — Discount.

96. When any rent or other payment falls due at stated periods, and the order or resolution to wind-up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day. Provided that where the Liquidator remains in occupation of premises demised to a Company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the Company, or the Liquidator, of rent during the period of the Company's or the Liquidator's occupation. — Periodical payments.

97. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order or resolution, the creditor may prove for interest at a rate not exceeding four per centum per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment. — Interest.

98. A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted. — Proof for debt payable at a future time.

99. In any case in which it appears that there are numerous claims for wages by workmen and others employed by the Company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. — Workmen's wages. Form 64.

Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this Rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

Production of bills of exchange and promissory notes.

100. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the Company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, Chairman of a meeting or Liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

Transmission of proofs to Liquidator.

101. Where a Liquidator is appointed in a winding-up by the Court, all proofs of debts that have been received by the Official Receiver shall be handed over to the Liquidator, but the Official Receiver shall first make a list of such proofs, and take a receipt thereon from the Liquidator for such proofs.

Admission and Rejection of Proofs, and Appeal to the Court.

Notice to creditors to prove.

102. Subject to the provisions of the Act, and unless otherwise ordered by the Court, the Liquidator in any winding-up may from time to time fix a certain day, which shall be not less than fourteen days from the date of the notice, on or before which the creditors of the Company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved, and the Liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding-up by the Court to every person mentioned in the Statement of Affairs as a creditor, and who has not proved his debt, and in any other winding-up to the last known address or place of abode of each person who, to the knowledge of the Liquidator, claims to be a creditor of the Company and whose claim has not been admitted.

Examination of proof. Form 65.

103. The Liquidator shall examine every proof of debt lodged with him, 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 shall state in writing to the creditor the grounds of the rejection.

Appeal by creditor.

104. If a creditor or contributory is dissatisfied with the decision of the Liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the Court to extend the time, no application to reverse or vary the decision of the Liquidator in a winding-up by the Court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained, unless notice of the application is given before the expiration of twenty-one days from the date of the service of the notice of rejection.

Expunging at instance of Liquidator.

105. If the Liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the Liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

Expunging at instance of creditor.

106. The Court may also expunge or reduce a proof upon the application of a creditor or contributory if the Liquidator declines to interfere in the matter.

Oaths.

107. For the purpose of any of his duties in relation to proofs, the Liquidator, in a winding-up by the Court, may administer oaths and take affidavits.

Official Receiver's powers.

108. In a winding-up by the Court the Official Receiver, before the appointment of a Liquidator, shall have all the powers of a Liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

109. In a winding-up by the Court the Official Receiver, where no other Liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding-up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

Filing proofs by Official Receiver.

110. Every Liquidator in a winding-up by the Court other than the Official Receiver shall on the first day of every month, file with the Registrar a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the Registrar.

Proofs to be filed. Form 66.

111. The Liquidator in a winding-up by the Court, including the Official Receiver when he is Liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the Registrar, with a memorandum thereon of his disallowance thereof.

Procedure where creditor appeals.

112. Subject to the power of the Court to extend the time in a winding-up by the Court, the Official Receiver as Liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it.

Time for dealing with proofs by Official Receiver,

113. Subject to the power of the Court to extend the time, the Liquidator in a winding-up by the Court, other than the Official Receiver, within twenty-eight days after receiving a proof, which has not previously been dealt with, shall in writing either admit or reject it wholly or in part, or require further evidence in support of it. Provided that where the Liquidator has given notice of his intention to declare a dividend, he shall within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject, or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby. Where a creditor's proof has been admitted the notice of dividend shall be a sufficient notification of the admission.

Time for dealing with proofs by Liquidator.

114. The Official Receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

Cost of appeals from decisions as to proofs.

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO A WINDING-UP BY THE COURT.

115. The meetings of creditors and contributories under section 152 of the Act (hereinafter referred to as the first meetings of creditors and contributories) shall be held within twenty-one days, or if a Special Manager has been appointed then within one month after the date of the Winding-up Order or within such further time as the Court may approve. The dates of such meetings shall be fixed and they shall be summoned by the Official Receiver.

First meetings of creditors and contributories.

116. The Official Receiver shall forthwith give notice of the days fixed by him for the first meetings of creditors and contributories to the Board of Trade, who shall gazette the same.

Notice of first meetings to Board of Trade.

117. The first meetings of creditors and contributories shall be summoned as hereinafter provided.

Summoning of first meetings.

118. The notices of first meetings of creditors and contributories may be in Forms 21 and 22 appended hereto, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.

Form of notices of first meetings. Forms 21 and 22.

119. The Official Receiver shall also give to each of the Directors and other Officers of the Company who in his opinion ought to attend the first meetings of creditors and contributories seven days' notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent by prepaid post

Notice of

first meetings to officers of company. letter, as may be convenient. It shall be the duty of every Director or Officer who receives notice of such meeting to attend if so required by the Official Receiver.

Form 23.

Summary of statement of affairs.

120. The Official Receiver shall also, as soon as practicable, send to each creditor mentioned in the Company's Statement of Affairs, and to each person appearing from the Company's books or otherwise to be a contributory of the Company a summary of the Company's Statement of Affairs, including the causes of its failure, and any observations thereon which the Official Receiver may think fit to make. The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these Rules not having been sent or received before the meeting.

Liquidator's meetings of creditors and contributories.

121. In addition to the first meetings of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the Court under Section 219 of the Act (hereinafter referred to as Court meetings of creditors and contributories), the Liquidator may himself from time to time subject to the provisions of the Act and the control of the Court summon, hold and conduct meetings of the creditors or contributories (hereinafter referred to as Liquidator's meetings of creditor and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding-up.

Application of rules as to meetings.

122. Except where and so far as the nature of the subject-matter or the context may otherwise require the succeeding Rules as to meetings hereinafter set out are intended to apply to first meetings, Court meetings and Liquidator's meetings of creditors and contributories, but so nevertheless that the said Rules shall take effect as to first meetings subject and without prejudice to any express provisions of the Act and as to Court meetings subject and without prejudice to any express directions of the Court.

Summoning of meetings.

123. The Official Receiver or Liquidator shall summon all meetings of creditors and contributories by giving not less than seven days' notice of the time and place thereof in the London Gazette and in a local paper; and shall not less than seven days before the day appointed for the meeting send by post to every person appearing by the Company's books to be a creditor of the Company notice of the meeting of creditors, and to every person appearing by the Company's books or otherwise to be a contributory of the Company notice of the meeting of contributories.

The notice to each creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the Statement of Affairs of the Company, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the Company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

Proof of notice.

Forms 76 and 77.

124. A certificate by the Official Receiver or other officer of the Court, or by the Clerk of any such person, or an affidavit by the Liquidator, or his solicitor, or the Clerk of either of such persons, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Place of meetings.

125. The meetings shall be held at such place as is in the opinion of the Official Receiver or Liquidator most convenient for the majority of the creditors or contributories or both. Different times or places or both may if thought expedient be named for the meetings of creditors and for the meetings of contributories.

Costs of calling meeting.

126. The costs of summoning a meeting of creditors or contributories at the instance of any person other than the Official Receiver or Liquidator shall be paid by the person at whose instance it is summoned who shall before the meeting is summoned deposit with the Official Receiver or Liquidator (as the case may be) such sum as may be required by the Official Receiver or Liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disburse-

ments for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, two shillings per creditor or contributory for the first 20 creditors or contributories, one shilling per creditor or contributory for the next 30 creditors or contributories, sixpence per creditor or contributory for any number of creditors or contributories after the first 50. The said costs shall be repaid out of the assets of the Company if the Court shall by Order or if the creditors or contributories (as the case may be) shall by resolution so direct.

Chairman of meeting. Form 79.

127. Where a meeting is summoned by the Official Receiver or the Liquidator, he or someone nominated by him shall be Chairman of the meeting. At every other meeting of creditors and contributories the Chairman shall be such person as the meeting by resolution shall appoint.

Ordinary resolution of creditors and contributories.

128. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the Company.

Copy of resolution to be filed.

129. The Official Receiver or as the case may be the Liquidator shall file with the Registrar a copy certified by him of every resolution of a meeting of creditors or contributories.

Non-reception of notice by a creditor.

130. Where a meeting of creditors or contributories is summoned by notice the proceedings and resolutions at the meeting shall unless the Court otherwise orders be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

Adjournment. Form 78.

131. The Chairman may with the consent of the meeting adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original place of meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

Quorum.

132.—(1.) A meeting may not 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 thereat at least three creditors entitled to vote or three contributories or all the creditors entitled to vote or all the contributories if the number of the creditors entitled to vote or the contributories as the case may be shall not exceed three.

(2.) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented the meeting shall 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 not being less than seven or more than twenty-one days.

Creditors entitled to vote.

133. In the case of a first meeting of creditors or of an adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting a proof of the debt which he claims to be due to him from the Company. In the case of a Court meeting or Liquidator's meeting of creditors a person shall not be entitled to vote as a creditor unless he has lodged with the Official Receiver or Liquidator a proof of the debt which he claims to be due to him from the Company and such proof has been admitted wholly or in part before the date on which the meeting is held. Provided that this and the next four following rules shall not apply to a Court meeting of creditors held prior to the first meeting of creditors.

Cases in which

134. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascer-

creditors may not vote. tained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the Company, and against whom a Receiving Order in Bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

Votes of secured creditors. 135. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

Creditor required to give up security. 136. The Official Receiver or Liquidator may within twenty-eight days after a proof estimating the value of a security as aforesaid has been used in voting at a meeting require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per cent. Provided that where a creditor has valued his security he may at any time before being required to give it up correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of twenty per cent. shall not be made if the security is required to be given up.

Admission and rejection of proofs for purpose of voting. 137. The Chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof should be admitted or rejected he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

Minutes of meeting. 138. The Chairman shall cause Minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the Minutes shall be signed by him or by the Chairman of the next ensuing meeting.

PROXIES IN RELATION TO A WINDING-UP BY THE COURT.

Proxies. 139. A creditor or a contributory may vote either in person or by proxy. The succeeding rules as to proxies shall not (unless otherwise directed by the Court) apply to a Court meeting of creditors or contributories prior to the first meeting.

Form of proxies. Forms 80 and 81. 140. Every instrument of proxy shall be in accordance with the form in the Appendix and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager or clerk or other person in his regular employment or of a Commissioner to administer oaths in the Supreme Court.

Forms of proxy to be sent with notices. 141. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Receiver or Liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

General proxies to managers or clerks. 142. A creditor or a contributory may give a general proxy to his manager or clerk or any other person in his regular employment. In any such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory

Special proxies. 143. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof:—

(*a*) for or against the appointment or continuance in office of any specified person as Liquidator or Member of the Committee of Inspection ; and,

(*b*) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

144. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a Liquidator in obtaining proxies or in procuring his appointment as Liquidator except by the direction of a meeting of creditors or contributories, the Court if it thinks fit may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the Committee of Inspection or of the creditors or contributories to the contrary.

Solicitation by Liquidator to obtain proxies.

145. A creditor or a contributory may appoint the Official Receiver or Liquidator to act as his general or special proxy.

Proxies to Official Receiver or Liquidator.

146. No person acting either under a general or a special proxy shall 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 Company otherwise than as creditor rateably with the other creditors of the Company. Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as Liquidator he may use the said proxies and vote accordingly.

Holder of proxy not to vote on matter in which he is financially interested.

147.—(1.) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs.

Proxies.

Forms 80 and 81.

(2.) In every other case a proxy shall be lodged with the Official Receiver or Liquidator not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3.) No person shall be appointed a general or special proxy who is a minor.

(4.) Where a Limited Company is a creditor, any person who is duly authorised under the seal of the creditor Company to act generally on behalf of the creditor Company at meetings of creditors and contributories and to appoint himself or any other person to be the creditor Company's proxy, may fill in and sign the form of proxy on the creditor Company's behalf and appoint himself to be the creditor Company's proxy, and a proxy so filled in and signed by such a person shall be received and dealt with as the proxy of the creditor Company.

148. Where an Official Receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf, and in such manner as he may direct.

Use of proxies by deputy.

149. The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

Filling in where creditor blind or incapable.

DIVIDENDS IN A WINDING-UP BY THE COURT.

150.—(1.) Not more than two months before declaring a dividend the Liquidator in a winding-up by the Court, shall give notice of his intention to do so to the Board of Trade in order that the same may be gazetted, and at the same time to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than fourteen days from the date of such notice.

Dividends to creditors.

Form 67.

(2.) Where any creditor, after the date mentioned in the notice

of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the Liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which the appeal is made, and the Liquidator may in such cases make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this Rule, the Liquidator shall exclude all proofs which have been rejected from participation in the dividend.

Form 71.

(3.) Immediately after the expiration of the time fixed by this Rule for appealing against the decision of the Liquidator he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted.

(4.) If it becomes necessary, in the opinion of the Liquidator and the Committee of Inspection, to postpone the declaration of the dividend beyond the limit of two months, the Liquidator shall give a fresh notice of his intention to declare a dividend to the Board of Trade in order that the same may be gazetted; but it shall not be necessary for the Liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

Forms 68 and 69.

(5.) Upon the declaration of a dividend the Liquidator shall forthwith transmit to the Board of Trade a list of the proofs filed with the Registrar under Rule 110, which list shall be in the Form 68 or 69 in the Appendix as the case may be. If the winding-up is in a Court other than the High Court the list shall, on payment of the prescribed fee, be examined by the Registrar, with the proofs tendered for filing and if found correct shall be certified by the Registrar. If the winding-up is in the High Court the Liquidator shall, if so required by the Board of Trade, transmit to the Board of Trade, office copies of all lists of proofs filed by him up to the date of the declaration of the dividend.

(6.) Dividends may at the request and risk of the person to whom they are payable be transmitted to him by post.

Form 72.

(7.) If a person to whom dividends are payable desires that they shall be paid to some other person he may lodge with the Liquidator a document in the Form 72 which shall be a sufficient authority for payment of the dividend to the person therein named.

Return of capital to contributories. Forms 73 and 74.

151. Every order by which the Liquidator in a winding-up by the Court is authorised to make a return to contributories of the Company, shall, unless the Court shall otherwise direct, contain or have appended thereto a Schedule or List (which the Liquidator shall prepare) setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories. The Schedule or List shall be in the Form 74 with such variations as circumstances shall require.

ATTENDANCE AND APPEARANCE OF PARTIES.

Attendance at proceedings.

152.—(1.) Every person for the time being on the list of contributories of the Company, and every person whose proof has been admitted shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the Court shall be of opinion that the attendance of any such person upon

any proceedings has occasioned any additional costs which ought not to be borne by the funds of the Company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

(2.) The Court may from time to time appoint any one or more of the creditors or contributories to represent before the Court, at the expense of the Company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the Court, and may remove the person so appointed. If more than one person is appointed under this Rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

(3.) No creditor or contributory shall be entitled to attend any proceedings in Chambers unless and until he has entered in a book, to be kept by the Registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor.

Attendance of Liquidator's Solicitor.

153. Where the attendance of the Liquidator's solicitor is required on any proceeding in Court or Chambers, the Liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

LIQUIDATOR AND COMMITTEE OF INSPECTION IN A WINDING-UP BY THE COURT.

Remuneration of Liquidator.

154.—(1.) The remuneration of a Liquidator, unless the Court shall otherwise order, shall be fixed by the Committee of Inspection, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors (other than debenture holders) out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2.) If the Board of Trade is of opinion that the remuneration of a Liquidator as fixed by the Committee of Inspection is unnecessarily large, the Board of Trade may apply to the Court, and thereupon the Court shall fix the amount of the remuneration of the Liquidator.

