THE

ACCOUNTANT'S COMPENDIUM

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PREFACE.

THE First Edition of this work appeared in 1898, the Second in 1904, and the Third in 1908.

The provisions of the Companies (Consolidation) Act, 1908, have been embodied throughout the present edition in the appropriate places, and the precise text of the Statute has been strictly adhered to.

Many of the articles on Accounting subjects have been revised and, where necessary, enlarged, while several new subjects have been introduced.

As hitherto, I accept responsibility for the whole of the work—every line of which has received my personal attention, but I desire to express my indebtedness to my partner, Mr. H. R. GRAVES, A.C.A., F.C.I.S., and also to Mr. W. E. BURNLEY, B.A., A.C.A., and Mr. F. R. RAYMONT, A.C.A. (past articled pupils of my firm), for the invaluable help they have rendered to me in connection with this edition.

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August 1911.

CORRIGENDA.

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280	1	—	Income Tax	The decision in *Clark v. Sun Insurance Office* was reversed on appeal. (*See title* Unexpired Risks, p. 720.)
315	1	23	Interest in respect of proof of debt	For "1886" *read* "1885."
353	2	—	License	The chief statutory provisions relative to Licensing are now embodied in the Licensing (Consolidation) Act, 1910.
375	1	—	Limited Partnership	The rules applicable to the winding-up of limited partnerships are set out under title Winding-up, on p. 743.
467	2	6	Perpetuity	For "£17,492.4" *read* "£1,492.4."
612	2	23	Secured Creditor	For "1891" *read* "1892."
626	2	1 and 2	Sinking Fund	For "was" *read* "were." For "proves" *read* "prove."

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Abandonment of Vessel or Cargo.—Subject to any express provision in the policy, where a vessel or cargo has been insured the subject-matter insured may be reasonably abandoned either (1) on account of its actual total loss appearing to be unavoidable, or (2) because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

Under such circumstances there is a constructive total loss, and the insured may either treat the loss as a partial loss or abandon the subject-matter to the insurer and treat the loss as an actual total loss. Notice of abandonment must be given with reasonable diligence, and may be given verbally or otherwise provided it is unconditional. (Marine Insurance Act 1906, sections 60, 61, 62.) (*See* Total Loss.)

Abatement.—A deduction, an allowance; commercially, a discount for prompt payment. (*See* Discount, Income Tax, Legacy.)

Abrogation.—The repeal or annulment of a law. Later laws abrogate contrary prior laws.

Absconding 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 movable personal property to be seized, and him and them to be safely kept until such time as the Court may order. (Companies Act 1908, section 176.)

Absconding Debtor.—If a person depart out of England, remain out of England, or otherwise absent himself, with the intention of defeating or delaying his creditors, he by so doing commits an act of bankruptcy. (1883 Act, section 4.)

If a person in respect of whose estate a receiving order is made, depart out of England (or attempt to do so) after or within four months before the presentation of a petition, taking or attempting to take with him property to the amount of £20 or upwards, which ought to be divided among his creditors, he commits a felony punishable with imprisonment for a period not exceeding two years, unless the jury are satisfied that the debtor had no intent to defraud. (Debtors' Act 1869, section 12.)

The Court may cause a debtor to be arrested if it appears that he has absconded, or is about to abscond, in order to avoid or delay bankruptcy proceedings. (1883 Act, section 25.)

It has been held by the Court of Appeal that the words "has absconded" are without limitation as to time, and include the case of a debtor who has absconded *before* notice of a bankruptcy petition having been presented against him. (*Northallerton* case, 1898.)

Where a receiving order has been made against a debtor, and the Official Receiver satisfies the Court that he has absconded, the Court may, on the application of the Official Receiver or a creditor, forthwith adjudge the debtor bankrupt. (Rule 191.)

Abstract of Title.—A summary of the evidence of ownership (generally of land) setting forth in chronological order (if possible) the dates, nature, and material parts of the deeds, wills, or other documents affecting the title, so that the

solicitor of a purchaser or mortgagee may more readily peruse the title to the property.

Acceptance.—An agreement to proposed terms; a bill of exchange after acceptance by the drawee.

Acceptance and Receipt.—These requirements with regard to a contract for the sale of goods of the value of £10 or upwards must be distinguished. There may be acceptance of goods without receipt and *vice versâ*, but the Sale of Goods Act 1893 (section 4) requires both; for although receipt is often evidence of acceptance it is not the same thing.

There is an acceptance within section 4 when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not. Receipt may take the form of actual delivery to the buyer or to a carrier named by him; so also, if the seller agrees to hold the goods for the buyer, or a third party notifies the buyer that he holds the goods on his behalf, there is receipt by the buyer.

Acceptance for honour supra protest.—Where a bill of exchange has been protested for dishonour by reason of non-acceptance, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra protest* for the honour of any party liable thereon, or for the honour of the party for whose account the bill is drawn. The bill must not be already overdue, and must have been protested (or at least noted) *even though an inland bill*. The acceptance must state that it is for honour, and if it does not state for whose honour it is made, it is deemed an acceptance for the honour of the drawer. Such an acceptance may be for part only of the amount in the bill, and the acceptor for honour engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if not paid by the drawee, provided the bill has been duly presented for payment and protested for non-payment, and that he receives notice of these facts. The acceptor for honour is liable to the holder and all parties subsequent to the one for whose honour he has accepted. (1882 Act, sections 65, 66, and 67.)

Acceptance of a Bill.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

The acceptance must be written on the bill and signed by the drawee, but his signature is sufficient without additional words. The acceptance is incomplete and revocable until delivery of the bill, or notification of the acceptance be given. The acceptance must not express that the drawee will perform his promise by any other means than the payment of money. (Bills of Exchange Act 1882, sections 17 and 21.)

A bill may be accepted (1) before it is signed by the drawer, (2) while otherwise incomplete, (3) when overdue, or (4) after dishonour by previous refusal to accept, or by non-payment. (Section 18.)

An acceptance may be general or qualified. A general acceptance assents without qualification to the order of the drawer.

A qualified acceptance expressly varies the effect of the bill as drawn, such as:—

(1) Acceptance subject to the fulfilment of a condition (conditional).

(2) Acceptance to pay part only of the amount for which the bill is drawn (partial).

(3) Acceptance to pay at a specified place and not elsewhere (local).

(4) Acceptance to pay on a different date from that in the bill as drawn (temporal).

(5) Acceptance by one or more of the drawees, but not all (aliquot). (Section 19.)

The holder of a bill may refuse to take a qualified acceptance, and treat the bill as dishonoured, but where a qualified acceptance is taken without the previous authority or subsequent assent of the drawer or an endorser, such drawer or endorser is discharged from his liability on the bill. (Section 44.)

A forged or unauthorised signature purporting to accept a bill is wholly inoperative, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. An unauthorised signature not amounting to forgery may, however, be ratified. (Section 24.)

The above section (24) is subject to the provisions of sections 80 and 82, which afford some protection to bankers paying or receiving payment of cheques in good faith and without negligence.

The delivery by a person of his signature upon a blank stamped paper, so that it may be converted into a bill, is *primâ facie* authority to fill same up as a complete bill for any amount the stamp will cover, using the signature for that of drawer, acceptor, or endorser. The bill must be filled up within a reasonable time, and strictly in accordance with the authority given, but if the bill after completion is negotiated to a holder in due course, he may enforce it as if it had been duly filled up as to time and instructions, and it will be valid and effectual for all purposes. (Section 20.)

(*See title* Signature.)

Acceptance of an Offer.—*See* Simple Contract.

Acceptor.—A person who accepts a bill of exchange drawn upon him; until he accepts he is called the drawee, and he is not liable as acceptor of the bill until he has signed it as such (1882 Act, section 23) and delivered it (section 21). On acceptance he is primarily liable to pay the amount of the bill according to the tenor of his acceptance, and is precluded from denying to a holder in due course (*a*) the existence of the drawer, the genuineness of his signature and his capacity and authority to draw the bill, (*b*) if the bill be payable to the drawer's order, the then capacity of the drawer to endorse, but not the genuineness or validity of his endorsement, and (*c*) if the bill be payable to the order of a third person, the existence of the payee and his then capacity to endorse, but not the genuineness or validity of his endorsement. (Section 54.) A bill of exchange being a simple contract the acceptor is liable to the holder for six years from the *maturity* of the bill; and as regards other parties, no action on a bill can be maintained against any party thereto after the expiration of six years from the time when a cause of action *first* accrued to the *then* holder against *such* party.

For capacity to accept a bill *see title* Infant (Bills of Exchange).

Accident Insurance.—Although to some extent a contract of indemnity, this class of insurance is rather an undertaking to pay a certain specified sum in the event of death or injury from accident. This distinction is important, for the insurer on paying the sum in question is not subrogated to the rights of the assured, and if damages are recoverable in respect of the injury or death from those who were responsible for the accident, such rights of the assured remain, notwithstanding the fact that the person injured had been insured, and the damages recoverable are not now liable to diminution by reason of the fact that the deceased was insured against accidents. (Fatal Accidents Act 1908.) (*See title* Assurance Companies Act.)

Accommodation Bill.—A bill to which the acceptor, drawer, or endorser, as the case may be, has put his name, without consideration, for the purpose of accommodating some other party *who is to provide for the bill when due*, or, if the accommodation party be the acceptor, the bill is one whereof the principal debtor (according to the terms of the instrument) is in substance a mere surety for some other person, who may or may not be a party to the bill.

An accommodation bill is discharged when it is paid by the person who is in substance, though not in form, the principal debtor. (1882 Act, section 59.) Where two parties exchange *specific* accommodation acceptances, such acceptances are not without consideration, for the acceptance of the one party is deemed to be consideration for the acceptance by the other. (*Rolfe v. Caslon*, 1795.)

(*See* Proof in respect of Bills of Exchange.)

Accommodation Party.—A person who has signed a bill as drawer, acceptor, or endorser, without receiving value therefor, and for the purpose of lending his name to some other person. The accommodation party is liable on the bill to a holder for value, and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not. (1882 Act, section 28.) The person accommodated engages (*a*) that he will provide funds for

payment of the bill at maturity, and (*b*) that if (owing to his omission to do so) the accommodation party is compelled to pay the bill, he will indemnify such party. The contract of indemnity arising out of the transaction does not require to be in writing. In general the Statute of Limitation runs against the accommodation party and in favour of the person accommodated from the time the former was compelled to pay.

An accommodation party who is compelled to pay a bill has all the rights of an ordinary surety under such circumstances, so that (*inter alia*) he is entitled to any security which may be held by the creditor.

Accord and Satisfaction.—*Accord.* An agreement between two persons, one of whom has a right of action against the other, that the latter shall do or give something in satisfaction of the right of action.

When the agreement is executed and satisfaction has been made it is called *accord and satisfaction.*

"Accord and satisfaction" bars the right of action, but accord without satisfaction does not.

In the case of an *ascertained* debt, the acceptance of a smaller sum without further consideration is no satisfaction, for it is simply a reduction of the debt *pro tanto*, and an agreement without consideration to waive the balance. If, however, a negotiable instrument be given for the smaller amount there would be satisfaction, as a general rule, and an action for the balance would not be maintainable.

Account.—A statement, narrative, record, or explanation of some particular matter in words or figures; commercially, a statement in money, showing, with any necessary explanation, the result, effect, or position of a specific business, transaction, or person, the precise form varying according to the circumstances of the case. (*See titles* Consignment Ledger, Ledger, Manufacturers' Accounts, Nominal Accounts, Personal Accounts, Profit and Loss Account, Real Account.)

Account Current.—An account of the financial transactions between two or more persons or firms in cases where it is agreed to allow the account to run on, instead of settling each item as it occurs. Interest is generally chargeable, and is entered on both sides of the account, the balance thereof being brought in as principal at the end of each financial period. The term is generally applied to a copy of a personal account in a Ledger, which is being sent to the person whose account it is in order to show the state of the account between the parties.

Account Day.—*See* Settling Days.

Accounting Party.—A person liable to account; particularly one who officially or otherwise acts and deals with property for the purported benefit of others, such as an agent, executor, trustee, liquidator, and receiver. "It is the first duty "of an accounting party to be constantly ready "with his accounts."

Account Sales.—An account of goods sold on commission rendered to the principal by the agent to whom the goods were consigned. The gross proceeds are credited and all expenses in connection with the consignment [including the agent's commission] deducted therefrom, thus showing the net proceeds.

Account stated.—An account between parties, showing a balance which has been agreed upon. It differs from an open account to the extent that the burden of proof is thrown upon the party who seeks to impeach it.

The admission of a balance due upon an account imports a promise to pay such balance, and gives rise to an action *ex contractu*.

All accounts stated with infants are declared absolutely void by the Infants' Relief Act 1874.

Accretion.—The act of growing to a thing. A specific bequest if vested carries all the net income and profits which may accrue upon it *after* the testator's death. (*See* Apportionment.)

Accumulated Profits.—Profits of a concern undistributed among its proprietors. Such profits must not be subject to the replacement of any *known* shrinkage of the assets of the concern,

otherwise the accumulations are really diminished to the extent of that shrinkage.

"Carrying profits to a Suspense or to a "Reserve Account does not necessarily change "their character, still less their ownership; they "remain the undrawn profits of those persons to "whom they belonged—dedicated, no doubt, to "certain purposes, but not otherwise altered in "their character or ownership. If the purpose "for which those profits are set apart fail, they "become divisible, not as capital, but as "undrawn profits" (Lindley, L.J., *Re Bridgwater Co.* See also *In re Spanish Prospecting Co., Lim.* (Court of Appeal, 1910).

The Companies Act 1908, section 40, provides that "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 com-"pany, the unpaid capital being merely increased "by a similar amount."

There are two funds to be dealt with—(1) the capital fund, and (2) the accumulated profits, and a distribution of a certain amount amongst the shareholders cannot reduce *both* funds to the extent of the amount distributed. Either the accumulated profits fund must remain intact, or the capital paid up must exist as before. If the latter procedure be adopted, the section really allows of another method of increasing the capital, for it is provided that the unpaid capital is increased by the amount distributed.

If a sum of distributable profits should be distributed *by way of reduction of capital*, and as a consequence the balance at the credit of Revenue Account remains the same, such portion of the credit balance of revenue so distributed would need to be carefully "earmarked" by a transfer to the credit of some special account to avoid its distribution a second time *as dividend*.

Although from an accountancy point of view the section has been (1) construed as authorising the reduction of two funds by the same payment to the full extent of such payment, and (2) declared an impossibility, the Court upon rare occasions appears to have sanctioned schemes thereunder. (See *Neale v. City of Birmingham Tramways Co.*, 1910, 2 Ch. 464.)

Accumulation of Income.—The prospective accumulation of income is restrained by 39 & 40 George III, c. 98. This statute is called Lord Loughborough's Act, or more commonly the Thellusson Act, from the case which caused its enactment. The Act declares that no person shall by deed, will, or otherwise dispose of any property, whether real or personal, in such a manner that the income thereof shall be accumulated for a longer period than (1) the life of the grantor, or (2) twenty-one years from the death of the grantor, or (3) during the minority of any person living, or *en ventre sa mère* at the death of the grantor, or (4) during the minority of any person who would, if of full age, be entitled to the income to be accumulated. The effect of the statute is to leave directions for accumulation valid so long as they are not contrary to the provisions of the Act. If the directions for accumulation aim at a duration beyond the statutory limits, they are valid until the date upon which (according to the circumstances) the statutory limit is reached, when such directions cease, and become of no effect.

The Act does not extend to (1) any provision for the payment of debts, (2) any provision for raising portions for a child of the grantor, or a child of a person taking an interest under the grant, or (3) any direction with regard to timber upon any lands.

The Accumulations Act 1892 provides that no property shall be settled in such manner that the rents, profits, or income thereof shall be wholly or partially accumulated for the *purchase of land only* for any longer period than during the minority or respective minorities of any person or persons who under the uses or trusts of the instrument directing such accumulation would, for the time being, if of full age be entitled to receive the rents, profits, or income so directed to be accumulated.

Acknowledgment of Debt or Liability.—The acknowledgment by a person of a debt or liability after the expiration of the particular period prescribed by the Statutes of Limitation for bringing

an action thereon, whereby he is deprived of the benefits of the statutes. The acknowledgment must be (*a*) in writing, signed by the party to be charged (or his duly authorised agent), or (*b*) by part payment of principal or interest.

" There must be one of these three things to " take the case out of the statute. Either there " must be an acknowledgment of the debt from " which a promise to pay is implied; or, secondly, " there must be an unconditional promise to pay " the debt; or, thirdly, there must be a con- " ditional promise to pay the debt, and evidence " that the condition has been performed." (*Re River Steamer Co.*, L.R. 6 Ch. 828.)

An acknowledgment as to simple contracts is said to create a new obligation, whilst an acknowledgment as to specialties revives the old one.

Part payment in respect of a simple contract will not revive the whole debt unless a promise to pay the balance can be fairly inferred from the part payment, but in the case of specialties, part payment, like a written acknowledgment, revives the old obligation, and the whole debt is revived irrespective of any promise to pay the balance.

With regard to contracts in respect of which two or more persons are jointly liable, and *one* of them makes an acknowledgment sufficient to " take the case out of the statute," there is again a difference between simple and specialty contracts. As the acknowledgment of a simple contract creates a *new* obligation the party making the acknowledgment is alone liable thereon. But in the case of a specialty it revives the old obligation and sets the action free against all parties, except where the acknowledgment is made by the executor of one of the obligors. (*Read v. Price*, 1909.)

The Mercantile Law Amendment Act 1856 provides, however, that *part payment* of a statute-barred debt by one or more co-contractors shall not affect the position of the others, whether the liability is under simple or specialty contract.

A person is bound by an undertaking to pay a statute-barred debt, even though there be no fresh consideration for the promise to do so.

The authority of executors (in respect of the administration of the estate) being a several one, one executor can revive the statutes without the others, but only as against the estate (*i.e.*, a liability to pay *de bonis testatoris*), it having been held that " chargeable " in section 1 of 9 Geo. IV, chap. 14 (Tenterden's Act), means " *personally chargeable.*" Thus, an acknowledgment by one or more executors binds the estate, but does not bind the *other* executors personally.

The acknowledgment of a debt contained in a debtor's statement of affairs (under bankruptcy procedure) will not operate to revive such debt if statute-barred. Such an admission does not either express or imply a promise to pay, except as to part of the debt, or in some qualified manner which is not a sufficient acknowledgment. (*Ex parte Topping*, 1865.)

The acknowledgment of a statute-barred debt is also termed the " revival of the statutes." (*See* Limitation of Actions.)

Acquittance.—A written discharge of a debt due or sum of money payable, whereby the party to whom the payment is due, on receipt thereof, admits that he has been paid, so that he cannot demand the sum again if the acquittance be produced.

Actio personalis moritur cum personâ.—A personal right of action dies with the person. This is the rule of common law, but it has been materially modified by statute as follows:—

4 Edward III, chap. 7.

Personal Estate.—Executors have the same right of action for trespass done to the goods and chattels of the testator and may recover damages in like manner as the testator might have done had he lived. (Administrators are within the statute.)

3 and 4 William IV, chap. 42.

Real Estate.—Executors (or administrators) may maintain an action for trespass for any injury done to the real estate of the testator in his lifetime, provided the *injury* was done within six months prior to the death, and the action be brought within one year after the death of the testator.

Real and Personal Estate.—Actions may be maintained *against* executors (or administrators) in respect of any wrong done by the testator in his lifetime, whereby injury was done to the real or personal estate of another, provided the *injury* was done within six months prior to the death and the action be brought within six months after the executors (or administrators) have taken up the administration of the estate.

Lord Campbell's Act, 9 & 10 Vict., chap. 93.

This Act, as amended by 27 & 28 Vict., c. 95, provides that the personal representatives of a deceased person can sue for damages for the benefit of his near relatives if his death was caused by circumstances of such a character that if the man had not died he would himself have been able to maintain an action for injuries. The representatives must sue within twelve months of the death, but if they do not sue within six months of the death, the persons entitled to the damages may themselves sue.

Employers' Liability Acts.

A right of action is given to the representatives of a workman who is killed in the course of his employment.

In addition to the Employers' Liability Acts the Workmen's Compensation Act of 1906 makes a still further encroachment upon the above common law rule. (*See title* Workmen's Compensation.)

With regard to the provisions of 3 & 4 William IV (*supra*) it has been held that the time prior to the death runs from the date the *injury* is done, and not from the time the wrong is committed which caused it. Damages recovered by executors or administrators are to be treated as personal estate, whilst damages payable by them are to be treated as simple contract debts.

Except so far as the common law rule has been modified by statute it is still in force, no action being maintainable in respect of purely personal wrongs, either by or against the legal representatives.

The general rule applies to a claim for damages in respect of fraudulent misrepresentation (*Peek v. Gurney*, L.R. 6 H.L. 377), but the executors or administrators of a director or other person who made the misrepresentation may be liable to the extent to which the estate of the deceased benefited by the misrepresentation. (*Phillips v. Homfray*, 24 C.D. 439.)

Active Debt.—A debt in respect of which part payment of principal or interest is from time to time being made.

Active Trust.—A confidence in connection with which there are duties to be performed.

Act of Bankruptcy.—An act the commission of which by a debtor empowers a qualified creditor to present a bankruptcy petition against him. (*See* Bankruptcy Petition.) The various acts of bankruptcy fall into the following classes:—

(1) Conveyance or assignment of property to a trustee for the benefit of creditors generally (even though unregistered). (*See* Deed of Arrangement.)

(2) A fraudulent gift or conveyance of property or any part thereof. (*See* Fraudulent Conveyances, &c.)

(3) Any conveyance of property, or creation of a charge thereon, which would, in the event of bankruptcy, be deemed a fraudulent preference. (*See* Fraudulent Preference.)

(4) Departure or remaining out of England, or from dwelling-house, &c., with intent to defeat or delay creditors. (*See* Absconding Debtor, Keeping House.)

(5) Levy of execution by seizure and sale of goods; or seizure and retention by the sheriff for 21 days, provided that the time occupied by interpleader proceedings (if any) is not to be counted as part of the 21 days. (*See* Execution Creditor.)

(6) Declaration of inability to pay debts filed in the Court or presentation of a petition by the debtor himself. (*See* Bankruptcy Petition.)

(7) Non-compliance with the requirements of a bankruptcy notice. (*See* Bankruptcy Notice.)

(8) Notification to creditors that payment of debts has been or is about to be suspended. (*See* Suspension of Payment.)

(1883 Act, section 4; 1890 Act, section 1.)

(9) The making of a receiving order by the Court in response to and in lieu of an application to commit the (judgment) debtor. This is *deemed* to be an act of bankruptcy. (1883 Act, section 103.) (*See* Judgment Creditor.)

An act of bankruptcy is only available for the presentation of a petition thereon for the three months next following such act (section 6), and the term "available act of bankruptcy" is defined as "any act of bankruptcy available for a "bankruptcy petition at the date of the presenta- "tion of the petition on which the receiving order "is made." (Section 168.)

The trustee's title relates back to the act of bankruptcy upon which the petition is grounded, or if there have been other acts of bankruptcy the trustee's title relates back to and the bankruptcy is deemed to commence at the time of the *earliest act* of bankruptcy proved to have been committed within three months next preceding the date of the presentation of the petition. (1883 Act, section 43.) (*See title* Relation Back.)

The execution by partners of a deed of assignment of the joint estate for the benefit of the joint (*i.e.*, the firm's) creditors is not an act of bankruptcy which is available to enable a (separate) creditor of one of those partners to present a petition in bankruptcy against that partner. (*In re Phillips*, 7 Mans. 277.)

Act of God.—A direct, violent, sudden, and irresistible act of Nature, which could not by any human intervention, care, or reasonable precautions have been foreseen or prevented.

Act of Parliament.—A law made by the Sovereign, with the advice and consent of the Lords spiritual and temporal, and the Commons, in Parliament assembled. Before an Act is passed it is termed a "Bill." The Acts are either (1) public; (2) special; or (3) private. Acts of Parliament are sometimes termed statutes. Where common law and statute law differ, the common law gives place to the statute—similarly an old statute gives place to a contrary new one. (*See title* Law.)

Actuarial Report.—A report made by an actuary based upon calculations made by him.

The Assurance Companies Act 1909 provides that every life assurance company and bond investment company shall, once in every five years, or at such shorter intervals as may be prescribed by the instrument constituting the company or by its regulations or bye-laws, cause an investigation to be made into its financial condition, including a valuation of its liabilities, by an actuary, and shall cause an abstract of the report of such actuary to be made in the form prescribed by the Act. Printed copies of such report must be deposited with the Board of Trade within six months after the date to which it has been prepared, and a printed copy must also be forwarded to every shareholder and policy-holder of the company, upon application being made. Assurance companies carrying on employers' liability insurance business must cause an investigation and report to be made by an actuary every year.

(*See title* Assurance Companies Act.)

Actuary.—A person skilled in the calculation of the value of life interests, annuities, and life assurance matters.

The officer of a life assurance company whose duty it is to make the necessary computations in connection with the statistics and finances of life assurance, and the actuarial reports required by the Assurance Companies Act 1909.

An officer appointed to keep the accounts of a savings bank.

Address Book.—The Companies Clauses Consolidation Act 1845 applies to certain companies incorporated by special Act, and every such company is required to keep a Shareholders' Address

Book containing the full names of the shareholders in alphabetical order and their respective addresses and descriptions.

Every assurance company which is not registered under the Companies Acts, or which has not incorporated in its deed of settlement the above provisions of the Act of 1845, must also comply with the above provisions in pursuance of the Assurance Companies Act 1909.

(*See* Register of Directors and Managers, Register of Members.)

Ademption.—The taking away of a legacy by the alienation or conversion of the subject-matter of the legacy by the testator during his lifetime.

Specific legacies are subject to ademption, but demonstrative legacies, on the failure of the particular fund, rank as general legacies.

Adhesive Stamp.—A stamp attached to a document by the party as distinct from an impressed stamp affixed by the Revenue authorities. Foreign bills and promissory notes, inland bills payable on demand, receipts for the payment of money, agreements under hand, and a protest of a bill of exchange are instances where an adhesive stamp is permitted.

Section 8 of the Stamp Act 1891 provides:—

An instrument, the duty upon which is required or permitted by law to be denoted by an adhesive stamp, is not to be deemed duly stamped with an adhesive stamp unless the person required by law to cancel the adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing or *otherwise effectively cancels* the stamp and renders the same incapable of being used for any other instrument, or for any postal purpose, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

Where two or more adhesive stamps are used to denote the stamp duty upon an instrument (*e.g.*, two halfpenny stamps in lieu of a penny one), each or every stamp must be cancelled in the manner aforesaid.

Every person who, being required by law to cancel an adhesive stamp, neglects or refuses duly and effectually to do so in the manner aforesaid shall incur a fine of ten pounds. (*See* Impressed Stamp.)

Adjourned Meeting.—A continuation of an original meeting at another time, at the same or another place. In the absence of special provision to the contrary there is no necessity to give notice of an adjourned meeting. But, as a rule, the regulations of a company provide that no business shall be transacted at an adjourned meeting except such as was left unfinished at the original meeting.

Adjournment.—Postponing to another time or place; a continuation of a meeting from one day to some other. The vacation of the chair by the chairman does not *per se* adjourn a meeting, for if those present consider the chairman has acted improperly, they can elect another chairman and proceed.

Adjudication.—The act of the Court whereby a man is declared bankrupt and is divested of his property, which is to be applied in payment of his debts.

Where a receiving order is made against a debtor the Court adjudge him bankrupt:—

(1) If the creditors at the first meeting, or any adjournment thereof, by ordinary resolution so resolve. (1883 Act, section 20.)

(2) If the creditors pass no resolution thereon. (*Ibid.*)

(3) If the creditors do not meet to consider the matter, or a quorum does not attend the meeting called by the Official Receiver, or one adjournment thereof. (*Ibid.*, and Rule 191.)