(3.) If there is no Committee of Inspection the remuneration of the Liquidator shall, unless the Court shall otherwise order, be fixed by the scale of fees and percentages for the time being payable on realisations and distributions by the Official Receiver as Liquidator.

Limit of remuneration.

155. Except as provided by the Act or the Rules, a Liquidator shall not under any circumstances whatever, make any arrangement for, or accept from any solicitor, auctioneer, or any other person connected with the Company of which he is Liquidator, or who is employed in or in connection with the winding-up of the Company, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Act and the Rules he is entitled as Liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to any such solicitor, auctioneer, or other person.

Dealings with assets.

156. Neither the Liquidator nor any member of the Committee of Inspection of a Company shall, while acting as Liquidator or member of such Committee, except by leave of the Court, either directly or indirectly, by himself or any partner, clerk, agent, or servant, become purchaser of any part of the Company's assets. Any such purchase made contrary to the provisions of this Rule may be set aside by the Court on the application of the Board of Trade or any creditor or contributory, and the Court may make such order as to costs as the Court shall think fit.

Restriction on purchase

157. Where the Liquidator carries on the business of the Company, he shall not, without the express sanction of the Court,

of goods by Liquidator.

purchase goods for the carrying on of such business from any person whose connection with the Liquidator is of such a nature as would result in the Liquidator obtaining any portion of the profit (if any) arising out of the transaction.

Committee of Inspection not to make profit.

158. No member of a Committee of Inspection shall, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding-up, or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the Liquidator for or on account of the Company. If it appears to the Board of Trade that any profit or payment has been made contrary to the provisions of this Rule, they may disallow such payment or recover such profit, as the case may be, on the audit of the Liquidator's accounts.

Costs of obtaining sanction of Court.

159. In any case in which the sanction of the Court is obtained under the two last preceding Rules, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the Company's assets.

Sanction of payments to Committee.

160. Where the sanction of the Court to a payment to a member of a Committee of Inspection for services rendered by him in connection with the administration of the Company's assets is obtained, the order of the Court shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature. Except by the express sanction of the Court no remuneration shall, under any circumstances, be paid to a member of a Committee for services rendered by him in the discharge of the duties attaching to his office as a member of such Committee.

Discharge of costs before assets handed to Liquidator.

161.—(1.) Where a Liquidator is appointed by the Court, and has notified his appointment to the Registrar of Joint Stock Companies, and given security to the Board of Trade, the Official Receiver shall forthwith put the Liquidator into possession of all property of the Company of which the Official Receiver may have custody; provided that such Liquidator shall have, before the assets are handed over to him by the Official Receiver, discharged any balance due to the Official Receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the Company, together with interest on such advances at the rate of four pounds per centum per annum; and the Liquidator shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the Liquidator before being put into possession of the property of the Company, and whether incurred before or after he has been put into such possession.

(2.) The Official Receiver shall be deemed to have a lien upon the Company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3.) It shall be the duty of the Official Receiver, if so requested by the Liquidator, to communicate to the Liquidator all such information respecting the estate and affairs of the Company as may be necessary or conducive to the due discharge of the duties of the Liquidator.

Resignation of Liquidator.

162. A Liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the Company to decide whether or not the resignation shall be accepted. If the creditors and contributories by ordinary resolutions both agree to accept the resignation of the Liquidator, he shall file with the Registrar a memorandum of his resignation, and shall send notice thereof to the Official Receiver, and the resignation shall thereupon take effect. In any other case the Liquidator shall report to the Court the result of the meetings and shall send a report to the Official Receiver and thereupon the Court may, upon the application of the Liquidator or the Official Receiver, determine whether or not the resignation of the Liquidator shall be accepted,

and may give such directions and make such orders as in the opinion of the Court shall be necessary.

163. If a Receiving Order in Bankruptcy is made against the Liquidator, he shall thereby vacate his office, and for the purposes of the application of the Act and Rules shall be deemed to have been removed.

Office of Liquidator vacated by his insolvency.

PAYMENTS INTO AND OUT OF A BANK.

164. All payments out of the Companies Liquidation Account shall be made in such manner as the Board of Trade may from time to time direct.

Payments out of Bank of England.

165.—(1.) Where the Liquidator in a winding-up by the Court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the Liquidator of the Company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the Company, and shall be signed by the Liquidator, and shall be countersigned by at least one member of the Committee of Inspection, and by such other person, if any, as the Committee of Inspection may appoint.

Special Bank account.

Forms 82 and 83.

(2.) Where application is made to the Board of Trade to authorise the Liquidator in a winding-up by the Court to make his payments into and out of a special bank account, the Board of Trade may grant such authorisation for such time and on such terms as they may think fit, and may at any time order the account to be closed if they are of opinion that the account is no longer required for the purposes mentioned in the application.

BOOKS.

166. The Official Receiver, until a Liquidator is appointed by the Court, and thereafter the Liquidator, shall keep a book to be called the "Record Book" in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the Committee of Inspection, and all such matters as may be necessary to give a correct view of his administration of the Company's affairs, but he shall not be bound to insert in the "Record Book" any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the Committee of Inspection, or the Official Receiver, or the Board of Trade.

Record Book.

167.—(1.) The Official Receiver, until a Liquidator is appointed by the Court, and thereafter the Liquidator, shall keep a book to be called the "Cash Book" (which shall be in such form as the Board of Trade may from time to time direct) in which he shall (subject to the provisions of the Rules as to trading accounts) enter from day to day the receipts and payments made by him.

Cash Book.

(2.) The Liquidator shall submit the Record Book and Cash Book, together with any other requisite books and vouchers, to the Committee of Inspection (if any) when required, and not less than once every three months.

INVESTMENT OF FUNDS.

168.—(1.) Where the Committee of Inspection are of opinion that any part of the cash balance standing to the credit of the account of the Company should be invested, they shall sign a certificate and request, and the Liquidator shall transmit such certificate and request to the Board of Trade.

Investment of assets in securities, and realisation of securities.

(2.) Where the Committee of Inspection are of opinion that it is advisable to sell any of the securities in which the moneys of the Company's assets are invested they shall sign a certificate and

Forms 84 and 85.

request to that effect, and the Liquidator shall transmit such certificate and request to the Board of Trade.

(3.) Where in a winding-up by the Court in which there is no Committee of Inspection, or in a Voluntary Winding-up or winding-up under the supervision of the Court, a case has in the opinion of the Liquidator arisen under section 231 of the Act for an investment of funds of the Company or a sale of securities in which the Company's funds have been invested, the Liquidator shall sign and transmit to the Board of Trade a certificate of the facts on which his opinion is founded, and a request to the Board of Trade to make the investment mentioned in the certificate, and the Board of Trade may thereupon, if it thinks fit, invest or sell the whole or any part of the said funds or securities, as provided in the said section, and the said certificate and request shall be a sufficient authority to the Board of Trade for the said investment or sale.

Accounts and Audit in a Winding-up by the Court.

Audit of Cash Book. Form 86.

169. The Committee of Inspection shall not less than once every three months audit the Liquidator's Cash Book and certify therein under their hands the day on which the said book was audited.

Board of Trade audit of Liquidator's accounts.

170.—(1.) The Liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the Cash Book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the Committee of Inspection. He shall also forward with the first accounts a summary of the Company's statement of affairs, showing thereon in red ink the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised. The Liquidator shall also at the end of every six months forward to the Board of Trade, with his Accounts, a report upon the position of the liquidation of the Company in such form as the Board of Trade may direct.

(2.) When the assets of the Company have been fully realised and distributed, the Liquidator shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

Form 87.

(3.) The accounts sent in by the Liquidator shall be verified by him by affidavit.

Liquidator carrying on business.

171.—(1.) Where the Liquidator carries on the business of the Company, he shall keep a distinct account of the trading, and shall incorporate in the Cash Book the total weekly amount of the receipts and payments on such trading account.

Forms 88 and 88A.

(2.) The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the Liquidator shall thereupon submit such account to the Committee of Inspection (if any), or such member thereof as may be appointed by the Committee for that purpose, who shall examine and certify the same.

Copy of accounts to be filed.

172. When the Liquidator's account has been audited, the Board of Trade shall certify the fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with the Registrar.

Summary of accounts.

173.—(1.) The Liquidator shall transmit to the Board of Trade with his accounts a summary of such accounts in such form as the Board of Trade may from time to time direct, and, on the approval of such summary by the Board of Trade, shall forthwith obtain, prepare, and transmit to the Board of Trade so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to each creditor and contributory.

(2.) The cost of printing and posting such copies shall be a charge upon the assets of the Company.

174. Where a Liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the Company, he shall, at the time when he is required to transmit his accounts to the Board of Trade, forward to the Board of Trade an affidavit of no receipts or payments.

Affidavit of no receipts.

175.—(1.) Upon a Liquidator resigning, or being released or removed from his office, he shall deliver over to the Official Receiver, or as the case may be, to the new Liquidator, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of Liquidator. The release of a Liquidator shall not take effect unless and until he has delivered over to the Official Receiver, or as the case may be to the new Liquidator, all the books, papers, documents, and accounts which he is by this Rule required to deliver on his release.

Proceedings on resignation, &c., of Liquidator.

(2.) The Board of Trade may, at any time during the progress of the liquidation, on the application of the Liquidator or the Official Receiver, direct that such of the books, papers, and documents of the Company or of the Liquidator as are no longer required for the purpose of the liquidation, may be sold, destroyed, or otherwise disposed of.

Disposal of books.

176. Where property forming part of a Company's assets is sold by the Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every Liquidator by whom such auctioneer or agent is employed, shall, unless the Court otherwise orders, be accountable for the proceeds of every such sale.

Expenses of sales.

TAXATION OF COSTS.

177. Every solicitor, manager, accountant, auctioneer, broker or other person employed by an Official Receiver or Liquidator in a winding-up by the Court shall on request by the Official Receiver or Liquidator (to be made a sufficient time before the declaration of a dividend) deliver his bill of costs or charges to the Official Receiver or Liquidator for the purpose of taxation; and if he fails to do so within the time stated in the request, or such extended time as the Court may allow, the Liquidator shall declare and distribute the dividend without regard to such person's claim, and subject to any order of the Court the claim shall be forfeited. The request by the Official Receiver or Liquidator shall be in the Form No. 89.

Taxation of costs payable by or to Official Receiver or Liquidator or by Company.

Form 89.

178. Where a bill of costs or charges in any winding-up has been lodged with the Taxing Officer, he shall give notice of an appointment to tax the same, in a winding-up by the Court to the Official Receiver, and in every winding-up to the Liquidator, and to the person to or by whom the bill or charges is or are to be paid (as the case may be).

Notice of appointment.

179. The bill or charges, if incurred in a winding-up by the Court prior to the appointment of a Liquidator, shall be lodged with the Official Receiver, and if incurred after the appointment of a Liquidator, shall be lodged with the Liquidator. The Official Receiver or the Liquidator, as the case may be, shall lodge the bill or charges with the proper Taxing Officer.

Lodgment of Bill.

180. Every person whose bill or charges in a winding-up by the Court is or are to be taxed shall, on application either of the Official Receiver or the Liquidator, furnish a copy of his bill or charges so to be taxed, on payment at the rate of *4d.* per folio, which payment shall be charged on the assets of the Company. The Official Receiver shall call the attention of the Liquidator to any items which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the taxation.

Copy of the Bill to be furnished.

Applications for costs.

181. Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding :—

(1.) Such party or person shall serve notice of his intended application on the Official Receiver in a winding-up by the Court and in every winding-up on the Liquidator.

(2.) The Official Receiver (if any) and Liquidator may appear on such application and object thereto.

(3.) No costs of or incident to such application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceeding.

Certificate of taxation. Form 90.

182. Upon the taxation of any bill of costs, charges, or expenses being completed, the Taxing Officer shall issue to the person presenting such bill for taxation his allowance or certificate of taxation. The bill of costs, charges, and expenses, together with the allowance or certificate, shall be filed with the Registrar.

Certificate of employment.

183. Where the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an Official Receiver or Liquidator, is or are payable out of the assets of the Company, a certificate in writing, signed by the Official Receiver or Liquidator, as the case may be, shall on the taxation be produced to the Taxing Officer setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the employment.

Scale of costs in a County Court, and taxation.

184. In a County Court all costs properly incurred in a winding-up by the Court shall be allowed on the Lower Scale in Appendix N. to the Rules of the Supreme Court, and costs shall be taxed by the Registrar in person.

Review of taxation at instance of Board of Trade.

185.—(1.) Where any bill of costs, charges, fees or disbursements which are payable out of the assets of the Company to any solicitor, manager, accountant, auctioneer, broker or other person has been taxed by a Registrar of a Court other than the High Court, the Board of Trade may require the taxation to be reviewed by the Taxing Officer of the High Court.

(2.) In any case in which the Board of Trade require such a review of taxation as is above mentioned they shall give notice to the person whose bill has been taxed, and shall apply to the Taxing Officer of the High Court to appoint a time for the review of such taxation and thereupon such Taxing Officer shall appoint a time for the review of, and shall review, such taxation and certify the result thereof. The Board of Trade shall give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

(3.) Where any such review of taxation as is above mentioned is required to be made by the Taxing Officer of the High Court, the Registrar whose taxation is to be reviewed shall forward to the said Taxing Officer the bill which is required to be reviewed.

(4.) The Board of Trade may appear upon the review of the taxation ; and if, upon the review of the taxation, the bill is allowed at a lower sum than the sum allowed on the original taxation, the amount disallowed shall (if the bill has been paid) be repaid to the Official Receiver or the Liquidator, or other person entitled thereto. The certificate of the Taxing Officer shall in every case of a review by him under this Rule be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

(5.) The costs of and incidental to the review shall be paid out of the assets of the Company or otherwise as the Taxing Officer or the Court may direct ; provided that the cost of the attendance of a principal shall not be allowed if in the opinion of the Taxing Officer he could have been sufficiently represented by his London agent.

COSTS AND EXPENSES PAYABLE OUT OF THE ASSETS OF THE COMPANY.

186.—(1.) Where a Liquidator or Special Manager in a winding-up by the Court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or Rules to be performed by himself.

Liquidator's charges.

(2.) Where a Liquidator is a solicitor he may contract that the remuneration for his services as Liquidator shall include all professional services.

187.—(1.) The assets of a Company in a winding-up by the Court, remaining after payment of the fees and actual expenses incurred in realising or getting in the assets, shall, subject to any order of the Court, and, as regards a winding-up to which the provisions of the Stannaries Act, 1887,* apply, subject to that Act as modified by the Act, be liable to the following payments, which shall be made in the following order of priority, namely :—

Costs payable out of the assets.

First.—The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court.

Next.—The remuneration of the special manager (if any).

Next.—The costs and expenses of any person who makes or concurs in making, the Company's statement of affairs.

Next.—The taxed charges of any shorthand writer appointed to take an examination. Provided that where the shorthand writer is appointed at the instance of the Official Receiver the cost of the shorthand notes shall be deemed to be an expense incurred by the Official Receiver in getting in and realising the assets of the Company.

Next.—The Liquidator's necessary disbursements, other than actual expenses of realisation heretofore provided for.

Next.—The costs of any person properly employed by the Liquidator.

Next.—The remuneration of the Liquidator.

Next.—The actual out-of-pocket expenses necessarily incurred by the Committee of Inspection, subject to the approval of the Board of Trade.

(2.) No payments in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers, or other persons, other than payments for costs and expenses incurred and sanctioned under Rule 54, and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the assets of the Company without proof that the same have been considered and allowed by the Registrar. The Taxing Officer shall satisfy himself before passing such bills or charges that the employment of the solicitor or other person in respect of the matters mentioned in the bills or charges has been duly sanctioned. Provided that the Official Receiver when acting as Liquidator may without taxation pay and allow the costs and charges of any person other than a Solicitor employed by him where such costs and charges are within the scale usually allowed by the Court and do not exceed the sum of £2 : provided always that the Board of Trade may require such costs or charges to be taxed by the Taxing Officer.