(4) If a composition or scheme is not accepted and approved within fourteen days after the public examination has been concluded, or such extended time as may be allowed by the Court. (*Ibid.*)

(5) Where the Official Receiver satisfies the Court that the debtor has absconded. (Rule 191.)

(6) Where the public examination of the debtor is adjourned *sine die*. (Rule 192A.)

(7) Where the debtor does not intend to propose any scheme or composition. (Rule 191.)

(8) Where an estate is being wound up in a summary manner and the Court is satisfied, as a result of the public examination, that a scheme or composition ought not to be sanctioned, by reason of the conduct of the debtor. (Rule 273.)

(9) Where the debtor applies to the Court to be adjudged bankrupt. Such application may be made orally and without notice. (Rule 190.)

(10) Where the debtor fails to submit his statement of affairs to the Official Receiver without reasonable excuse. (1883 Act, section 16.)

An order of adjudication may be made although the debtor has died since the commencement of the bankruptcy proceedings. (1883 Act, section 108, and *Re Walker*, 1886.)

No order of adjudication will be made against a firm in the firm-name, but it will be made against the partners individually. (Rule 264.)

There are three cases in which the Court may *annul* the adjudication, viz.:—

(1) Where a composition or scheme is accepted by the creditors and approved by the Court after adjudication. (1883 Act, section 23.)

(2) Where, in the opinion of the Court, the debtor ought not to have been adjudged bankrupt. (Section 35.)

(3) Where it is proved to the satisfaction of the Court that the debts of the bankrupt have been paid in full. (*Ibid.*) It does not necessarily follow that the Court will annul an adjudication on the payment of 20s. in £; all the circumstances will be inquired into. (*See* Arrangements in Bankruptcy, Bankruptcy Petition, Infant, Lunatic, Married Woman, Receiving Order, &c.)

Adjudication Stamp.—The stamp affixed to an instrument after the Commissioners of Inland Revenue have, on request, in cases of doubt, assessed the duty payable on the instrument.

Administration, Letters of.—Where a person dies intestate, and under certain other circumstances (*see titles* Administrator, *et seq.*), letters of administration are granted by the Court to some proper person, called the administrator. Grants of administration are either (*a*) general or unlimited, or (*b*) special or limited. In the former case the whole of the estate is committed to the administrator's charge, and his powers and functions vary little from those of an executor, but a limited administration extends only to a part of the estate, or to a certain locality or for a specified time.

Generally, the widow or widower (as the case may be) has the prior right to administer an intestate's estate, and then in the following order come the children, grand-children, great grand-children, father, mother, brothers and sisters, &c., all being equally entitled as regards those of the same degree. Males are generally preferred to females, and those of whole blood to the half-blood, other things being equal.

The Land Transfer Act 1897 provides that where the intestate dies possessed of land, the heir-at-law, if not one of the next-of-kin, shall be nevertheless equally entitled to the grant of administration.

A person who is entitled to administration may renounce the right. The Court, however, will not grant administration unless those having the prior right have either renounced or have been cited to appear before the Court to assent to the grant to another.

Failing any other person entitled, the Court may grant administration to a creditor, but only where the creditor has no security for his debt, and undertakes to pay all debts *pro ratâ*.

An administrator is not deemed to have had that personal confidence of the deceased which is presumed in favour of an executor. By section 81 of the Probate Act 1857 every person (other than the solicitors to the Treasury and Duchy of

Lancaster obtaining administration for the benefit of the Crown) to whom any grant of administration shall be committed shall give bond, *and, if the Court shall require*, with one or more surety or sureties conditioned for duly collecting, getting in, and administering the personal estate of the deceased. In rare cases the discretion conferred by this section is exercised by the Court and the personal bond of the applicant, only, is accepted and sureties dispensed with.

Although an executor who has proved a will cannot take steps to revoke the grant of probate, it is the duty of an administrator, should he discover a will of the testator, to inform the Court, and take such steps as may be necessary to revoke the grant of administration.

Although an executor's right is derived from the will, and the law knows no interval between the death of the testator and the vesting of the right in the executor (the subsequent grant of probate being the mere evidence of the right), the title of an administrator is derived solely from the letters of administration, and strictly the administrator has no authority or title before the grant has been made, and even then only in respect of the estate as it exists, or in respect of things afterwards coming into existence.

This state of things, if strictly adhered to, would obviously result in loss to the estate pending the grant, because no one would have title or authority in the interval to protect the assets, &c.; the Courts, however, in order to prevent such a state of things, have "adopted the "convenient fiction that letters of administration, "*when obtained*, operate retrospectively, having "relation back to the death of the deceased, so "as to enable the administrator to sue before the "grant to him of administration, or after "administration in respect of matters occurring "previously thereto, but it would appear that he "can only sue when the act done is for the "benefit of the estate."

In any event, as in the case of an executor, the administrator cannot proceed (before the grant of administration) beyond the point where proof of title becomes necessary by production of the letters of administration.

The above are the more important distinctions between the office of an executor and an administrator, their rights, liabilities, and duties being generally similar in other respects. (*See* Administration of Assets, Executor.)

Administration of Assets (of a deceased person).—In the administration of the estate of a deceased person the assets are to be applied in payment of the debts in the following order:—

(1) The general personal estate not bequeathed, or bequeathed only by way of residue.

(2) Real estate devised in trust to pay debts.

(3) Real estate descended to the heir and not charged with debts.

(4) Real or personal estate, devised or bequeathed subject to the payment of debts.

(5) General legacies and annuities.

(6) Specific legacies.
[Demonstrative legacies are treated as specific if the fund remains, if not, they are treated as general legacies.]

(7) Real or personal estate subject to a general power of appointment which has been exercised in favour of volunteers.

(8) Paraphernalia of the widow.

The debts are payable out of the assets in the following order:—

(1) Reasonable funeral and testamentary expenses.

(2) Debts due to the Crown by record or specialty.

(3) Debts to which particular statutes give priority, such as income-tax, poor rates, debts owing to building or friendly societies *ex officio*, regimental debts, &c.

(4) Registered judgments against the deceased (within five years prior to the death), and *unregistered* judgments if recovered against the personal representatives themselves.

(5) Recognisances and statutes.

(6) Specialty contracts (if for valuable consideration) and simple contracts, including unregistered judgments recovered against the deceased in his lifetime.

(7) Voluntary bonds or covenants. If, however, a voluntary bond be assigned for *value* in the lifetime of the deceased it will rank as though originally given for valuable consideration.

Prior to Hinde Palmer's Act (32 & 33 Vict. c. 46) all specialty debts ranked equally with simple contract debts as against equitable assets, but in priority as against legal assets.

Section 10 of the Judicature Act 1875 provides that in the administration by the Court of the assets of any person dying after 1st November 1875, and whose estate may prove insufficient to pay his debts in full, the same rules shall be observed as to the respective *rights of secured and unsecured creditors, and as to the debts provable*, &c., as may be in force for the time being under the law of bankruptcy. This section does not adopt the whole of the bankruptcy rules, the following having no application to the administration:—

(1) Limitation of the landlord's right of distress.

(2) The avoidance of voluntary settlements.

(3) The avoidance of fraudulent preferences.

(4) The "order and disposition" doctrine.

(*See* Deceased Insolvent, Hinde Palmer's Act, Land Transfer Act 1897, Legal Assets, Preference, Retainer.)

Administration Order.—

(1) Where a judgment has been obtained in a County Court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding fifty pounds, inclusive of the debt for which the judgment is obtained, the County Court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the County Court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which the Court may think just.

(2) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed fifty pounds, but in such case the County Court may, if it thinks fit, set aside the order.

(3) Where, in the opinion of the County Court in which the judgment is obtained, it would be inconvenient that that Court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the County Court in the district of which the debtor or the majority of the creditors resides or reside, and thereupon the latter County Court shall have all the powers which it would have under this section had the judgment been obtained in it.

(4) Where it appears to the Registrar of the County Court that the property of the debtor exceeds in value ten pounds, he shall, at the request of any creditor, and without fee, issue execution against the debtor's goods, but the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade to the value in the aggregate of £20, shall to that extent be protected from seizure.

(5) When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a County Court, except with the leave of that County Court, and on such terms as that Court may impose; and any County Court or inferior Court in which proceedings are pending against the debtor in respect of any such debt shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor, and such costs may, on application, be added to the debt notified.

(6) If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default, and to have refused or neglected to pay the same.

(7) . . . . . .

(8) Money paid into Court under the order shall be appropriated first in satisfaction of the costs of the plaintiff in the action, next in satisfaction of the costs of administration (which shall not exceed two shillings in the pound on the total amount of the debts), and then in liquidation of debts in accordance with the order.

(9) . . . . . .

(10) Any creditor of the debtor, on proof of his debt before the Registrar, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.

(11) Any creditor may, in the prescribed manner, object to any debt scheduled, or to the manner in which payment is directed to be made by instalments.

(12) Any person who after the date of the order becomes a creditor of the debtor shall, on proof of his debt before the Registrar, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

(13) When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.

(1883 Act, section 122.)

Where an application to commit is made to a County Court, and it appears to the Court that the total liabilities of the judgment debtor do not exceed fifty pounds, the Court may, if it thinks that an order for committal ought not to be made, make an administration order under section 122 of the Act, in lieu of making a receiving order under section 103. (Rule 358.)

Where an administration order has at any time heretofore been or shall hereafter be made, such order may at any time be set aside or rescinded by the Judge in any of the following cases, namely:—

(1) Where two or more of the instalments ordered to be paid are in arrear.

(2) Where the debtor has wilfully inserted in the list attached to his request the wrong name or address of any of his creditors, or has wilfully omitted therefrom the name of any creditor.

(3) Where the debtor subsequent to the date of the order has obtained credit to the extent of £2 or upwards without informing the creditor that he has an administration order.

(4) Where the order has been obtained by fraud or misrepresentation.

(5) Where a receiving order has since the date of the administration order been made against the debtor.

Where an order is set aside or rescinded under the last preceding rule, it shall be without prejudice to anything already done or suffered under the order. Any money paid into Court under the order may be dealt with as if the order had not been set aside or rescinded.

Notice shall be sent by the Registrar to the debtor and to every creditor named in the schedule that the order has been set aside or rescinded.

Where it appears that the debtor is unable to pay any instalment, by reason of illness or other unavoidable misfortune, the Registrar may from time to time suspend the operation of the order until the next sitting of the Court, and the Judge may from time to time suspend the operation of the order for such time as he shall direct, or make a new order for payment by instalments.

(Rules 15, 16, and 17 as to Administration Orders.)

Administrator ad litem.—A person appointed as administrator of a deceased person's estate for the purpose of litigation only.

Administrator cum testamento annexo.—A person appointed to administer the estate of a deceased person who, having left a will, has either named no executor or has named one either unable or unwilling to act.

Administrator de bonis non (administratis).—A person appointed to complete the administration of the estate of a deceased person on the death of the executor or administrator before the estate has been fully administered.

Administrator durante absentia.—A person appointed to administer the estate of a deceased person during the absence of another who is strictly entitled to the administration.

Administrator durante minore ætate.—A person appointed to administer the estate of a deceased person during the minority of the executor or of one entitled to grant of administration.

Administrator pendente lite.—A person appointed to administer the estate of a deceased person pending any suit respecting the validity of the will or any other matter in dispute.

Ad valorem Duty.—Duties or customs levied upon goods according to their value. Stamp duties payable in respect of certain documents according to the value of the subject-matter involved, or the amount of the consideration therein expressed. (*See* Nominal Consideration.)

Advance Freight.—*See* Freight.

Advance Note.—A note given to a seaman stating that a certain sum will be paid to the bearer thereof at a certain future date, on account of the seaman's wages, conditionally on the seaman going to sea in pursuance of his agreement. The sum payable must not exceed one month's wages payable under the agreement.

Adventure.—*See* Consignment.

Adverse Claim.—*See* Interpleader.

Adverse Possession.—Occupancy of realty, without molestation, by one other than the person rightly entitled, which may ultimately give a good title.

An action to recover possession of land must be brought within twelve years of the time when the right first accrued.

Advice.—An opinion of counsel or others; a commercial report; information by letter; written instructions to bankers or merchants relative to bills of exchange; notification of arrival or despatch of goods.

Advowson.—A right of presentation to an ecclesiastical benefice. There is a distinction between a right of presentation and a right of nomination, and they may be possessed by different persons in respect of the same benefice. Presentation is the offering of the person to the bishop; nomination is the offering of the person to the one who has the right of presentation.

A right of nomination *only* to a vacant benefice does not pass to the trustee in the event of the bankruptcy of the person possessing such right, but a right of presentation does. (1883 Act, section 44.)

Affidavit.—A pledge of one's faith; a written statement sworn before a person having authority to administer an oath (generally a Commissioner for Oaths).

A trustee in bankruptcy and a liquidator of a company being wound up under an order of the Court may, for the purpose of their respective duties in relation to proofs of debt, administer oaths and take affidavits.

Affinity.—Relationship by marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband. For legacy and succession duty purposes, the husband or wife of a blood relation of a deceased person is treated as being of the same blood relationship to the deceased as his or her spouse; but relations of the husband or wife of the deceased are treated as strangers in blood unless they are themselves related in blood to the deceased. (*See* Consanguinity.)

Affirmation.—A solemn declaration without an oath. (*See* Declaration, Oath.)

Affreightment.—*See* Freight.

After-acquired Property. — *See* Undischarged Bankrupt.

After Sight.—A bill of exchange expressed to be payable at a stated period *after sight* signifies such period after the bill has been accepted, or after the date it has been noted or protested for non-acceptance. (1882 Act, section 14 (3).)

Where a bill is payable *after sight*, presentment for acceptance is necessary in order to fix the maturity of the instrument. (1882 Act, section 39.)

When a bill is payable *at sight* it is presented for acceptance and payment at the same time.

Agenda.—Memoranda of the business to be transacted at a meeting.

Agent.—A person appointed to transact the business of another, who is termed the principal.

Agencies may be divided into three classes:—Special, General, and Universal.

A *Special* agent is one authorised to perform a single act, or a series of acts relating to one subject-matter.

A *General* agent is one authorised to transact all the business of the principal, or at least all the business of a particular class.

A *Universal* agent is one appointed to do all the acts which the principal can personally do. This is a class of agency which rarely occurs, and is not referred to by some writers.

There are various classes of agents, such as:—Auctioneers, Brokers, Factors, Masters of Ships, Partners (*inter se*), Solicitors, &c.

These are specially dealt with in their respective places.

An infant cannot act as principal, but, save under certain circumstances (such as proxy in company liquidation and bankruptcy procedure), an infant can act as an agent, for as agent he is not deemed to exercise his own powers, but those which have been transmitted to him by his principal.

Appointment.

An agency may be created either verbally, in writing, or from a course of dealing, but an agent who is required to execute and deliver a deed must be appointed by deed. A *del credere* agent may be appointed verbally, notwithstanding the provisions of the Statute of Frauds, which require a guarantee to be in writing. There appear to be two grounds for this:—

(1) If a *del credere* agent be regarded as the guarantor of the customers of his principal, the main object of the contract of agency is none the less to appoint the agent, not to obtain the guarantee from him, the latter being merely a term of the agent's appointment.

(2) The appointment does not involve a guarantee of the solvency of the principal's customers, but an indemnity to the principal against any loss arising from the agent's personal inadvertence in entering into contracts on behalf of his principal with persons who fail to perform them.

Authority.

The nature and extent of an agent's authority will include all the necessary means of carrying out his instructions. But where an agent's authority is known to be of a particular or limited character, those who deal with him should inquire whether the authority given justifies the act contemplated. Where, however, an agent exceeds his authority, the principal is not bound, unless he is estopped from denying the want of authority. The agent in such a case may nevertheless be liable to the party with whom he has dealt, on the ground that he has committed a breach of his warranty of authority. A *general* agent may be subject as between himself and his principal to some particular restriction, but such restriction does not relieve the principal as against strangers who deal with the agent *without notice* of such particular restriction, if the act done falls within the ordinary scope of the general agency. On the other hand, the power of a *special* agent is strictly bound by the express authority he has received, and a stranger dealing with such special agent has no right to assume the act will be binding on the

principal. Where, however, any act is done by an agent which is in fact beyond his authority, such act may be subsequently ratified by the principal, and such ratification will be equivalent to a previous authority to perform such act, provided that (1) the agent acted *as agent* for a principal who was in contemplation and in existence at the time, and (2) the act in question was one the principal himself might have lawfully done. For instance, a corporation on coming into existence cannot ratify acts purporting to have been done on its behalf prior to incorporation.

Remuneration.

In the absence of agreement or a trade usage to the contrary, the employment of an agent implies an undertaking by the principal to pay or reward the agent for his services. In general, the services originally stipulated for should be completed before an agent can claim his remuneration, but in cases where he is willing to complete his contract, but is prevented by the principal from so doing, he might be entitled to a proportion of his remuneration—that is, to a *quantum meruit* for the actual services rendered.

An agent is, however, entitled to no further reward, profit, or advantage from any acts or dealings on behalf of his principal other than the reward which has been agreed upon by his principal. All other profits whatsoever belong to the principal, and he may recover any secret commissions, profits, or double commissions from the agent, or damages for loss sustained by such dealings from either the agent or the party dealing with him. No trade usage can be alleged to justify these secret commissions. Such a usage has been characterised as a usage of fraud and plunder.

Where an agent was entitled to a stated amount of remuneration, and his "out-of-pocket" expenses in addition, he was held liable to account to his principal for certain special discounts allowed in respect of the latter, on the ground (*inter alia*) that to claim the gross amount was to claim more than the agent's "out-of-pocket" expenses. (*Hippersley v. Knee Brothers*, 1904.)

(With regard to secret commissions *see title* Corruption: Prevention of.)

Liabilities of Agent.

An agent is liable for any loss sustained by reason of neglect of his duties without reasonable excuse.

An agent is also liable (equally with the principal) for a tort purporting to have been done under authority.

Where an agent has not disclosed his principal to the party with whom he deals he may be held liable to such party. The chief exceptions to this rule are:—

(1) Where a trade usage settles otherwise, and

(2) Where it is expressly stated that the agent acts as such (although the principal is not disclosed).

An agent may be liable in respect of his dealings, even where he discloses his principal, as, for instance:—

(1) Where he agrees to be so.

(2) Where he contracts by deed in his own name.

(3) Where the custom of the trade makes him liable, and

(4) (In some cases) where he acts for a foreign principal.

Rights of Agent.

He has a right to indemnity by his principal for all advances and disbursements made which may have been right and proper in connection with the duties of the agency, and in cases where he has an *interest* in the proceeds of a contract made by him for a disclosed principal he may sue thereon. An agent may also sue in respect of any contracts made by him for an undisclosed principal.

In addition to the ordinary remedies by action against his principal an agent may deduct any moneys due to him from any moneys of his principal which may be in his hands, and in certain cases where custom has established the right, an agent has a lien upon the principal's goods for any moneys due.

Liabilities of Principal.

A principal may be sued upon all contracts validly entered into by his agent for him, and where he has been undisclosed he may be sued on discovery, "subject to the qualification that "the state of the account between the principal "and the agent is not [subsequently] altered to "the prejudice of the principal."

Rights of Principal.

A principal may sue upon all contracts validly entered into by his agent for him, whether he was disclosed or undisclosed, provided that where the agent has been allowed to appear as the real contracting party the principal must allow any set-off or other equity which the third party may have against the agent.

As a general rule the principal is entitled to the benefit of the personal service of the agent, but the maxim "*Delegatus non potest delegare*" (*q.v.*) does not always apply.

Termination of Agency.

The relationship of principal and agent may be terminated by:—

(1) Withdrawal of authority by the principal.

(2) Retirement of the agent.

(3) Expiration of a fixed period.

(4) Completion of a specified act or series of acts.

(5) Death or insanity of either party (subject to sections 8 and 9 of the Conveyancing Act 1882).

(6) Bankruptcy of the principal (subject to Conveyancing Act 1882).

Either the principal or agent may retire from the relationship at any time, but if:—

(1) it will act prejudicially to the other party, or

(2) the agency is a power coupled with an interest, or

(3) the agency was created for a fixed period, which has not elapsed, or

(4) it was expressly agreed that the authority should be irrevocable.

the agency can only be terminated with the assent of both parties, otherwise a right of action for damages will lie. A *gratuitous agent* may renounce his office at any time, but even under these circumstances he should give reasonable notice of his intended withdrawal. A gratuitous agent is, however, not liable for non-feasance, there being no consideration for the contract, but having commenced his duties he is liable for misfeasance; the "confidence induced" on his commencing his duties being held sufficient consideration to bind him as an ordinary agent.

Agents' Balances.—These may represent moneys due to or from the agents of a concern. If moneys are due from the agents, care should be taken when including the items as "assets" that they are stated separately from ordinary book debts, and that the net amount only, after deducting commissions and other charges, is brought into the Balance Sheet.

Insurance companies supply their agents each quarter with *pro formâ* statements of the business between them, and the agents are required to complete and certify the same, and these accounts constitute the vouchers for the sums stated to be in the hands of the agents, and should be examined by an auditor and compared with the books.

Agents' Returns.—These are reports made by agents to their principals, which may be either statistical or financial; the statistical reciting prices, market movements, inquiries, &c., while the financial will include cash transactions, deliveries, and purchases of goods, &c., enabling the principal to prepare his accounts and show his position with the agent or with the parties with whom the agent has dealt on his account.

Aggregate Corporation.—*See* Corporation.

Aggregation.—The act of collecting parts whole mass or sum. The Finance Ac provides for the aggregation of all pr ing on the death of a person which to estate duty, so as to form one *rate* of duty payable is the pro in respect of the aggreg

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Exceptions are made in respect of (1) small estates, and (2) property passing in which the deceased never had an interest, and in certain cases of settled property, the property so settled is not aggregated, but treated as an estate by itself. (*See* Estate Duty.)

Agio.—The difference between the real and nominal value of the currency of a country.

Agistment.—The taking of other men's cattle into pasture land.

Agreement.—The reconciliation of two or more minds as to anything done or to be done; the agreement of parties is the very essence of contract. (*See* Contract.)

Alien.—Subject to certain conditions, aliens are not now under any disability as regards the taking, holding, or disposing of real and personal property in the United Kingdom. An alien is under no contractual disability, and may make a will or act as an executor or administrator; and if he has ordinarily resided or had a place of business or been domiciled in England during the year preceding the presentation of a petition, he is amenable to the bankruptcy laws of England. He is liable to pay income-tax upon all profits and gains *received* by him *in this country* (wherever earned), and upon all profits and gains *earned* by him *in this country* (wherever received).

An alien may not own or possess any share or shares in a British ship, but he may hold shares in the capital of a registered company which owns one or more British ships.

Alienation.—The transferring of property from one ownership to another.

Alimony.—The allowance made to a wife out of her husband's estate for her support after or during a matrimonial suit.

In the event of the husband's bankruptcy, future payments of alimony are not provable on the ground of being incapable of fair estimation (*Linton v. Linton*, 1885), nor can arrears of alimony be proved for whether accruing before or after the receiving order (*Kerr v. Kerr*, 1897).

The husband is liable to continue the payments notwithstanding his bankruptcy or discharge.

"A" List.—*See* Contributory.

Allocatur.—(It is allowed.) The certificate of allowance of costs by the taxing master. In bankruptcy procedure no costs must be paid to any solicitor, accountant, auctioneer, or other agent for the trustee except upon production of an allocatur for the amount claimed, otherwise such payments will not be allowed to the trustee in the audit of his accounts. (Bankruptcy Act of 1883, section 73.)

Before taxing the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an Official Receiver or trustee, the taxing officer shall require a certificate in writing, signed by the Official Receiver or trustee, as the case may be, to be produced to him, 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. (Rule 117.)

Where any bill of costs, charges, fees, or disbursements of any solicitor, manager, accountant, auctioneer, broker, or other person has been taxed by a Registrar of the County Court, the Board of Trade may require the taxation to be reviewed by a bankruptcy taxing master of the High Court. (Rule 124.)

The fees payable on taxation may be added to the amounts respectively allowed, and charged against the estate.

In summary cases the costs of any person (other than a solicitor) may, under certain circumstances, be paid and allowed without taxation. (Rule 273.)

The trustee's remuneration is not a taxable charge. (1883 Act, section 73.)

The foregoing provisions apply, *mutatis mutandis*, to the winding up of a company by the Court. (Rules 183, 185, &c.)

Allonge.—When there is no room on a bill of exchange for further indorsements, a slip of paper, called an allonge, may be attached thereto, and all indorsements upon the allonge are deemed to be written upon the bill itself. (1882 Act, section 32.)

As a preventative against fraud the first signature requiring an allonge should commence on the bill and end on the allonge. Some foreign codes require this procedure. The allonge does not require a stamp.

Allotment.—The appropriation or distribution of stock, shares, debenture stock, or bonds in a joint-stock company in response to applications therefor, or in pursuance of contracts already entered into.

An application for stock or shares may be withdrawn at any time before allotment, but when notice of allotment is duly addressed and posted the applicant is bound, even though the notice may never reach him. A valid allotment may also be made verbally.

Although usually allotment follows an application, yet it is equally effective if allotment first be made and is then followed by an acceptance.

A contract with a company to take up and pay for any debentures may be enforced by an order for specific performance. (Companies Act 1908, section 105.)

It is not necessary formally to allot the shares subscribed for by the signatories to the memorandum of association, for they are deemed to have agreed to become members of the company, but in practice allotment generally takes place.

If the shares are not taken up by the signatories they will be liable to pay for them in the event of the liquidation of the company, unless the whole of the authorised capital has been allotted to other persons. (*Mackley's* case, 1 Ch.D. 247.)

Statutory Restrictions upon Allotments.

Companies Act 1908, section 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 5 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 5 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 5 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 company which has allotted any shares or debentures before the first day of July nineteen hundred and eight.

Effect of Irregular Allotment.

Section 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.

Return as to Allotments.

Section 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 12 of that Act.

(3) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues:

Provided that, in case of default in 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.

Issue of Certificates of Shares, &c.

Section 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, 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. (*See titles* Commencement of Business, Minimum Subscription, &c.)

Allotment Letter.—A written or printed notice given to an applicant for shares or debentures in a joint-stock company informing him of the number which has been allotted to him.

A letter of allotment requires 1d. impressed stamp where the nominal amount to which the letter of allotment relates is less than five pounds, and 6d. impressed stamp where the nominal amount is five pounds or over.

A separate duty is chargeable in respect of letters of allotment and letters of renunciation, even though they be contained in the same document. (Finance Act 1899, section 9.)

Allotment Notes.—Notes issued for the payment periodically to a savings bank or to a near relative of a seaman, of stated sums on account of his wages during his absence at sea. The total amount payable under such allotment notes is limited to one-half of the total wages payable.

Allowance.—A deduction from either weight or price for certain reasons. Commercial allowances are various, the following being examples:—

Trade Discount.—An allowance of a certain percentage from the "list" price of goods irrespective of the date of payment. A trade discount will vary from 10 per cent. to as high as 80 per cent. according to the nature of the goods, or class of customer.

Cash Discount.—An allowance made in consideration of payment within a certain time. A cash discount is in addition to the trade discount (if any), but is computed on the balance remaining after deducting such trade discount.

Draft is a deduction from the gross weight of goods, to ensure the buyer obtaining full weight.

Tare is a deduction from the gross weight of packed goods of the weight of the box, case, wrapper, or other package in which the goods have been weighed. This deduction may be either based upon actual, estimated, or customary weight as the case may be. The balance of weight after deduction of tare is called *subtle* or *net werght.*

Tret is a deduction of four pounds for every 104 pounds of subtle weight as an allowance for sand, dust, &c., but this practice is becoming obsolete, the practice now being to allow for same in the price.

An auditor should require all unusual allowances of substantial amount (which have been passed to the credit of customers' accounts) to be vouched in some manner, either (1) by written acknowledgment of the particular customer, or (2) by the initials of the principal or some responsible official being affixed to the entries in the Allowance Book. Defalcations are sometimes successfully effected by (1) the non-accounting for moneys actually paid by customers, and (2) passing to the credit of the customers' accounts unauthorised "allowances" to the extent of the moneys not accounted for, the accounts thus being closed.

Payments made by an accounting party are also called allowances. (*See* Discount.)

Alteration.—*Deed.*—The alteration of a material part of a deed after execution vitiates the instrument. (*See titles* Blank Transfer, Deed.)

Will.—No alteration of a will shall have effect unless the meaning of the words prior to the

alteration was not apparent, or unless the alteration be duly initialled by the testator and the witnesses who attested the execution of the will.

Bill of Exchange.—A material alteration of a bill (*e.g.*, date, sum payable, time or place of payment) without the assent of all parties liable thereon avoids the bill, except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers, provided that if the (material) alteration is not apparent, payment of the bill according to its *original* tenor may be enforced by a holder in due course as though the bill had not been altered. A bill may be altered at any time before issue, and it may be subsequently altered to make it accord with the intention of the parties at the *time of issue*, but otherwise a material alteration after issue *may* be held to create a new instrument and require a fresh stamp.

(*See* Articles of Association, Award, Memorandum of Association.)

Alternative Director.—*See* Substituted Director.

Alternative Drawee.—An order (purporting to be a bill of exchange) addressed to two drawees in the alternative or in succession is not a bill of exchange. (1882 Act, section 6.)

A drawee *in case of need* is not an alternative drawee. (*See* Drawee.)

Alternative Payee.—A bill of exchange may be made payable to one of two or more payees. (1882 Act, section 7.)

Amalgamation (of Joint-Stock Companies).—This procedure is resorted to in order to combine two or more businesses for the common advantage. It may be performed either (1) by the transfer of all or part of the assets and liabilities of one or more existing companies to another *existing* company; or (2) by the transfer of all or part of the assets and liabilities of two or more existing companies to a *new* company.

Under both operations the members of the transferring companies may have a right of becoming members in the company to which the properties, &c., have been transferred.

In the first case the company acquiring the properties, &c., of the other company or companies is not wound up, but the companies whose properties, &c., are being *transferred* must be so dissolved.

In the second case all the previously existing companies must be wound up.

Amalgamations are generally effected (1) under section 192 of the Companies Act 1908, or (2) under a special power in the memorandum of the transferring company, to sell the *whole* undertaking for shares in another company, combined with a power in the articles to divide the assets in a winding-up *in specie*.

As to the amalgamation of assurance companies and the transfer of assurance business from one company to another, *see title* Assurance Companies Act.

Where an existing company acquires the whole undertaking of another company, under a scheme of amalgamation, it may then, if thought fit, alter its name, by special resolution, to meet the changed circumstances, but it is none the less the same company, not having been formally wound up. (*See* Arrangements, Joint-stock Companies, Reconstruction.)

Amortisation.—This term is used, in a legal sense, to express the alienation of lands in mortmain, but in an accountancy sense it is applied in connection with the redemption of a liability, or reduction of the book value of an asset (such as a lease), by means of a sinking fund or otherwise.

Analysis.—An arrangement of matter, under appropriate heads, according to requirements or circumstances. In its application to accounts, the recapitulation of a statement which shows a certain result, but in such a form as to expose the constituent parts contributing to such result. Careful analysis of accounts often provides information of considerable value in regard to a business; in particular it affords data for comparison of items—as regards periods, departments, districts, &c.

Analysis of the Ledger.—An expedient resorted to as an arithmetical check upon the postings to the Ledger where it would be impracticable to call over such postings in detail.

Analysis sheets are used and are ruled to allow of columns for the folio, name, commencing balance (debit or credit), the various subsidiary books (debit and credit), and the concluding balance (debit or credit), so that the entries in each Ledger Account may be extracted under these heads. The analysis of each account should be self-balancing; as also each schedule and the summary of the schedules. The totals of the various columns (debit and credit) representing the subsidiary books should agree with the totals of the entries in the subsidiary books themselves. Thus, if the books do not agree, the error or errors may be located.

This expedient is also of value (1) in cases of investigation where the period of access to the Ledger is limited, provided, of course, the accountant is permitted to make and take away such extracts from the Ledger; and (2) where it is desired to complete the "double-entry" figures, owing to the (improper) practice having obtained of entering transactions direct into the Ledger without the intervention of subsidiary books. (*See* Trial Balance.)

Ancient Lights.—The enjoyment of light for upwards of 20 years does not necessarily entitle the owner of a tenement to all the light which enters his windows without any diminution whatsoever. In order to give a right of action for loss of ancient lights as a result of illegal obstruction it is not sufficient to show that there is in fact less light than before; it must be shown that there has been a substantial privation of light so as to render the occupation of the house uncomfortable, and (in the case of business premises) to prevent the plaintiff from carrying on his accustomed business on the premises as beneficially as he had formerly done. (*Colls v. Home and Colonial Stores*, H.L. (1904) A.C. 179.)

Annual General Meeting.—(*See* General Meeting.)

Annual List and Summary.—Every company (to which the Companies Act 1908 applies) 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.

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.

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. (*See* " Counsel's Opinion " under article Auditor, *and also title* Assurance Companies Act.)

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.

(*Note.*—The Registrar will not accept the signature of a director.)

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. (1908 Act, section 26.)

A registration fee of 5s. is payable upon the filing of the copy of the annual list and summary with the Registrar.

(*See titles* Foreign Companies, Register of Members, Share Warrants.)

Annual Rests.—*See* Rest.

Annual Return.—The annual list and summary (*q.v.*) which a company having its capital divided into shares is required to file is sometimes called the " annual return," but the term is obviously applicable to all accounts, or reports which have to be prepared and filed annually.

Annual Value.—The amount assessed as issuing annually out of, or by virtue of, the subject-matter in question, whether lands, personal property, trade, profession, or otherwise. The term is chiefly used in connection with the assessment and collection of income-tax (Schedule A) and local rates. Although the basis of valuation is not the same as for the purpose of income-tax assessment, the annual value of lands is generally used for the valuation of such lands, so that the principal value may be stated as being at the rate of a certain number of years' purchase.

Annuity.—An annual payment, usually determined on the death of the annuitant; it may, however, be granted for a fixed term, and may be transmitted by will.

An annuity may also be created by will, when it will rank and abate as a general legacy. Legacy duty (if chargeable) is payable upon the value of the annuitant's interest, calculated according to tables provided for the purpose. The duty is payable in four annual instalments, which are due and payable as and when the first four payments of the annuity are made, the first instalment being due on completion of the payment of the first year's annuity. Simple interest at the rate of three per cent. per annum, without deduction of income-tax, is payable on all unpaid instalments of duty.

Annuities are also subject to estate duty to the extent to which any beneficial interest accrues by survivorship on the death of a person, but a single survivorship annuity, if less than £25, is exempt. If there be more than one such annuity, then only the first granted is entitled to exemp-

tion. The estate duty may be paid by four equal yearly instalments, the first of which is due at the end of twelve months from the date of the death, with interest at the rate of three per cent. per annum, without deduction of income-tax, upon all unpaid instalments of duty, which interest must be paid with each instalment after the first year.

An annuity created by will runs from the death of the testator; the first payment is therefore due at the end of a year from the death, unless the annuity is directed to be paid monthly or quarterly, in which cases the instalments will be payable at the end of the first month or quarter. If an annuity is directed to be paid, say, in quarterly instalments, and a day is appointed for the first payment, which is less than three months from the death, the first payment would be made on such appointed day, but the second would not be payable until six months from the death; or if the annuity were appointed to be paid in, say, monthly instalments payable on the first of each month, then the first payment would be apportioned (if necessary) in respect of the period between the date of the death and the 1st of the following month, the first payment being such apportioned part, and all subsequent payments being a full month's proportion.

Although the point is not free from doubt it has been held that a bequest of an annuity "free from any deduction," although relieving the annuitant of legacy duty, will not relieve him of income-tax. (*Lethbridge v. Thurlow*, 21 L.J. Ch. 538, and *Saddler v. Richards*, 6 W.R. 533.) Payment of annuities without deduction of income-tax, when such should be deducted, will amount to a breach of trust to the extent of the tax. A testator may, however, *expressly* direct that the income-tax upon an annuity shall be payable out of his estate.

An annuitant may prove against the estate of a bankrupt, by whom the annuity is payable, to the extent of the present value of such annuity, whether it be for life, for a term of years, or otherwise.

For the rules as to the valuation of annuities in the winding-up of a Life Assurance Company, *see title* Assurance Companies Act.

Annuity certain.—One payable over a definite period, as distinct from an annuity dependent for its duration upon some contingency—*e.g.*, the existence of a given life. Ordinarily, annuities are payable at the end of the periods to which they respectively have reference; if an annuity be payable at the commencement of such periods it is called an *annuity-due*.

A *perpetual annuity* is termed a perpetuity, whilst a *deferred* annuity is one which is not to be enjoyed until the expiration of a given number of years.

A *reversionary annuity* is one which is to commence on the death of a given person.

(*See* Expectation of Life and Life Annuity, and for an explanation of the Annuity system of redemption of loans *see* Sinking Fund.)

Ante-date.—To date a document as though executed before the true date of execution.

A bill of exchange is not invalid by reason only that it is ante-dated. (1882 Act, section 13.)

Ante-nuptial Debts.—A woman, married after 1882, remains liable for her ante-nuptial debts, contracts, and torts to the extent of her separate property, and her husband will only be liable for them to the extent of any property he may have acquired through his wife.

Anticipation.—The doing of an act or the acquiring of a thing before the appointed time. Married women may be restrained by the terms of a will or settlement from alienating, by way of anticipation, property settled to their separate use during *coverture*, but no restraint against alienation imposed by a woman *upon herself* will be valid as against her ante-nuptial debts. The Court has now power, even where a woman is restrained from anticipation, to make a judgment or order binding her interest in her separate property, if the woman consents thereto, and the Court is satisfied that it will be to her benefit to do so.

Anticipation of Profit.—This term is not used in the sense of "expectation of profit" (for such a prospect justifies the existence of every trader,

as such), but rather in the sense of *taking credit* in the accounts for profits as though they were earned, when they are only partly so, or depend for finality upon some future performance or other contingency. Thus, to take credit for the profit on sales made for future delivery is an anticipation of such profit if (say) the particular goods in question have not been acquired by the vendor at the time of preparing the accounts and there is an uncertainty about his ability to effect delivery. The valuation of stock-in-trade at selling prices, and in the majority of cases the practice of " writing-up " assets, are other forms of anticipation of profit. (*See* Profit, Realised Profit.)

Appearance.—When a person is served with a summoning process from a Court he generally comes into such Court to defend himself by " entering an appearance " with the proper officer. Appearance to an action in the High Court must be entered within eight days from service of the writ, and may be entered in person or by attorney.

Appointment, Power of.—A power to give or distribute property, given by one person to another in some instrument.

Such a power may be either general or special. A general power enables the donee of the power to appoint to anyone he pleases—even to himself. A special power restricts him to appointment among particular individuals only or not at all.

Apportionment.—Apportionment may be made in respect of *time* or in respect of *estate*.

At common law there is no apportionment in respect of time of any periodical payments except interest on money lent. The reason for the exception with regard to interest is set out in a decision nearly two centuries old, thus:—" Interest being " due *de die in diem* is not one entire thing, but " is an aggregate of many distinct things." *Per contra* the reason given for the non-apportionment of rent at common law was that until the rent day nothing was due or payable, and that the whole rent belonged to the person entitled on the day of payment, however recent his title.

The common law rule was the cause of injustice and inconvenience, and was modified by statute from time to time. The last Act dealing with the subject is the Apportionment Act of 1870, which provides *inter alia* (*a*) All rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly (section 2). (*b*) The apportioned part of any such rent, annuity, dividend, or other payment shall be payable or recoverable in the case of a continuing rent, annuity, or other such payment when the entire portion of which such apportioned part shall form part shall become due and payable, and not before, and in case of a rent, annuity, or other such payment determined by re-entry, death, or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before (section 3.) (*c*) The word "dividends" includes (besides dividends strictly so called) all payments made by the name of dividend, bonus, or otherwise out of the revenue of trading or other public companies divisible between all or any of the members of such respective companies, whether such payments shall be usually made or declared at any fixed times or otherwise; and all such divisible revenue shall, for the purposes of this Act, be deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the same revenue shall be declared or expressed to be made, but the said word " dividend " does not include payments in the nature of a return or reimbursement of capital (section 5).

The Act does not extend to life insurance premiums; nor does it apply to the proceeds of investments sold *cum dividend* (during the currency of the period in respect of which the dividend is declared), when such investments have been bequeathed to one for life with remainder over, the whole of the proceeds being treated as capital, although a full period's dividend may be about to be declared upon the investments in question. On the other hand, if

an investment be made during the currency of a period when a dividend is accruing due, the tenant-for-life will be entitled to the whole of such dividend when declared. This was decided in the case of *Re Duff; Muttlebury v. Muttlebury* in 1886. The purchase or sale must, however, be in the *due course of the administration*, for some special circumstances may induce the Court to order an apportionment, as in the case of *Bulkeley v. Stephens* (1896). In *Re Sir Robert Peel's Settled Estates* (1910, 1 Ch. 389) Warrington, J., drew a distinction between "purchases or sales made during the currency of the half-year which was the dividend-earning period," and cases where "the whole dividends had been earned before the purchase was made." Dividends received under the latter circumstances were capital and the tenant-for-life was not entitled to them.

With regard to dividends and interest upon shares or debentures in public companies, ordinarily they must be apportioned according to the time or period in respect of which they are deemed to have been declared, regardless of the actual date of receipt. Thus, if a person died on 20th October, and a dividend were declared in the following February upon one of his investments in respect of the year ending the intervening 31st December, the proportion from 1st January to 20th October would be treated as capital, and the balance ($\frac{72}{365}$ of the whole dividend) would be treated as income. So, if a dividend be declared in respect of a half-year, such as on railway stock, the apportionment between capital and income would be based upon the number of days' dividend to which these accounts were respectively entitled out of the actual number of days in the *particular half-year*.

If, however, an *interim* dividend be declared upon ordinary shares at the rate of 5 per cent. per annum, for the half-year ending 30th June, and is paid in August, and the following February a dividend is declared for the half-year ending 31st December, at the rate of 10 per cent. per annum, and expressed at the time of declaration to be supplementary to the interim dividend, making a total dividend for the year of 7½ per cent., then if a person died (say) on the 5th September, holding some of these shares, it is submitted (there being no direct decision on the point) that the apportionment would be:—

Capital.—The proportion of dividend at 7½ per cent. per annum, from 1st January to 5th September, *less* the amount of the *interim* dividend paid in August.

Income.—The balance of dividend received in February, after deducting the net amount apportioned to capital—that is, the proportion of dividend at 7½ per cent. per annum from 5th September to 31st December.

Where a final dividend is small compared with the interim dividend received during the lifetime of a testator, or where no final dividend is declared, so that on an apportionment being made as suggested above the final dividend is less than the "computed" sum due to income, it is submitted that income can only be credited with the amount of the final dividend, no portion of the interim dividend being chargeable to capital in order to augment the sum to be credited to income.

The Apportionment Act 1870 expressly states that the word "dividends" includes (besides dividends strictly so called) all payments made by the name of bonus or otherwise out of the revenue of trading or other public companies (see above); but where a public company declares a dividend or bonus, without paying the same in the ordinary way, but with the *intention* of appropriating the amount so declared as an increase of the company's capital and without any option to the shareholders, such "dividend" or its equivalent does not belong to the life-tenant, but must be treated as capital (*Bouch v. Sproule* (1887), 12 A.C. 385).

The rents in respect of a specific devise of real property, and the dividends accrued on a specific bequest of personalty, are apportionable to the date of the testator's death as between capital and the respective devisees or legatees.

A person entitled to a specific legacy is liable for the cost of the upkeep, care, and preservation of his legacy between the death of the testater and the assent by the executors. (*In re Pearce; Crutchley v. Wells*, 25 T.L.R. 497.)

The profits of a private partnership are not apportionable under the Act, although they may be declared at regular intervals; for such profits are not "rents, annuities, or periodical payments," nor are private partnerships "trading or other public companies" within the meaning of the Act of 1870 (*Re Griffith*, 12 Ch.D. 655), but the interest payable on a partner's capital is apportionable (*Ibbotson v. Elam* (1866), 1 Eq. 188).

The articles of partnership generally provide for the ascertainment of profits as at the date of dissolution, whether occasioned by death or otherwise, so that although the question of apportionment in such cases may not arise as between the partners, it may in exceptional cases as between the life-tenant and the remaindermen of a deceased partner's estate.

Where arrears of dividend in respect of cumulative preference shares are ultimately received, a difficult question of apportionment arises as between capital and income in the event of the death of the shareholder during the period when the "arrears" of dividend were accumulating. There is no legal decision bearing directly upon preference shares, but *In re Taylor's Trusts*; *Matheson v. Taylor* (1905, 1 Ch. 734) dealt with arrears of interest on bonds, which interest (like preference dividends) was only payable conditionally upon there being profits out of which such interest could be paid. It was decided that the "arrears" on receipt were not apportionable over the whole period during which they were accumulating, but only over the period during which profits were earned out of which the interest was payable, for prior to that period there was no legal obligation to pay, and therefore no question of income accruing due within the meaning of the Apportionment Act. Therefore if a testator died before the commencement of the period when profits commenced to be earned, all interest declared subsequently would be credited to income. If the testator died *during* that period there would be apportionment as between capital and income, having regard to the date of his death during that profit earning period, not the whole period while "arrears" had been accumulating.

It is open to question whether the decision in *In re Taylor's Trusts* (*supra*) would apply equally to "arrears" of preference dividends.

The principles of apportionment between capital and income involved in the administration of a deceased person's estate (or in any other case where applicable) may be summarised as follows:—

(1) Rents, annuities, dividends, and interest on money lent are apportionable from day to day. But rent payable in *advance* by agreement is not apportionable. The whole sum is due on the first day of each period. (*Ellis v. Rowbotham*, App. Cas. 1900.)

(2) The profits of a private partnership, the profits from a voyage of a ship owned in 64th shares, and life insurance premiums are *not* apportionable.

(3) A dividend received as part of the proceeds of sale of an investment sold *cum. div.* is capital unless the *whole* dividend has been earned before the sale was made.

(4) The first dividend received upon an investment made during the currency of a period is income unless the *whole* dividend has been earned before the investment was made.

(5) Ordinarily dividends and the like are apportionable according to the period in respect of which they are declared, regardless of the date of receipt.

(6) Dividend or bonus declared with the *intention* of increasing the capital of a concern to the extent of the amount declared, and with no intention of paying same in the ordinary way, must be treated as capital.

(7) The provisions of the Apportionment Act do not extend to any case in which it is expressly stipulated that no apportionment shall be made.

The principle of apportionment, as between life-tenant and remainderman, of a fund representing the proceeds of the realisation of an *authorised* but insufficient mortgage security upon which there are arrears of interest due, in order that

there may be rateable equality in the incidence of the deficiency, is to take the amount due to the tenant-for-life in respect of arrears (only) of interest, and the amount due to the remainderman in respect of capital, and to apportion the realised fund in proportion to those amounts respectively (*Re Atkinson; Barber's Company v. Grosesmith*, Court of Appeal, 1904).

Thus:

Amount advanced 10 years ago £1,000 @ 4%—

Interest received £300, Net Interest in arrear (after deducting interest and rents received on account)..... £100.

Security realised £800.

Apportionment:—

Life-tenant (or Income) $\frac{100}{1,000+100}$ of £800 = £72$\frac{8}{11}$

Remainderman (or Capital) $\frac{1,000}{1,000+100}$ of £800 = £727$\frac{3}{11}$

Prior to the above decision—there was a conflict of decisions on this question—it was at one time held that the amount actually received by the tenant should be brought into "hotchpot" thus:—

Advance ..	£1,000	Security realised	£800
Interest 10 years	400	Interest received	300
	£1,400		£1,100

Life-tenant—

$\frac{1}{11}$ of £400 =	£314$\frac{3}{11}$	
Less already received	300	
		14$\frac{3}{11}$

Remainderman—

$\frac{1}{11}$ of £1,000	785$\frac{8}{11}$	
		£800

But this latter method of apportionment was overruled in *Re Atkinson* (*supra*), when Romer, L.J., said: "As to the interest which was paid to "the tenants-for-life, it is clear that the tenants-"for-life were entitled to receive it, and that the "remaindermen could have no possible claim "upon the sum so received by the tenants-for-"life—no equity against the tenants-for-life in "respect of those sums in any point of view "whatever. That being so, what is the position "of the tenants-for-life and the remaindermen so "far as concerns the property that represents "the security for the debt? They are simply in "the position of persons who have one security "for the two debts belonging to them respec-"tively. Notwithstanding the payment of interest "to the tenants-for-life, so far as concerns their "arrears of interest they have a right, as against "remaindermen, to see that those arrears are "charged upon the security. The security is a "security not only for principal but for interest, "and that is a right the tenants-for-life had. And "I fail to see any equity on the part of the "remaindermen which would enable them to "challenge the position or right of the tenants-"for-life. That being so, when the security is "insufficient to pay the two debts charged upon "the security, I should have thought that it "would follow as a matter of clear right that the "tenants-for-life would say to the remaindermen: "'Apportion our security, which is a security for "'our debt as well as yours, between us in pro-"'portion to the amount of the respective debts, "'in the same way as you would if you had a "'joint mortgage given on one security—a "'security for two separate debts, and the "'security is insufficient.' In such a case you "apportion the insufficient proceeds between the "two mortgage debts. That is the simple prin-"ciple, and there is no possible equity that I can "see to prevent the ordinary rights applying and "being enforced."

Sometimes property not producing income is given to trustees in trust to convert and re-invest and to pay the income thereon to a tenant-for-life with reversion to others, but the conversion of the property into an income-producing fund may be properly deferred for the benefit of the estate. In such a case, the Court will order the apportionment between capital and income to be effected as follows:—

Ascertain the amount which, if put out at interest on the day the property came into the trustees' hands (*e.g.*, the day of the death of the testator), and accumulated at compound interest with yearly rests, less income-tax, would produce an amount equal to the proceeds of the property upon the day such proceeds were actually received. The rate of interest used to be 4 per cent., but it has now been laid down that for the future it should be 3 per cent. The sum so ascertained, after making provision for payment to the Inland

Revenue Authorities of the income-tax deducted, is to be treated as capital, and the difference between that sum and the actual proceeds as income.

The life-tenant will then receive compound interest at 3 per cent., less the current income-tax, upon the amount treated as capital, for if the above process be reversed, commencing with the final figure, whatever it may be, and interest (less tax) be added and compounded in yearly rests, the accumulations will bring the amount apportioned as capital to the equivalent of the actual proceeds of sale at the date thereof.

The complication between capital and income, arising from the postponement of sale of non-income-producing assets, is often avoided by the insertion of a clause in the will, allowing postponement of sale, and providing that no allowance shall be made to the life-tenant in respect of any loss of income pending realisation. (*See* also title Executorship Accounts.)

In *Allhusen v. Whittell* (1867, 4 Eq. 295) an important rule of apportionment (re-affirming earlier decisions) was clearly laid down to the following effect:—Inasmuch as that portion of the capital of a testator's estate which is required to pay the debts, legacies, funeral expenses, and such like is not part of the true residue of the estate, the life-tenant is not entitled to the income upon that portion of the capital which is so required. In other words, the capital of the estate must not be charged with the gross amount of the debts, legacies, and expenses, but only such a sum as with the *income thereon* for one year from the death, will make up the amount necessary to pay such debts, &c. This rule was also followed in *Lambert v. Lambert* (16 Eq. 320), the actual figures in that case being: Capital £10,209, first year's income £1,571, debts, legacies, and expenses £4,729. Therefore £4,099 of the latter item was held chargeable to Capital Account, and £630 (the balance) was treated as the income earned upon the £4,099, leaving £941 for the life-tenant.

The method of apportionment may be illustrated thus:—

Gross Capital at date of death..	£10,209	
Income for first year, equal to 15·39 per cent.	1,571	£11,780
Apportionment thereof:—		
Debts, Legacies, and Expenses—		
Amount required to produce £4,729 in one year at 15·39 per cent...	£4,099	
Accretion thereto at 15·39 per cent. per annum	630	£4,729
Net Capital Fund:—		
Gross Amount	£10,209	
Less Amount required to be set aside for Debts, Legacies, and Expenses	4,099	6,110
Income for Life-tenant 15·39 per cent. on £6,110 for one year, being the actual income £1,571 less the amount transferred to Capital Account to "assist" in the payment of the Debts, Legacies, and Expenses		941 £11,780

The rule is seldom applied in practice—in fact, it would raise considerable difficulties in many cases, for the rule is based upon the unwarranted assumption that the debts and expenses are not paid for one year after the death. For instance certain death duties must be paid earlier, and in many cases carry interest until payment. Many of the debts of a testator are found to be carrying interest and are paid promptly. Even legacies are in many cases directed by the will to be paid within a certain (limited) time after the death. In these respects the "executor's year" cannot be said to apply. In some instances a clause is inserted in the will excluding the operation of the rule, so that that portion of the capital of a testator's estate ultimately required for the payment of debts, legacies, &c., may be treated as "residue" until actually applied to such purposes.

For the rule of apportionment in *Howe v. Lord Dartmouth* see article Executorship Accounts.

Bankruptcy and Company Liquidation.—When any rent or other payment falls due at stated periods, and the receiving order or the winding-up order or resolution to wind up (as the case may be) is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the receiving order or winding-up order or resolution as if the rent or payment accrued due from day to day. (Bankruptcy Act 1883, 2nd Schedule, Rule 19, and Winding-up Rule 96.)

Commercially, apportionments are made in respect of various matters not only upon a change of proprietorship, as in the case of the sale of a

business or an incoming or outgoing partner, but also upon each date the position of a concern is ascertained. Such items as interest, rent, rates, and fire insurance premiums, which accrue from day to day, require adjusting in order to show the position with accuracy, for some may be paid in advance whilst others are accruing due.

It is sometimes contended that the omission to include apportionments does not materially affect commercial accounts, the "commencing" and "ending" figures compensating each other. Although this may generally be true as regards the Profit and Loss Account, it is *not* the case with the Balance Sheet, in which apportionments *must* be included if a proper statement of the position is to be prepared.

In the case of annual payments there does not appear to be much difficulty as to their proper apportionment between two given periods, but where payments are made (say) quarterly in respect of an annual sum, there appears to be great difference of opinion. For instance, to take the familiar case of rent—a rental at the rate of £92 10s. per annum in respect of certain property is payable upon the usual "quarter days"—that is to say, £23 2s. 6d. each quarter. The property is sold on the 9th September, the vendor having already received the rent payable on the previous 24th June, and an inquiry as to the amount payable to the vendor in respect of the rent accrued during the 77 days from 24th June to 9th September elicited four different solutions, viz.:—

	£ s d	Amount payable to vendor for accrued rent £ s d
(1) $\frac{77}{365}$ of £92 10 0		19 10 3
(2) $\frac{77}{92}$ of £23 2 6		18 7 2
(There are 97 days between 24th June and 29th September)		
(3) $\frac{20}{365}$ of £92 10 0	5 1 4	
The *Purchaser* is entitled to 20 days' rent out of the current quarter's rent, therefore the vendor takes	23 2 6	
Less	5 1 4	18 1 2
(4) The vendor is entitled to the portion of rent which has accrued since the *date in the year* from which the premises were originally let. Thus, if the premises were let on 25th March in any year the vendor is entitled in this case to $\frac{282}{365}$ of £92 10 0 ..	42 11 6	
Deduct Amount received on 24th June	23 2 6	
		19 9 0

The above solutions are set out at length in order to show the various principles involved, but the true solution would in all cases appear to be inseparable from the *precise* terms of the tenancy. Thus, if the rent is an *annual* one, but payable quarterly or otherwise for convenience, Solution No. 1 (above) is correct; whilst if the rent be a *quarterly* one, being referred to at its annual equivalent merely for comparative purposes. Solution No. 2 is correct. Solution No. 4 would not only depend upon the terms of the agreement, but upon the terms of the receipt given for the rent received on 24th June.