Costs.

(3.) Nothing contained in this Rule shall apply to or affect costs which, in the course of legal proceedings by or against a Company which is being wound up by the Court, are ordered by the Court in which such proceedings are pending or a Judge thereof to be paid by the Company or the Liquidator, or the rights of the person to whom such costs are payable.

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* 50 & 51 Vict. c. 43.

STATEMENTS BY LIQUIDATOR TO THE REGISTRAR OF JOINT STOCK COMPANIES.

Conclusion of winding-up.

188. The winding-up of a Company shall, for the purposes of section 224 of the Act, be deemed to be concluded :—

(*a.*) In the case of a Company wound up by order of the Court, at the date on which the order dissolving the Company has been reported by the Liquidator to the Registrar of Companies, or at the date of the order of the Board of Trade releasing the Liquidator pursuant to section 157 of the Act.

(*b.*) In the case of a Company wound up voluntarily, or under the supervision of the Court, at the date of the dissolution of the Company. unless at such date any funds or assets of the Company remain unclaimed or undistributed in the hands or under the control of the Liquidator, or any person who has acted as Liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account at the Bank of England.

Times for sending Liquidator's statements, and regulations applicable thereto.

189. The statements with respect to the proceedings in and position of a liquidation of a Company, the winding-up of which is not concluded within a year after its commencement, shall be sent to the Registrar of Companies twice in every year as follows :—

(1.) The first statement commencing at the date when a Liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding-up, shall be sent within 30 days from the expiration of such twelve months, or within such extended period as the Board of Trade may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is sent.

Form 92.

(2.) Subject to the next succeeding Rule, Form No. 92, with such variations as circumstances may require, shall be used, and the directions specified in the Form shall (unless the Board of Trade otherwise direct) be observed in reference to every statement.

Form 93.

(3.) Every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 93, with such variations as circumstances may require.

Affidavit of no receipts or payments.

Forms 92 and 93.

190. Where a Liquidator has not during any period for which a statement has to be sent received or paid any money on account of the Company, he shall at the period when he is required to transmit his statement, send to the Registrar of Companies the prescribed statement in the Form No. 92, in duplicate, containing the particulars therein required with respect to the proceedings in and position of the Liquidation, and with such statement shall also send an affidavit of no receipts or payments in the Form No. 93.

UNCLAIMED FUNDS AND UNDISTRIBUTED ASSETS IN THE HANDS OF A LIQUIDATOR.

Payment of undistributed and unclaimed money into Companies Liquidation Account.

191.—(1.) All money in the hands or under the control of a Liquidator of a Company representing unclaimed dividends, which for six months from the date when the dividend became payable have remained in the hands or under the control of the Liquidator, shall forthwith, on the expiration of the six months, be paid into the Companies Liquidation Account.

(2.) All other money in the hands or under the control of a Liquidator of a Company, representing unclaimed or undistributed assets, which under sub-section 4 of Section 224 of the Act, the Liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the Registrar of Companies is brought

down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the Liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Board of Trade may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the Companies Liquidation Account within fourteen days from the date to which the statement of account is brought down.

(3.) Notwithstanding anything in this Rule, any moneys representing unclaimed or undistributed assets or dividends in the hands of the Liquidator at the date of the dissolution of the Company shall forthwith be paid by him into the Companies Liquidation Account.

(4.) A Liquidator whose duty it is to pay into the Companies Liquidation Account at the Bank of England, money representing unclaimed or undistributed assets of the Company shall apply in such manner as the Board of Trade shall direct to the Board of Trade for a paying-in order, which paying-in order shall be an authority to the Bank of England to receive the payment.

(5.) Money at the credit of the account of the Official Liquidator of a Company with the Bank of England shall be deemed to be money under the control of such Official Liquidator, and when such money has remained unclaimed or undistributed for six months after the date of receipt it shall be transferred to the Companies Liquidation Account, and the Official Liquidator and Master of the Chancery Division of the High Court attached to the Judge in whose chambers the winding-up is proceeding shall draw and sign such cheques or orders as may be necessary for the transfer of the money. An application to the Board of Trade for payment out of moneys so transferred shall be signed by the official Liquidator and counter-signed by the said Master.

(6.) Money invested or deposited at interest by a Liquidator shall be deemed to be money under his control, and when such money forms part of the minimum balance payable into the Companies Liquidation Account pursuant to clause (2) of this Rule, the Liquidator shall realise the investment or withdraw the deposit, and shall pay the proceeds into the Companies Liquidation Account, provided that where the money is invested in Government securities, such securities may, with the permission of the Board of Trade, be transferred to the control of the Board of Trade instead of being forthwith realised and the proceeds thereof paid into the Companies Liquidation Account. In the latter case, if and when the money represented by the securities is required wholly or in part for the purposes of the Liquidation, the Board of Trade may realise the securities wholly or in part and pay the proceeds of realisation into the Companies Liquidation Account and deal with the same in the same way as other monies paid into the said Account may be dealt with.

Liquidator to furnish information to Board of Trade. Form 97.

192. Every person who has acted as Liquidator of any Company, whether the liquidation has been concluded or not, shall furnish to the Board of Trade particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the Company and such other particulars as the Board of Trade may require for the purpose of ascertaining or getting in any money payable into the Companies Liquidation Account at the Bank of England. The Board of Trade may require such particulars to be verified by affidavit.

Board of Trade may call for verified accounts. Forms 92 and 93.

193.—(1.) The Board of Trade may at any time order any such person to submit to them an account verified by affidavit of the sums received and paid by him as Liquidator of the Company and may direct and enforce an audit of the account.

(2.) For the purposes of section 224 of the Act, and the Rules, the Court shall have, and, at the instance of the Board of Trade, may exercise all the powers conferred by the Bankruptcy Act, 1883,*

* 46 & 47 Vict. c. 52.

with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of that Act with respect thereto shall, with any necessary modification, apply to proceedings under section 224 of the Act.

Application to the Court for enforcing an account, and getting in money.

194. An application by the Board of Trade for the purpose of ascertaining and getting in money payable into the Bank of England pursuant to section 224 of the Act, shall be made by motion, and where the winding-up is by or under the supervision of the Court shall be made to and dealt with by the Judge, and in a voluntary winding-up shall be made to and dealt with by the Judge of the High Court.

Application for payment out by person entitled.

195. An application by a person claiming to be entitled to any money paid into the Bank of England in pursuance of section 224 of the Act, shall be made in such form and manner as the Board of Trade may from time to time direct, and shall, unless the Board of Trade otherwise directs, be accompanied by the certificate of the Liquidator that the person claiming is entitled and such further evidence as the Board of Trade may direct.

Application by Liquidator for payment out.

196. A Liquidator who requires to make payments out of money paid into the Bank of England in pursuance of section 224 of the Act, either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Board of Trade may direct, and the Board of Trade may thereupon either make an order for payment to the Liquidator of the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the Liquidator for transmission to the persons to whom the payments are to be made.

Release of Liquidator in a Winding-up by the Court.

Proceedings for release of Liquidator. Forms 98, 99, and 100.

197.—(1.) A Liquidator in a winding-up by the Court before making application to the Board of Trade for his release, shall give notice of his intention to do so to all the creditors who have proved their debts, and to all the contributories, and shall send with the notice a summary of his receipts and payments as Liquidator.

(2.) When the Board of Trade have granted to a Liquidator his release, a notice of the order granting the release shall be gazetted. The Liquidator shall provide the requisite stamp fee for the *Gazette*, which he may charge against the Company's assets.

Official Receivers and Board of Trade.

Appointment.

198.—(1.) Judicial notice shall be taken of the appointment of the Official Receivers appointed by the Board of Trade.

(2.) When the Board of Trade appoints any officer to act as deputy for or in the place of an Official Receiver, notice thereof shall be given by letter to the Court to which such Official Receiver is or was attached. The letter shall specify the duration of such acting appointment.

(3.) Any person so appointed shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of an Official Receiver.

Removal.

199. Where an Official Receiver is removed from his office by the Board of Trade, notice of the order removing him shall be communicated by letter to the Court to which the Official Receiver was attached.

Personal performance of duties.

200. The Board of Trade may, by general or special directions determine what acts or duties of the Official Receiver in relation to the winding-up of Companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control.

Assistant Official Receivers.

201. An assistant Official Receiver, appointed by the Board of Trade, shall be an officer of the Court, like the Official Receiver to whom he is assistant, and subject to the directions of the Board of Trade, he may represent the Official Receiver in all proceedings in

Court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of an assistant Official Receiver, and he may be removed in the same manner as is provided in the case of an Official Receiver.

Power of Officers of Board of Trade and Official Receivers' clerks in certain cases to act for Official Receivers.

202. In the absence of the Official Receiver any Officer of the Board of Trade duly authorised for the purpose by the Board of Trade, and any clerk of the Official Receiver duly authorised by him in writing, may by leave of the Court act on behalf of the Official Receiver, and take part for him in any public or other examination and in any unopposed application to the Court.

Duties where no assets.

203. Where a Company against which a winding-up order has been made has no available assets, the Official Receiver shall not be required to incur any expense in relation to the winding-up without the express directions of the Board of Trade.

Accounting by Official Receiver.

204.—(1.) Where a Liquidator is appointed by the Court in a winding-up by the Court, the Official Receiver shall account to the Liquidator.

(2.) If the Liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who shall take such action (if any) thereon as it may deem expedient.

(3.) The provisions of these Rules as to Liquidators and their accounts shall not apply to the Official Receiver when he is Liquidator, but he shall account in such manner as the Board of Trade may from time to time direct.

Official Receiver to act for Board of Trade where no committee of inspection.

205. Where there is no Committee of Inspection any functions of the Committee of Inspection which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the Official Receiver.

Appeals from Board of Trade and Official Receiver.

206. An Appeal in the High Court against a decision of the Board of Trade, or an Appeal to the Court from an act or decision of the Official Receiver acting otherwise than as Liquidator of a Company, shall be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced, or made.

Applications under s. 159 (2) of the Act.

207.—(1.) An application by the Board of Trade to the Court to examine on oath the Liquidator or any other person pursuant to section 159 of the Act, shall be made *ex parte*, and shall be supported by a report to the Court filed with the Registrar, stating the circumstances in which the application is made.

(2.) The report may be signed by any person duly authorised to sign documents on behalf of the Board of Trade; and shall for the purposes of such application be *primâ facie* evidence of the statements therein contained.

BOOKS TO BE KEPT, AND RETURNS MADE, BY OFFICERS OF COURTS.

Books to be kept by Officers of Courts. Forms 101 and 102.

208.—(1.) In the High Court the Registrar and in the District Registries of the High Court at Liverpool and Manchester respectively the District Registrars of the High Court, and in a Court other than the High Court, the Registrar shall keep books according to the Forms in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

(2.) The Officers of the Courts whose duty it is to keep the books prescribed by these Rules shall make and transmit to the Board of Trade such extracts from their books, and shall furnish the Board of Trade with such information and returns as the Board of Trade may from time to time require.

GAZETTING IN A WINDING-UP BY THE COURT.

Gazetting Notices. Form 103.

209.—(1.) All notices subsequent to the making by the Court of a winding-up order in pursuance of the Act or the Rules requiring publication in the *London Gazette* shall be gazetted by the Board of Trade.

(2.) Where any winding-up order is amended, and also in any case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade shall re-gazette such order or matter

with the necessary amendments and alterations in the prescribed form, at the expense of the Company's assets, or otherwise as the Board of Trade may direct.

Filing Memorandum of *Gazette* notices. Form 104.

210.—(1.) Whenever the *London Gazette* contains any advertisement relating to any winding-up proceedings the Official Receiver or Liquidator as the case may be shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

(2.) In the case of an advertisement in a local paper, the Official Receiver or Liquidator as the case may be shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3.) For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the Court is inserted, shall be left with the Official Receiver or Liquidator as the case may be by the person who inserts the advertisement.

(4.) A memorandum under this Rule shall be *primâ facie* evidence that the advertisement to which it refers was duly inserted in the issue of the *Gazette* or newspaper mentioned in it.

ARRESTS AND COMMITMENTS.

To whom warrants may be addressed.

211. A Warrant of Arrest, or any other Warrant issued under the provisions of the Act and Rules, may be addressed to such Officer of the Court, or to such High Bailiff or Officer of any County Court, whether such County Court has jurisdiction to wind up a Company or not, as the Court may in each case direct.

Prison to which person arrested on Warrant is to be taken.

212. Where the Court issues a Warrant for the arrest of a person under any of the provisions of the Act or Rules, the prison (to be named in the Warrant of Arrest) to which the person shall be committed shall, unless the Court shall otherwise order, be the prison used by the Court in cases of Orders of Commitment made in the exercise by the Court of its ordinary jurisdiction.

Execution of Warrants of Arrest outside ordinary jurisdiction of Court. Forms 105 and 106.

213. Where a Warrant for the Arrest of a person has been issued by a Court other than the High Court under any of the provisions of the Act and Rules, the High Bailiff of the Court, or other Officer of the Court to whom the Warrant is addressed, may send the Warrant of Arrest to the Registrar of any other Court (other than the High Court) within the ordinary jurisdiction or district of which such person shall then be or be believed to be, with a Warrant annexed thereto under the hand of the High Bailiff or Officer and Seal of the Court from which the Warrant originally issued, requiring execution of the Warrant by the Court to which it is so sent; and the Registrar of the last-mentioned Court shall seal or stamp the Warrant with the Seal of his Court, and issue the same to the High Bailiff or other proper Officer of his Court, with an endorsement thereon in the Form 106; and thereupon such last-mentioned High Bailiff or Officer may, and shall in all respects execute the said Warrant according to the requirements thereof, and all Constables and Peace Officers shall aid and assist within their respective districts in the execution of such Warrant.

Prison to which a person arrested is to be conveyed, and production and custody of persons arrested.

214.—(1.) Where a person is arrested under a Warrant of Commitment issued under any of the provisions of the Act and Rules, other than sections 174 and 176 of the Act, and Rule 66 of the Rules, he shall be forthwith conveyed in custody of the Bailiff or Officer apprehending him to the prison of the Court within the ordinary jurisdiction of which he is apprehended, and kept therein for the time mentioned in the Warrant of Commitment, unless sooner discharged by the Order of the Court which originally issued the Warrant of Commitment, or otherwise by law.

(2.) Where a person is arrested under a Warrant, issued under section 174 or section 176 of the Act, or under Rule 66 of the Rules, he shall be forthwith conveyed in custody of the Bailiff or Officer apprehending him to the prison of the Court within the ordinary jurisdiction of which he is apprehended; and the Governor or Keeper of such prison shall produce such person before the Court as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be

otherwise discharged by law. Provided that where any such person is conveyed to a prison other than the prison used by the Court which originally issued the Warrant in cases of Orders of Commitment made by such Court in the exercise of its ordinary jurisdiction, the Court may by Order direct such person to be transferred to such last mentioned prison; and on receipt of such Order the Governor or Keeper of the prison to which such person has been conveyed, shall cause such person to be conveyed in proper custody to the prison mentioned in such Order, and the Governor or Keeper of such last mentioned prison shall, on production of such Order and of the Warrant of Arrest, receive such person, and shall produce him before the Court, as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law.

MISCELLANEOUS MATTERS.

Board of Trade orders.

215. The Board of Trade may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or the Rules which are of an administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the King's printers, and purport to be issued under the authority of the Board of Trade.

Enlargement or abridgment of time.

216. The Court may, in any case in which it shall see fit, extend or abridge the time appointed by the Rules or fixed by any order of the Court for doing any act or taking any proceeding.

Formal defect not to invalidate proceedings.

217.—(1.) No proceedings under the Act or the Rules shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2.) No defect or irregularity in the appointment or election of a Receiver, Liquidator, or member of a Committee of Inspection shall vitiate any act done by him in good faith.

Application of existing procedure.

218. In all proceedings in or before the Court, or any Judge Registrar or Officer thereof, or over which the Court has jurisdiction under the Act and Rules, where no other provision is made by the Act or Rules, the practice procedure and regulations shall unless the Court otherwise in any special case directs, in the High Court be in accordance with the Rules of the Supreme Court and practice of the High Court, and in a Palatine Court and County Court in accordance, as far as practicable, with the existing Rules and practice of the Court in proceedings for the administration of assets by the Court.

Petitions in Liverpool and Manchester District Registries.

219. The provisions of Rule 2 of the Rules of the Supreme Court, 1887,* relating to petitions in the District Registries of Liverpool and Manchester, shall apply to petitions presented in those Registries under the Act and Rules.

Annulment.

220. The Companies (Winding-up) Rules, 1903, and the forms thereby prescribed are hereby revoked and annulled, provided that such revocation and annulment shall not prejudice or affect anything done or suffered before the date on which these rules come into operation under any Rule or Order which is hereby revoked and annulled and that no rule or practice which was annulled or repealed by the said Rules and Orders shall be revived by reason of the revocation and annulment hereby effected.

Short title and commencement.

221. These Rules may be cited as the Companies (Winding-up) Rules, 1909. They shall come into operation on the 1st day of April, 1909.

Loreburn, C.

I concur,

Winston S. Churchill,
President of the Board of Trade.

The 29th day of March, 1909.

* Rules of the Supreme Court, May, 1887, printed in Statutory Rules and Orders Revised (1st Edition), Vol. 7, p. 333.

APPENDIX.

Forms.

No. 1. (Rule 11.)

General Title (High Court).

[For this Form see p. 833.]

No. 2. (Rule 11.)

General Title (County Court).

[For this Form see p. 834.]

No. 3. (Rule 8.)

Form of Summons (General).

[This Form is used in the summons on pp. 815 and 816.]

No. 4. (Rule 25.)

Petition.

[For this Form see pp. 834 and 835.]

No. 5. (Rule 25.)

Petition by unpaid Creditor on Simple Contract.

[For this Form see p. 835.]

No. 6. (Rule 27.)

Advertisement of Petition.

[For this Form see pp. 838 and 839.]

No. 7. (Rule 28.)

Affidavit of Service of Petition on Members, Officers, or Servants.

[For this Form see pp. 848 and 849.]

No. 8. (Rule 28.)

Affidavit of Service of Petition on Liquidator.

[For this Form see p. 849.]

No. 9. (Rule 29.)

Affidavit verifying Petition.

[For this Form see p. 848.]

No. 10. (Rule 31.)

Order appointing the Official Receiver as Provisional Liquidator after Presentation of Petition, and before Order to Wind up.

[For this Form see p. 852.]

No. 11. (Rule 33.)

Notice of Intention to appear on Petition.

[For this Form see p. 854.]

No. 12. (Rule 34.)

List of Parties attending the hearing of a Petition.

[For this Form see p. 855.]

No. 13. (Rule 37.)

NOTIFICATION TO OFFICIAL RECEIVER OF ORDER PRONOUNCED ON PETITION FOR WINDING UP.

[For this Form see p. 872.]

No. 14. (Rule 37.)

NOTIFICATION TO OFFICIAL RECEIVER OF ORDER PRONOUNCED FOR APPOINTMENT OF OFFICIAL RECEIVER AS PROVISIONAL LIQUIDATOR PRIOR TO WINDING UP ORDER BEING MADE.

[For this Form see p. 872.]

No. 15. (Rule 40.)

ORDER FOR WINDING UP BY THE COURT.

[For this Form see p. 873.]

No. 16. (Rule 41.)

ORDER FOR WINDING UP, SUBJECT TO SUPERVISION.

[For this Form see pp. 1314 and 1315.]

No. 17. (Rule 41.)

NOTICE OF ORDER TO WIND UP (FOR NEWSPAPER).

[For this Form see p. 879.]

No. 18. (Rule 43.)

ORDER OF TRANSFER.

[For this Form see p. 817.]

No. 19. (Rule 46.)

NOTICE OF TRANSFER OF PROCEEDINGS TO THE BOARD OF TRADE AND OFFICIAL RECEIVER.

[For this Form see pp. 817 and 818.]

No. 20. (Rule 49.)

AFFIDAVIT BY SPECIAL MANAGER VERIFYING ACCOUNT.

[For this Form see p. 908.]

No. 21. (Rule 118.)

NOTICE TO CREDITORS OF FIRST MEETING.

[For this Form see p. 932.]

No. 22. (Rule 118.)

NOTICE TO CONTRIBUTORIES OF FIRST MEETING.

[For this Form see pp. 932 and 933.]

No. 23. (Rule 119.)

NOTICE TO DIRECTORS AND OFFICERS OF COMPANY TO ATTEND FIRST MEETING OF CREDITORS OR CONTRIBUTORIES.

[For this Form see p. 933.]

No. 24.

MEMORANDUM OF PROCEEDINGS AT ADJOURNED FIRST MEETING.

(No quorum.)

[For this Form see p. 936.]

No. 25.

LIST OF CREDITORS (*a*) ASSEMBLED TO BE USED AT EVERY MEETING.

(*a*) "Or contributories."

[For this Form see p. 937.]

No. 26. (Rule 50.)

STATEMENT OF AFFAIRS.

[For this Form see pp. 912 *et seq.*]

No. 27. (Rule 55.)

REPORT OF RESULT OF MEETING OF CREDITORS OR CONTRIBUTORIES.

[For this Form see pp. 943 and 944.]

No. 28. (Rule 55.)

ORDER APPOINTING LIQUIDATOR.

[For this Form see p. 945.]

No. 29. (Rule 57.)

CERTIFICATE THAT LIQUIDATOR OR SPECIAL MANAGER HAS GIVEN SECURITY.

[For this Form see p. 948.]

No. 30. (Rule 55.)

ADVERTISEMENT OF APPOINTMENT OF LIQUIDATOR.

[For this Form see p. 946.]

No. 31. (Rules 60–62.)

ORDER DIRECTING A PUBLIC EXAMINATION.

[For this Form see p. 1062.]

No. 32. (Rule 64.)

ORDER APPOINTING A TIME FOR PUBLIC EXAMINATION.

[For this Form see p. 1063.]

No. 33. (Rule 64.)

NOTICE TO ATTEND PUBLIC EXAMINATION.

[For this Form see pp. 1064 and 1065.]

No. 34. (Rule 71.)

APPLICATION FOR APPOINTMENT OF SHORTHAND WRITER TO TAKE DOWN NOTES OF PUBLIC EXAMINATION AND ORDER THEREON.

[For this Form see p. 1045.]

No. 35. (Rule 71.)

DECLARATION BY SHORTHAND WRITER.

[For this Form see p. 1065.]

No. 36. (Rule 67.)

NOTES OF PUBLIC EXAMINATION WHERE A SHORTHAND WRITER IS APPOINTED.

[For this Form see pp. 1065 and 1066.]

No. 37. (Rule 67.)

NOTES OF PUBLIC EXAMINATION WHERE A SHORTHAND WRITER IS NOT APPOINTED.

[For this Form see p. 1066.]

No. 38. (Rule 72.)

REPORT TO THE COURT WHERE PERSON EXAMINED REFUSES TO ANSWER TO SATISFACTION OF REGISTRAR OR OFFICER.

[For this Form see p. 1066.]

No. 39.

ORDER ON PERSONS TO ATTEND AT CHAMBERS TO BE EXAMINED.

[For this Form see p. 1067.]

No. 40. (Rule 66.)

WARRANT AGAINST PERSON WHO FAILS TO ATTEND EXAMINATION.

[For this Form see pp. 1068 and 1069.]

No. 41. (Rule 76.)

NOTICE BY LIQUIDATOR REQUIRING PAYMENT OF MONEY OR DELIVERY OF BOOKS, &c., TO LIQUIDATOR.

[For this Form see pp. 999 and 1000.]

No. 42. (Rule 77.)

PROVISIONAL LIST OF CONTRIBUTORIES TO BE MADE OUT BY LIQUIDATOR.

[For this Form see pp. 1093 and 1094.]

No. 43. (Rule 78.)

NOTICE TO CONTRIBUTORIES OF APPOINTMENT TO SETTLE LIST OF CONTRIBUTORIES.

[For this Form see p. 1094.]

No. 44.

AFFIDAVIT OF POSTAGE OF NOTICES OF APPOINTMENT TO SETTLE LIST OF CONTRIBUTORIES.

[For this Form see p. 1095.]

No. 45. (Rule 79.)

CERTIFICATE OF LIQUIDATOR OF FINAL SETTLEMENT OF THE LIST OF CONTRIBUTORIES.

[For this Form see pp. 1095 and 1096.]

No. 46. (Rule 80.)

NOTICE TO CONTRIBUTORY OF FINAL SETTLEMENT OF LIST OF CONTRIBUTORIES AND THAT HIS NAME IS INCLUDED.

[For this Form see p. 1097.]

No. 47. (Rule 82.)

SUPPLEMENTAL LIST OF CONTRIBUTORIES.

[For this Form see pp. 1097 and 1098.]

No. 48.

AFFIDAVIT OF SERVICE OF NOTICE TO CONTRIBUTORY.

[For this Form see p. 1098.]

No. 49. (Rule 81.)

ORDER ON APPLICATION TO VARY LIST OF CONTRIBUTORIES.

[For this Form see p. 1098.]

No. 50. (Rule 83 (1).)

NOTICE TO EACH MEMBER OF COMMITTEE OF INSPECTION OF MEETING FOR SANCTION TO PROPOSED CALL.

[For this Form see p. 1176.]

No. 51. (Rule 83 (2).)

ADVERTISEMENT OF MEETING OF COMMITTEE OF INSPECTION TO SANCTION PROPOSED CALL.

[For this Form see pp. 1176 and 1177.]

No. 52. (Rule 83 (4).)

RESOLUTION OF COMMITTEE OF INSPECTION SANCTIONING CALL.

[For this Form see p. 1177.]

No. 53. (Rule 86.)

NOTICE OF CALL SANCTIONED BY COMMITTEE OF INSPECTION TO BE SENT TO CONTRIBUTORY.

[For this Form see p. 1177.]

No. 54. (Rule 84.)

SUMMONS FOR LEAVE TO MAKE A CALL.

[For this Form see pp. 1177 and 1178.]

No. 55. (Rule 84.)

AFFIDAVIT OF LIQUIDATOR IN SUPPORT OF PROPOSAL FOR CALL.

[For this Form see p. 1178.]

No. 56. (Rule 84.)

ADVERTISEMENT OF INTENDED CALL.

[For this Form see p. 1179.]

No. 57. (Rule 84.)

ORDER GIVING LEAVE TO MAKE A CALL.

[For this Form see p. 1179.]

No. 58. (Rule 85.)

DOCUMENT MAKING A CALL.

[For this Form see p. 1180.]

No. 59. (Rule 86.)

NOTICE TO BE SERVED WITH THE ORDER SANCTIONING A CALL.

[For this Form see p. 1180.]

No. 60. (Rule 87.)

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER FOR PAYMENT OF CALL.

[For this Form see pp. 1180 and 1181.]

No. 61. (Rule 87.)

ORDER FOR PAYMENT OF CALL DUE FROM A CONTRIBUTORY

[For this Form see p. 1184.]

No. 62. (Rule 87.)

AFFIDAVIT OF SERVICE OF ORDER FOR PAYMENT OF CALL.

[For this Form see p. 1186.]

No. 63. (Rules 88-93.)

PROOF OF DEBT. GENERAL FORM.

[For this Form see pp. 1245 and 1246.]

No. 64. (Rule 99.)

PROOF OF DEBT OF WORKMEN.

[For this Form see p. 1246.]

No. 65. (Rule 103.)

NOTICE OF REJECTION OF PROOF OF DEBT.

[For this Form see pp. 1246 and 1247.]

No. 66. (Rule 110.)

LIST OF PROOFS TO BE FILED UNDER RULES 110 AND 111.

[For this Form see p. 1249.]

No. 67. (Rule 150.)

NOTICE OF CREDITORS OF INTENTION TO DECLARE DIVIDEND.

[For this Form see p. 1249.]

No. 68. (Rule 150 (5).)

CERTIFIED LIST OF PROOFS UNDER RULE 150 (5) COMPANIES (WINDING-UP) RULES, AND APPLICATION FOR ISSUE OF CHEQUES FOR DIVIDEND ON COMPANIES LIQUIDATION ACCOUNT.

[For this Form see p. 1250.]

No. 69. (Rule 150 (5).)

CERTIFIED LIST OF PROOFS FILED UNDER RULE 150 (5) COMPANIES (WINDING UP) RULES, SPECIAL BANK CASE.

[For this Form see pp. 1250 and 1251.]

No. 70.

NOTICE TO PERSONS CLAIMING TO BE CREDITORS OF INTENTION TO DECLARE FINAL DIVIDEND.

[For this Form see p. 1250.]

No. 71. (Rule 150 (3).)

NOTICE OF DIVIDEND.

[For this Form see pp. 1251 and 1252.]

No. 72. (Rule 150 (7).)

AUTHORITY TO LIQUIDATOR TO PAY DIVIDENDS TO ANOTHER PERSON.

[For this Form see pp. 1252 and 1253.]

No. 73. (Rule 151.)

NOTICE OF RETURN TO CONTRIBUTORIES.

[For this Form see pp. 1259 and 1260.]

AUTHORITY FOR DELIVERY.

[For this Form see p. 1260.]

No. 74. (Rule 151.)

SCHEDULE OR LIST OF CONTRIBUTORIES HOLDING PAID-UP SHARES TO WHOM A DIVIDEND OR RETURN IS TO BE PAID.

[For this Form see p. 1260.]

No. 75. (Rule 121.)

NOTICE OF MEETING [GENERAL FORM].

[For this Form see p. 958.]

No. 76. (Rule 124.)

AFFIDAVIT OF POSTAGE OF NOTICES OF MEETING.

[For this Form see p. 935.]

No. 77. (Rule 124.)

CERTIFICATE OF POSTAGE OF NOTICES (GENERAL).

[For this Form see p. 936.]

No. 78. (Rule 131.)

MEMORANDUM OF ADJOURNMENT OF MEETING.

[For this Form see p. 936.]

No. 79. (Rule 127.)

AUTHORITY TO DEPUTY TO ACT AS CHAIRMAN OF MEETING AND USE PROXIES.

[For this Form see p. 936.]

No. 80. (Rule 147.)

GENERAL PROXY.

[For this Form see p. 934.]

No. 81. (Rule 147.)

SPECIAL PROXY.

[For this Form see pp. 934 and 935.]

No. 82. (Rule 165.)

APPLICATION TO BOARD OF TRADE TO AUTHORISE A SPECIAL BANK ACCOUNT.

[For this Form see p. 965.]

No. 83. (Rule 165.)

ORDER OF BOARD OF TRADE FOR SPECIAL BANK ACCOUNT

[For this Form see pp. 965 and 966.]

No. 84. (Rule 168.)

CERTIFICATE AND REQUEST BY COMMITTEE OF INSPECTION AS TO INVESTMENT OF FUNDS.

[For this Form see p. 966.]