Where the sum to be apportioned is an annual one the apportionment may be effected readily by the use of an ordinary 5 per cent. interest table. Thus:—

> Ascertain the capital sum which if put out for one year at 5 per cent. per annum will produce the sum to be apportioned. Then find the interest at 5 per cent. per annum upon the capital sum so ascertained for the number of days in respect of which the apportionment is required. The amount of interest so ascertained is the apportioned part required.

For example:—£755 15s. 9d. per annum; required the apportioned part for 97 days. The first part of the rule can speedily be carried out, for as £1 at 5 per cent. will produce one shilling per annum, conversely, every shilling and fractional part of a shilling in the interest represents a corresponding number of pounds and fractions thereof as capital. The annual sum therefore only requires to be reduced to shillings, and then termed pounds, to arrive at the capital sum. Thus £755 15s. 9d. interest is derived from £15,115 15s. capital; and 97 days' interest upon the latter sum at 5 per cent. per annum is £200 16s. 10d., which is the required portion of £755 15s. 9d. for 97 days.

Interest tables may also be made use of for apportionment purposes in another way when numerous apportionments are required of the same sum. For instance, required the respective apportionments of the annual sum of £17 12s. for 87, 32, 27, and 219 days.

As x days' interest on £b is equal to b days' interest on £x, it follows that if the annual sum is less than £18 5s. the problem may be reversed, and in the example given, instead of apportioning in the ordinary way by multiplication and division, all that is necessary is to find the interest at 5 per cent. on £87, £32, £27, and £219 for 352 days (the number of shillings in the sum to be apportioned) and the required apportionments are obtained, the total of which should equal the annual sum; thus a check is obtained.

As the whole of these results are upon *one page* in an ordinary interest table, it is obviously the more rapid method.

Appraisers.—Persons employed to value goods, &c.; they are required to take out a licence, paying £2 per annum therefor.

Appropriation Account.—An account to which the balance of a Profit and Loss Account is transferred, so that the amount may be divided or appropriated according to the respective rights of those interested. For example, in the case of a company, part of the profits may be set aside to reserve, part divided amongst the preference shareholders and the ordinary shareholders, and the balance carried forward.

Appropriation of Payments.—If a debtor owes more than one debt to a person, and makes a payment insufficient to satisfy the whole, the money is appropriated as follows:—

(1) To the debt the debtor desires, if he exercise the option at the *time of payment*. The appropriation may be by word, in writing, or by conduct.

(2) If the debtor does not make any election, then the creditor may place the money against any debt he pleases. This he may do at any time before action is brought, and having done so he may alter his appropriation, provided he has not notified the debtor, and so disclosed the previous state of the account. Provided a debt really exists—that is to say, the contract upon which it is founded must not have been void—the creditor may place the money (if unappropriated by the debtor) against such debt, even though a right of action thereon may be barred by the Statute of Limitation.

(3) If there be a general account between the parties, and no appropriation of payments by debtor or creditor, the *presumption* is that the payments have been appropriated to the items in order of date. "The first "item on the credit side is to be placed "against the first item on the debit side." (*Clayton's* case, 1 Mer. 585.) This presumption may be rebutted by evidence.

As against a *cestui que trust* a trustee who has mixed trust money with his own moneys in his banking account may not set up the rule in *Clayton's* case (No. 3 above), and it will be presumed that in drawing out of the bank he drew upon his own funds and not the trust money. (*In re Hallett's Estate*, 13 Ch.D. 696.) *Clayton's* rule will, however, apply as between two *cestuis que trustent* under similar circumstances.

Arbitration.—The determination of a matter or matters in dispute by the *decision* of one or more persons called arbitrators, who, in case they disagree, may call in an umpire to make a final decision.

Arbitrations generally are governed by the Arbitration Act 1889, if the submission is in writing. Under the 1889 Act (1) the parties agree in writing to submit differences to arbitration; (2) the arbitrator hears all the evidence; (3) the award is drawn up; and (4) the Court will enforce the award as if it were a *judgment or order to the same effect*. (*See* Arbitrator.)

Arbitrator.—A person appointed to decide matters in dispute between two or more parties. When the reference to arbitration is made by the Court, the arbitrator is termed an official or special referee.

Although in general the arbitrator should be an impartial person, yet, if the parties with full knowledge of the facts select a man known to be biassed, there would be some difficulty in avoiding a trial before him.

The *duties* of an arbitrator are to hear and determine all the questions at issue, and exercise such skill as he possesses in arriving at a decision.

His *authority* depends largely upon the terms of the submission, but he cannot order anything to be done which would amount to an illegality, nor can he decree a divorce or deal with criminal cases. He can only deal with matters within the strict ambit of the submission.

An ordinary arbitration clause in a partnership agreement is sufficient to confer upon an arbitrator, appointed in pursuance of such clause, a power to award a dissolution and state the terms thereof.

The arbitrator is not bound by any rules of procedure, although it is usual and proper to follow the proceedings of a trial at law. Notes of the evidence should be taken, and, on deciding to close the proceedings, prior to coming to his decision, the arbitrator should formally notify the parties thereof, after which it is improper for him to listen to either of the parties. The arbitrator cannot delegate his powers and duties to another; he must be present throughout the hearings, and, although he may call in legal or scientific experts and may delegate mere ministerial acts to his clerk, a solicitor, or an accountant, it is the *decision* of the arbitrator himself which must prevail, the award must be his, and he must not adopt the theories or opinions of any of the experts he consults, unless he is convinced of their truth.

The admission or rejection of evidence is in the discretion of the arbitrator, but if he refuse to hear evidence which clearly bears upon matters within the submission the validity of the award may be imperilled. Witnesses may be compelled to attend, give evidence, and produce documents, but they cannot be compelled to produce documents which are not liable to be produced at a trial at law. Unless the submission shows a contrary intention, the witnesses may be examined on oath or affirmation, and for that purpose the arbitrator may administer oaths to, or take the affirmations of, the parties to the submission, and the witnesses appearing before him.

Persons *wilfully* giving false evidence are guilty of perjury, as if the evidence had been given in open Court.

If a point of law arise the arbitrator may (1) deal with it, or (2) he may state a special case for the opinion of the Court, or (3) he may put his award in the form of a special case—that is to say, he may state the findings on the *facts*, and further state that if one view of the law be correct he finds for one party, or if another view of the law be correct he finds for the other party.

Either party may ask the Court to compel the arbitrator to state a question of law for the opinion of the Court in the form of a special case.

In the absence of anything to the contrary in a submission, it is implied that the reference is to a single arbitrator.

(*See* Arbitration, Award, Special Referee, Submission, Umpire.)

Arrangements in Bankruptcy.—An arrangement may be entered into between a debtor and his creditors either *before* or *after* adjudication. The procedure is as follows:—

The debtor must lodge his proposal for a scheme or composition in writing with the Official Receiver within four days after submitting the statement of affairs. The proposal must contain the terms of the composition or scheme, and state the particulars as to sureties or securities, if any.

A meeting of the creditors will then be called to consider the proposal before the close of the public examination, and if a majority in number and three-fourths in value of all the creditors *who have proved their debts* resolve to accept the proposal, and the Court approve, the scheme is binding on all the creditors. Any creditor who has proved his debt may assent to or dissent from the proposal by a letter addressed to the Official Receiver, and, if received a day prior to the meeting, the letter counts as if the creditor had attended the meeting and voted.

Upon every application to the Court to approve a *composition* a fee is payable computed upon the gross amount of the composition, viz., £1 on every £100 or fraction of £100 up to £5,000, and

10s. on every £100 or fraction of £100 beyond £5,000. Upon every application to the Court to approve a *scheme of arrangement* a fee is payable computed on the gross amount of the estimated assets (but not exceeding the gross amount of the unsecured liabilities), viz., £1 on every £100 or fraction of £100 up to £5,000, and 10s. on every £100 or fraction of £100 beyond £5,000, provided that, where a fee has been taken upon a *previous application* to the Court to approve a composition or scheme, or where a fee has been paid upon the gross amount of the assets realised and brought to credit in the Cash Book when submitted for audit, *seven-eighths* of the amount thereof shall be deducted from the fee payable on application to approve a composition or scheme.

Note.—The fee must be paid before the application can be heard.

The Court cannot approve a scheme:—

(1) Where the terms of the proposal are not reasonable; or

(2) Where the scheme is not calculated to benefit the general body of creditors; or

(3) In any case in which the Court is required, where the debtor is adjudged bankrupt, to refuse his discharge.

(And see below as to preferential payments and costs.)

Where the estate of a bankrupt would entail great expense and involve considerable delay in realisation the Court is reluctant to refuse approval of a scheme which has been approved by the creditors, because *primâ facie* they are the persons who are most interested in the matter, and are generally best able to judge as to whether a proposed scheme is really for their benefit. But where any facts are proved which would necessitate a *conditional* discharge, or the refusal or suspension of same, in the event of bankruptcy, the Court cannot approve a scheme unless it provides reasonable security for payment of not less than 7s. 6d. in the £ upon the unsecured debts provable at the date the scheme comes before the Court. (*Re Ashmead Bartlett*, 1901.) Creditors otherwise settled with can be excluded when providing the security, but the Court cannot sanction a scheme in which claims have been only *conditionally* withdrawn. (*Re Pilling*, 1903.)

The effect of the approval of a composition upon the various debts due from the debtor is much the same as it would be had he been adjudged bankrupt—that is to say, the scheme is binding upon all creditors as regards debts provable in bankruptcy, but does not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause except to such extent as the Court expressly orders.

Where the Court approves of a composition or scheme *after* adjudication, it *may* make an order annulling the bankruptcy.

The acceptance by a creditor of a composition or scheme does not release any partner of or joint-debtor with the debtor, or any person who was surety for him.

No composition or scheme can be approved by the Court unless it provides for the payment in priority to other debts of all preferential payments in bankruptcy.

The Court must also, before approving a composition or scheme, be satisfied that provision is made for payment of all proper costs, charges, and expenses of, and incidental to, the proceedings, and all fees and percentages payable to the Official Receiver and the Board of Trade, under the scale in force for the time being.

If default is made in payment of any instalment due in pursuance of any composition or scheme, or if it appears to the Court on satisfactory evidence that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by the Official Receiver or the trustee or by any creditor, adjudge the debtor bankrupt and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done,

under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt as aforesaid, any debt provable in other respects, which has been contracted *before the adjudication* will be provable in the bankruptcy.

(An important article dealing with arrangements in bankruptcy appeared in *The Accountant*, 1902, p. 644.)

Arrangements (Joint Stock Companies).—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.

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.

In this section the expression "company" means any company liable to be wound up under this Act. (1908 Act, section 120.)

Note.—The foregoing applies even if the company is not in the course of being wound up.

Voluntary Liquidation.

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, 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. (1908 Act, section 191.)

Sale to another Company.

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.

Any sale or arrangement in pursuance of this section shall 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 Companies Clauses Consolidation Act 1845).

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 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. (1908 Act, section 192.)

Note.—A dissentient shareholder has only the rights here set out; he cannot impeach the sale. On the other hand, he is not compelled to accept shares in any other company, to which, as a result of the sale, he might become entitled.

General Scheme of Liquidation by Arrangement.

The liquidator may, with the sanction following (that is to say)—

(*a*) in the case of a winding-up by the Court with the sanction either of the Court or of the committee of inspection;

(*b*) in the case of a 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.

In the case of a winding-up by the Court 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. (1908 Act, section 214.)

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. (1908 Act, section 210 (3).)

(*See* Amalgamation, Reconstruction.)

Articled Clerk.—Where, at the time of the presentation of a bankruptcy petition, any person is apprenticed or is an articled clerk to the bankrupt, the *adjudication* of bankruptcy operates as a complete discharge of the indenture or articles of agreement, if either the bankrupt or apprentice or clerk gives notice in writing to that effect to the trustee, and if any money has been paid by, or on behalf of, the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf (but subject to an appeal to the Court), pay such sum as he (the trustee) thinks reasonable out of the bankrupt's property, to or for the use of the apprentice or clerk—regard being had to (1) the amount which was paid to the bankrupt as a fee; (2) the time served by the apprentice or clerk prior to the bankruptcy; and (3) any special circumstances.

Where it appears expedient, the trustee may, upon application by the apprentice or clerk, instead of making a payment as compensation, transfer the indenture or articles of agreement to some other person. (1883 Act, section 41.)

In the winding-up of an insolvent company, the same rules prevail as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable as are in force for the time being under the law of bankruptcy, and all persons who in bankruptcy would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up. (Companies Act 1908, section 207.) An apprentice or articled clerk would probably be entitled to preferential payment out of the assets of a company, but the point is not without doubt.

Being a personal contract, an apprenticeship or articled clerkship ordinarily terminates on the death of either party, but if a master has covenanted to clothe and feed (as well as educate) the apprentice or clerk, the master's representatives in the event of his death will be required either to carry out the covenant to clothe and feed, or to compensate for the breach thereof, so far as they may have assets.

Articles of Association (of a Company).—The internal regulations of a company, defining the mode and form in which the business of the company is to be carried on.

The Companies Act 1862 contained a *pro formâ* set of regulations called Table A; these were amended by the Board of Trade as from 1st October 1906, and are embodied, with further slight amendments, in the Companies (Consolidation) Act of 1908.

A company limited by shares may adopt, *in whole or in part*, the provisions contained in Table A, or may be registered with a specially drawn set of articles. If no articles of association are registered with the memorandum, or if articles are registered, then in so far as they do not exclude or modify the regulations contained in Table A, such 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. Specially drawn articles must be printed, divided into paragraphs, numbered consecutively, and bear a 10s. stamp, as if they were contained in a deed. The signatories to the memorandum must also sign the articles, such signatures being duly attested, but the number of shares the subscribers take must not be stated, as required in the case of the memorandum. (1908 Act, sections 10, 11, and 12.) (*See title* Table A.)

The effect of such signatures is similar *mutatis mutandis* to the signing of the memorandum. (*See* Memorandum of Association.)

On the registration of the articles a fee of 5s. is payable.

The memorandum of association of a company limited by guarantee or unlimited *must* be accompanied by specially drawn regulations, and if the company has a share capital the articles must state the amount of share capital with which the company proposes to be registered. If it has no share capital the number of members with which it is proposed to be registered must be stated. (Section 10.)

There are forms for guidance in the Third Schedule of the Act of 1908.

Where it is desired to register a private company as defined by section 121 of the Act, it will be necessary to register articles, for Table A does not comply with the requirements of that section. The restriction on the right to transfer partly paid-up shares, and shares on which the company has a lien, &c. (clause 20), is not considered sufficient restriction on "the right to transfer," for the Registrar contends that the restriction must apply to all shares. Clauses 35 to 40 inclusive, as to share warrants, must also be deleted, as they nullify the provisions of section 121, and clause 5 cannot apply to a private company. (*See* Private Company.)

Briefly, the clauses of a company's articles deal with such matters as:—

(1) *Shares*, as regards certificates, calls, forfeiture, lien, transfer, warrants to bearer, conversion, increase, and reduction of capital, rights attached to the shares, &c.

(2) *Borrowing powers*, manner of raising loans; how powers exerciseable, *i.e.*, whether by company or by directors; limit (if any).

(3) *Meetings*, proceedings, quorum, votes, minutes, &c.

(4) *Directors*, proceedings, powers, qualification, remuneration, disqualification, retirement, &c.

(5) *Accounts*, audit, dividends, reserve funds, &c.

(6) *Arbitration*, (7) serving of notices, and (8) sundry other internal matters.

The articles of association must keep within the ambit of the memorandum, for, as becomes a subsidiary document, they cannot in any way extend or amplify the memorandum. The articles of association cannot deprive the members of their statutory rights. For instance, a clause in the articles substituting certain rights in lieu of those contained in section 192 of the Act of 1908 (formerly sections 161 and 162 of the Act of 1862), as regards dissentient members in a reconstruction arrangement, has been declared void by the Court of Appeal. (*Re Gould*, 1899.) So a clause in the articles purporting to forbid, or attempting to qualify, a shareholder's right to present a petition for winding-up is inoperative.

Subject to the provisions of the Act of 1908, 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 (section 13), and the company cannot be deprived or deprive itself of this power, for an article purporting to declare the regulations unalterable is void.

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.

A copy of every special resolution must be printed and filed (within 15 days of the confirmation of the same) with the Registrar of Joint Stock Companies, and a fee of 5s. is payable thereon.

Default in printing or forwarding the copy of a special resolution to the Registrar, or in embodying or annexing it to the articles, renders the company and every director and manager knowingly permitting the default liable to certain fines. (Section 70.)

At one time it was a common practice for directors of companies to take power in their articles of association "to make from time to "time such bye-laws as may be found necessary "for the internal regulation of the company's "affairs." This provision must now be carefully expressed as applicable only to the conduct of the business and the control of the company's servants. If the provision be of such a nature as possibly to affect the rights, privileges, and liabilities of *members*, it will be looked upon by the authorities as affording scope (under the guise of bye-laws) for making such changes in the regulations as would amount to an alteration of the articles. As this would, under ordinary circumstances, require a special resolution, the Registrar will refuse to register articles containing such a clause unless restricted as stated.

The articles are only a contract by the shareholders *inter se* as such, and do not constitute a contract with any outside person named therein, even though he may be a signatory to the memorandum and articles, so that a solicitor or auditor nominated as such in the articles cannot enforce the appointment. The nomination merely amounts to an *authority* to the directors to appoint the person or persons in question; the articles must be regarded as regulations, and not as a contract with the nominees. Therefore, it is usual to appoint the chairman of directors, the secretary, solicitor, and auditors, at the first meeting of directors, or to *adopt* the appointment of any of the officers if mentioned in the articles.

Every person having dealings with a company, whether a member or a creditor or otherwise, is deemed to have constructive notice of the memorandum and articles of association, so far as regards the external position of the company.

Every member of a company is entitled to have a copy of the memorandum and also of the articles of association (if any) forwarded to him on payment of the sum of 1s. or any less sum prescribed by the company for each copy. Any company making default in forwarding a copy of the memorandum and articles of association upon request is liable to a fine not exceeding one pound. (Section 18.)

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. Default renders the company and every director and manager knowingly permitting same liable to a fine not exceeding one pound. (Section 70.)

The original memorandum and articles of association (together with copies of special resolutions altering same, as stated above) are open to the inspection of the public at the office of the Registrar of Joint Stock Companies on payment of the prescribed fees. (Section 243.)

(*See* Memorandum of Association.)

Articles of Partnership.—Although a partnership may be constituted by verbal agreement, it is more usual for the partners to enter into an agreement in writing, either under seal or under hand only.

If the agreement be under seal it is referred to as the partnership deed, and if under hand only, the articles of partnership.

Both documents, however, are drafted in "article form"—that is to say, in distinct paragraphs or divisions, each dealing with a separate matter for convenience of reference.

The principal matters *usually* dealt with in a partnership agreement are:—

(1) The names of the partners and the style of the firm.

(2) Nature of Business.

(3) Term of Partnership.

(4) Capital to be contributed.

(5) The banking account and the right to sign cheques.

(6) How profits and losses are to be shared.

(7) Whether interest on capital is to be allowed, and, if so, the rate.

(8) Whether any acting partner is to receive a salary.

(9) Whether partners are to be allowed to draw against accruing profits; if so, the amount; whether interest is to be chargeable thereon; and, if so, the rate.

(10) Whether partners are to devote their whole time to the business of the partnership or not.

(11) Whether any partner is to have extraordinary powers, or any partner's authority is to be restricted.

(12) Provisions as to the notice required to effect a dissolution.

(13) Rights of various partners on dissolution, retirement, or death, as regards—

(*a*) Goodwill.

(*b*) Proportion of accrued profits or losses.

(*c*) Conditions of repayment of capital.

(*d*) Competition with firm (in case of retirement).

(*e*) Surplus assets (in case of dissolution).

(14) Provisions as to proper books of account being kept and audited, and as to the partners signing the Balance Sheets.

(15) Arbitration in case of dispute.

The foregoing are general matters usually dealt with, the peculiar circumstances of each case requiring special clauses.

The partners may determine their respective rights, interests, powers, and duties as they may think fit, but they cannot affect the rights of third parties, nor can their arrangements *inter se* operate to the prejudice of strangers.

It is the ordinary apparent authority of a partner which a stranger is entitled to act upon,

so that if any restriction be placed upon the ordinary powers of a partner, such restriction will only be operative as against third parties who have been notified of it.

In the absence of any agreement between the partners, the provisions of the Partnership Act 1890 apply so as to determine the respective rights, duties, and interests of the partners.

(*See* Partnership.)

Since 1st January 1908, articles of partnership in the case of "limited partnerships" must contain special provisions as to the capital contributed (and not to be withdrawn) by the limited partner or partners, &c. (*See title* Limited Partnership.)

Assessment.—The valuation of property or other subject-matter for the purposes of taxation. (*See titles* Annual Value, Income-tax.)

Assets.—Property available for the payment of the debts and legacies of a deceased person; commercially, the stock-in-trade, land, buildings, machinery, tools, book debts, cash, &c., of a trader.

Assets may be classified variously according to the particular circumstances of the case, viz.:—As regards value, they may be *wasting* assets (*see titles* Depreciation, Profits available for Dividend, Trust Investments, Wear and Tear), or they may be *fluctuating* assets, *e.g.*, investments subject to the fluctuations of the Stock Exchange. *Tangible* assets are such as are readily realisable, whereas *intangible* assets are not actually fictitious but such as are difficult to convert into money, *e.g.*, Goodwill. *Fictitious* assets are those which are not realisable at all, *e.g.*, preliminary expenses of a company, or the cost of a debenture issue, which are considered too heavy to charge against the profits of the year in which they were incurred and are being written off over a period of years, the diminishing balances being meantime treated as assets in the Balance Sheet. As regards the character or nature of the assets, they may be legal or equitable, fixed, floating or circulating. (As to these *see titles* Capital, Fixed Capital, Floating Capital, Legal Assets.)

Assignment.—The transfer of property or an interest therein to another. (*See* Deed of Arrangement.)

Assurance.—*See* Insurance.

Assurance Companies Act 1909.—This Act consolidated and amended the law relating to life assurance companies, and extended the same in some respects to companies carrying on insurance and bond investment business.

The Act applies to all persons or bodies of persons (called in the Act "assurance companies"), whether corporate or unincorporate, and whether established before or after the commencement of the Act (1st July 1910), and whether established within or without the United Kingdom, who carry on business within the United Kingdom in connection with (*a*) life assurance (life policies and life annuities); (*b*) fire insurance; (*c*) insurance against personal accidents, including sickness and disease; (*d*) employers' liability insurance; or (*e*) bond investments as defined by the Act.

Note.—A company registered under the Companies Acts which transacts business of any such class as aforesaid in any part of the world is deemed to transact such business within the United Kingdom.

The Act does not apply to bodies of persons registered under the Acts relating to friendly societies or trade unions (section 1), or to employers' liability insurance business, carried on by companies as incidental only to the business of marine insurance or by certain associations of employers for the mutual insurance of members. (Section 33.) Nor does it 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 he complies with the requirements set out in the Eighth Schedule to the Act and applicable to business of that class. (Section 28.) These requirements *inter alia* involve the deposit of £2,000 by each member, or, as respects fire and accident insurance business, the compliance with alternative conditions.

Subject to the provisions below, every assurance company must deposit, and keep deposited, with the Paymaster-General for the Supreme Court the sum of £20,000, which shall be invested by him in such authorised securities as the company may select, and shall be deemed part of the assets of the company, and interest accruing due on any such securities shall be paid to the company. (Section 2.)

Where a company carries on life assurance business the obligation to deposit the £20,000 applies, notwithstanding the fact that the company has previously made and withdrawn its deposit or been previously exempted therefrom under enactments repealed by the 1909 Act. (Section 30.)

Where a company carries on, or intends to carry on, more than one class of assurance business, a separate sum of £20,000 must be deposited in respect of each class of business (section 2), provided that it shall not be necessary to make a deposit in respect of fire (or accident 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 thereafter it shall be treated as if it had been made in respect of such other business. (Sections 31 and 32.)

The provisions of the Act with regard to deposits do not apply—

(1) In respect of the fire insurance, accident insurance, or bond investment business of a company which had commenced to carry on that business within the United Kingdom before the passing of the Act (3rd December 1909), or in respect of the employers' liability insurance business of a company which had commenced to carry on that business within the United Kingdom before 28th August 1907; or

(2) In respect of a business wholly or mainly carried on by an association of owners or occupiers for the purpose of the mutual insurance of its members against fire damage. (Sections 31 to 34 inclusive.)

As soon as the employers' liability fund or the bond investment fund set apart and secured for the satisfaction of the claims of the respective policy holders or bond holders amounts to £40,000, the money deposited by a company in respect of the employers' liability insurance business or bond investment business must be returned to the company if the company has made a deposit in respect of any other class of assurance business. (Sections 33 and 34.)

Where an assurance company transacts other business besides that of assurance, or transacts more than one class of assurance business, a separate account must be kept of all receipts in respect of the assurance business, or of each class of assurance business, provided that the investments of the various funds need not be kept separate. (Section 3.) This requirement does not apply as regards fire insurance business and accident insurance business. (Sections 31 and 32.) The funds of the various classes of assurance business shall constitute the security and must be exclusively applied to the purposes of the specific class to which they are applicable. (Section 3.) Special provisions are contained in the Act as regards the specific liability of certain funds in the case of life assurance companies established prior to 1870.

Every assurance company must at the end of each financial year prepare a Revenue Account, a Profit and Loss Account (except where the company carries on assurance business of one class only, and no other business), and a Balance Sheet, in the prescribed forms. (Section 4.)

Every life assurance and bond investment company shall once in every five years, or at such shorter intervals as may be prescribed by the regulations of the company, cause an investigation to be made into its financial condition by an actuary, and shall cause an abstract of the report of such actuary to be made in the prescribed forms. (Section 5.)

Companies carrying on accident and employers' liability insurance business must file statements annually in the prescribed forms. (Sections 32 and 33.)

Note.—The forms may be modified with the consent of the Board of Trade for the purpose of adapting them to the circumstances of any particular company. (Section 22.)

Every account, Balance Sheet, abstract, or statement hereinbefore required to be made shall be printed, and four copies thereof, one of which shall be signed by the chairman 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, shall 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: Provided that, 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 shall 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 shall communicate with the company with a view to the correction of any such inaccuracies and the supply of deficiencies.

There shall 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 of the company in respect of the financial year 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 the provisions of this section, 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 shall not be necessary for the company to send to the Registrar a statement in the form of a Balance Sheet as required by subsection (3) of section 26 of the Companies (Consolidation) Act 1908, and the copy of the accounts and Balance Sheet so sent shall be dealt with in all respects as if it were a statement sent in accordance with that subsection. (Section 7.)

(*See title* Annual List and Summary.)

A printed copy of the last-deposited accounts, Balance Sheet, abstract, or statement shall, on the application of any shareholder or policy-holder of the company, be forwarded to him by the company by post or otherwise. (Section 8.)

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, or by any other officer of the Board of Trade; and any such documents and copies shall 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. (Section 20.)

Where the accounts of an assurance company 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 shall be audited annually in such manner as the Board of Trade may prescribe, 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. (Section 9.)

(*See title* Auditor.)

Every assurance company which is not registered under the Companies Acts, or which has not incorporated in its deed of settlement section 10 of the Companies Clauses Consolidation Act 1845, shall keep a "Shareholders' Address Book," in accordance with the provisions of that section, and shall, 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 sixpence for every hundred words required to be copied. (Section 10.)

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 com-

pany 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. (Section 11.)

Where any notice, advertisement, or other official publication of an assurance company contains a statement of the amount of the authorised capital of the company, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up. (Section 12.)

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 by petition to sanction the proposed arrangement. (Section 13.)

No amalgamation or transfer shall take place unless sanctioned by the Court in accordance with the provisions of Section 13 of the Act. But such provisions with respect to amalgamation do not apply where the only classes of assurance business carried on by both of the companies are fire insurance business and/or accident insurance business, nor do they apply with respect to the transfer of fire insurance business or accident insurance business from one company to another. (Sections 31 and 32.) The Court shall not sanction any scheme of amalgamation or transfer affecting life assurance business where life policy-holders representing one-tenth or more of the total amount assured in the company dissent from the scheme. (Section 30.)

The Court may order the winding up of an assurance company in accordance with the Companies (Consolidation) Act 1908, and the provisions of that Act shall apply accordingly, subject, however, to the following modification:—

The company may be ordered to be wound up on the petition of ten or more policy-holders owning policies of an aggregate value of not less than ten thousand pounds.

Provided that such a petition shall not be presented except by the leave of the Court, and leave shall not be granted until a *primâ facie* case has been established to the satisfaction of the Court, and until security for costs for such amount as the Court may think reasonable has been given. (Section 15.)

But 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. (Section 18.)

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 policy requiring to be valued in such winding-up, shall be estimated in manner applicable to policies and liabilities of that class provided by the Sixth Schedule to the Act. (See *infra*.)

The rules in the Sixth Schedule to the 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 for the purpose of carrying into effect the provisions of the Act with respect to the winding-up of assurance companies. (Section 17.)

The Sixth Schedule of the Act provides as follows:—

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, 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*) 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 75 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 75 per cent. of the annual value of the weekly 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, 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.

(*See* Accident Insurance, Insurance, Life Assurance Companies, Workmen's Compensation.)

Ats.—An abbreviation denoting "at the suit of," used by the defendant in referring to the action against him, thus:—Jones (defendant) *ats.* Williams (plaintiff).

At sight.—*See* After sight.

Attachment of Debt.—A judgment creditor may apply to the Court (1) to have a judgment debtor orally examined as to any debts due to him from

third parties, and (2) for an order attaching such debts owing or accruing in the hands of any third parties (called garnishees). A garnishee may then be required to appear before the Court to show cause why he should not pay the judgment creditor the amount he (the garnishee) owes to the judgment debtor, or so much as is necessary to satisfy the judgment debt.

An attachment of a debt due to a bankrupt will not be good as against the trustee unless completed (by *receipt* of the debt) by the judgment creditor before

(1) The date of the receiving order; and

(2) Notice of a bankruptcy petition by or against the judgment debtor, or notice of the commission by him of an available act of bankruptcy. (Bankruptcy Act 1883, section 45.)

Attendance Book.—A book used for recording attendances at meetings of the members of any committee or similar body. It is usual to employ such a book in the case of joint stock companies, and it is particularly advisable where the directors are either paid a fee for each attendance, or where the total amount voted to the " board " is divisible among the directors in proportion to their respective attendances.

Attestation Clause.—The statement upon a written instrument that such instrument was executed in the presence of those who sign the " clause." Although such a clause is generally set out at length on a will or codicil, the Wills Act 1837 expressly provides that no *form* of attestation is necessary. (*See title* Will.)

Attorney.—One appointed to do something for another. There are two kinds:—

Attorney-at-Law.—Now called a solicitor of the Supreme Court.

Attorney in fact.—One appointed to do some special business; a kind of special agent. The appointment must be by deed, commonly called a " power of attorney." (*q.v.*)

Attornment.—The acknowledgment of a new lord; the assent of a tenant of one person to become the tenant of another.

Auction.—A public sale of property conducted by biddings of intending buyers, each successive bid increasing the price, the highest bidder becoming the purchaser. When goods are sold by auction each lot is deemed to be the subject of a separate contract of sale. The acceptance of the offer of an intending buyer is signified by the " fall of a hammer " in the hands of the auctioneer, or by some other customary sign. Until the fall of the hammer any bidder may retract his bid (and *semble* the auctioneer may withdraw his offer of the goods for sale), but upon the fall of the hammer the contract of sale is completed, subject, of course, to the conditions of sale being complied with; for instance, that the reserve price has been obtained. Where a right to bid is expressly reserved, but not otherwise, the seller or his agent may bid at an auction; any sale contravening this rule may be treated as fraudulent by the buyer, who may have the contract rescinded and recover the price if already paid. A sale by auction may be notified to be subject to a reserve or upset price. The qualifications are generally included in the printed conditions of sale and read out by the auctioneer prior to commencing the auction.

A trustee in bankruptcy is accountable for the proceeds of every auction sale (of the bankrupt's property) authorised by him (Rule 295), and the *gross proceeds* must be recovered from the auctioneer and included among the trustee's receipts, and the auctioneer's charges, when taxed, paid over in due course. (*See* Allocatur.) The auctioneer's Sale Accounts should be forwarded to the Board of Trade by the trustee, when submitting his accounts for audit. The scale of allowances to auctioneers is fixed by the appendix to the Rules of 1890, and although the trustee may arrange with the auctioneer that the scale charges be subject to a reduction, they cannot be exceeded without the sanction of the Board of Trade. Where either the trustee or his firm acts as auctioneer (or valuer) no *special* charge for such services will be allowed, as the trustee is only entitled to the remuneration voted to him in the prescribed manner. (Board of Trade Regulations.)

The above provisions apply (*mutatis mutandis*) to the winding-up of companies by the Court.

(*See* Auctioneer, Dutch Auction.)

Auctioneer.—A person appointed to sell goods, merchandise, or other property at a public auction for a recompense, generally in the form of a commission. He must have a licence, paying a duty therefor of £10 per annum. Until the "fall of the hammer" an auctioneer is the agent of the seller only, but after the sale is completed he becomes the agent of both parties, and his signature is *primâ facie* sufficient to satisfy section 4 of the Sale of Goods Act 1893; but the presumption may be rebutted, for instance, where the auctioneer is himself the vendor.

The auctioneer is personally liable on his contracts, and may ordinarily himself sue thereon, and in his own name. He must obtain the best price for the goods or property sold, and should sell only for cash, being responsible for:—

(1) The proper storage of any goods in his charge prior to the sale, and

(2) The price of them after sale.

He has, however, a special property in goods in his possession, and a lien upon them for his charges.

He has, impliedly, authority to do all such acts as are within an auctioneer's province, and may receive the proceeds of the sale of goods, but only the *deposit* in respect of the sale of lands.

His authority cannot be delegated.

Whilst a broker has not the possession of the subject-matter of sale an auctioneer often has such possession; further, a broker can both buy and sell publicly and privately, whilst an auctioneer (*quâ* auctioneer) can sell only, and is restricted to public auction. (*See* Auction.)

Audit.—An authorised examination of accounts. The term is capable of many constructions, varying in their degree with the extent of an auditor's powers, duties, and responsibilities, although the Legislature evidently assumes that the word has a recognised meaning, for the Municipal Corporations Act 1882 provides that the treasurer shall submit his accounts, with the necessary vouchers and papers to the auditors, "*and they shall audit them.*"

The many conflicts of opinion as to the precise meaning of these few words have placed the audit of the accounts of municipal bodies upon an unsatisfactory basis.

Some of the questions arising in the course of an audit are dealt with under the undermentioned titles:—

Accumulated profits.
Agents' balances.
Agents' returns.
Allowance.
Analysis of the Ledger.
Anticipation of profit.
Apportionment.
Appropriation of payments.
Articles of Association.
Articles of Partnership.
Assurance Companies Act.
Audit Note-book.
Auditor.
Bad and doubtful debts.
Balance Sheet.
Bank Book.
Bills discounted.
Bills receivable.
Book debts.
Borough Auditors.
Branch Accounts.
Branch Banks.
Building Societies.
Cancellation of scrip.
Cancellation of vouchers.
Capital.
Capital expenditure.
Capital receipts.
Carriage and cartage.
Cash Book.
Charges recoverable.
Cheque Book.
Circulating Capital.
Completed audit.
Consignment.
Continuous audit.
Contra.
Conversion of stock.
Cost Accounts.
Cost Book Mining Company.
Credit note.
Creditor.
Dating forward.
Deferred ordinary shares.
Departmental Accounts.
Depreciation.
Directors.
Discount.
Double-Account System.
Doubtful Debts Ledger.
Drawings.
Empties.
Equation of payments.
Error.
Establishment Account.
Falsification of Accounts.
Fixed Capital.
Fixtures.
Forfeiture of shares.
Founders' shares.
Fraud.
Free of income-tax.
Friendly Societies.
Goodwill.
Gross Profit.
Head office charges.
Hire and purchase agreements.
Imprest system.
Income.
Income and Expenditure.
Income-tax.
Incomplete work.
Inscribed Stocks.
Inspection.
Interest.
Interest on calls in arrear.
Interest on capital.
Interest on capital during construction of works.
Interest on moneys in advance of calls.
Interim dividend.
Intermediate balancing.
Internal check.
Investigation.
Investment.
Joint stock company.
Journal.
Land tax.
Life Assurance Companies.
Loose plant and tools.
Manufacturers' Accounts.
Memorandum of Association.
Minutes and Minute Book.
Misfeasance.
Mortgage (Ship).
Municipal Accounts.
Petty cash.
Postage bill.
Preference stock and shares.
Preliminary expenses.
Premiums on shares.
Profit.
Profit and Loss Account.
Profits available for dividend.
Profits prior to incorporation.
Prospectus.
Proving the balances.
Public Trustee.
Rate of exchange.
Realised profits.
Rebate on bills discounted.
Receipt.
Receipt Book.
Receipts and payments.
Redeemable debentures.
Registered capital.
Register of Members.
Register and Registration of Mortgages.
Rent roll.
Repairs and renewals.
Reserves and Reserve Funds.
Royalty.
Sale Contract.
Savings Banks.
Sectional Ledgers.
Selling-price System.
Single-Account System.
Sinking Funds.
Slip Bookkeeping.
Statement of Account.
Statutory meeting.
Stock-in-Trade.
Stock Register.
Suspense Account.
Till takings.
Trial Balance.
Unclaimed dividends.
Unexpired risks.
Unpresented cheques.
Voucher.
Vouching back.
Voyage Account.
Wages.
"Writing down" assets.
"Writing up" assets.

Audit Note Book.—A Memorandum Book wherein are recorded the nature of the work performed in respect of a particular set of accounts, the names of those by whom the work is done, and the date thereof.

A record is also made of all matters requiring special attention (including extracts from the Articles of Partnership or Articles of Association and Minute Books, &c.), or which call for inquiry and explanation, so that (1) they may be dealt with at a later stage without interfering with the course of audit; and (2) the replies may be noted for future reference.

When the Note Book is ruled to meet the requirements of a particular audit, it serves as a ground plan of the work to be performed, and minimises the risk of any portion of the audit work being left uncompleted either (*a*) by the omission to examine subsidiary books, or (*b*) by the omission to apply any special test, such as vouching or comparison with other records which any particular book may render necessary.

There is an excellent form of Audit Note Book published which is applicable to a large number of cases, and capable of modification to meet particular instances.

Auditor.—A person appointed to examine and report upon certain accounts; he has also the right of examining, and *hearing* the explanations of, any persons responsible for the accounts under examination; in fact, it is believed that the ancient system of conducting an examination of accounts was carried out orally, hence the derivation of the word.

The varying circumstances under which an auditor may be appointed, the extent of his duties and attendant responsibilities, are beyond the scope of this work, and for more exhaustive treatment of the subject reference must be made to books devoted solely to these particular questions. Throughout this work, however, in their appropriate places (*see title* Audit), numerous references are made to matters concerning the duties and responsibilities of an auditor, the office being one of the most important elements of the practice of a professional accountant.

The Companies Act 1900 first rendered the appointment of an auditor compulsory in respect of every company registered under the Companies Acts of 1862 *et seq.*, and the provisions of the Act of 1900, as amended by the Act of 1907, are now embodied in the Companies (Consolidation) Act of 1908.

Some of the most important Acts of Parliament which contain "audit provisions" are:—

Assurance Companies Act 1909.

Building Societies Act 1894. (*See title* Building Societies.)

Companies Clauses Consolidation Act 1845.

Companies (Consolidation) Act 1908.

District Auditors Act 1879.

Friendly Societies Act 1875.

Municipal Corporations Act 1882. (*See title* Borough Auditors.)

Public Health Act 1875.

Regulation of Railways Act 1868.

Trustee Savings Bank Act 1893. (*See title* Savings Banks.)

With regard to companies to which the 1908 Act applies, the following are the statutory provisions as to auditors:—

Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

Note.—The Act does not prescribe any particular qualification for the auditor.

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.

A director or officer of the company shall not be capable of being appointed auditor of the company.

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:

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.

Note.—If through inadvertence or otherwise the necessary notice to appoint another auditor has not been given, the shareholders, if they desire a change of auditor, may decline to re-elect the retiring auditor, under which circumstances the Board of Trade would presumably make the appointment (*supra*)—not the directors, as in the case of a casual vacancy (*infra*).

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.

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.

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. (Section 112.)

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.

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.

Note.—The words " as shown by the books of the company " were commented on by Lindley, L.J., and are referred to later.

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.

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. (Section 113.)

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 traosmitted 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. (Section 113.)

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.

The foregoing provision shall not apply to a private company, nor to a company registered before the first day of July nineteen hundred and eight. (Section 114.)

The summary to be forwarded to the Registrar under Section 26 of the Act must " (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." (Section 26 (3).)

Counsel's Opinion.

The following is a joint opinion of Counsel obtained by the Institute of Chartered Accountants on the duties of auditors as regards the Balance Sheet and Report. The opinion is dated 13th March 1908, and was given on the " audit sections " when contained in the 1907 Act, before their repeal and re-enactment in the Consolidation Act of 1908. The references have therefore been extended accordingly:—

1. In our opinion the Auditors' Report to be made pursuant to paragraph (2) of section 19 of the Companies Act 1907 (now paragraph (2) of section 113 of the 1908 Act) should in cases where the auditors have no special comments to make run as follows:—

Report of the Auditors to the Shareholders of , Limited.

We have audited the Balance Sheet of the , Limited, dated the day of , and (here identify it as: " above set forth," or " within contained," or " a copy of which is annexed hereto and initialled by us," or " a copy of which has been initialled by us ").

We have obtained all the information and explanations we have required.

In our opinion such Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of our information and the explanations given us and as shown by the books of the company.

We consider that the Report should identify very clearly the particular Balance Sheet to which it refers, so that there may be no room for after dispute or confusion, and no danger that by mistake or otherwise the Balance Sheet submitted to the shareholders, though bearing the proper date, should not be the one actually referred to in the Report.

Perhaps the surest mode of identification is to write the Report at the foot or indorse it on the Balance Sheet to be submitted, for by these means the two documents are made inseparable; in other words, the Report runs with the

Balance Sheet. But, as above appears, there are alternatives open. In any case the auditors should keep a copy of the Balance Sheet they audit, and place a memorandum of identity thereon, so that if the question arises they may be able to testify certainly as to the matter.

2. Under the section the Auditors' Report is to be attached to the Balance Sheet or referred to at the foot thereof. In the former case we consider that the attachment should be effected either by printing the two documents continuously on the same sheet of paper or by fastening the Report to the Balance Sheet. We consider that the best mode of attachment is that the Report should be written or printed at the foot of the Balance Sheet or indorsed thereon.

3. If the Report is not attached to the Balance Sheet there should at the foot of the Balance Sheet be words referring to the Report, *e.g.*:—

"The Report to the shareholders of
"Messrs. the company's auditors on
"the above Balance Sheet is dated the
"day of , and is open to inspection."

In our opinion it is for the directors to make the reference and settle the form thereof, and not for the auditors.

4. In our opinion the Act does not impose on the auditors the duty of seeing that the Report is attached to the Balance Sheet or referred to at the foot thereof. This duty, we consider, is imposed on the company and its directors.

5. It appears to us that it is not the duty of the auditors to see that the Balance Sheet is signed by the required number of directors. Subsection (3) of section 19 (now subsection (3) of section 113) clearly contemplates that the Balance Sheet is to be issued after the Report has been made, for a copy is to be attached or referred to. As to cases in which there are no officers called directors, the Balance Sheet should be signed by the manager, or other person occupying the position of director, for section [285 of the 1908 Act] provides that the term "director" includes any person occupying the position of director, by whatever name called.

6. In our opinion it is not the duty of the auditors to supply to shareholders when requested copies of the Balance Sheet and their report, or to furnish information to individual shareholders.

7. In our opinion the statement in the form of a Balance Sheet referred to in section 21 of the Act of 1907 (now subsection (3) of section 26 of the 1908 Act) is a document to be submitted by the directors to the auditors for audit. The document must contain, as the section requires, a summary of the company's capital, liabilities, and assets, giving such particulars as would disclose the general nature of such liabilities and assets and how the value of the fixed assets has been arrived at, but it is not necessary to include in it a statement of profit or loss. We consider that in many cases the last audited Balance Sheet will be a sufficient statement in the form of a Balance Sheet, but where the Balance Sheet does not state how the value of the fixed assets has been arrived at it would, in order to comply with the section, have to be supplemented by a note or memorandum stating how the value of such assets was arrived at.

Where the Balance Sheet, whether supplemented as aforesaid or otherwise, is adopted for the purposes of the section as a statement in the form of a Balance Sheet, it should in our opinion be accompanied by a copy of the Report of the Auditors on such Balance Sheet, and if it is so supplemented the auditors should certify that according to the best of their information the method specified in the supplementary note or memorandum has been adopted.

We consider, however, that it is open to the directors to frame the "statement in the form of a Balance Sheet" referred to in Section 21 (now subsection (3) of section 26) in more general terms than the Balance Sheet, provided that it complies with the requirements of the section, but in such case the statement must be audited by the company's auditors and the result of the audit should be certified at the foot of the statement.

8. As to the general duties of the auditors under section 19 of the Act of 1907 (now under section 113 of the 1908 Act), we consider that they should perform these duties with due regard to the provisions of the company's articles of association in so far as those articles are consistent with the Acts, and that they should call for all such information and explanations as they consider requisite to enable them to make the Report to the shareholders contemplated by the section. They should not have the least hesitation in reporting fully as to any unsatisfactory features in the position.

Lastly, we do not consider that the auditor's duties are limited to a comparison of the figures in the Balance Sheet and those in the books. No doubt he has to examine the books, but, as Lord Justice Lindley said in *Re The London and General Bank* (1895, 2 Ch. 683), " he does " not discharge his duty by doing this without " inquiry and without taking any trouble to see " that the books themselves show the com- " pany's true position. He must take reason- " able care to ascertain that they do so."

Section 113 directs that the signatures of the two directors on the Balance Sheet are to be attached " on behalf of the Board," and a resolution should therefore be passed giving them the necessary authority where the number of directors exceeds two.

The question as to whether the Auditor's Report should be the subject of a separate document or be set out at the foot of the Balance Sheet remains a debatable one, and must depend upon the special circumstances of each case. Obviously a Balance Sheet issued without any certificate or report is not a satisfactory document. On the other hand, the report of the auditor, if published, might upon occasion damage the particular company's credit. To place the Report at the foot of the Balance Sheet when it was satisfactory and withhold it when not so would be equally damaging. If the auditors of all companies under all circumstances merely stated at the foot of every Balance Sheet that they had duly reported upon the Balance Sheet to the shareholders, and signed such statement, the uniformity of the practice would lead shareholders to make a point of hearing or obtaining a copy of the report. The wording of the Act clearly indicates an intention that the report may form the subject of a separate document, for it is provided that it is sufficient if " a reference to the report " is inserted at the foot of the Balance Sheet.

It is the directors of a limited company, not the auditor, who must keep true accounts and prepare a Balance Sheet therefrom for submission annually to the shareholders of the company in general meeting. The duty of the auditor (*quâ* auditor) is to examine the accounts submitted to him—he must be satisfied that the books correctly record the transactions of the company and that the accounts and Balance Sheet correspond with the books; he must make such inquiries from directors and officers of the company as he may deem necessary to clear up doubtful points; prepare and submit to the shareholders a report (comprehensive or formal, according to circumstances) in the terms of section 113 (2) of the Companies Act 1908. If the accounts are not such as the auditor can honestly certify as correct he must say so in his report; if the accounts are substantially correct, but the auditor takes objection to the " form " in which the Balance Sheet is prepared, he may make representations thereon to the directors, and the directors may adopt the suggestions of the auditor. But should the directors decline to amend the form of the Balance Sheet, the auditor has no power to insist upon his ideas being carried out; all he can do is to report the facts and his opinions to the shareholders.

"An auditor is not bound to exercise more than " reasonable care and skill in making inquiries " and investigations. He is not an insurer; he " does not guarantee that the books do correctly " show the true position of the company's affairs; " he does not even guarantee that the Balance " Sheet is correct according to the books of the " company. If he did, he would be responsible " for error on his part, even if he were himself " deceived without any want of reasonable care " on his part, say, by the fraudulent concealment " of a book from him. His obligation is not so

" onerous as this. Such I take to be the duty of " an auditor. He must be honest, *i.e.*, he must " not certify what he does not believe to be true, " and he must take reasonable care and skill " before he believes that which he certifies is " true. What is reasonable care in any particular " case depends upon the circumstances of that " case. Where there is nothing to excite sus- " picion, very little inquiry will be reasonably " sufficient, and in practice I believe business men " select a few cases at haphazard, to see that " they are right, and assume that others like " them are correct also. Where suspicion is " aroused, more care is obviously necessary; but " still an auditor is not bound to exercise more " than reasonable care and skill even in a case " of suspicion." (Lindley, L.J., *In re London and General Bank.*)

" The duties of auditors must not be rendered " too onerous. Their work is responsible and " laborious, and the remuneration moderate. I " should be sorry to see the liability of auditors " extended any further than in *In re London and* " *General Bank.* Indeed, I only assented to that " decision on account of the inconsistency of the " statement made to the directors with the " Balance Sheet certified by the auditors and pre- " sented to the shareholders. This satisfied my " mind that the auditors deliberately concealed " from the shareholders that which they had com- " municated to the directors. It would be difficult " to say this was not a breach of duty. Auditors " must not be made liable for not tracking out " ingenious and carefully-laid schemes of fraud; " frauds are perpetrated by tried servants of the " company and are undetected for years by the " directors. So to hold would make the position " of an auditor intolerable." (Lopes, L.J., *In re Kingston Cotton Mills Company.*)

(*See also titles* Depreciation, Stock-in-trade.)

In support of his examination of the ordinary financial books:—

(1) The auditor of the accounts of a company registered under the Companies Acts should examine the memorandum of association and the articles of association (if any), the agreement for purchase of the business, the prospectus (if any), and the Minute Books of the company; also the register of members, the register of directors, the register of mortgages and charges, and the last annual list and summary.

(2) The auditor of the accounts of a company incorporated by special Act of Parliament should examine such special Act.

(3) The auditor of the accounts of a company, the preparation of whose accounts is regulated by statute (such as railways, gas undertakings, and the like) should see that the accounts are prepared in accordance with the statutory forms and regulations.

(4) The auditor of the accounts of a partnership firm should examine the articles of partnership (if any) and satisfy himself that the accounts are in accordance therewith.

The duties of a professional accountant retained to " close the books " and prepare accounts for a private undertaking should be carefully distinguished from those of an auditor engaged as such. Where the accountant is required only to " make up " the accounts, the terms of his engagement will usually form the subject of a special arrangement between himself and his client, and the accountant should for his own protection clearly define in his report and/or in his bill of charges the nature of the work which he has performed.

An auditor was deemed an " officer " of a company within the meaning of section 10 of the Companies (Winding-up) Act 1890 (now section 215 of the Act of 1908) if he is appointed to the office of auditor to the company and acts as such; and no irregularity in his appointment will then affect his liability. But, as the word "Auditor " does not occur in this section, the performance of auditor's work upon a given occasion by a person who has never been appointed to the office of auditor of the company does not make that person an " officer " of the company so as to render him liable under the section. (*In re Western Counties Steam Bakeries & Milling Co.*, 1897.)

It was held in the *London and General Bank* case, 1895, that auditors appointed by a banking company in pursuance of the Companies Act 1879, section 7, now repealed, and spoken of as officers in the articles of association, were officers within the meaning of section 10 of 1890 (now section 215 of 1908), and in the *Kingston Cotton Mills* case, 1896, it was settled that the auditor of any limited liability company having *a normal set of articles of association* was an officer of the company. (*See title* Misfeasance.)

With regard to the words, "as shown by the books of the company," which may form part of the expression of opinion of the auditor as set out in the Act (*supra*), the following extract from the judgment of Lindley, L.J., in the *London and General Bank* case is important:—

"The auditor's business is to ascertain and "state the true financial position of the com- "pany at the time of the audit, and his duty is "confined to that. But then comes the question, "How is he to ascertain such position? The "answer is, By examining the books of the com- "pany. But he does not discharge his duty by "doing this without inquiry, and without taking "any trouble to see that the books of the com- "pany themselves show the company's true "position. He must take reasonable care to "ascertain that they do. Unless he does this, "his duty will be worse than a farce."

As to an auditor's attitude in connection with the accounts of a company possessing a secret reserve, *see title* Reserves and Reserve Funds. (*See* Inspection.)

Authorised Capital.—The amount of capital which a company has power to raise or issue. (*See* Registered Capital.)

Aval.—The Continental term used to express an indorsement by a person who signs a bill otherwise than as drawer or acceptor, thereby incurring the liabilities of an indorser to a holder in due course.

Average.—The mean quantity of two or more quantities obtained by adding the quantities together and dividing by the number of them. An average is a medium of comparison, but once an average is ascertained it cannot be used as an element with other averages so as to obtain an "average of averages," for such a result is an impurity. If (say) three averages have been ascertained they must not be added together and divided by three upon the assumption that the result is the *aggregate average*. To ascertain the latter, the *quantities* involved in the three *separate* averages must be all brought into one total and the aggregate average deduced directly from the quantities themselves. Thus, suppose the following:—

9	shops,	1st	year, profits,	£1,800;	average per shop, £200
12	"	2nd	" "	1,800;	" " 150
20	"	3rd	" "	4,400;	" " 220

The total of the averages for the three years is £570, but the "average per annum per shop" for the three years is *not* £190.

The total profits for the three years are £8,000, and the total of the varying numbers of shops is 41. Therefore, if 41 shops were possessed at the same time they would theoretically earn £8,000 in one year, the average per annum per shop being £195 (odd).

The following is another instance of the importance of closely examining the factors in an average result. Suppose the profits of a company for a period of three years to have been as follow:—

1900-1	Profits for 1½ year..		£9,000
1902	" 1 "		10,000
1903	" ½ "		6,000
	Total for 3 years		£25,000
	Annual Average		£8,333

By the following re-arrangement the above figures may be made to show £1,000 per annum in excess of the above sum of £8,333, thus:—

1900-1	Profits for	1½ year =	£9,000, or	£6,000 per annum
1902	" "	1 " =	10,000	"
1903	" "	first ½ " =	6,000, or 12,000	"
	Total for 3 years ..		£28,000	"
	Annual Average ..		£9,333	

It will be observed that a half-year (by proportion) is discarded in the first period, when profits were low, and an "additional" half-year (by proportion) is inserted in the last period, when profits were more satisfactory. (*See titles* General Average, Investigation, Particular Average, Percentage.)

Average Adjuster.—One skilled in insurance matters, particularly in the preparation of accounts showing the rateable distribution of losses.

Average Adjustment.—The ascertaining of the amounts which all the insured, after making proper allowances, are entitled to receive under the respective policies, and the fixing of the proportion which each underwriter has to pay.

Average Date.—*See* Equation of Payments.

Average Loss.—*See* Partial Loss.

Average Policy.—*See* Fire Insurance.

Award.—Although in its primitive sense an award was the taking into consideration of the circumstances of a matter *and* the pronouncing of a judgment thereupon, at the present time the term is used exclusively in connection with the consequent judgment.

There is no special form required by law nor need an award be in writing, but a written submission renders a *written award* necessary, unless the submission expresses a contrary intention.

Prior to 1906 written awards were liable to an *ad valorem* stamp duty, but by the Revenue Act 1906 a uniform duty of ten shillings is now chargeable on all awards, irrespective of the amount involved.

The decision embodied in the award must be that of the arbitrator (or umpire) himself, but having finally settled the terms of his decision he may allow his solicitor to draw up the award in proper form. Joint arbitrators should *all* sign the award, at the same time and in each other's presence. When the award has once been made and declared, the arbitrator cannot change his mind, but he may amend any clerical error arising from any accidental slip or omission.