No. 85. (Rule 168.)

REQUEST BY COMMITTEE OF INSPECTION TO BOARD OF TRADE TO SELL SECURITIES.

[For this Form see p. 967.]

No. 86. (Rule 169.)

CERTIFICATE BY COMMITTEE OF INSPECTION AS TO AUDIT OF LIQUIDATOR'S ACCOUNTS.

[For this Form see p. 985.]

No. 87. (Rule 170.)

AFFIDAVIT VERIFYING LIQUIDATOR'S ACCOUNT UNDER SECTION 155.

[For this Form see p. 986.]

No. 88. (Rule 171.)

LIQUIDATOR'S TRADING ACCOUNT UNDER SECTION 155.

[For this Form see p. 986.]

No. 88A. (Rule 171.)

AFFIDAVIT VERIFYING LIQUIDATOR'S TRADING ACCOUNT UNDER SECTION 155.

[For this Form see p. 987.]

No. 89. (Rule 177.)

REQUEST TO DELIVER BILL FOR TAXATION.

[For this Form see p. 1196.]

No. 90. (Rule 182.)

CERTIFICATE OF TAXATION.

[For this Form see p. 1198.]

No. 91. (Rules 177–184.)

REGISTER TO BE KEPT BY TAXING OFFICER.

[For this Form see p. 1199.]

No. 92. (Rules 189 and 190.)

[For this Form see pp. 976 *et seq.*]

No. 93. (Rules 189 and 190.)

AFFIDAVIT VERIFYING STATEMENT OF LIQUIDATOR'S ACCOUNT UNDER SECTION 224.

[For this Form see pp. 979 and 980.]

No. 94.

LIQUIDATOR'S TRADING ACCOUNT UNDER SECTION 224.

[For this Form see pp. 980 and 981.]

No. 95.

LIST OF DIVIDENDS OR COMPOSITION.

[For this Form see p. 981.]

No. 96.

LIST OF AMOUNTS PAID OR PAYABLE TO CONTRIBUTORIES.

[For this Form see pp. 981 and 982.]

No. 97. (Rule 192.)

AFFIDAVIT VERIFYING ACCOUNT OF UNCLAIMED AND UNDISTRIBUTED FUNDS.

[For this Form see p. 982.]

No. 98. (Rule 197.)

NOTICE TO CREDITORS AND CONTRIBUTORIES OF INTENTION TO APPLY FOR RELEASE.

[For this Form see p. 988.]

No. 99. (Rule 197.)

APPLICATION BY LIQUIDATOR TO BOARD OF TRADE FOR RELEASE.

[For this Form see pp. 988 and 989.]

No. 100. (Rule 197.)

STATEMENT TO ACCOMPANY NOTICE OF APPLICATION FOR RELEASE.

[For this Form see pp. 990 and 991.]

No. 101. (Rule 208.)

REGISTER OF WINDING-UP ORDERS TO BE KEPT IN THE COURTS.

[For this Form see p. 1021.]

No. 102. (Rule 208.)

REGISTER OF PETITIONS TO BE KEPT IN THE COURTS.

[For this Form see p. 1022.]

No. 103. (Rule 209.)

NOTICES FOR LONDON GAZETTE.

(1.) *Notice of Winding-up Order.*

[For this Form see p. 879.]

(2.) *Notice of first Meetings.*

[For this Form see p. 933.]

(3.) *Notice of Day appointed for Public Examination.*

[For this Form see p. 1064.]

(4.) *Notice of Intended Dividend.*

Name of Company.	Address of Registered Office.	Court.	Number of Matter.	Last Day for receiving Proofs.	Name of Liquidator.	Address.

(5.) *Notice of Dividend.*

Name of Company.	Address of Registered Office.	Court.	Number of Matter.	Amount per £	First and final or otherwise.	When payable.	Where payable.

(6.) *Notice of Return to Contributories.*

Name of Company.	Address of Registered Office.	Court.	Number of Matter.	Amount per Share.	First and final or otherwise.	When payable.	Where payable.

(7.) *Notice of Appointment of Liquidator.*

[For this Form see p. 946.]

(8.) *Notice of Removal of Liquidator.*

[For this Form see p. 956.]

(9.) *Notice of Release of Liquidator.*

[For this Form see p. 992.]

No. 104. (Rule 210.)

MEMORANDUM OF ADVERTISEMENT OR GAZETTING.

[For this Form see p. 1022.]

No. 105. (Rule 213.)

WARRANT TO REGISTRAR OF COURT IN WHOSE DISTRICT A PERSON AGAINST WHOM A WARRANT OF ARREST HAS BEEN ISSUED IS BELIEVED TO BE.

[For this Form see p. 1188.]

No. 106. (Rule 213.)

ENDORSEMENT OF WARRANT OF ARREST ISSUED BY A COURT TO WHICH THE SAME HAS BEEN SENT FOR EXECUTION BY EHT COURT WHICH ORIGINALLY ISSUED IT.

[For this Form see p. 1188.]

IV.

STATUTORY RULES AND ORDERS, 1909.

No. $\frac{327}{L.\ 14}$.

PARTNERSHIP.

Limited Partnerships.

THE LIMITED PARTNERSHIPS (WINDING-UP) RULES, 1909, DATED MARCH 29, 1909, MADE UNDER SECTION 268 (1) (vii) OF THE COMPANIES (CONSOLIDATION) ACT, 1908 (8 EDW. 7, c. 69).

The provisions of the Companies (Consolidation) Act, 1908, with respect to winding-up, and the provisions of the Companies (Winding-up) Rules, 1909, so far as applicable to the proceedings in a winding-up by the Court (hereinafter called "the applied provisions"), shall apply to the winding-up by the Court of Limited Partnerships subject to the modifications following, that is to say :—

Preliminary.

General interpretation of applied provisions.

1. The following expressions shall, unless the context or subject matter otherwise requires, be substituted in the applied provisions and in the forms prescribed by the said Rules for the expressions hereinafter particularly mentioned, that is to say :—

"Limited Partnership" for "Company."

"General Partner" for "Director" and for "Secretary," and for "Secretary or Chief Officer."

"Manager, Clerk, or Servant" for "Officer."

"Partner" for "Member" or "Shareholder."

"Principal place of business as registered" for "registered office."

Definition of "the Act" and "the Court."

2. In these Rules unless the context or subject matter otherwise requires, the expression "the Act" shall mean the Companies (Consolidation) Act, 1908, and the expression "the Court" shall mean the Court which has jurisdiction to wind up the limited partnership.

Substitution of Rules as to contributories for certain provisions of Act.

3. For the purposes of the application of Section 124 of the Act, the provisions of these Rules with regard to the liability of partners and others as contributories shall be substituted for the provisions of Section 123 of the Act.

Contribution by partners.

4. In the event of a limited partnership being wound up by the Court every present and past partner, general or limited, shall be liable to contribute to the assets of the limited partnership to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding-up, and for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say :—

(1.) No present or past limited partner shall be liable to contribute as such to the assets of the limited partnership to any greater amount than the amount of any part of his contribution as such limited partner which he may have drawn out or received back since he became or whilst he remained a limited partner, except in the case of a present limited partner who is a past general partner and in the case of a past limited partner who has become a present general partner.

(2.) No past general partner shall be liable to contribute as such to the assets of the limited partnership, except in respect of partnership debts and obligations incurred whilst he continued to be a general partner : but every past general partner who has become a limited partner shall in addition to any amount which he may be liable to contribute in respect of partnership debts and obligations incurred whilst he continued to be a general partner be liable to contribute to the assets of

the limited partnership to an amount equal to the amount of any part of his contribution as such limited partner which he may have drawn out or received back since he became or whilst he remained a limited partner.

(3.) No past partner, general or limited, shall be liable to contribute as such to the assets of the limited partnership unless it appears to the Court that the existing partners are unable to satisfy the contributions required to be made by them in pursuance of this Rule.

(4.) No sum due to any partner, general or limited, in his character as a partner, by way of capital, dividends, profits, or otherwise, shall be deemed to be a debt of the limited partnership payable to such partner in a case of competition between himself and any other creditor not being a partner but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories amongst themselves.

Provisions in case of death of contributory in insolvent circumstances.

5. In the event of any contributory dying in insolvent circumstances and of an Order being made for the administration of his estate according to the law of bankruptcy, either before or after he has been placed on the list of contributories, the trustee (or in Ireland, the assignees) of his estate shall be deemed to represent the deceased for all purposes of the winding-up of the limited partnership and shall be deemed to be a contributory accordingly, and may be called upon to admit to proof against the estate of the deceased or otherwise to allow to be paid out of his assets in due course of law any moneys due from the deceased in respect of his liability to contribute to the assets of the limited partnership being wound up.

Jurisdiction and Procedure.

Inability to pay debts.

6. For the purposes of the application of Section 268 of the Act, the expression "principal place of business" as used in that section shall mean the principal place of business as registered, and the word "member" as used in that section shall mean a general partner only and shall not include a limited partner.

Court having jurisdiction in England and Wales.

7. The provisions of Section 131 of the Act shall not apply, but every petition for the winding-up of a limited partnership registered in England shall be presented to the High Court, and that Court shall, subject as hereinafter mentioned, be the Court having jurisdiction to wind-up limited partnerships registered in England.

Provided always that the Judge of the High Court may, by the winding-up order or by any further order, direct that the winding-up of the said limited partnership shall proceed in either of the Chancery Courts of the Counties Palatine of Lancaster and Durham or in any County Court having jurisdiction to wind-up a company within the jurisdiction of which said Palatine or County Court the principal place of business as registered of such limited partnership shall be situate.

And thereupon the said winding-up shall proceed accordingly, and the said Palatine or County Court shall for the purposes of such winding-up have all the jurisdiction and powers of the High Court in relation to the winding-up of that limited partnership: and every officer of the said Palatine or County Court who, as the prescribed officer in relation to the winding-up of companies in that Court is bound to perform any duties in relation to such winding-up, shall perform the like duties in relation to the winding-up of a limited partnership, and shall for that purpose have all the powers of the prescribed officer of the High Court.

Right of contributory to petition.

8. The provisions of Section 137, subsection (1), paragraphs (a) and (b), and subsection (3) of the Act shall not apply.

Form of petition.

9. The provisions of Rules 25 and 28 of the Companies (Winding-up) Rules, 1909, and of Rule 3 of the Rules of the Supreme Court (Ireland), 1905, shall not apply, but every petition for winding-up a limited partnership shall be in the form No. 1 in the Appendix to

these Rules with such variations as circumstances may require, and shall be served in the manner prescribed by these Rules.

A petition for the winding-up of a limited partnership if presented in the name of the firm shall be signed by all the general partners, if there are more than one.

Title of proceedings generally.

10. The provisions of Rule 11 (1) of the Companies (Winding-up) Rules, 1909, and of Rule 1 of Order 74 of the Rules of the Supreme Court (Ireland), 1905, shall not apply, but every proceeding in a winding-up matter shall be dated, and shall with any necessary additions be intituled as follows :—

In the Court of
Limited Partnerships Winding-up.
In the matter of The Limited Partnerships Act, 1907, and of The Companies (Consolidation) Act, 1908,
and
the name of the matter to which it relates.
Numbers and dates may be denoted by figures.

Service.

11. Every demand for payment, and every notice of the institution of any action or other proceeding under Section 268 of the Act as applied by these Rules, and every petition for the winding-up of a limited partnership unless presented in the name of the firm by all the general partners jointly, if there are more than one, shall be served upon the limited partnership at the principal place of business of the limited partnership as registered, by delivering the same to one of the general partners there or to some person having at the time of service the control or management of the partnership business there, unless the Court or a Judge shall otherwise direct.

Every petition for the winding-up of a limited partnership presented in the name of the firm by all the general partners, jointly, if there are more than one, or presented by any general partner, shall be served on each of the limited partners personally unless the Court or a Judge shall otherwise direct.

Every notice and other document requiring to be served upon the limited partnership for the service of which no special mode is prescribed may be served by post or by leaving the same at the principal place of business of the limited partnership as registered in an envelope addressed to the limited partnership in the firm name as registered.

Report on winding-up and proceedings thereon in England.

12. For the purposes of the application of Sections 148 and 175 of the Act the preliminary report of the Official Receiver to the Court shall be a report,

(*a*) as to the contributions of the partners and the estimated amount of assets and liabilities of the limited partnership ; and

(*b*) if the limited partnership has failed, as to the causes of the failure ; and

(*c*) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the limited partnership or the conduct of the business thereof.

The further report or reports (if any) of the Official Receiver shall state the manner in which the limited partnership was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any partner, general or limited, in relation to the limited partnership since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

The court may, on consideration of any such further report stating that in the opinion of the Official Receiver a fraud has been committed as aforesaid, direct that any person who has taken part in the promotion or formation of the limited partnership or has been a partner, general or limited, shall attend before the court on a day appointed by the Court for that purpose and be publicly examined as to the promotion or formation or the conduct of the

business of the limited partnership, or as to his conduct and dealings as a partner.

Rectification of Register.

13. For the purpose of settling the list of contributories the Court shall have power to rectify the Register of the limited partnership in respect of :—

(a) the name of any of the partners whether general or limited ; and

(b) the sum contributed by any limited partner ; and

(c) the nature of the liability of any partner, whether general or limited as therein registered and otherwise as may be necessary for the purpose aforesaid, upon the application of any person aggrieved or of any partner whether general or limited.

Report of Official Receiver as to compromise.

14. Any report of the Official Receiver under Rule 74 of the Companies (Winding-up) Rules, 1909, as applied by these Rules, may extend to the conduct of the limited, as well as of the general partners.

Notice of first meetings.

15. The Official Receiver shall give to each of the limited partners also the notice to attend the first meetings of creditors and contributories to be given to general partners under Rule 119 of the Companies (Winding-up) Rules, 1909, as applied by these Rules, and it shall be the duty of every such limited partner to attend accordingly.

Inspection of file.

16. Every person who is or has been a partner, whether general or limited, of a limited partnership which is being wound-up shall be entitled free of charge to inspect the file of proceedings and to take copies or extracts under Rule 19 of the Companies (Winding-up) Rules, 1909, as applied by these Rules, and shall be entitled to be furnished with such copies or extracts at the rate therein mentioned.

Collection and Distribution of Assets.

Postponement of rights of Liquidator in case of insolvency of contributory.

17. Notwithstanding anything contained in Sections 127 or 151 of the Act, the liquidator shall not, in the event of any contributory being adjudged bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, and of an order being made for the administration of his estate according to the law of bankruptcy, have power to prove, rank, claim, and draw a dividend for any balance against the estate of such contributory, or to take and receive dividends in respect of such balance, until the claims of the other separate creditors of such contributory for valuable consideration in money or money's worth have been satisfied.

Supplemental Provisions.

Order of dissolution.

18. The provisions of Section 172 of the Act shall apply only when the affairs of the limited partnership have been completely wound-up by the Court under an order for winding-up not made on the ground that the limited partnership has been dissolved.

Disposal of books, &c.

19. The provisions of Section 222 of the Act shall apply where any limited partnership has been wound-up by the Court under an Order for winding-up made on the ground of the previous dissolution of the limited partnership as well as where the limited partnership has been wound-up on any other ground.

Application to Scotland.

20. These Rules shall apply to Scotland only so far as they modify provisions of the Act which are applicable to Scotland.

Repeal.

21. The Limited Partnerships (Winding-up) Rules, 1908, are hereby annulled as from the commencement of these Rules, except so far as regards any proceedings for the winding-up of any limited partnership under those Rules which may be pending in any Court at the date of the commencement of these Rules and for the purposes of such winding-up those Rules shall be deemed to remain in full force.

Short title and commencement.