Notice of the execution of the award should be given to the parties to the submission, to any one of whom it may be delivered. The award (if the submission be in writing) should be delivered within three months after entering on the reference unless there is something to the contrary in the submission, but the arbitrator may extend the time by notice in writing to the parties.

It is usual for the award to be delivered only on payment of the costs; and in doubtful cases arbitrators sometimes obtain a written undertaking that their costs will be paid in any event, *e.g.*, when no award is made because the parties come to agreement and decline to proceed with the arbitration. The costs may be fixed by the arbitrator himself if the submission does not otherwise provide, but the Court may intervene if the amount be excessive.

In *Brown v. Llandovery Terra Cotta, &c., Co., Lim.* (25 T.L.R. 625) the facts were as follow:—The plaintiff had been appointed one of two arbitrators to a reference to which the defendants were parties, and the umpire had by his award directed the defendants to pay the plaintiff's charges, but left the plaintiff to recover those charges from the defendants. It was held that the plaintiff, although not appointed as arbitrator by the defendants, could maintain an action against them for his charges, as there was an implied promise by the parties to the submission jointly to pay the arbitrators and umpire for their services.

The award must be entire, and final on all matters referred; it must be certain, mutual, possible, consistent, *intra vires*, and legal.

An *alternative* award directing that a party shall do one or other of two or more things *may* be considered good, but *conditional* awards are not viewed favourably by the Court; such conditions as the following are, however, permissible:—

(1) A condition that the costs shall be only such as are allowed by the Taxing Master.

(2) That the award shall depend upon the decision of the Court upon a stated point of law.

If an award be partly good and partly bad, the good part will be held valid if severable from the bad part.

A *valid* award is a final and conclusive judgment as between the parties, on all matters referred by the submission, and the Court has no power to alter or amend it.

An award may, however, be set aside by the Court under certain circumstances, such as:—

(1) Where the arbitrator (or umpire) has misconducted himself with regard to the procedure or otherwise.

(2) Where the arbitrator (or umpire) has exceeded his authority.

(3) Where the award lacks the requisites of a valid award, as already stated, or contains a palpable error of substance.

(4) Where new evidence has been discovered which was not previously obtainable. This ground *alone* is, however, hardly sufficient to set the award aside.

The tendency of the Court is to uphold an award if possible, and it may therefore, instead of setting aside an award, refer or remit it back to the arbitrator (or umpire) for amendment.

Although strangers to an award cannot be directed to perform any act thereunder, yet they cannot disregard the state of affairs which the award has set up between the parties. As in the case of other contracts, a stranger to an award cannot enforce its terms, even though it might be to his interest to do so. (*See* Arbitrator, Special Referee, Submission, Umpire.)

B

Backwardation.—*See* Settling Days.

Bad and Doubtful Debts.—Bad debts are such as are irrecoverable or only partly recoverable and "bad" as to the balance. Doubtful debts are such as may or may not be recovered, some circumstance affecting the value of each of them. Bad debts should be written off as soon as they are considered irrecoverable. Some concerns make a periodical charge against the profits as a provision against bad and doubtful debts, and where this is done, and such provision is adequate, the bad debts as ascertained and written off may safely be charged against the amount so provided. Where no such provision is made, the Profit and Loss Account should be charged with the bad debts immediately they become so. Other concerns continue to include bad debts among the debtors' balances, on the ground that sufficient provision exists to cover them. This practice is not correct in principle. If a debt is bad—irrecoverable—the loss has taken place, and it is misleading to state that a provision against loss from *bad debts* has been made when the loss has already been incurred and has *ipso facto* absorbed at least a part of the provision in question.

With doubtful debts, the question is somewhat different. Here it cannot be said that any particular debt will not be ultimately recovered. Some doubtful debts may, with due care and attention, be recovered in full, others may be realised in part, and the remainder prove worthless. In such a case it is clear that, pending developments, no specific debt can be written off, and yet the debts *as a class* cannot be taken to credit at any given date at their face value; therefore, a provision based upon estimates must be made against possible loss.

Thus, although it is customary to find in a Balance Sheet the phrase, "Provision against bad and doubtful debts," strictly such provision should be based so as to provide only for loss arising from doubtful debts which may become wholly bad, the bad debts having been written off altogether.

It is not suggested that debts should prematurely be written off as bad, and so lost sight of, with the result that moneys which *might* have been ultimately recovered may be wholly lost, but rather, that when a debt has been adjudicated *bad* (whatever may be the means of judging) the books of account should properly record the decision. For instance, if a *final* dividend has been received in respect of an unsecured claim on a bankrupt's estate, and the bankrupt has received an unconditional discharge, it is futile to carry the balance of the debt forward simply because an equivalent amount exists in "Provision for Bad and Doubtful Debts Account."

It is customary to deduct the provision against loss on debts from the gross amount of the debts themselves when preparing the Balance Sheet instead of stating same upon the opposite side to the debts—in fact, the basis of the provision in

some cases is in the nature of a fixed percentage of the *total* debts outstanding, ranging from 3 per cent. to 6 per cent., the necessary adjustment on account of the varying amount of the debts being charged or credited to revenue at the end of each period.

Where such a practice is carried out the debts are stated thus:—

Sundry Debtors		£20,000
Less 4 per cent. for provision against loss from doubtful debts		800
		£19,200

Some accountants prefer to set aside annually as a provision against bad debts a given percentage of the sales, such percentage being assessed as a result of the experience of previous years. (*See* Book Debts, Doubtful Debts Ledger.)

Bailment.—"A delivery of a thing in trust for some "special object or purpose, and upon a contract, "express or implied, to conform to the object or "purpose of the trust."

Bailments were divided by Lord Holt, in *Coggs v. Bernard* (1704), as follows:—

(1) Deposit of goods, &c., to be kept for the benefit of the bailor.

(2) Deposit of goods, &c., that are useful, to be used by the bailee without charge.

(3) Deposit of goods, &c., to be used by the bailee upon payment of hire.

(4) Pawn or pledge.

(5) Deposit of goods, &c., to be carried or for something to be done to them for a reward payable to the bailee.

(6) Deposit of goods to be carried or for something to be done to them without charge.

Where the bailment is wholly for the benefit of the bailor or some third party (such as classes 1 and 6 above) the bailee is only liable for gross negligence.

Where the bailment is wholly for the benefit of the bailee (such as class 2 above) he must use the strictest diligence.

Where the bailment is for the benefit of both parties, or one of them and a third person (such as classes 3, 4, and 5 above), the bailee must exercise reasonable care of the chattel entrusted to him, but he will not be held liable for loss or injury which may happen to it during the bailment unless caused by his negligence or that of his servants acting in the course of their employment. The onus lies on the bailee to show circumstances negativing negligence on his part.

The ordinary rules of law concerning liability as between the bailor and the bailee may, however, be varied by agreement.

(*See* Carrier, Pawn.)

Balance Account.—An account in the Ledger to which, as at the date of closing the books, all the balances of the other accounts may be carried in a summarised form, so that the whole of the accounts may be closed or "balanced off." The modern practice, however, is to discard the Balance Account and "bring down" each balance in its appropriate place, so that the books are closed, as at the expiration of one period, and reopened for the succeeding period simultaneously. Where the Balance Account is still in use, it is found of considerable value as a check upon the arithmetical accuracy of the "closing" figures.

Balance Order.—The term applied to orders of the Court issued to enforce payment of calls or balances due from contributories.

Balance Scrip.—When a transferor of stock or shares lodges scrip for a greater amount than he is about to transfer, such scrip is cancelled; and after issuing to the transferee scrip for the stock or shares being transferred, new scrip for the balance retained, called "balance scrip," is issued to the transferor. (*See* Certificate.)

Balance Sheet.—Technically, a Balance Sheet is peculiar to the system of bookkeeping by double-entry in so far as it contains (generally) in a summarised form the whole of the Ledger balances after all the items rightly pertaining to the Revenue Account (or the Profit and Loss Account) have been transferred thereto.

Thus, as all the then existing balances are embodied in the Balance Sheet, items which are not strictly assets (such as expenditure which is being spread over a period) and items which are not really liabilities (such as the so-called reserve funds) find a place in the statement.

A Balance Sheet from time to time during the life of a business or undertaking purports to show the financial position and to afford evidence of the amount of profits periodically made (or of losses sustained) on the basis of a going concern, due estimates being made (1) of the values of assets, (2) of incompleted transactions and outstanding liabilities.

From the records of the transactions of a concern kept by single-entry a statement of assets and liabilities may be compiled, for such a statement may be prepared from any available data, but it does not operate as a Balance Sheet in so far as the records in such a case are not kept upon a system which admits of reconciliation. But if the records are kept by double-entry, the statement of affairs deducible therefrom will not only act as a statement of affairs, but will serve as a Balance Sheet as regards the equilibrium of the Ledger. Although a Balance Sheet presupposes a double-entry system of accounting as its base, the statements prepared from single-entry records are sometimes referred to as Balance Sheets also; possibly because the popular conception of a Balance Sheet is that it is a statement of affairs, and has no other function. To a very great extent this is so in practice, inasmuch as the equilibrium test is afforded by the Trial Balance, which, as its name implies, is a device whereby an accountant endeavours to balance his records before proceeding to prepare his Balance Sheet proper. For present purposes it will therefore be convenient to assume that the Trial Balance affords the necessary test as to the accuracy of the records, and that the Balance Sheet confines itself to an exposition of the financial position of the concern to which it appertains. This will enable reference to be made to the functions of a Balance Sheet and a statement of affairs in synonymous terms as regards a going concern, since, assuming accuracy, the mode of compilation is probably the only important difference between the two, for both are intended to afford, as on a specified date, a fair view of the financial position of the concerns to which they respectively refer.

Upon which sides should the assets and liabilities respectively appear in the Balance Sheet? The general practice in England at the present time is to place the assets upon the right-hand or credit side, with the capital and liabilities upon the left-hand or debit side.

It would appear, however, that this is not in accord with the practice in America and upon the Continent; furthermore, the present practice in England has really grown up during comparatively recent years, and even yet admits of some difference of opinion in this country. Although an asset appears in a trader's Ledger as a debit item, that same item appears upon the credit side in a Balance Sheet drawn in the form to which we are now accustomed. This reversal of sides does not form part of the system propounded in any one of the nine leading bookkeeping works published between the years 1721 and 1858, the authors of same, without exception, showing the assets and liabilities on the same sides as those upon which they respectively appear in the Ledger, in the form of a Balance Account. These writers do not appear to have used the term " Balance Sheet " at all, but confined their system to the Balance Account, viz., an account in the Ledger to which the balances of every other Ledger Account were transferred each balancing date, so that, in effect, every Ledger Account was closed. Cory (a barrister, by the way) thus refers to it in his work published in 1839:—

" The Balance Account contains upon its debit " side the quantities and value of all the mer- " chant's property, and of all the debts due to " him at the time the Rest is made; and upon its " credit side it contains all the debts or liabilities " he owes. Deducting one from the other, the " Balance Account, therefore, contains upon its " debit side a balance showing the property of " the merchant when he closes business upon " this occasion."

It was remarked by Inglis in 1858 that some systems adopted the reversed method while others

did not, and it appears that of the authors of the works published during the following two or three years one advocated one method while another supported the reverse. It therefore seems that the statutory form of Balance Sheet annexed to the original Table A of the Companies Act of 1862, which came into prominence at a time when opinions evidently differed, had much to do with the " schism " of English accountants, for the latter form of Balance Sheet, although optional, has certainly been substantially adopted by the trading community. If this should be so, it is incongruous that accountants should take their cue from statutory forms. Fortunately, no difference of opinion exists as to the proper side upon which, say, the credit items of a Revenue Account should appear, yet the compulsory forms prescribed for adoption by assurance companies by the Assurance Companies Act 1909 places the income upon the left-hand side and the expenditure on the right-hand side. The distinction between truths and rules in bookkeeping is not overlooked. The truths are inviolate, but the rules may be varied at will; there is no absolute necessity that credit items should appear upon the right-hand side, although it is in the interest of the uniformity of accounts that it should be so. However, certain English writers have evidently considered it necessary that the reversal of sides in a Balance Sheet should be justified, and they state that the firm or company (considered for the purpose quite distinct from the individual proprietors or shareholders, as the case may be) prepares a Balance Sheet so as to render an account of its stewardship to the proprietors or shareholders in question. For this purpose the firm or company is entitled to take credit for assets possessed, and must be debited with the capital invested and any liabilities incurred. This is, however, characterised by some accountants as a convenient fiction. But it would appear that so long as one side of a Balance Sheet is headed Capital and Liabilities, the other, Property, Assets, and Expenditure, and the items appearing thereunder are correctly stated, it is hardly a matter of importance, except for uniformity in accounts, upon which side they respectively appear.

Apart from the question of reversed sides, a Balance Sheet may be prepared in either of two forms, viz., the double account form or the single account form. The double account Balance Sheet is adopted where the capital of a company is contributed by the shareholders for a specific purpose, such as the construction of a railway, or the acquisition of a gas undertaking, &c., the amount actually paid for, or in respect of same being shown as against the total capital raised, the balance only being brought into the general Balance Sheet; in other words, the Balance Sheet is divided into two parts. (*See* Double Account System.)

In the appended *pro formâ* Balance Sheet it will be noted that the Legislature, in separating the Capital Account from the remaining items of the Balance Sheet, reversed the sides, and dealt with the account in the form of Receipts and " Expenditure."

Extract from the Forms of Account prescribed by the Regulation of Railways Act 1868:—

RECEIPTS AND EXPENDITURE ON CAPITAL ACCOUNT.

	Amount expended to	Amount expended during last half-year	Total Expenditure to date		Amount received to	Amount received during last half-year	Total Receipts to date
	£ s d	£ s d	£ s d		£ s d	£ s d	£ s d
To Expenditure—				By Receipts—			
Lines open for traffic				Shares and Stock			
Lines in course of construction ..				Loans			
Working Stock				Debenture Stock..			
Subscriptions to other Railways ..				Other Receipts			
Docks, Steamboats, and other items							
To Balance (if an excess of receipts) ..				By Balance (if an excess of expenditure)			

Dr. GENERAL BALANCE SHEET. *Cr.*

To	£ s d	£ s d	£ s d	By	£ s d	£ s d	£ s d
Capital Account				Capital Account			
Balance (if an excess of receipts) ..				Balance (if an excess of expenditure)			
„ Net Revenue Account				„ Cash in hand			
Balance at credit				„ Cash at Bankers			
„ Debts due to other Railway Companies				„ Investments			
„ Amount due to Clearing House ..				„ General Stores on hand			
„ Sundry Liabilities				„ Sundry Debts due to the Company ..			
				„ Amounts due from other Railway Companies			
				„ Amount due from Clearing House ..			
				„ Amount due from Post Office ..			

The above is not a literal extract, but one designed to show with prominence the distinguishing principles involved.

The double account system is compulsory in the case of certain railway and tramway companies, and all gas companies incorporated by special Act of Parliament. The system is applicable, however, to many classes of companies which sink their capital in what are called "permanent assets."

With regard to the single account system, it is only necessary to state that while the double account form resolves the Balance Sheet into two parts, in the single account Balance Sheet all the assets and liabilities (including capital) are classed together.

As the cost of a railway or a canal once constructed may be easily earmarked in a Balance Sheet, the system required by law is peculiarly applicable to the various prescribed cases; but to an industrial concern the double account form is not well fitted. Of course, an industrial concern may, and often does, acquire a building, or a goodwill, which is as much a "standing" asset as the cost of a railway or canal; but a large proportion of the capital of many industrial concerns consists of what is called working or circulating capital—cash in hand and at bank, stock-in-trade, and book debts—in the form of cash one day, stock-in-trade another, then a book debt which, when collected, becomes cash once more. And as the assets of a concern generally exceed its paid-up capital to the extent of its liabilities and undistributed profits, it cannot be stated precisely what particular assets represent the original capital, the undistributed profit, and the liabilities respectively.

Thus the double account system can only be adopted in a limited number of cases, and it is, therefore, the single account form with which accountants generally have to deal.

The order in which the assets should successively appear upon a Balance Sheet is not of very great importance, so long as they are properly described and fairly grouped, but the question of grouping is a momentous one.

Assets may be so grouped that, despite correct description of the groups, the true position of the concern may be misrepresented.

Intangible assets should not be grouped with those which are readily realisable; the former should always be set out separately. Goodwill is a prominent example of an intangible asset. More particularly fictitious assets (viz., those not really realisable at all), such as preliminary expenses, should be stated as separate items.

As regards order, the *pro formâ* Balance Sheet annexed to the original Table A shows (1) immovable property, such as lands and buildings; (2) movable property, such as stock-in-trade; (3) choses in action, *e.g.*, bills and book debts; (4) investments; and, lastly, (5) cash in hand and at bankers.

This form commences with the more stable assets, and gradually arrives at the actually liquid asset of available cash, and this would appear to be the best form for an ordinary industrial concern.

Note.—The form of Balance Sheet set out in the original Table A annexed to the Companies Act 1862 was omitted from the *new* Table A, which came into force on 1st October 1906, and also from the Table A annexed to the Companies (Consolidation) Act 1908.

On the other hand, financial institutions desire rather to give prominence to their liquid assets, and, as a consequence, the order in which the assets appear in the Balance Sheet of a banking concern is almost the reverse of that stated above, the cash in hand, at Bank of England, at call and at short notice, and the easily realisable investments, being invariably set out at the head of the assets, while the real estate, if any, and such assets as bank premises, generally appear last.

Reverting to the *pro formâ* Balance Sheet annexed to the original Table A, the capital and liabilities are set out somewhat in the following order:—Capital, mortgages and debentures, bills payable, sundry liabilities, reserved profits to meet contingencies, and, lastly, the balance at the credit of Profit and Loss Account available for dividend. This order is generally adopted by trading companies and, *mutatis mutandis*, by partnership concerns also. The object in placing the capital first was probably to give that item due prominence, but it might be urged that it would be more correct, at all events more consistent, to place the capital last. The order adopted would then more closely exhibit the varying rights of the parties concerned in and against the assets on the other side of the Balance Sheet, viz., creditors holding security first, unsecured creditors next, shareholders' claims last.

Probably as a relic of the old-fashioned Balance Accounts, the Balance Sheets of many partnership concerns do exhibit the capital last, but the more authoritative writers place the item at the head of the liabilities, and it would appear that while the business in question is a going concern the resultant prominence to the amount of capital is desirable. It is, perhaps, a convenient expression to say that a Balance Sheet shows the assets of a concern upon one side and on the other side states to whom, and in what proportions, those assets equitably belong. So much to shareholders, or partners, for capital contributed; so much to creditors for various goods supplied or services rendered; so much to the shareholders (again) for reserved and undistributed profits.

Thus, assuming solvency, every item included in the capital, liabilities, and undistributed profits is represented amongst the assets. Of course, under ordinary circumstances, it is not possible to earmark the particular assets which represent the capital, nor in the absence of a specific mortgage can a liability be set against a particular asset, but assuming solvency, the various items of capital, liabilities, and undivided profits set out on one side of a Balance Sheet may be said to be an apportionment of the total assets appearing on the other side.

Suppose the items in a Balance Sheet could be earmarked as under:—

Sundry specified assets purchased with or representing the paid-up capital	£10,000
Sundry specified assets acquired on credit as yet unpaid for	3,200
Sundry specified assets representing profits earned by the concern, and as yet undistributed	2,500
	£15,700

In such a case there would be no necessity for a contra side to the Balance Sheet. But in practice this cannot be done, the circulation of the capital rendering it difficult, if not impossible, to state specifically (in the absence of a mortgage or charge) which assets represent the capital, which assets represent the profits, and which assets are the proceeds of liabilities incurred.

The question of ranking against assets in a winding-up is not being considered at present, but rather the earmarking of assets against the liabilities and capital in the Balance Sheet of a going concern; and all that can be done in such a case, apart from the concerns to which the double account system is applicable, and in the absence of a mortgage or charge, is to set the total assets against the total amount of capital, liabilities, and undivided profits. In other words, the assets cannot be allotted specifically to their equitable owners, whether creditors or capitalists, but they can be apportioned; and a contra side is therefore required setting forth the equitable owners of the assets, and the amounts of their respective interests therein.

Thus, taking the foregoing example, assuming the assets cannot be specifically allotted, the contra side showing the equitable owners will appear thus:—

Capital paid up	£10,000
Sundry creditors	3,200
Surplus of assets over capital and liabilities arising from profits earned, but undistributed	2,500
	£15,700

For convenience, so that the statement may be compact and comparative, the two schedules may be set against each other thus:—

	£		£
Capital	10,000	Sundry Assets ..	15,700
Sundry Creditors ..	3,200		
Surplus	2,500		
	£15,700		£15,700

This exhibits the framework of a Balance Sheet as at present prepared; but it must be noted that, although practical difficulties prevent specific allotments of the assets so that a second side is necessary to show the financial position, the fact remains that the capital and surplus exist, if at all, among the assets. In other words, the assets are concrete, but the items capital and surplus on the left-hand side (above) are mere abstract records. The liabilities are concrete, apart from the question of the existence of assets to meet them; if there are no assets the creditors may not be paid, but the right to payment might remain. In the case of the capital and surplus this is not so. If there are assets to represent the abstract amounts of same, then the capital and surplus exist; if there are sufficient assets to represent the amount of capital only and none to represent the alleged surplus, then the latter is non-existent; if there are sufficient assets for the creditors only and none representing either the capital or surplus, there is no capital or surplus, nor has the "owner" of the capital and surplus (ordinarily) any rights remaining.

Every auditor of a company to which the Act of 1908 in this respect applies shall make a report to the shareholders on the accounts examined by him and on every Balance Sheet laid before the company in general meeting during his tenure of office, and the report shall state (*a*) whether or not he has obtained all the information and explanations he has required; and (*b*) whether, in his 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 his information and the explanations given to him, and as shown by the books of the company. (*See title* Auditor.)

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 auditor's 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 who shall be entitled to be furnished with a copy of the Balance Sheet and auditor's 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 the Act, or without either having a copy of the auditor's report attached thereto or containing such reference to that report as is required by the Act, 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. (Companies Act 1908, section 113.)

Note.—As the section directs that the signatures of the directors on the Balance Sheet shall be attached thereto "on behalf of the Board," a resolution should be passed giving them the necessary authority when the number of the directors exceeds two.

Holders of preference shares and debentures in companies registered on and after 1st July 1908 (other than "private companies") are entitled to receive and inspect the Balance Sheets and reports of auditors and other reports in the same way as holders of ordinary shares. (Section 114.)

The total amount of commissions paid on shares or debentures, or discounts allowed on debentures, or so much thereof as has not been written off shall be stated in every Balance Sheet of a company to which the Companies Act 1908 in this respect applies until the whole amount has been written off. (Section 90.)

Where interest is paid out of capital, under the power contained in the Companies Act 1908 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. (Section 91.)

Every company (other than private companies) required to forward to the Registrar a summary under section 26 of the Companies Act 1908 shall include in that summary 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 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. (Section 26.)

(*See also title* Assurance Companies Act.)

Every company incorporated outside the United Kingdom having a place of business in the United Kingdom must, in every year, file with the Registrar such a statement of its affairs, as would, if it were a company incorporated in the United Kingdom, and having a capital divided into shares, be required as above to be included in the annual summary. (Section 274.)

(*See titles* Annual List and Summary, Statement of Affairs.)

Ballast.—Heavy material placed in the lowest part of a vessel to give her stability, which is required where there is a short cargo, or a full cargo but a light one. (*See* Kentledge.)

Bank Book.—A book supplied by a banker to each of his customers, wherein the banker periodically enters in detail the deposits, withdrawals, and other transactions of the customer, so that the state of the account between them may be ascertained and agreed upon. It is also termed a Pass Book.

The Bank Pass Book should be the *banker's* record of the transactions between the bank and the customer: the banker should not, therefore, permit the customer or his employee to make any entry in the Pass Book. In the case of the *Brighton Empire and Eden Syndicate v. The London and County Bank*, decided in March 1904, the bank was held liable for the losses caused by the defalcations of the customer's manager, who had been permitted by the bank from time to time to make up the Bank Pass Book himself, several of the entries so made being false as to date or amount. The responsibility of the banker for the accuracy of the Bank Pass Book is further emphasised by the important case of *Chatterton v. The London and County Bank*, by which it was established that although a banker may make up a Pass Book and hand it to the customer, together with the paid cheques, the customer is under no obligation to examine the book, and the banker has no right to infer that it has been examined. (See also *Kepitigalla Rubber Estates, Lim. v. The National Bank of India, Lim.*, 1909, 2 K.B. 1010.)

A customer is entitled to act on the faith of the correctness of the entries made by the banker in his Pass Book, and to recover damages he may sustain by acting thereon in good faith in the event of the entries being inaccurate, although the banker is entitled to have the wrong entries ultimately corrected. (*Holland v. The Manchester and Liverpool District Banking Co., Lim.*, 25 T.L.R. 386.)

The examination of the Bank Pass Book and comparison thereof with the books of account usually form an important part of an auditor's duty.

The devices of dishonest employees in connection with Bank Pass Books are numerous, and are dependent upon the particular type of defalcation the manipulation of the Pass Book is intended to assist and conceal. The method generally employed is one or other of the following:—

(*a*) Alteration of dates in the Pass Book where moneys have been lodged on dates later than those appearing in the Cash Book.

(*b*) Alteration of amounts in the Pass Book where the moneys actually lodged are less than those entered in the Cash Book.

(*c*) Making entries in the Pass Book which are inaccurate—such false entries not being detected by the Pass Book clerk at the bank.

(*d*) Operating with a " duplicate " Pass Book. One book is sent regularly to the bank, but the duplicate is wholly written up by the dishonest employee to accord with his requirements. The banker's record is carefully withheld from the auditors, and the duplicate utilised for the purposes of audit.

Sometimes bills receivable are deposited (duly indorsed) for collection with the bankers, and are treated as bills receivable on hand. But a dishonest cashier defrauded his employers of a large sum of money by arranging with the bank for the discounting of some of the bills, the proceeds of which were then brought to credit in the Bank Pass Book instead of being stated " short," the cashier still treating such bills as in the hands of the bank for collection. As such they, or the bills fraudulently substituted therefor, in after years formed part of the debit balance of Bills Receivable Account, and were included in the assets at each balancing time (for several years), although the bills so treated had in fact been " realised " and the proceeds brought to credit. (*See title* Bills Receivable.)

The balance shown by a Bank Book should be supported by a certificate from the banker before being accepted by an auditor as a voucher for the bank balance stated in the accounts. The certificate should expressly refer to the position " after close of business " on a specified date and should also state the particulars and amounts of bills receivable held by the bank for collection and not brought to credit in the account. Generally, the balance shown in the Bank Book does not agree with that stated in the accounts, and this is accounted for by (1) unpresented cheques; (2) cheques paid in but not cleared at the date in question; and (3) other causes. A Reconciliation Account must then be prepared taking all these matters into consideration. An auditor should, however, satisfy himself that all items which are necessary to reconcile the balances are *bonâ fide*, and as many of them at the date of actually completing the accounts will have already " come through " they can be readily tested. The mere agreement of the balance in the Banking Account of the customer with that certified by the banker (whether reconciliation be necessary or not) is not conclusive evidence that all is in order. The details, both as regards dates and amounts, should be compared with the customer's books, for deposits may have been made which are correct as regards amount but several days later than the date recorded in the customer's books, while a large amount may have been entered as a deposit in the customer's books, but in the Bank Pass Book it may be represented by two or more smaller items on different dates. Obviously these irregularities would not affect the ultimate balance, therefore details must be compared.

The auditor of a *banker's* accounts should also examine the Bank Books of the customers, or as many as possible, and see that they agree with the respective customers' accounts in the bank's Ledger. Many banks have an Audit Department of their own, and circularise their customers periodically with forms of certificate showing the balance according to the bank's Ledger, and the customers are requested to compare these certificates with their Bank Pass Books and Ledgers and to return them duly signed to the bank.

The auditor of a savings bank must examine from time to time throughout the year the Pass Books relating to at least 10 per cent. of the entire number of active accounts in the current Deposit Ledgers.

Some trading concerns keep a single cash column book wherein they record by addition and subtraction the deposits and withdrawals day by day, thus enabling them to ascertain the available bank balance at any time, allowing for unpresented cheques, without having to await the banker's convenience in the matter of writing up the Bank Book.

Bank Commission.—The amount payable to a banker for the services rendered as banker to his customers. It is either a charge of a fixed sum per annum as agreed, or a certain rate per cent. upon the withdrawals. In some cases it is not charged on the understanding that a sum agreed upon is maintained as a minimum balance to the credit of the customer, no interest being allowed upon that balance.

Bankers' Books Evidence Act 1879.—The object of this Act is to enable proof in Courts of justice of transactions recorded in the books of account of a banker without requiring the production of the books themselves.

A duly sworn copy of any entry or entries in the *ordinary* books of account of a banker is deemed *primâ facie* evidence of such entry or entries in all legal proceedings.

Upon the application of any party to a legal proceeding the Court may order that such party may be at liberty to inspect and take copies of any entries in a banker's books for any of the purposes of the legal proceedings. The Court may make the order without summoning the banker, but in ordinary cases the order must be served upon the banker three clear days before it is to be obeyed. The order may be enforced against the banker as if he were a party to the proceedings, and the banker may be liable for costs and expenses caused through his default and delay in connection with the order.

In *Pollock v. Garle*, 1897, the Court of Appeal held that this Act does not give rights to litigants to inspect a banking account which was not in fact or in substance the account of one of the parties to the action, but of third persons who had nothing to do with the litigation, although there might be exceptional cases, such as where there was an undisclosed principal, where an order would be made to inspect the account of a third person.

Bank Note.—A Bank of England note, as distinct from the notes of other banks of issue, the latter being termed country notes.

The Bank of England cannot refuse to pay a note presented for payment; such notes cannot therefore be "stopped," but if the Bank officials are advised of the numbers of notes which have been lost or stolen, the discovery of the holder may be facilitated. In England and Wales, Bank of England notes payable to bearer on demand are a legal tender for any sum of £5 or upwards (so long as the bank continues to pay its notes in legal coin), except at and by the bank itself or its branches. The bank in London is bound on presentation to pay the holder of *any* of its notes; its branches are bound to pay only such notes as are made specially payable at the particular branch where the note is presented for payment.

Certain banks established before 1844, not having since lost their privileges, have the right, subject to certain conditions, to issue notes payable to bearer; but with these exceptions, the Bank of England has the exclusive privilege of issuing notes payable to bearer on demand. (*See title* Marked Cheque.)

Bank of Issue.—A bank lawfully issuing its own notes. The Bank of England has the monopoly in London and within a radius of three miles; beyond three miles and within 65 miles the monopoly is shared with banks of less than ten persons established before 1844; and beyond the 65 miles limit the monopoly is shared with all banks established before 1844 which have not since lost their privileges. No new banks of issue can now be formed, and as each existing bank of issue becomes extinct, or loses its privilege, two-thirds of the amount of notes it was authorised to issue is added to the "authorised issue" of the Bank of England.

The holders of shares in a bank of issue, notwithstanding registration under the Companies Acts with limited liability, are unlimitedly liable for the note issue, section 251 of the Consolidation Act of 1908 (formerly section 6 of the 1879 Act) providing (1) for the payment of the notes outstanding, and (2) for the indemnity of the general creditors to the extent of the general assets used in payment of the note-holders, whether in so doing the nominal amount of the liability of members is exceeded or not.

Bank Pass Book.—*See title* Bank Book.

Bank Post Bills.—Bills issued by the Bank of England generally payable at seven or sixty days' sight They form a convenient means of remitting to any part of England. The lowest sum they are issued for is £10, and no charge is made by the Bank for the accommodation.

Bank Rate.—The rate per cent. at which the Bank of England is prepared to grant loans for limited periods and to discount approved bills of exchange. The rate is fixed every Thursday, and although considered the minimum rate, transactions are carried out in exceptional cases at a less rate. In times of emergency the rate has been changed during the currency of the week for which it had been fixed, but such occasions are rare. In fixing the rate the directors of the Bank are influenced by the supply of and demand for gold, and the general conditions of the money market.

The rate is largely adopted as a standard for the transactions of the other banks of the country, the interest chargeable upon loans being an agreed rate (say 1 per cent.) over the bank rate for the time being, and the interest allowed upon deposits an agreed rate under that ruling at the Bank of England.

Bank Return.—The report issued by the Bank of England every Thursday afternoon showing the financial position of the Bank and setting forth (1) the amount of bank-notes in circulation, (2) the stock of bullion and coin in reserve, and (3) details as to the banking department. The issue and banking departments must be stated separately.

The following is a *pro formâ* specimen of the return:—

ISSUE DEPARTMENT.

	£			£	
Notes issued ..	56,591,050	(1)	Government Debt	11,015,100	(2)
			Other Securities	7,434,900	(3)
			Gold Coin and Bullion ..	38,141,050	(4)
	£56,591,050			£56,591,050	

BANKING DEPARTMENT.

	£			£	
Proprietors' Capital ..	14,553,000	(5)	Government Securities ..	15,874,770	(10)
Rest	3,681,854	(6)	Other Securities	29,696,428	(11)
Public Deposits	16,862,841	(7)	Notes	28,388,005	(12)
Other Deposits	40,148,554	(8)	Gold & Silver Coin.. ..	1,299,982	(13)
Seven-day and other Bills ..	12,936	(9)			
	£75,259,185			£75,259,185	

The form of this return was prescribed by the Bank Charter Act 1844, prior to which date the Liabilities and Assets of both Departments were respectively consolidated. The Government Debt (2) stood at £1,200,000 in 1694, and gradually grew to £11,015,100 in 1835, at which amount it has since remained. The item, Other Securities (3) is represented by investments of the highest class, and the three amounts (2) (3) (4) together constitute the guarantee that the Bank Notes will be paid on presentation.

In the above Specimen Return:—

(*a*) The Notes in actual circulation amount to .. .. £28,203,045 (being 1−12)
(*b*) The Cash and Bullion amounts to £39,441,032 (being 4+13)
(*c*) The Liabilities amount to.. .. £57,024,331 (being 7+8+9)
(*d*) The Reserve (*i.e.*, against the Liabilities) amounts to .. .. £29,687,987 (being 12+13)
(*Note.*—The Rest, or withheld profits, is not deemed the Reserve.)
(*e*) The Ratio of the Reserve to the Liabilities is 52 per cent.

Bankrupt.—Colloquially, one who is unable to pay his debts in full, but legally one who has been formally adjudged bankrupt by the Court. (*See* Adjudication.)

Bankruptcy Notice.—If a creditor has obtained a *final* judgment against a debtor for any amount, and execution thereon has not been stayed, he may serve upon the debtor in England, or by leave of the Court elsewhere, a notice called a bankruptcy notice, requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court.

A fee stamp of 5s. is payable upon every bankruptcy notice.

If the debtor does not within seven days after service of the notice (or within the time fixed if served out of England) either

(1) Comply with the requirements of the notice, or

(2) Satisfy the Court that he has a counterclaim, set-off, or cross demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained,

he commits an act of bankruptcy upon which a petition may be presented. (1883 Act, section 4.)

A bankruptcy notice can only be presented in respect of a *final* judgment, and although formerly the assignee of a judgment debt and the trustee of a judgment creditor could not serve a bankruptcy notice, the Act of 1890 (section 1) has amended this, providing that " a person who is " for the time being entitled to *enforce* a final " judgment shall be deemed a creditor who has " obtained a final judgment."

A garnishee order absolute is not a final judgment in this connection, nor is an order made under section 12 of the Arbitration Act 1889; but an order for payment of money made by the Court under section 215 of the Companies Act 1908 (the " misfeasance " section) is deemed a final judgment upon which a bankruptcy notice can be issued.

A bankruptcy notice must be in the prescribed form, and must state the consequences of non-compliance therewith. (1883 Act, section 4.)

Although leave may be obtained to serve a notice out of England, no notice can be served upon a *foreign* debtor when resident out of the jurisdiction. (*Re Pearson*, 1892.)

It has also been decided that a bankruptcy notice cannot be issued upon a judgment against a married woman, although if trading separately from her husband, she is *otherwise* subject to the bankruptcy laws as if she were a *feme sole*. (*Re Lynes*, 1893.)

Where non-compliance with a bankruptcy notice is the act of bankruptcy relied upon in presenting a petition, the Court may, if it thinks fit, stay or dismiss the petition if an appeal from the judgment is pending. (1883 Act, section 7.)

The issue of a bankruptcy notice is extensively resorted to by creditors, for although about one-sixth only of the total notices issued result in receiving orders being made, this small proportion accounts for twice as many receiving orders as all the other acts of bankruptcy taken together. (Board of Trade Reports.)

Bankruptcy Petition.—A petition presented to the Court, either by a creditor or the debtor himself, that a receiving order be made against the debtor for the protection of his estate.

Any creditor, whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm, may present a petition against any one or more of the partners of the firm without including the others.

A creditor shall not be entitled to present a bankruptcy petition against a debtor unless:—

(1) The debt owing, or if two or more creditors join in the petition the aggregate of the debts owing, amounts to £50 or upwards.

Note.—If the petitioning creditor is a secured creditor he must, in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or he must give an estimate of the value of his security. In the latter case he may be admitted as a petitioning creditor to the extent of the *balance* of debt due to him (after deducting the value so estimated) in the same manner as if he were an unsecured creditor.

(2) The debt is a liquidated sum, payable either immediately or at some certain future time.

(3) The petition is founded upon an act of bankruptcy which has occurred within three months next before the presentation of the petition; and

(4) The debtor is domiciled in England, or within a year before the date of the presentation of the petition has ordinarily resided or had a dwelling-house or place of business in England.

Although not stated in the Act, it is necessary as a result of a common law rule in bankruptcy that the petitioning creditor's debt should have accrued due before the commission of the act of bankruptcy upon which it is intended to found the petition. And if the debt is on a bill of exchange the bill must have been *issued* before the act of bankruptcy, although it may not have vested in the petitioning creditor until after such act.

A creditor cannot set up as an act of bankruptcy any deed of assignment or other arrangement to which he has assented. As to what amounts to such assent, *see title* Deed of Arrangement (Creditor's Assent).

The petition must be verified by an affidavit of either the creditor or someone acting for him having knowledge of the facts.

A copy of the petition must be served on the debtor, and the petition will not be heard by the Court until the expiration of eight days from such service, unless it is shown to the satisfaction of the Court that the debtor has absconded, or unless the debtor has filed a declaration of his inability to pay his debts, in which cases the Court may hear the petition earlier.

Where two or more bankruptcy petitions are presented against the same debtor, or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks fit.

A stamp duty of £5 as a Court fee is payable on the petition, and a further sum of £5 must be deposited with the Official Receiver to cover any expenses which he may have to incur. Both these amounts are, however, repayable to the creditor out of the estate in the event of a sufficiency of assets: and for better protection they rank in priority to the majority of the expenses of administering the estate. In special cases the deposit for expenses may be a sum less than £5, and on a *debtor's* petition the fee of £5 is not payable where the Official Receiver certifies that there is reasonable ground for believing that the assets are sufficient to meet the expenses of administration. In such a case, however, the Court fee (*i.e.*, £5) will be payable upon the making of the receiving order.

At the hearing of the petition the Court requires proof of (1) the creditor's debt, (2) service of the petition, and (3) the act of bankruptcy alleged, and, if satisfied with such proof, the Court may make a receiving order, but if the Court is not satisfied therewith, or for some sufficient cause considers that no order should be made, the petition may be dismissed.

The processes of the Court must not be used for the purposes of extortion. The Court will not permit a petition in bankruptcy to be presented and then used, not for the purpose of obtaining a receiving order but for the purpose of extracting money from the debtor. A bankruptcy petition once presented, whether by the debtor or a creditor, cannot be withdrawn without the leave of the Court. And the Court will have regard to the conduct of a petitioning creditor before the presentation of a petition, for where a creditor had endeavoured to make some secret arrangement whereby he would obtain an advantage over the other creditors, and had threatened that if the debtor did not agree to the suggestion a bankruptcy petition would be presented against him, it was held in *Re Shaw* (83 L.T.R. 754) that upon such a petition being presented there was " sufficient cause " under section 7, subsection 3, of the Act of 1883 for the Court to decline to make a receiving order. The decision in *Re Shaw* was followed in *Re Goldberg* (1904) by the Divisional Court and upheld by the Court of Appeal.

Although formerly there was statutory remedy for persons aggrieved by the improper filing of a bankruptcy petition, under the present Acts there is apparently no remedy. But an action might be brought under the common law for maliciously presenting a petition and thus abusing legal process, the plaintiff being required to show malice and a want of " reasonable and probable " cause for presenting the petition.

A debtor may petition for a receiving order against himself, filing a declaration of his inability to pay his debts beforehand, or merely stating that fact in the petition itself. Where a petition is filed by a debtor the Court will make a receiving order forthwith. The Court fee of £5, and deposit £5, are generally payable as in the case of a creditor's petition; but, as already stated, the amount of the deposit may be reduced in a special case, and the fee may be dispensed with where there are sufficient assets, in which case the £5 fee is charged upon the making of the receiving order.

The Court may stay any action, execution, or legal process against the property or person of

the debtor at any time after the presentation of a petition, and *any* Court in which proceedings are pending against the debtor on proof of a bankruptcy petition having been presented, may either stay the proceedings or allow them to continue as it may think just.

If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive. Where the debtor dies before service of the petition, the Court may order service on the personal representatives.

Where the petitioning creditor does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by the Act in the case of the petitioning creditor. (*See* Receiving Order.)

(1883 Act, sections 6, 7, 8, 10, 106, 107, 108, 110.)

Bank Shares.—All contracts and agreements for the sale of shares or stock in any joint stock banking company in the United Kingdom are null and void to all intents and purposes unless such contracts or agreements set forth the distinguishing numbers of the shares or stock, or where there are no such distinguishing numbers the person or persons in whose name or names the shares or stock are or is registered. (Leeman's Act.)

Although treated upon the Stock Exchange as a *dead letter*, this Act has been declared as still of full legal force. (*See* Bank of Issue.)

Barratry.—The term barratry includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or as the case may be, the charterer (*vide* the rules for the construction of a policy where the context does not otherwise require, contained in the first schedule to the Marine Insurance Act 1906).

Barratry is a crime, and any act sought to be held as such must have been wilful and must have proceeded from criminal motives.

Barter.—To exchange one commodity for another, as distinct from a sale which requires a money consideration.

Bear.—*See* Bull and Bear.

Bearer.—A bill of exchange is payable to bearer which is expressed to be so payable, or on which the only or *last* indorsement is an indorsement in blank (1882 Act, section 8); a bill payable to bearer is negotiated by delivery (section 31). (*See* Transfer of a bill by delivery.)

Benefice.—*See* Advowson.

Beneficial Interest.—A term sometimes applied to the interest of a *cestui que trust* in the property held by the trustee, but the term is capable of general application.

A "beneficiary" has, generally speaking, a right to demand accounts and statutory provisions as to audit, &c., exist in special cases. (*See titles* Judicial Trustees Act 1896, Public Trustee Act 1906, Trustee, Liquidator's Accounts, Deed of Arrangement, Auditor.)

Benefit Building Societies.—Associations established for the purpose of raising funds by small periodical subscriptions from their members for mutual assistance to purchase property. They are regulated by the Building Societies Acts. (*See* Building Societies.)

Bequeath.—To leave personalty by will to another, whilst the word *devise* is used for the transmission of real property. Both words, however, may be used indiscriminately, without affecting the validity of the intended gift.

Bequest.—A gift of personalty by will; a legacy. (*See titles* Devise, Legacy.)

Bid.—An offer of a price for an article on sale, generally at an auction.

A person may withdraw a bid at any time, before it has been accepted, which acceptance at an auction sale is evidenced by the fall of the hammer. (*See* Auction.)

Bill in a Set.—Where a bill is drawn in a set it is commonly drawn in a set of three, one part only being stamped, the remaining parts being exempt, unless issued or in some manner negotiated apart

from the stamped part; but presentment for acceptance is not a negotiation, therefore the drawing of a bill in a set not only allows of transmission by different routes, and obviates the inconveniences arising from the miscarriage or loss of a bill, but affords an opportunity of negotiating the stamped part whilst the unstamped parts are in transit for acceptance. This is a great advantage in the case of bills drawn upon persons residing in foreign countries. If the bill parts be numbered and each part refers to the other parts, then the whole of the parts are only one bill. If there be no reference to the other parts then each part becomes a separate bill in the hands of a *bonâ fide* holder. Where an indorser has negotiated two or more parts, or a drawee has accepted two or more parts, they are respectively liable as though each part was a separate bill, if they are negotiated into the hands of holders in due course. Subject to the foregoing, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. (1882 Act, section 71.)

The parts are called First of Exchange, Second of Exchange, and Third of Exchange respectively. (*See* Sola.)

Bill of Entry.—An account of goods entered at the Custom House both outward and inward stating the name of the merchant, the quantity and nature of the merchandise, and the place to which the goods are going or from which they have been imported.

When a merchant cannot state definitely the real quantities or qualities of imports he may make a *bill of sight* or *prime entry*, giving the best description possible. The goods may then be landed and examined in order that a perfect entry may be made. (*See* Post Entry.)

The term bill of entry is also applied to the daily statement issued by the Custom House, giving detailed particulars of the exports and imports.

Bill of Exchange.—An unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to bearer. (1882 Act, section 3.) A bill payable on demand, or at sight, or on presentation, or within three days after date or sight, requires 1d. stamp, which may be either impressed or adhesive. A bill payable otherwise than on demand requires an *ad valorem* stamp by scale up to £100, the stamp for £100 being one shilling, and for all greater amounts one shilling per £100 or fraction thereof. The *ad valorem* stamp on inland bills must be impressed, while in the case of foreign bills adhesive stamps must be affixed of sufficient amount and duly cancelled before the bills are presented for acceptance, indorsement, or payment, or being otherwise negotiated in this country. The duty on foreign bills was reduced by section 10 (1) of the Finance Act 1899.

A bill is a chattel, and may be sold as such; it is also a chose-in-action, and may be assigned as such by indorsement and delivery. Bills are, however, excluded from the term "Goods" in the Sale of Goods Act 1893.

The various matters in connection with bills of exchange are dealt with in detail in their appropriate places throughout this work, viz.:—

Acceptance of a bill.
Acceptance for honour supra protest.
Acceptor.
Accommodation Bill
Accommodation Party.
Advice.
After sight.
Allonge.
Alteration.
Alternative drawee.
Alternative payee.
Ante-date.
At sight.
Aval.
Bank note.
Bank Post Bills.
Bearer.
Bill in a set.
Bills Payable.
Bills Receivable.
Blank acceptance.
Blank cheque.
Blank indorsement.
Blank signature.
Cheque.
Conditional acceptance.
Conditional indorsement.
Consideration.
Country notes.
Cross bill.
Crossed cheque.
Date.
Days of grace.
Demand (payable on).
Discharge of bill.
Dishonoured bill.
Dishonour, Notice of.
Draft.
Drawee.
Drawer.
Exchequer Bills.
Extension of protest.
Fictitious person.
First of Exchange.
Foreign Bill.
Forged acceptance.
Forged indorsement.
General acceptance.
Holder in due course.
Honoured bill.
Immediate parties.
Inchoate instrument.
Indorsement.
Indorser.
Inland Bill.
Interest secured by Bill of Exchange.
I O U.
Issue.
Lost bill.
Marked cheque.
Negotiable instruments.
Negotiation back.
Notary.
Noting a bill of exchange.
Not negotiable.
Open cheque.
Order.
Overdue bill.
Partial acceptance.
Partial indorsement.
Payment for honour supra protest.
Per procuration.
Post-dated cheques.
Presentment for acceptance.
Presentment for payment.
Promissory note.
Proof in respect of bills of exchange.
Protest.

Qualified acceptance.
Qualified indorsement.
Rate of exchange.
Rebate on bills discounted.
Re-draft.
Re-exchange.
Referee in case of need.
Refer to drawer.
Re-issue.
Remote parties.
Renewal of a bill.
Restrictive indorsement.
Retired bill.
Sans recours.
Second of Exchange.
Securities deposited against bill.
Short bills.
Sight bills.
Signature.
Sola.
Special indorsement.
Stale cheque.
Third of Exchange.
Transfer by delivery.
Treasury bills.
Unauthorised signature.
Unpresented cheques.
Usance.
Value in merchandise.
Value received.
Waring, *Ex parte*.
Without grace.

Bill of Lading.—A receipt for goods put on board a ship, signed by the shipowner or his agent (generally the captain), and stating the terms upon which the goods are delivered to, and received by, the ship.

Bills of lading are usually made out in sets, three or more copies being prepared. The captain retains one, and hands the consignor two or more, so that he may forward a copy to the consignee. A clause is generally inserted that, upon the accomplishment of one of the bills, the others are to be void.

Every shipowner who carries goods for hire in his ship undertakes to carry them at his own absolute risk, the act of God and of the King's enemies excepted, *unless* by agreement between himself and a particular shipper, on a particular voyage, he limits his liability by *further* exceptions.

The consequence of this rule of law is well described by Mellish, L.J. :—" Modern bills of " lading contain a long list of excepted perils, " exemptions from, and qualifications of, liability, " printed in type so minute though clear as not " only to fail to attract attention to any of the " details, but to be only readable by persons of " good eyesight."

The bill of lading is, however, not *the* contract with the shipper, but only evidence as to its terms. The effect of the indorsement and delivery of a bill of lading by the person entitled to hold it depends partly upon custom and partly upon statute :—

(1) *By Mercantile Custom.*—Indorsement and delivery of the bill, after shipment of the goods, but before delivery to the person entitled to them under the bill, transfer such property as was *intended* by the indorsement.

(2) *By Bills of Lading Act, 1855.*—The indorsement of the bill transfers to the indorsee not only the property in the goods but all *rights of suit* and all liabilities in respect of the goods, as if the contract evidenced by the bill of lading had been made with himself.

(3) *By Admiralty Jurisdiction Act.*—The indorsement of the bill of lading may give the indorsee rights of action in the Admiralty Court against the ship.

Where goods are shipped in pursuance of a contract of sale the property in the goods passes to the buyer, unless the seller shows a contrary intention. He may show such intention by (1) taking a bill of lading in his own name, (2) making the goods deliverable to his order, or the order of his agent, and (3) instructing his agent not to deliver the bill except under certain conditions, such as payment of the price of the goods. Here the *jus disponendi* is reserved by the seller, and no property passes to the buyer by shipment.

The seller may also draw upon the buyer for the price, and transmit the bill of lading and bill of exchange together. Here the property in the goods does not pass until the buyer has either accepted or paid the bill, as the case may be.

A bill of lading is assignable without notice, but it cannot be termed negotiable in the widest sense, for its assignment cannot give a better title than the assignor possessed, with one exception, viz. :—An assignment (indorsement) *bonâ fide* and for value relieves an assignee, if he takes from an assignor with a good title at the time of indorsement, from liability to the vendor's right of stoppage *in transitu* which might have been exercised against the original consignee.

A bill of lading requires a 6d. impressed stamp, which must be affixed before execution of the bill.

Bill of Parcels.—An account given by a seller of goods to the buyer, stating the quantities and prices of the goods bought. It is also called an invoice.

Bill of Sale.—The term bill of sale is applied to a document whereby the right and property in personal chattels are transferred to a person called the grantee.

A bill of sale may be *absolute*, the property in the chattels assigned passing upon the execution of the deed, or it may be *conditional* by way of mortgage to secure the payment of money on a future day. In the latter case the property in the goods passes to the grantee, but the right of possession remains in the grantor. On default the property in the goods vests in the grantee freed from the condition.

The particular statutes referring to Bills of Sale are the Bills of Sale Act 1878, repealing the Act of 1854 as amended by the Act of 1866, and the Bills of Sale Act 1882 as amended by the Acts of 1890 and 1891. Though it is necessary for some purposes to construe the Acts together, the Act of 1878 refers to absolute bills of sale, whereas the Act of 1882 refers to those which are conditional.

The expression "bill of sale" includes bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase-moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities or licences to take possession of personal chattels as security for any debt, and also any agreement (whether intended or not to be followed by the execution of any other instrument) by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred. (Bills of Sale Act 1878, section 4.)

The following are not included in the term "bill of sale" within the meaning of the Bills of Sale Acts:—

(1) Assignments for the benefit of creditors.

(2) Marriage settlements.

(3) Transfers or assignments of ships or shares therein.

(4) Transfers of goods in the ordinary course of business.

(5) Bills of lading.

(6) Warehouse keepers' certificates and other documents used in the ordinary course of business as proof of possession or control of goods.

(7) Letters of hypothecation of imported goods.

(8) Debentures of mortgage, loan, or other incorporated company.

In *Standard Manufacturing Co.* (1891, 1 Ch. 627) it was held that the Bills of Sale Acts did not apply to companies registered under the Companies Act of 1862 *et seq.*, but now a charge given by a company, and evidenced by an instrument which if executed by an individual would require registration as a bill of sale, must be registered with the Registrar of Joint Stock Companies. (Companies Act 1908, section 93.)

Hiring agreements are not within the Bills of Sale Acts, for no right of property passes under them to the hirer.

The Bills of Sale Act of 1878 refers to absolute bills of sale, but one given by way of security for the payment of money is governed principally by the amending Act of 1882, which requires:—

(1) The bill to be in the prescribed form.

(2) The consideration to be set forth.

(3) The consideration to be £30 or upwards.

(4) The bill to contain or have annexed a schedule specifically describing the chattels comprised.

(5) The bill to be attested by one or more credible witnesses who are non-parties.

(6) The bill to be registered within seven clear days of execution, and registration to be renewed at least once in every five years. The Register is open to public inspection.

A bill of sale given by way of security does not of itself afford any protection against

(1) Distress for rent, rates, or taxes.

(2) The effect of the "reputed ownership" clause in the event of the grantor's bankruptcy.

Note.—But the "reputed ownership," or "order and disposition" clause does not apply to chattels not in a bankrupt's trade or business, and even with regard to chattels in the way of trade or business its effect can be defeated if it can be shown that a well-known custom of the trade exists which excludes any reputation of ownership of chattels held under such circumstances.

The chattels comprised in such a bill of sale can only be seized by the grantee under the following circumstances:—

(1) Default in payment of sums secured or breach of covenant for maintenance of the security.

(2) Bankruptcy of the grantor.

(3) If distress be made for rent, rates, or taxes, or if execution be levied under any judgment.

(4) Fraudulent removal of the goods.

(5) Failure to produce last receipts for rent, rates, and taxes.

But, as already stated, the right of seizure is subject to the right of distress for rent, rates, &c., and subject also to the possible effect of the reputed ownership rules of bankruptcy. Thus, if the grantor becomes bankrupt and the goods are not deemed within the grantor's order and disposition, they will pass to the grantee; but if such goods are held to be in the order and disposition of the grantor in his trade or business under such circumstances that he is the reputed owner thereof, the goods will pass to the trustee in bankruptcy. (*See* Debenture, Distress, Reputed Ownership.)

An agreement accompanying a *pledge* of chattels to secure a debt is *not* a bill of sale and does not require registration. (*Ex parte Hubbard*, 55 L.J. Q.B. 490.) This is because in the case of a pledge the possession of the subject-matter is not retained by the pledgor.

Bill of Sale (Shipping).—The instrument of transfer of any British ship or any share therein. It must contain a sufficient description of the ship to enable it to be identified, and be executed by the transferor in the presence of, and be attested by, a witness. When duly executed every bill of sale for the transfer of a ship or any share therein must be produced to the registrar of the port of registry of the ship, together with a "declaration of transfer," stating the transferee's qualifications to own a British ship, and the registrar shall thereupon register the bill and indorse the fact of such registration on the bill, stating the day and hour thereof. See Form A, Part I, first schedule, Merchant Shipping Act 1894. A bill of sale is not liable to stamp duty, but there is a small customs fee payable on registration.