22. These Rules may be cited as the Limited Partnerships (Winding-up) Rules, 1909. They shall come into operation on the

1st day of April, 1909, and shall apply to all proceedings instituted or commenced for the winding-up of a limited partnership on or after the said day.

Loreburn, C.

I concur,

Winston S. Churchill,
President of the Board of Trade.

The 29th day of March, 1909.

APPENDIX.

No. 1 (*Rule* 9).

PETITION.

[For this form see p. 836.]

V.

STATUTORY RULES AND ORDERS, 1903.

No. $\frac{1102}{\text{L. } 26}$.

COMPANY, ENGLAND.

Companies (Winding-up).

ORDER, DATED DECEMBER 2, 1903, MADE BY THE LORD CHANCELLOR WITH THE CONCURRENCE OF THE TREASURY AS TO FEES UNDER THE COMPANIES (WINDING-UP) ACT, 1890.

I, the Right Honourable Hardinge Stanley, Earl of Halsbury, Lord High Chancellor of Great Britain, Do, by virtue of the powers vested in me by the Companies (Winding-up) Act, 1890, direct that the fees in the scale hereto annexed shall, from and after the 1st January, 1904, be the fees to be paid in respect of proceedings under the said Act, in lieu of the fees in the scale annexed to the Order of December 17, 1891.

Halsbury, C.

Dated the 2nd day of December, 1903.

SCALE OF FEES.

TABLE A. (*a*)

	£	*s.*	*d.*
Every petition	2	0	0
Every bond with sureties	0	10	0
Every subpœna or summons	0	3	0
Every order made in Court (except an order upon a petition for winding-up, an order adjourning a public examination and an order appointing a shorthand writer)	1	0	0
Every order adjourning a public examination	0	5	0
Every order appointing a shorthand writer	0	5	0
Every order made in Chambers	0	5	0
Every examination of a witness taken by a Registrar of a County Court, 10*s.* for the first hour, and 7*s.* for every additional hour, and also travelling expenses where the examination is held at any place other than where the Court usually holds its sittings.			
Every affidavit filed other than proof of debts	0	2	0
For taking an affidavit, or an affirmation, or attestation upon honour in lieu of an affidavit, or a declaration,			

(*a*) The order of 31st July, 1908, supersedes this order as regards proceedings in the Supreme Court.

	£	s.	d.
except for proof of debts, and except declaration by a shorthand writer under Rule 74 (Form 35), for each person making the same	0	1	6
And in addition thereto for each exhibit referred to therein and required to be marked	0	1	0
On every proof of debt above £2 (other than proof for workmen's wages under Rule 102)	0	1	0
Every application for search other than by petitioner, liquidator, or officer of the Company	0	1	0
Every office copy, each folio of 72 words	0	0	4
Every application to inspect liquidator's statement lodged with Registrar of Joint Stock Companies under Section 15 of the Act	0	1	0
Every copy of, or extract from, such statement, each folio of 72 words or figures	0	0	4
Every application by a committee of inspection to the Board of Trade for a special bank account	1	0	0
Every order of the Board of Trade for a special bank account	2	0	0
Every application by a liquidator to an Official Receiver acting as committee of inspection	0	10	0
Every application under Section 15 of the Act to the Board of Trade for payment of money out of the Companies Liquidation Account; and every application for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the Companies Liquidation Account :—			
Where the amount applied for does not exceed £1	0	1	0
Where the amount applied for exceeds £1	0	2	6
On every application to the Court to approve a reconstruction or other scheme by which the affairs of the company are to be wound up otherwise than by the realization and distribution of the assets	5	0	0

[On every order of the Court approving such reconstruction or scheme, a fee according to the following scale on the estimated value of the company's property transferred or otherwise disposed of, viz. :—

On the first £10,000 or fraction thereof	$\frac{1}{4}$ per cent.
On the next £90,000 ,, ,,	$\frac{1}{8}$,,
Above £100,000	$\frac{1}{10}$,,] (b)

For taxation of costs.—The same fees as those directed to be paid and collected by the order for the time being in force as to Supreme Court fees.

TABLE B.

	£	s.	d.

I.—*On the audit of the Official Receiver's or liquidator's accounts by the Board of Trade, a fee according to the following scale on the amount brought to credit, including the produce of calls on contributories, but after deducting* (1) *money received and spent in carrying on the business of the company, and* (2) *amounts paid by the Official Receiver or liquidator to secured creditors (other than debenture-holders)* :—

On the first £5,000 or fraction thereof	1 per cent.
On the next £95,000 ,, ,,	$\frac{1}{2}$,,
On the next £400,000 ,, ,,	$\frac{1}{4}$,,
On the next £500,000 ,, ,,	$\frac{1}{8}$,,
Above £1,000,000	$\frac{1}{16}$,,

II.—*Where the Official Receiver acts as provisional liquidator only* :—

(a.) Where no winding-up order is made upon the petition, or where a winding-up order is

(b) The order of 8th November, 1904, provides that Table A is to be read as if the words in brackets were omitted, and as if the following words were added : "Every Registrar of a County Court certifying lists of proofs on each winding-up under Rule 119 (5) for ever 50 proofs or fraction thereof two shillings."

	£ s. d.
rescinded, or all further proceedings are stayed prior to the summoning of the statutory meetings of creditors and contributories :— Such amount as the Court may consider reasonable to be paid by the petitioner, or by the company as the Court may direct, in respect of the services of the Official Receiver as provisional liquidator.	
(b.) Where a winding-up order is made but the Official Receiver is not continued as liquidator after the statutory meetings of creditors and contributories :—	
(1.) In respect of every 10 members, creditors and debtors, and every fraction of 10 up to 1,000	0 10 0
For every 10 or fraction of 10 above 1,000 .	0 5 0

Provided that where the net assets of the company, including uncalled capital, are estimated in the statement of affairs not to exceed £500, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and inland postages.)

(2.) On the value of the company's property as estimated in the statement of affairs, after deducting (in cases where a person other than the Official Receiver has, prior to the making of a winding-up order, been appointed Receiver for debenture holders) the amount due to debenture holders :—

On the first £5,000 or fraction thereof .	1 per cent.
On the next £20,000 " " .	½ "
On the next £75,000 " " .	¼ "
Above £100,000	⅛ "

III.—*Where the Official Receiver acts as liquidator of the company (including his services as provisional liquidator)* :—

	£ s. d.
(1.) In respect of every 10 members, creditors, and debtors, and every fraction of 10 . .	1 0 0

Provided that where the net assets of the company, including uncalled capital, do not exceed £500, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and inland postages.)

(2.) Upon the total assets, including produce of calls on contributories, realised or brought to credit by the Official Receiver, after deducting sums on which fees are chargeable under No. IV. of this Table, and not being moneys received and spent in carrying on the business of the company :—

On the first £1000, or fraction thereof .	5 per cent.
On the next £1,500 " " .	4 "
On the next £2,500 " " .	3 "
On the next £5,000 " " .	2 "
On the next £90,000 " " .	1 "
Above £100,000	½ "

(3.) On the amount distributed in dividend or paid to contributories, preferential creditors, and debenture holders by the Official Receiver . Half the above percentages.

	£ s. d.
IV.—*Where the Official Receiver collects calls or realises property for debenture holders, or other secured creditors* :— The same fees as under No. III. (2.) and (3.) of this Table, to be paid out of the proceeds of such calls or property.	
V.—*Where the Official Receiver performs any special duties not provided for in the foregoing Tables* :— Such amount as the Court, on the application of the Official Receiver, with the sanction of the Board of Trade, may consider reasonable.	
VI.—Travelling, keeping possession, law costs, and other reasonable expenses of the Official Receiver, the amount disbursed.	
VII.—On every payment under Section 15 of money out of the Companies Liquidation Account, threepence on each pound or fraction of a pound to be charged as follows :— Where the money consists of unclaimed dividends, on each dividend paid out. Where the money consists of undistributed funds or balances, on the amount paid out.	

TABLE C. (*c*).

	£	s.	d.
High bailiff for attending sittings of the Court, under each winding-up order, per case	0	6	0
Serving every petition or subpœna or winding-up or other order (not serviceable by post) within two miles, including affidavit of service	0	3	6
If serviceable by post	0	1	0
Executing every warrant of seizure, or search warrant, or warrant of apprehension, or order of commitment	0	10	0
Keeping possession under a warrant, for each day the man is actually in possession; including affidavit of possession being actually kept	0	4	6
(not less than 3*s.* 6*d.* of the above sum is to be paid to the man in possession, and his receipt produced.)			
High bailiff's or (in the London district) officer's man, travelling to place of possession, or to execute a warrant of or order of commitment, or to serve a summons or subpœna, or for any other purpose specially directed by the Court, the amount actually and reasonably expended in travelling.			
His time, per day, where distance exceeds 10 miles	0	4	6
His expenses, per day, ,, ,, ,,	0	4	6
If high bailiff of a County Court or officer of Supreme Court directed by the Court personally to travel, the amount actually and reasonably expended in travelling.			
His time, per day	0	10	0
His expenses, per day	0	10	0

Where the head office of the Company being wound up is situated out of England, and the liquidation takes place partly in England and partly elsewhere, or where the Court has sanctioned a reconstruction of the Company or a scheme of arrangement of its affairs, or where for any other reason the Official Receiver satisfies the Board of Trade that the fees in the scale hereto annexed would be excessive such reduction may be made in the said fees as may, on the application of the Board of Trade, be sanctioned by the Lords Commissioners of His Majesty's Treasury.

(*c*) This Table C was substituted for the original Table C by an Order of 30th December, 1911.

We, the undersigned Lords Commissioners of His Majesty's Treasury, do hereby sanction the foregoing scales of fees, and do direct that the fees mentioned in Table A. shall be taken in money, except when they are to be taken by an officer of the Supreme Court of Judicature, or an officer of the Board of Trade, or an officer in the Companies Registration Office, and that the fees mentioned in Tables B. and C. shall be taken in money.

The documents to be stamped and the description of stamps to be used shall be as provided in the schedule annexed hereto.

The adhesive stamps shall be stamps over-printed with the words "Companies Winding Up," when the fee is to be taken by any officer of the Supreme Court of Judicature, or by the Official Receiver or any other officer of the Board of Trade; and they shall be the stamps used for the purposes of the "Companies Act" when taken by any officer in the Companies Registration Office.

They shall be cancelled by the various court or other officials by perforation, or in such other manner as the Commissioners of Inland Revenue may from time to time direct.

The impressed stamp shall be of such character as the said Commissioners may adopt for the purpose.

And we further direct that wherever practicable the stamp shall be affixed or the money paid in respect of every fee before the proceeding is had in respect of which the fee is payable; and that the charge to be made by the London Gazette for the insertion of each notice authorised by the Act or Rules shall be five shillings.

H. W. Forster,
Ailwyn E. Fellowes,
Two of the Lords Commissioners
of His Majesty's Treasury.

Dated the 2nd day of December, 1903.

The Schedule above referred to.

Proceeding.	Document to be stamped.	Character of Stamp to be used.
Every petition	Petition .	Impressed.
Every bond with sureties . .	Bond .	Impressed.
Every affidavit filed . . .	Affidavit .	Impressed or adhesive.
Every subpœna or summons . .	Subpœna or summons.	Impressed.
Every order made in Court or Chambers	Order .	Impressed.
For taking an affidavit, or an affirmation, or attestation upon honour in lieu of an affidavit, or a declaration	Affidavit .	Impressed or adhesive.
Every proof of debt above £2 .	Proof .	Impressed or adhesive.
Every application for search .	Application	Impressed.
Every application to inspect liquidator's statement	Application	Impressed.
Every copy or office copy . .	Office copy	Impressed or adhesive.
Every certificate of taxation by any officer of the Court for any costs, charges, or disbursements	Certificate	Impressed or adhesive

VI.

STATUTORY RULES AND ORDERS, 1908.

No. $\frac{813}{L. 31}$.

SUPREME COURT, ENGLAND.

Fees.

ORDER DATED JULY 31, 1908, AS TO SUPREME COURT FEES IN PROCEEDINGS IN THE WINDING-UP OF COMPANIES UNDER THE COMPANIES ACTS, 1862 TO 1907.

I, the Right Honourable Robert Threshie Baron Loreburn, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Supreme Court and with the concurrence of the Lords Commissioners of His Majesty's Treasury, do, by virtue of the powers vested in me by the Judicature Act, 1875, the Companies (Winding-up) Act, 1890, and all other powers enabling me in that behalf, order and direct that the fees and percentages to be taken in the High Court of Justice and the Court of Appeal in respect of all proceedings in the winding up of companies under the Companies Acts, 1862 to 1907, shall from and after the 31st December, 1908, be the fees and percentages fixed and appointed to be taken by the Orders for the time being in force as to Supreme Court fees and the fees and percentages contained in the schedule hereto in lieu of the fees prescribed in Table A. of the Order as to fees of the 2nd December, 1903, and the Order of 8th November, 1904.

The Schedule hereto.

	£	*s.*	*d.*
Every petition for winding up	2	0	0
Every Order made in Court (except an Order upon a Petition for winding up)	1	0	0
Every Order appointing a Shorthand Writer	0	5	0
Every inspection of a file of proceedings under Rule 19 .	0	1	0
Every application to approve a reconstruction or other scheme of arrangement under the Joint Stock Companies Arrangement Act, 1870	5	0	0
Every application to restore the name of a company to the register of Joint Stock Companies	2	0	0
On every proof of debt above £2 (other than proof for workmen's wages under Rule 102)	0	1	0

Loreburn, C.
Alverstone, C.J.
C. Swinfen Eady, J.
Ralph Neville, J.

We concur in the above Order.

J. Herbert Lewis,
Cecil Norton,
Commissioners of H.M. Treasury.

31st July, 1908.

VII.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

REGULATIONS ISSUED BY THE BOARD OF TRADE UNDER THE PROVISIONS OF RULE 215 OF THE COMPANIES (WINDING-UP) RULES, 1909.

1. *Remittances to Companies Liquidation Account.*—All moneys received by a Liquidator of a Company which is being wound up by order of the Court are required to be paid, without deduction, to the

Companies Liquidation Account (unless an account with any other Bank has been authorised by the Board of Trade under section 154 of the Companies (Consolidation) Act, 1908,) and remittances are to be made once a week, or forthwith, if a sum of 200*l.* or more has been received. Remittances may be made direct to the Bank of England, Law Courts Branch, by cheque crossed "Bank of England, credit of Companies Liquidation Account."

2. The remittances to the Bank of England should be accompanied by a Receivable Order (Form C. No. 7), and the counterpart or advice letter should be transmitted by the same post to the Accountant-General to the Board of Trade. Halfpence should not be included in remittances. Forms of Receivable Order will be supplied on application to the Comptroller of the Companies Department, 27, Great George Street, Westminster, S.W.

3. By sub-section 3 of section 154 of the Companies (Consolidation) Act, 1908, a Liquidator is absolutely prohibited from paying any sums received by him as Liquidator into his private banking account, and by sub-section 2 it is enacted that if a Liquidator at any time retains for more then ten days a sum exceeding 50*l.*, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board, he shall pay interest on the amount so retained in excess at the rate of 20*l.* per centum per annum and shall be liable to disallowance of all or such part of his remuneration as the Board may think just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

All current Bills of Exchange should be remitted to the Companies Liquidation Account.

4. *Special Bank Account.*—Where a special Bank Account is sanctioned by the Board of Trade under the provisions of section 154 (1) of the Companies (Consolidation) Act, 1908, *all* moneys received must be paid into the appointed Bank. The Pass Book with the special Bank should be forwarded at each audit.

5. *Payments made to a Liquidator out of Companies Liquidation Account.*—All necessary disbursements made by a Liquidator on account of a Company to the date of his application for release will be repaid to him out of any moneys standing to the credit of the Company in the Companies Liquidation Account on application to the Comptroller (Form C. No. 5).

Any expenses properly incurred by the Liquidator after applying for, but before obtaining, his release, will be repaid to him by the Official Receiver out of any funds available for the purpose.

6. Cheques to the order of the payee for sums which become payable on account of the Company may be obtained by the Liquidator on application by him on Form C. No. 6, for delivery by him to the parties entitled.

7. Under no circumstances will the Board of Trade hold themselves responsible for payments made on the requisition of the Liquidator.

8. The Comptroller will be prepared to certify the balance standing to the credit of a Company in the Companies Liquidation Account, on receiving from the Liquidator a statement of the balance shown by the Bank columns of the Cash Book.

9. Moneys withdrawn from the Bank should not be treated as receipts from realisations, but should appear only in the "Drawn from Bank" column of the Cash Book, the application of the money being entered in the "Payments" column. The payments into the Bank should appear only in the "Paid into Bank" column in the Cash Book.

10. *Cancellation of cheques and money orders.*—All applications for the cancellation of cheques and money orders should be addressed to the Comptroller and should state the grounds upon which the cancellation is required.

11. *Payment of Dividends.*—The payment of dividends will in every instance, *except where a special Bank Account has been*

authorised, be made by cheques on the Bank of England, or money orders, which will be prepared by the Board of Trade on the application of the Liquidator, and will be transmitted to him for distribution amongst the Creditors. The application must be in the prescribed form (No. 68), and must be certified by the Registrar of the Court, if the proceedings are in a County Court, and by the Liquidator, if the proceedings are in the High Court, and in the latter case must be accompanied by office copies of the lists of proofs filed (Rule 150 (5)). The Board of Trade will require TEN days' notice to enable them to prepare the cheques or money orders for dividends. Considerable inconvenience and increased labour has been caused by Liquidators transmitting imperfect and inaccurate lists of Creditors, and the Board of Trade request that great care may be exercised in the preparation of them, and that in all cases of payment to executors, Trustees, representative officials, &c., the name or names should be inserted in the list.

The creditors in the lists should be numbered consecutively, so that for the purpose of identification corresponding numbers may be affixed to the cheques and money orders.

The total amount of the dividend payable should be charged in the Cash Book in one sum. If the dividend has been paid by cheques on the Companies Liquidation Account, the Liquidator on the expiration of six months from the date of issue, or on application for his release, if that event occurs earlier, should return any cheques remaining in hand to the Accountant-General to the Board of Trade.

If the dividend is paid through a Special Bank, the Liquidator should, upon the declaration of the dividend, forward to the Comptroller of the Companies Department a certified list of the proofs filed in Form No. 69, together with an office copy of the list of proofs filed if the proceedings are in the High Court, and, at the expiry of six months from the date of the declaration of the dividend, should forward to the Comptroller, for audit, vouchers for the dividends paid and a list of those remaining unclaimed.

The Liquidator will then be furnished with a Receivable Order for payment into the Bank of England of the amount of the dividends unclaimed. Under no circumstances should unclaimed dividends be credited to the Estate without the previous sanction of the Comptroller.

12. *Return to Contributories.*—Applications for cheques for return to Contributories should be made on Form C. No. 6, which should give the name of each Contributory together with the amount for which he has been settled on the list; and, in cases where the amount payable is under 2*l.*, the place at which the money order should be made payable.

The total amount of each return to Contributories should be entered in the Cash Book in one sum as in the case of dividends.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

REGULATIONS APPROVED BY THE BOARD OF TRADE AND THE COMMISSIONERS OF INLAND REVENUE AS TO KING'S TAXES ASSESSED ON COMPANIES WOUND UP BY THE COURT.

1. Where a winding-up order is made on or after the 1st December in the year of assessment, or the Official Receiver or Liquidator remains in possession of the premises in respect of which King's Taxes are assessed under a winding-up order made prior to the 1st December, until the 1st January next following, the Collector shall be entitled to prove for the said taxes, viz. :—the Income Tax (Schedule " A "), Inhabited House Duty and Land Tax, assessed on the Company up to the 5th April next following the date of the winding-up order, in the same manner as if such taxes had become due and payable at the date of the winding-up order, and such proof shall rank for dividend.

2. Where a winding-up order is made prior to the 1st December in the year of assessment, the Inland Revenue authorities will make no claim on the Official Receiver or Liquidator for Income Tax (Schedule "A") Inhabited House Duty and Land Tax for the year ending 5th April next following the date of the winding-up order, unless the Official Receiver or Liquidator remains in possession of the premises in respect of which the taxes are assessed until the following 1st January.

3. Where the Official Receiver or Liquidator disposes of a business as a going concern, he will allow to the purchaser the proportion of the Income Tax (Schedule "A") and Land Tax for the current year to the date of the completion of the purchase, and the purchaser will become liable to the Inland Revenue authorities for the taxes in question for the whole year.

4. PROVIDED ALWAYS that nothing in these Regulations shall be deemed to interfere with the right of the Crown to enforce payment of Income Tax (Schedule "A") and Land Tax *actually due and payable*, by distress levied on the property of the Company. These taxes for the year ending 5th April next following the date of the winding-up order should, therefore, be dealt with on the footing of "secured" debts, and be paid by the Official Receiver or Liquidator on demand without any proof on the part of the Collector, if on or after the 1st January in the year of assessment there are on the premises sufficient goods belonging to the company on which the Collector might levy, and notice of any such claim should be given to the Official Receiver or Liquidator by the Collector forthwith upon the making of the winding-up order. If at such time there are no goods upon which distress can be levied, proof of the debt may be made by the Collector as directed in paragraph 1, and such proof shall, if found correct, be admitted to rank for dividend.

In like manner any Income Tax (Schedule "A") and Land Tax assessed on the Company up to the 5th April next *before* the date of the winding-up order should be dealt with as secured debts if there are at the time of the Collector's demand sufficient goods on the premises on which he might levy. If there are no such goods proof of the debt may be made by the Collector, and such proof shall, if found correct, be admitted as a preferential claim in so far as it relates to taxes payable in full under section 209 (1) (a) of the Companies (Consolidation) Act, 1908, and as ranking for dividend for any part thereof not so payable in full.

5. Where Income Tax is outstanding under Schedules "B," "D," or "E," the Inland Revenue authorities will, on receipt of an affidavit by the Secretary or other officer of the Company, with a certificate by the Official Receiver or Liquidator, setting out that no income taxable under such Schedule has been made, forego all claim to payment of the tax, whether the same is payable in full under section 209 (1) (a) of the Companies (Consolidation) Act, 1908, or otherwise, but the waiver of claim under this Regulation shall not embrace rents, royalties, interest of money, or annuities, or fees, or salaries, from which deductions have been made on account of Income Tax.

6. In cases where an affidavit by the Secretary or other officer of the Company cannot be obtained, the certificate of the Official Receiver or Liquidator may be accepted as sufficient evidence.

Board of Trade,
Companies Department,
27, Great George Street,
Westminster, London, S.W.

MODEL FORM OF CLAIM FOR RELIEF FROM PAYMENT OF INCOME TAX, SCHEDULES "B," "D," OR "E."

[For this Form see pp. 1218 and 1219.]

VIII.

STATUTORY RULES AND ORDERS, 1909.

No. $\frac{592}{L. 20}$.

County Court, England.

Procedure.

The County Court Rules, 1909 (No. 2). Da ed May 24, 1909.

These Rules may be cited as the County Court Rules, 1909 (No. 2), or each Rule may be cited as if it had been one of the County Court Rules, 1903, and had been numbered therein by the number of the Order and Rule placed in the margin opposite such Rule.

An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1903, or in any County Court Rules of subsequent date, as the case may be.

These Rules shall be read and construed as if they were contained in the County Court Rules, 1903.

ORDER XXV.

Enforcement of Judgments and Orders.

ORDER XLIa.

The Companies (Consolidation) Act, 1908.

Order LI., Rule 1. Proceedings under the Companies (Consolidation) Act, 1908, 8 Edw. 7, c. 69 (other than winding up proceedings).

2.—(1.) The practice and rules of procedure for the time being in force in the High Court of Justice in relation to proceedings in the High Court under the Companies (Consolidation) Act, 1908, other than proceedings relating to the winding up of companies, shall, with the necessary modifications, apply to similar proceedings in the county courts having jurisdiction under the said Act; and the judges and registrars of such courts respectively shall in relation to any such proceedings have and exercise all the powers of a judge of the High Court having jurisdiction in such proceedings, and of a registrar, master, or other officer of the High Court exercising the powers of any such judge.

(2.) Except and so far as by this rule provided, the County Court Rules for the time being in force, and the general practice of the county court in actions and matters under the equitable jurisdiction of the court, shall apply, as far as may be practicable, as regards all such proceedings as in this rule mentioned.

Costs.

(3.) The costs of any such proceedings as in this rule mentioned may be taxed and allowed according to the scale of costs applicable to similar proceedings in the High Court.

Fees.

(4.) The court fees payable in respect of any such proceedings as in this rule mentioned shall, subject to the approval of the Treasury, be the same as those payable in respect of similar proceedings in actions or matters under the equitable jurisdiction of the county court.

Application of rule to court exercising stannaries jurisdiction.

(5.) This rule, and rule 7 of Order LI., shall apply to such proceedings as in this rule mentioned in the court exercising the stannaries jurisdiction.

We, William Lucius Selfe, William Cecil Smyly, Robert Woodfall. Thomas C. Granger, and H. Tindal Atkinson, being Judges of County Courts appointed to frame Rules and Orders for regulating the practice of the courts and forms of proceedings therein, having by virtue of the powers vested in us in this behalf framed the

foregoing Rules and Orders, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

Wm. L. Selfe.
Wm. Cecil Smyly.
R. Woodfall.
T. C. Granger.
H. Tindal Atkinson.

Approved,
Loreburn, C.
Alverstone, C.J.
Herbert H. Cozens-Hardy, M.R.
R. J. Parker, J.
Christopher James.
James S. Beale.

I allow these Rules, which shall come into force on the 15th day of June, 1909.

Loreburn, C.

EXTRACTS FROM STOCK EXCHANGE RULES AND REGULATIONS, 1911.

Stock Exchange Rules as to Special Settlements and Official Quotations.

Special Settling-day. Loans.

149.—The Secretary of the Share and Loan Department shall give Three days' public notice of any application for a Special Settling-day in the Scrip or Bonds of a new Loan previously to its being submitted to the Committee, who will appoint a Special Settling-day, provided that sufficient Scrip or Bonds are ready for delivery and are in reasonable amounts (*vide* Appendix 35) (*a*).

Special Settling-day. Companies.

150.—(1) The Secretary of the Share and Loan Department shall give Three days' public notice of any application for a Special Settling-day in the Shares or other Securities of a new Company previously to such application being submitted to the Committee, who will appoint a Special Settling-day provided that sufficient Certificates or Scrip are ready for delivery.

Vendors' Shares.

(2) The Committee will not fix a Special Settling Day for bargains in Shares or Securities issued to the Vendors, credited as fully or partly paid, until Six months after the date fixed for the Special Settlement in the Shares or Securities of the same class subscribed for by the public, but this does not necessarily apply to reorganisations or amalgamations of existing Companies, or to cases where no Public Shares are issued, or to cases where the Vendors take the whole of the Shares issued for cash (*vide* Appendix 35).

Official Quotations.

151.—(1) The Committee may order the Quotation in the Official List of any security of sufficient magnitude and importance.

Applications.

(2) Applications for Quotation must be made to the Secretary of the Share and Loan Department and must comply with such conditions and requirements as may be ordered from time to time by the Committee (*vide* Appendix 36).

Notice.

(3) Three days' public notice must be given of every application.

Broker.

(4) A Broker, a Member of The Stock Exchange, must be authorised to give the Committee full information as to the Security and to furnish them with all particulars they may require.

Quotation of Vendors' Securities.

152.—Securities issued to Vendors credited as fully or partly paid shall not be quoted until six months after the date fixed for the Special Settlement of the Securities of the same class subscribed for by the public, nor unless a quotation for the latter is also granted.

(*a*) The real points on an application for a special settlement are (1) that there have been dealings, and (2) that the certificates, bonds or debentures are ready for issue.

APPENDIX 35 TO STOCK EXCHANGE RULES.

35. Special Settlements.

The following documents and particulars should be sent to the Secretary of the Share and Loan Department, when application is made for a Special Settlement :—

(Rules 149 and 150.)

A Scrip or Bonds of New Loans.

A Specimen of the Scrip or Bond.
A copy of the prospectus, circular or advertisement relating to the issue.
A Statutory Declaration stating :
1. The amount allotted
   (*a*) to the public.
   (*b*) to others.
2. The distinctive numbers and denomination of each Class of Scrip or Bond.
3. The amount paid up thereon.
4. That the Scrip or Bonds are ready to be delivered.

B Shares of New Companies.

The Certificate of Incorporation.
A Specimen of the Share Certificate.
A Copy of the Prospectus, the Statement in lieu of Prospectus as filed with the Registrar of Joint Stock Companies, Circular, or Advertisement relating to the issue.
A specimen call letter.
Certified printed Copies of Contracts relating to the issue of Shares credited as fully or partly paid.
A letter from the Secretary of the Company, stating :
1. That the Share Certificates are ready to be issued.
2. The distinctive numbers of the shares allotted.
   (*a*) to the public.
   (*b*) to the vendors.
3. The particulars of the Company's Capital.
4. The nominal amount of each share, and the amount paid in cash or credited as paid on each share.
5. In cases where the whole of the capital has not been issued at the time the application is made, whether the unissued shares are Vendors' Shares or are held in reserve for future issue.

C Stock or Debenture Stock of New Companies.

A Specimen of the Scrip or Stock Certificate.
A Copy of the Prospectus, the Statement in lieu of Prospectus, as filed with the Registrar of Joint Stock Companies, Circular or Advertisement relating to the issue.
A letter from the Secretary of the Company, stating :
1. The amount allotted
   (*a*) to the public.
   (*b*) to others.
2. The amount paid in cash per £100 Stock.
3. That the Scrip or Stock is ready to be issued.

APPENDIX 36 TO STOCK EXCHANGE RULES.

36. OFFICIAL QUOTATIONS.

A Conditions precedent to an Application for Official Quotation.

(Rules 151 and 152.)

1. That the Prospectus—
   Shall have been publicly advertised ;

Agrees substantially with the Act of Parliament or Articles of Association;

Provides for the issue of not less than one-half of the Authorised Capital and for the payment of 10 per cent. upon the amount subscribed;

If offering Debentures or Debenture Stock states fully the terms of redemption.

In cases where a Company has sold an issue of Debentures or Debenture Stock which is subsequently offered for public subscription either by the Company or any subsequent purchaser, states the authority for the issue and all conditions of sale.

2. That two-thirds of the amount proposed to be issued of any class of Shares or Securities, whether such issue be the whole or a part of the authorised amount, shall have been applied for by and unconditionally allotted to the public, Shares or Securities granted in lieu of money payments not being considered to form a part of such public allotment.
3. That the Articles of Association, and the Trust Deed where such is required, contain the provisions specified hereafter.
4. That the Certificate or Bond is in the form approved.

B ARTICLES OF ASSOCIATION.

Articles of Association should contain the following provisions:—

1. That none of the funds of the Company shall be employed in the purchase of, or in loans upon the security of its own Shares;
2. That Directors must hold a share qualification;
3. That the borrowing powers of the Board are limited;
4. That the non-forfeiture of dividends is secured;
5. That the common form of transfer shall be used;
6. That all Share and Stock Certificates shall be issued under the Common Seal of the Company, and shall bear the signatures of one or more Directors and the Secretary;
7. That fully-paid Shares shall be free from all lien;
8. That the interest of a Director in any contract shall be disclosed before execution, and that such Director shall not vote in respect thereof;
9. That the Directors shall have power at any time and from time to time to appoint any other qualified person as a Director either to fill a casual vacancy or as an addition to the Board, but so that the total number of Directors shall not at any time exceed the maximum number fixed; but that any Director so appointed shall hold office only until the next following Ordinary General meeting of the Company, and shall then be eligible for re-election;
10. That a printed copy of the Report, accompanied by the Balance Sheet and Statement of Accounts, shall, at least seven days previous to the General Meeting, be delivered or sent by post to the registered address of every member, and that two copies of each of these documents shall at the same time be forwarded to the Secretary of the Share and Loan Department, The Stock Exchange, London;
11. That the charge for a new Share Certificate issued to replace one that has been worn out, lost, or destroyed shall not exceed one shilling.

C TRUST DEEDS.

Trust Deeds should contain the following provisions:—

1. Where provision is made that the security shall be repayable at a premium, either at a fixed date or at any time upon notice having been given, the Trust Deed must further provide that should the Company go into voluntary liquidation for the purpose of amalgamation or reconstruction the security shall not be repayable at a lower price.

2. The following clause should be inserted in all Deeds :—
"The statutory power of appointing new Trustees hereof "shall be vested in the Company, but a Trustee so "appointed must in the first place be approved of by a "Resolution of the Debenture (or Debenture Stock) "holders passed in the manner specified in the "Schedule hereto. A Corporation or Company may be "appointed a Trustee of these presents."
3. In the clause regulating the convening of meetings of the Debenture (or Debenture Stock) holders, the following words should be inserted, "and the Trustee or Trustees shall do so "upon a requisition in writing signed by holders of at least "one-tenth of the nominal amount of Debentures (or "Debenture Stock) for the time being outstanding."
4. The clause defining an "Extraordinary Resolution" must provide that "the expression 'Extraordinary Resolution' "means a resolution passed at a meeting of the Debenture "(or Debenture Stock) holders duly convened and held at "which a clear majority in value of the whole of the Debenture "(or Debenture Stock) holders is present in person or by "proxy and carried by a majority consisting of not less than "three-fourths of the persons voting thereat upon a show of "hands, and if a poll is demanded then by a majority con- "sisting of not less than three-fourths in value of the votes "given on such poll."
5. Should Debentures or Debenture Stock be entitled "First Mortgage," provision must be made for the creation of a specific first mortgage in favour of the Debenture or Debenture Stock holders.

D

SHARE AND STOCK CERTIFICATES.

All Certificates should state on their face the authority under which the Company is constituted and the amount of the authorised Capital of the Company.

All Certificates should bear a footnote to the effect that no Transfer of any portion of the holding can be registered without the production of the Certificate.

Where the Capital of a Company consists of more than one class of Shares of the same denomination, the distinctive numbers of the Shares of each class must be printed on the face of the Share Certificates.

All Preference Share Certificates should bear on their face a statement of the Company's Capital and the conditions, both as to capital and dividends, under which the Shares are issued.

Debentures and Debenture Stock Certificates should, in addition to legal requirements, state on their face the authority under which the Company is constituted, the nominal Capital of the Company, the dates when the interest on the Debentures or Debenture Stock is payable, and the authority under which the issue is made (*i.e.*, Articles of Association and resolutions); and on their back the conditions of issue, redemption, and transfer.

E

BONDS.

Bonds must specify the amount and conditions of the loan, the powers under which it has been contracted and the numbers and denominations of the Bonds issued, and in the case of a loan issued either wholly or partly in London, those issued in London must bear the autographic signature of the London Agents or Contractors.

F

NEW COMPANIES.

Before the application form can be issued for signature there must be supplied :—

A Copy of the Prospectus.

Two Copies of the Articles of Association.

In the case of Debentures or Debenture Stock the Trust Deed [where possible before execution].

G After the application form has been signed there must also be supplied in the case of :—

Shares.

The Certificate of Incorporation, and the Certificate that the Company is entitled to commence business.

Two certified copies of the Prospectus, endorsed with the date when first advertised.

Two certified copies of the Memorandum and Articles of Association.

The original Letters of Application.

The Allotment Book containing a List of Applicants, the number applied for by each and the result of each Application, with a Summary signed by the Chairman and Secretary.

Should the allotment have taken place at an interval of six months or more before the date of the application, a certified list of present shareholders will also be required.

A copy of the Letter of Allotment and the date when posted.

A Specimen of the Share Certificates.

The Bankers' Pass Book, accompanied by a Certificate on a special Form from the Company's Bankers, stating the amount of Deposits received by them, and the number of Shares on which such Deposits (*i.e.*, application money only, being £ per Share) were paid.

Authenticated copies of all Concessions and similar documents, with notarially certified printed translations, and certified printed copies of all Contracts and Agreements.

A Statutory Declaration by the Chairman and Secretary, stating the following particulars :—

1. That the Prospectus complies with the provisions of the Companies (Consolidation) Act, 1908.
2. That all documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing.
3. The number of Shares applied for by the public.
4. The number of Shares allotted unconditionally to the public (Nos. to), and the amount per Share paid thereon in cash.
5. The number of Shares allotted for a consideration other than cash (being Nos. to).
6. The amount of deposits paid, and that such deposits are absolutely free from any lien.
7. That the Share Certificates are ready for delivery, that the purchase of the properties has been completed, and the purchase-money paid, and that no impediment exists to the settlement of the Account.
8. The total number of Allottees and the largest number of Shares (*a*) applied for by and (*b*) allotted to any one applicant.

H After the application form has been signed there must be supplied in the case of :—

DEBENTURES AND DEBENTURE STOCK.

The Certificate of Incorporation, or Act of Parliament, and the Certificate that the Company is entitled to commence business.

A Certified (*a*) printed copy of the Mortgage Deed or other similar document, and the Official Certificate of the Registration of the Mortgage or Charge.

Certified copies of the Articles of Association, Resolutions, or other authority for the present issue.

Two Certified copies of the Prospectus.

(*a*) The Secretary of the company will usually certify documents.

The original Letters of Application.

The Allotment Book containing a list of applicants, the amount applied for by each, and the result of each application, with a summary of the whole, signed by the Chairman and Secretary.

Should the allotment have taken place at an interval of six months or more before the date of the application, a Certified List of present Stockholders will also be required.

A copy of the Allotment Letter, and the date when posted.

A Specimen of the Debentures or Debenture Stock Certificates and of the Scrip where Scrip is issued ; Certificates of Debenture Stock allotted to vendors in lieu of money payments being enfaced "Issued to Vendors" (*b*).

A copy of the last published Report and Accounts.

The Banker's Pass Book, accompanied by a Certificate, on a special form, from the Company's Bankers, stating the amount of Deposits received by them and the amount of Debentures or Debenture Stock on which such Deposits (*i.e.*, application money only, being £ per Debenture) were paid.

A Statutory Declaration by the Chairman and Secretary stating:—

1. That the Prospectus complies with the provisions of the Companies (Consolidation) Act, 1908, and that all documents required by that Act have been duly filed with the Registrar of Joint Stock Companies and the dates of filing.
2. The amount of Stock applied for by the public.
3. The amount unconditionally allotted to the public (Nos. to).
4. The amount, viz. : £ %, paid thereon in cash.
5. The amount allotted for a consideration other than cash (Nos. to).
6. The total amount of Deposits, and that such deposits are absolutely free from any lien.
7. That the Debentures or Debenture Stock Certificates are ready for delivery, and that there is no impediment to the settlement of the Account.
8. That a Trust Deed has been executed and completed, if such be the case.
9. The effect of such Trust Deed, and the nature of the charge created thereby in favour of the Debenture-holders.
10. The total number of Allottees.
11. The largest amount of Debentures or Debenture Stock (*a*) applied for by, and (*b*) allotted to any one applicant.

A Statutory Declaration by the Chairman and Secretary, stating :—

1. The total amount of the Authorised Capital of the Company, and how constituted.
2. The number of Shares allotted unconditionally to the public (Nos. to), and the amount paid on each Share in cash.
3. The number of Shares taken by Concessionnaires, Owners of Property, Contractors or other parties not included in the public allotment (being Nos. to).
4. That the Share Certificates have been delivered ; that the purchase of the properties has been completed and the purchase money paid.

SCRIP.

I In addition to the requirements made in the case of definitive Stock or Bonds, a Specimen of the Scrip Certificate must be supplied (*c*).

K After the application form has been signed there must be supplied in the case of :—

(*b*) This will be required until the stock becomes good delivery under R. 150 (2) of the Stock Exchange rules, and will apply if prior to that time the stock is privately sold and a fresh certificate is issued.

(*c*) Scrip need not be in any special form or state the authority under which it issued, etc.

FURTHER ISSUES.

A King's printers' copy of the Act of Parliament authorising, the Resolutions, &c. creating, and the Circular or Prospectus offering, the new issue.

If Shares have been issued credited as fully or partly paid, certified printed copies of the Contracts relating thereto.

A Copy of the Allotment Letter.

A Copy of the last Report and Accounts.

A Specimen of the Share Certificate.

The Allotment Book unless the allotment is *pro ratâ*.

A Statutory Declaration by the Secretary stating :

1. That the Prospectus or Circular complies with the provisions of the Companies (Consolidation) Act, 1908 ;
2. That all documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing ;
3. That the Shares (Nos. to) have been applied for by and unconditionally allotted to the shareholders or the public or sold upon the market, as the case may be ;
4. The amount per Share paid in cash ;
5. The total number of Allottees, and the largest number of Shares applied for by and allotted to any one applicant ;
6. That Certificates are ready to be issued and that there is no impediment to the settlement of the Account. It must also be stated whether or not the Shares are in all respects identical with those already quoted in the Official List.

The statement that Shares are in all respects identical means that :

They are of the same nominal value, and that the same amount per Share has been called up.

They carry the same rights as to unrestricted transfer, attendance and voting at meetings, and in all other respects.

They are entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will amount to exactly the same sum.

The statement that Stock is in all respects identical means that :—

All the Stock is entitled to the same rights as to unrestricted transfer, and in all other respects.

All the Stock is entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each £100 of the Stock will amount to exactly the same sum.

L After the application form has been signed there must be supplied in the case of :—

VENDORS' SHARES.

A Certified List of the present holders of the Vendors' Shares.

A Certified Copy of the last published Report and Accounts of the Company.

A Specimen of the Share Certificate.

A Statutory Declaration by the Secretary stating :

1. That the Vendor's Shares (Nos. to) have all been issued and Certificates delivered ;
2. That the Shares are in all respects identical with those already quoted in the Official List.

M After the application form has been signed there must be supplied in the case of :—

OLD COMPANIES.

The Certificate of Incorporation, or Act of Parliament, and the Certificate that the Company is entitled to commence business.

Authenticated copies of all Concessions and similar documents, with notarially certified printed translations.

Certified copies of all Prospectuses, original or otherwise endorsed with the date when first advertised.

Two Certified copies of the Memorandum and Articles of Association.

A Specimen of the Share Certificate and of the Allotment Letter.

A Certified copy of present Register of Shareholders.

Certified printed copies of Contracts, Agreements, &c., together with copies of all Contracts relating to the issue of Shares credited as fully or partly paid.

A Certified copy of the Company's last published Report and Accounts.

A short history of the Company, setting forth its origin, progress, dividends, &c., the number of transfers registered during the last twelve months, and the number of Shares represented by such transfers.

Statutory Declaration by the Chairman and Secretary, stating the following particulars :—

1. That the Prospectus complied with the provisions of the Companies (Consolidation) Act, 1908.
2. That all documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies, and the dates of filing.
3. The number of Shares applied for by the public.
4. The number of Shares allotted unconditionally to the public (Nos. to), and the amount per Share paid thereon in cash.
5. The number of Shares allotted for a consideration other than cash (being Nos. to).
6. That the Share Certificates have been delivered ; that the purchase of the properties has been completed and the purchase money paid.

N After the application form has been signed, there must be supplied in the case of :—

COLONIAL AND FOREIGN COMPANIES.

The Certificate of Incorporation, or Act of Parliament, or other similar document.

Two copies of the Statutes or Articles of Association or notarial translations of the same.

A Certified List of present Shareholders.

A Specimen of the Share Certificate.

Copies of all Agreements, Concessions, Deeds, &c., or notarially certified printed translations of the same.

A Certified copy of last published Report and Accounts, or translation of the same.

Official evidence of quotation in the country to which they belong, or where the issue has been made.

A short history of the establishment and progress of the Company from its incorporation to the present time, including particulars as to the issue of the Capital.

A Declaration stating :—

1. The number of Shares allotted ;
2. The amount per Share paid in cash ;
3. That the Shares are ready for delivery, and that no impediment exists to the settlement of the Account.

O After the application form has been signed, there must be supplied in the case of :—

RECONSTRUCTED COMPANIES.

The Certificate of Incorporation, and the Certificate that the Company is entitled to commence business.

A statement of the plan of reconstruction, together with certified copies of all resolutions passed and Circulars issued in connection with the reconstruction.

The Allotment Book, with a Summary signed by the Chairman and Secretary.

The Allotment Letter, and the date when posted.

A Specimen of the Share Certificate.

Two Certified copies of the Memorandum and Articles of Association.

Certified printed Copies of all Contracts, Agreements, &c.

Copies of all Contracts relating to the issue of fully or partly paid Shares.

A Statutory Declaration by the Chairman and Secretary stating :—

1. That all Documents required by the Companies (Consolidation) Act, 1908, have been duly filed with the Registrar of Joint Stock Companies and dates of filing.
2. The Authorised Capital of the Company.
3. The number of Shares to which Shareholders in the old Company were entitled ; the number and distinctive numbers of Shares unconditionally allotted to such Shareholders ; and the amount per Share (*a*) paid thereon in cash, and (*b*) credited as paid up.
4. The number and distinctive numbers of Shares applied for by and allotted unconditionally to the public, and the amount per Share (*a*) credited as paid up, and (*b*) paid thereon in cash.
5. That the Share Certificates have been or are ready to be delivered, and that there is no impediment to the settlement of the Account.

P After the application form has been signed the following documents must be supplied in the case of :—

LOANS.

Details of the creation of the Loan, and the authority under which it is issued, including authenticated copies of concessions, &c., with notarially certified translations.

The Authority to the Agents or Contractors to receive subscriptions.

A Certified Copy of the Prospectus.

Evidence that all Bonds issued and payable abroad bear the signature of some properly authorised person.

A Specimen Bond, together with a Bond duly executed, or Scrip Certificate if issued.

Statutory Declaration by the Agents, stating :—

1. The amount allotted unconditionally to the public.
2. That the required amount, viz., £ per cent., has been paid thereon in cash.
3. That the Bonds are ready for delivery, and that there is no impediment to the settlement of the Account.
4. The numbers and denominations of those Bonds which bear the autographic signatures of the London Agent or Contractors.

Q After the application form has been signed the following documents must be supplied in the case of :—

BONDS QUOTED ABROAD.

Official evidence of quotation in the country to which they belong or where the issue has been made.

Notarially certified printed translations of all Prospectuses, and of the laws creating and authorising the Loan.

A Specimen Bond, together with a Bond duly executed.

An Official Certificate setting forth :—

1. The authorised and issued amounts of the Loan, and the terms of issue.
2. The distinctive numbers and denominations of the Bonds.
3. Evidence that all Bonds bear the signature of some properly authorised person.

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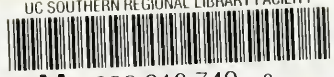
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