A bill of sale will, however, only effect the transfer of shares (64ths) in ships. Shares in the capital of companies owning ships are transferable by ordinary transfer deed and are liable to the *ad valorem* duty of 10s. per cent. (*See* British Ship.)

Bill of Sight.—*See* Bill of Entry.

Bills Discounted.—Bills of exchange upon which the "present value" has been received by the payee from a banker or other person, before the maturity of the bill. The banker charges a percentage called "discount" for the accommodation afforded, and hands the holder of the bill the net proceeds, recouping himself by collecting the face value of the bill on maturity. (*See title* Discount.) Until the bill is paid by the person primarily liable thereon (acceptor or otherwise), the party who has obtained such proceeds is, nevertheless (under ordinary circumstances), contingently liable upon the bill; but a person who has negotiated a bill by mere delivery (*see* Transfer of a Bill by Delivery) or indorsed it "sans recours" will not be liable thereon.

Where a trader is contingently liable upon bills receivable which he has discounted with his bankers a note of the total amount of such outstanding bills should be appended to his Balance

Sheet, particularly where the amount is comparatively large, or where there is any probability of one or more of the bills being dishonoured.

Where a banker closes his books at the end of his financial period he has invariably a number of unmatured " discounted bills " on hand. The whole of the interest (or discount) charged on the respective bills cannot properly be taken to credit in the Profit and Loss Account for the period under review, as provision should be made for interest on the bills from the " closing date " until they respectively mature. This provision is termed " Rebate on bills discounted " (*q.v.*).

Bills Payable.—*See titles* Bills Receivable, Creditor.

Bills Payable Account.—The account in the Ledger of a specified person wherein are recorded upon the *credit* side all bills in respect of which the person is primarily liable as acceptor or otherwise; and upon the *debit* side all payments against such bills. The credit side of the account may be compiled (1) from the Journal in summary form, or (2) from the Bills Payable Book, either (*a*) in totals periodically, or (*b*) by recording each bill as accepted. The balance of the Bills Payable Account at any time should agree with an extracted list of outstanding bills, as shown by the Bills Payable Book.

Bills Payable Book.—A chronological record of all bills accepted by a person, ruled in appropriate columns, to show:—

Date of Bill.
Date accepted.
Name of drawer.
Amount of bill.
Period.
Date of maturity.
To whom payable.
Where payable.
Ledger or Journal folio.
Remarks.

Some merchants use the Bill Book as a Ledger Account to represent the bills payable, posting the several items to the debit of the respective drawers. Others periodically journalise the contents of the Bill Book in a summarised form. Another method is to post the various amounts of the bills to the drawers' accounts, and periodically credit a Bills Payable Account in the Ledger with the total of the bills accepted during the particular period, whilst yet another method is to deal with the bills through a special column in the Cash Book.

Bills Receivable.—The term used to signify those bills the proceeds of which are *receivable by* a specified person, either as the drawer or as indorsee. It is a bookkeeping term distinguishing the bills in question from bills payable, viz., those in respect of which a specified person is primarily liable, either as acceptor or otherwise.

To verify the item " Bills Receivable " in a Balance Sheet, an auditor should:—

(1) Require a list of the bills outstanding at the Balance Sheet date to be extracted from the Bills Receivable Book and agree the list with the balance of the Ledger Account.

(2) Require the production of the bills at the same time as the other securities belonging to the concern, and compare them with the extracted list referred to above.

(3) Where any of the bills have been deposited with the bankers for collection, require a certificate from the bankers that they held such bills, and that none of the proceeds thereof had been credited to the customer's account prior to the balancing date.

(4) See that any cash received for bills met or discounted since the Balance Sheet date (if the examination is made after that date) has been duly accounted for.

(5) Take a note of the dates of the bills to see that none are overdue or dishonoured, and see that a proper provision against loss has been made for bills of a doubtful character.

(*See titles* Bank Book, Bills Discounted.)

Bills Receivable Account.—This account operates conversely to a Bills Payable Account, so that the same remarks apply, *mutatis mutandis*, to both accounts. (*See* Bills Payable Account.)

Bills Receivable Book.—This book deals with bills receivable in the same manner as a Bills Payable Book treats with bills payable, and the same remarks apply, *mutatis mutandis*, to both books. (*See* Bills Payable Book.)

Blank Acceptance.—*See* Acceptance.

Blank Cheque.—A cheque form, containing the signature of the drawer, leaving the amount for which the cheque is to be drawn (and sometimes the name of the payee and the date) to be filled in by the holder.

Where a person signs an ordinary bill of exchange before any amount is inserted therein the amount that may be subsequently inserted is limited by the value of the bill stamp (1882 Act, section 20); but in the case of a cheque requiring a penny stamp only, whatever the amount involved, the limit *primâ facie* depends only on the amount to which the banker would honour the cheque. (*See* Inchoate Instrument.)

Blank Indorsement.—*See* Indorsement.

Blank Signature.—*See* Acceptance.

Blank Transfer.—A form of transfer of shares or other interest in a joint stock company executed only by the transferor, the transferee not being named. The intention of the transferor is that the person to whom the document is handed is thereby authorised to fill in the name of the transferee, whether a purchaser, mortgagee, or nominee.

When the instrument of transfer is required by the regulations of the company to be in writing merely, a blank transfer may be filled in at any time and sent in for registration, and no objection can be raised by the company as to its validity.

Table A of the 1908 Act does not require transfers of shares to be by deed but in writing only.

Where, however, the transfer is required to be by *deed*, this practice is, strictly speaking, not available, for a deed executed in blank is inoperative, the *delivery* of a deed by the party in the form in which it is to operate being one of its essentials. (*Powell v. London and Provincial Bank*, 1893, 2 Ch. 555.)

The practice is nevertheless carried out, even with deeds, in the expectation that the company, on registration, will either not know of or not notice or take advantage of the irregularity.

B. List.—*See* Contributory.

Blue Book.—A Governmental report or statement in book form, usually with a blue paper cover.

Bond.—A promise under seal defeasible upon a condition subsequent—that is to say, it imposes a penalty for the non-performance of a condition which is avoided on the performance of the condition, such performance being the *real* object of the bond. Notwithstanding the amount of the penalty, the rights of a promisee are limited to the actual loss sustained by breach of the condition.

Bonded Stock.—The goods of a trader which are liable to customs or excise duties as the case may be, and which are left in duly certified bond warehouses until required, the duties thereon not being paid until the goods are removed. On removal and payment of the duty, the goods are termed "Duty paid Stock."

Bonus.—A premium; an extra dividend; a distribution of profits amongst policy-holders of a life assurance company.

Book Debts.—Debts due and accruing due to a person in the ordinary course of his trade or business, which are usually entered by a trader in his trade books.

Book debts are not chattels within the meaning of the Bills of Sale Acts, but trade book debts are deemed within the order and disposition of the trader in the event of his bankruptcy, unless the debts have been assigned and notice of the assignment has been given to the various debtors prior to the commencement of the bankruptcy. An assignment of book debts carries the books in which they are recorded.

Every mortgage or charge created on any book debts of a company to which the Companies Act 1908 in this respect applies 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 filed with the Registrar of Joint Stock Companies within twenty-one days after its creation, but without prejudice to any obligation for repayment of the money thereby secured, and when a mortgage or charge thus becomes void the money secured thereby shall immediately become payable. 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 is not within the section. (Companies Act 1908, section 93.) (*See title* Register of Mortgages.)

The regulations of some companies prohibit the granting of loans or the extension of credit to its officers, but in any case book debts due to a company by any of its directors or other officers should be separately stated upon the face of the Balance Sheet. The *pro formâ* Balance Sheet annexed to the original Table A of the Companies Act 1862 specially provided for this, though such form of Balance Sheet is not contained in Table A of the Act of 1908.

With regard to the examination of book debts from the point of view of the realisable value, the "age" of the debt, the regularity of the debtor in making payments and meeting acceptances, and the volume of business done are important points. Where the examination of the book debts is being conducted a little while after the date at which the book debts are stated to have been owing, there is the additional advantage of being able to refer to payments actually made in the meantime, and in many cases it may be possible, in the examination of schedules of book debts, by marking off those actually paid between the date in question and the date of the examination, to reduce considerably the number of outstanding debts for consideration.

With regard to the verification of the items themselves, as distinct from their realisable value, much will depend upon circumstances. Where the bookkeeping and cash keeping are in the hands of a few, sometimes even in the hands of one, nothing short of a detailed examination will suffice, but where the number on the staff of the particular concern is so large that it is possible to divide the work and to institute a system of internal check, an auditor may rely upon that internal check to some extent.

Whether it is necessary to conduct a detailed examination, or whether this may be dispensed with to some extent in consequence of an efficient internal check, depends entirely upon circumstances.

Where an auditor is called upon to verify the item of book debts in a Balance Sheet, he should satisfy himself as to the following:—

(1) That the amounts constituting the sum stated in the Balance Sheet as book debts agree with the several balances of the debtors' accounts in the Ledgers.

(2) That such Ledger balances represent *bonâ fide* debts so far as can reasonably be ascertained.

(3) That adequate provision against loss from doubtful debts has been made, and that all debts which (according to available data) are actually irrecoverable, have been altogether written off.

In an Irish case (*Irish Woollen Co., Lim. v. Tyson*), Holmes, L.J., said: "As to the provision "for bad debts, if there is any one thing upon "which an auditor is dependent upon the officers "(of the company) it is the writing off, or the "making of a prospective allowance for bad "debts." But in the case in question it was clear that the auditor had exercised reasonable care and skill in this connection.

The auditors of some concerns are permitted to communicate direct with the debtors by circular, stating the amount of indebtedness shown by the books as due by each respectively, and asking for a reply direct to the auditors in the event of any discrepancy. This, in most of the cases where the practice is adopted, is an effective check, while the moral effect upon the staff of the knowledge that the system is carried out must

be great; but if the directors of a particular company disapprove of the practice, the auditor cannot claim as of right to issue such circulars. Should the auditor consider, under the particular circumstances, that the issue of circulars is essential, his remedy would be to communicate the facts to the shareholders, leaving them to decide the question. (*See* Bad and Doubtful Debts, Chose-in-action, Future Book Debts.)

Book Entry.—The term given to the record of a transaction in the books, which really amounts to nothing further than an internal adjustment. For instance, if A. had two accounts with B., one in credit and the other in debit, and it was arranged to consolidate the two accounts, one of them (perhaps both) would be closed by the operation of the "book entry" which carried out the arrangement.

Bookkeeping.—Bookkeeping is the art (based on certain scientific principles) of correctly recording transactions, generally mercantile, which involve the transfer of money or money's worth.

The chief aims of bookkeeping are:—

(1) To record the financial effect of any one transaction.

(2) To record the combined effect of all the transactions within a given period so that the financial position of the transactor at the end of that period may be ascertained.

There are two systems of bookkeeping in use, viz.:—

Double Entry.—Bookkeeping by double entry was called in the earlier works the Italian method, from the fact that, although such a system is believed to have been in use in earlier times, it was left to Italy to revive the system by its adoption in the commercial cities of that country, whence it ultimately spread throughout Europe.

As every transaction is a transfer of money or money's worth, involving a yielder and a receiver, it follows that the effect of each transaction is that some person or account is benefited or increased to the same extent as another person or account suffers detriment or is decreased. Thus "every debit requires a corresponding credit," and in principle each transaction involves a "double entry." Upon this fundamental truth the whole superstructure of bookkeeping by double entry has been raised. In order to record the effect of each transfer and yet obviate the necessity of making the continuous addition and subtraction (and the consequent increase in clerical work) which the recording of numerous transactions would entail,

(1) A Journal and separate books for various classes of transactions are utilised to collect and classify the various records of transactions before being carried to the Ledger, and

(2) The Ledger Accounts are divided into two parts, giving a left-hand side, to which side all increases or debits are exclusively confined, and a right-hand side, to which all decreases or credits are placed.

There are various devices, such as the Columnar system, to expedite the preparation of the records; Sectional Ledgers and Departmental Accounts, to classify customers, districts, and departments; subsidiary books to amplify the records, and "self-balancing" Ledgers to facilitate the balancing of the accounts. But these—few only among many—are the result of carefully adapting the double entry system to varying circumstances—the inevitable outcome of increasing commerce, and the enhanced experience of accountants. Although, to the uninitiated, they are apparently complications tending to obscure the principle involved, they are in fact mere subdivisions of one system based upon one simple truth.

It has been said there is but one truth; and, to make this a little clearer, it may be necessary to point out the distinction between this fundamental principle and bookkeeping rules which are based upon mere expediency. The *truth* involved in the transfer is universal and inviolate: the *rule* which places the debit items to the left-hand side of a Ledger Account, and the credit items to the right-hand side, is not necessarily universal, and the sides might be reversed without affecting the principle involved. Furthermore, one

side of the Ledger could be dispensed with, and both debits and credits placed in the remaining one, adding debits and deducting credits; in fact, it has been suggested upon good authority that a single column was the first method adopted.

The cause and effect of recording transactions by double entry may be summarised thus:—

(1) A transaction is a transfer of money or money's worth,

(2) Necessitating a yielder and a receiver,

(3) So that an account must be increased (or debited) and another account reduced (or credited) by an equivalent amount;

(4) An equilibrium in the Ledger is thus maintained, so that by means of the Trial Balance the clerical accuracy of the entries in the Ledger as regards amounts may be tested.

(5) From the items in the Trial Balance the losses and gains are selected, and they constitute the Profit and Loss Account; while the remaining items, the assets and liabilities, form the basis of the Balance Sheet.

(6) The difference between the assets and liabilities (including capital) should equal the balance of the Profit and Loss Account.

(7) Thus, the Balance Sheet and Profit and Loss Account are confirmatory of each other, whilst details are afforded as to how the resultant profit or loss has been derived or sustained, as the case may be.

Single Entry.—This system is an incomplete record of the transactions with which it deals, varying in extent according to circumstances, but generally recording only the personal obligations of or to the person in question, and omitting the complementary Revenue Accounts.

What is termed single entry is in fact not a distinct system of bookkeeping, but rather the double entry system in an incomplete state.

The procedure and effect of single entry may be summarised as follows:—

(1) The cash transactions are recorded as in the case of double entry.

(2) The sales and purchases are charged and credited respectively to Personal Accounts.

(3) The cash received and paid in respect of sales and purchases is posted in the Ledger to the credit or debit of the personal accounts of those concerned.

(4) But there is no detailed or classified record of the gains or losses, nor is there any arithmetical check afforded as in double entry.

(5) The financial position is ascertained by the preparation of a statement of affairs which is compiled from all available data, viz.:— Balances of debtors' and creditors' accounts in the Ledger, cash in hand, balance of banking account, stock-in-trade as taken and valued, and particulars of such items as plant and machinery as set out in the *previous* statement of affairs, due allowance being made for further outlay thereon, or sales thereof meantime, and for depreciation during the period under review.

(6) The profit or loss is ascertained from a comparison of the past and present financial positions of the trader, after allowing for additions to or withdrawals from capital meantime.

System.—The chief practical features of a satisfactory system of bookkeeping should be:—

(1) Adaptability to the particular business.

(2) Maximum of result for the amount of clerical labour involved.

(3) Ready and authoritative reference to the records of past transactions.

(4) Simplicity as to points of detail so as to ensure a high degree of clerical accuracy.

(5) Efficient safeguard against fraud.

The principles underlying the system adopted should not be obscured by the necessary details, therefore in the operative part of the scheme *decentralisation* of the work should be aimed at, so that at the conclusion of a given period of trading *codification* of results may be more readily attained.

These codified results should clearly show the trader:—

(1) The amount of profit or loss for the period in question,

(2) Particulars as to how the result has been attained, and

(3) His financial position at the end of the period.

(*See titles* Foreign Systems of Accounting, Journal, Journal Entry, Ledger, Trial Balance.)

Books of Account.—The books forming part of a system of accounting, such as the Ledger, Journal, Cash Book, Purchase and Sales Books, and other connected subsidiary books. The precise extent of the term varies according to the system adopted, for in certain instances the Cost Books would be connected with the balancing of the books, whilst in others (the majority) the Cost Books would be treated as merely statistical records.

Books of Original Entry.—Those in which the various transactions are recorded in the books of account for the first time—for instance, the Sales Day Book is ordinarily the book of original entry as regards the sales, although full particulars as to the goods delivered may have been previously recorded in a Warehouse Book, for the latter is not a book of account.

Book Value.—The amount appearing from time to time in the books of a concern as the "value" of a particular asset or group of assets. It generally represents (1) the actual and direct cost, or (2) the cost (whether direct or indirect, original or additional), or (3) either of the foregoing less the amounts which have been written off by way of depreciation. The original cost of an asset may have been excessive; additional and capitalised expenditure thereon may not have resulted in a corresponding increase in value, and the amount written off by way of depreciation may have been inadequate, so that the resultant book value would be in excess of the true value whether regarded from the point of view of a going concern or otherwise. On the other hand, depreciation may have been provided for excessively, or unnecessarily because of appreciation in value from special causes.

Sometimes the book value of an asset is a nominal amount which is obviously not the real value—*e.g.*, the book value of the Bank of England (land and buildings) in the books of that institution. (*See titles* Depreciation, Value.)

Borough Auditors.—The three auditors appointed under the Municipal Corporations Act 1882, two of whom are elected by the burgesses, and called elective auditors, the other being appointed by the mayor, and called mayor's auditor.

An elective auditor must be qualified to be a councillor, but may not be a councillor, or the town clerk, or the treasurer.

The mayor's auditor must be a councillor.

The term of office of each auditor is one year, and the election and appointment of the three auditors takes place on the same day; and although the method of appointment is different, the distinction between elective and mayor's auditor would appear to end there, for generally their duties and responsibilities are the same.

The treasurer is required to make up the accounts of the borough *half-yearly*, at such dates as may be appointed, and within one month from the date to which the accounts are to be prepared he must submit them, with the necessary vouchers and papers, to the borough auditors, and *they shall audit them*. On the completion of the second half-year in each financial year, the accounts for the year are to be consolidated and issued in printed form.

These provisions have been described as "exceedingly meagre and unsatisfactory"—in fact, although the Act of 1835 required the auditors to sign the accounts if they found them correct, the Act of 1882 contains no such provision. The duties of the auditors have consequently given rise to much difference of opinion, many officials whose accounts are subject to the audit attempting all means of limiting the scope of the auditors' functions.

Many boroughs have, however, obtained private Acts of Parliament allowing them to

employ professional accountants, and thus replace the elective auditors entirely, or allow the duties of the latter to be merely nominal.

Bottomry Bond.—A type of mortgage of a *ship* by which her keel (or bottom) is pledged for the repayment of a sum of money. The repayment depends upon the safe return of the ship.

When the loan is secured upon the *cargo* the contract is known as *respondentia*.

Bought Note.—A broker records his transactions in his Contract Book, and sends a transcript of the entry of each transaction to his particular principal. If it is a purchase he has made, the transcript is a bought note; if a sale, it is a sold note. (*See* Contract Note.)

Bounty.—A premium paid to producers, or exporters of certain goods, with a view of encouraging and developing an industry, when considered of importance to the country. Sometimes one country importing the "bounty fed" produce of another country levies import duties upon such produce in an attempt to counteract the effect of the bounty upon prices in the importing country. Such import duties are sometimes called "countervailing duties."

Branch Banks.—Branch banks are regarded as mere agencies of a single bank, and not as distinct banks. Thus a bank, in the absence of special agreement, may consolidate the accounts of a customer who has balances to his credit in certain branches and balances against him in others. The accounts so consolidated must, however, be in the same right, *e.g.*, the banker cannot combine a Personal Account with one which he is aware is a Trust Account.

The right of consolidation does not apply in *favour* of the customer without the bank's consent; therefore, if a customer without consent draws upon a branch bank where he has no account, the bank is justified in dishonouring the cheque, although there are funds at another branch of the same bank.

Branch banks are treated as separate banks for the purpose of calculating the time within which notice of dishonour of a bill of exchange must be given.

The auditor of every company is entitled to have delivered to him and he shall have access to all books and accounts of the company, so that he may examine them; but with regard to *banking* companies registered after 15th August 1879 having branches beyond the limits of Europe, it is to be deemed sufficient if the auditor is allowed access to such copies of, and extracts from, the books and accounts of such branches as may have been transmitted to the head office of the banking company in the United Kingdom. (Companies Act 1908, section 113.)

Branch Establishments, Accounts of.—The main points to be kept in view when devising a system of accounts for branch establishments are those which will ensure:—

Control and supervision by head office.

Separate results of the trading of each branch.

Facility of centralising and comparing such separate results.

In order to keep each branch under the control of those in authority, a thorough system of statistical periodical report should be instituted, including such matters as the following (varying according to circumstances):—

(*a*) Orders received and having attention.

(*b*) Orders on hand, but not commenced (in case more workmen are required).

(*c*) Goods required from headquarters.

(*d*) Special goods required by the branch, not stocked at headquarters.

(*e*) Schedule of accounts due for payment.

(*f*) Schedule of debts overdue.

(*g*) Complaints from customers.

(*h*) Rough idea of stocks on hand.

&c. &c.

With regard to the financial requirements, as distinct from the statistical, branch establishments may be divided into two classes.

(1) Small establishments making only periodical returns to the head office, from which returns the books of account are compiled. These returns should include a Daily Statement of the gross cash taken, the expenses in detail, small purchases (if any) and the net cash, &c. The cash balances should be paid as often as possible either direct to head office, or to the local banking account for transmission to head office. Book debts are "returned" at each stocktaking similarly to stock-in-trade.

As to the check upon stocks, this may be effected either by a Stock Register (see that title) or by a comparison of the respective percentages of gross profit (*see* Percentage) realised from time to time:—

(*a*) With the past results of the particular branch for the corresponding periods of previous years; and,

(*b*) With the past and present results of similar branches.

(2) Important branches keeping an independent set of books, which are periodically balanced, and of which only the *final results* are transmitted to head office. These final results will be sent in the form of a Trial Balance divided into two sections—viz., General section, consisting of Sundry Creditors and Debtors, apportionments of Rates and other periodical payments, Cash and Bank Balances, &c., the balance of these items agreeing with the balance of the Private Ledger section, which will contain the balances of the Impersonal and Private Accounts, and of the accounts with other branches, from which particulars, together with the valuation of Stock-on-hand, the head office accountant can prepare the Trading and Profit and Loss Accounts for the particular branches, and incorporate the results in the head office accounts.

Each branch must keep a careful account of all goods supplied to and received from either head office or the other branches, and also of cash transactions therewith. At balancing time the total of the head office and various branch credits should equal the total of the head office and branch debits, and when the balances of all these cross accounts are transferred at the end of the trading period to the head office books they can be entered in the form of a Reconciliation Account, both sides of which will agree, thus eliminating the balances after they have served their purpose—viz., the preparation of distinct Trading Accounts for each establishment.

Head office expenses are sometimes apportioned over the various branches either in proportion to the trade done or on some other basis, according to the special circumstances of the particular business.

In the consolidated Balance Sheet the assets and liabilities should be set out under their respective headings; the method sometimes adopted of inserting only head office assets and liabilities and recording the branch figures as "Balance due to *or* from" the various branches is inaccurate.

Breach of Trust.—A violation of duty by a trustee or other person in a fiduciary position. The act amounts to a misdemeanour, and may subject the defaulter to fine and imprisonment. Where a *cestui que trust* (not being under a disability) has concurred in, or confirmed, any act amounting to a breach of trust, or has released the trustee from the consequences thereof, he *may* thereby have barred any remedy which might otherwise have been enforced against the trustee in respect of the breach, provided the *cestui que trust* acts with full knowledge of all the facts of the case.

The Trustee Act 1893 provides that where a breach of trust has been committed at the instigation or request (which need not be in writing), or with the written consent of the beneficiary, the Court may, even in the case of a married woman restrained from alienation, impound the interest of such beneficiary by way of indemnity to the trustee.

In ordinary circumstances, however, the remedies of a *cestui que trust* upon a breach of trust are:—

(1) A right of action against the trustee. The personal liability of trustees is joint and several, and the breach of trust constitutes a simple contract debt. The claim is provable in bankruptcy, but a bankrupt trustee is released from further liability for the breach on obtaining his discharge, unless the breach be of a fraudulent character. Where the trustee has not been guilty of fraud, the action must be brought within six years from the breach, for in such a case the trustee may claim the benefit of the Statute of Limitation as though he had not been a trustee.

(2) A right of following the trust estate into the hands of any alienee, except a *bonâ fide* purchaser for value having the legal estate before notice of the trust.

Where a trustee has committed a breach of trust, and before his bankruptcy makes good the breach out of his own property, the trustee in the bankruptcy cannot recover the property under section 48 of the Bankruptcy Act of 1883, for it has been decided that such an act does not amount to a fraudulent preference, but an endeavour by the bankrupt to cover up his wrong and so prevent proceedings being taken against him. (*New's Trustee v. Hunting*, 1897.)

(3) A right of following the property into which the trust fund has been converted so long as it can be traced.

Where the trustee mixes the trust funds with his own moneys, and the trust funds are still in his hands, the *cestui que trust* is entitled to all moneys in the trustee's possession which he cannot prove to be his own. The rule in *Clayton's* case as to appropriation of payments (see that title) does not apply in this instance, the trustee being deemed to have drawn upon his own moneys first, irrespective of dates.

(4) A right of impounding any beneficial *equitable* interest, to which the trustee committing the breach is entitled under the trust instrument.

(5) A right to claim interest. The rate is usually 4 per cent., but it will be at a *greater* rate (*a*) where the trustee ought to have received more; (*b*) where he has actually received more; (*c*) where he is presumed to have received more (*e.g.*, where the trustee has traded with the trust funds he will not only be liable for the funds, but also interest with yearly rests (*i.e.*, compound), or the actual trading profits at the option of the *cestui que trust*); (*d*) where the trustee has been guilty of direct breaches of trust or *gross* misconduct. (Snell's *Equity*.)

Where a member of a partnership being a trustee makes improper use of trust moneys in the business, or on account of the partnership, no other partner is liable therefor to the persons beneficially interested, provided he was not aware of the breach of trust; but the trust money can be recovered if still in the possession of the firm or under its control. (Partnership Act 1890, section 13.)

The Judicial Trustees Act 1896 (see that title) provides that if it appears to the Court that a trustee, whether appointed under that Act or not, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of that Act, but has acted *honestly and reasonably* and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve the trustee either wholly or partly from personal liability for the same.

If in any proceeding against a director of a company for negligence or breach of trust it appears to the Court that the director 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. (Companies Act 1908, section 279.)

Break-up Value.—The ultimate *selling* value of a specified thing when worn out or superseded; for instance, the "scrap iron" value of an old machine. This is one of the factors in determining the rate of depreciation to be adopted in respect of an asset. (*See* Depreciation.)

British Ship.—One that has been registered as such, and is owned wholly by those entitled by law to hold a British ship, viz.:—(1) Natural born British subjects who have never taken an oath of allegiance to a foreign Government, or, having done so, have taken a subsequent oath to the British Sovereign, and whilst owners remain resident in the King's dominions, or are partners of a firm carrying on business therein. (2) Naturalised persons, or denizens by letters of denization who have taken the oath subsequently to naturalisation, and are resident as above. (3) Bodies corporate established under, and subject to the laws of, and having their principal place of business in, the United Kingdom or a British possession. With certain exceptions every British ship must be registered. The property in a British ship is divided into sixty-four shares, and no more than sixty-four persons may be registered at the same time as owners of one ship, but any share may be held in joint ownership, and the joint owners not exceeding five in number may be registered and shall be considered as constituting one person, and any number of persons may have a beneficial title in a single share or number of shares, the registered holder representing such persons; a corporation or company may hold a share or the whole of the sixty-four shares (*e.g.*, a single-ship company), the members of the corporation or company holding *shares in the capital of the corporation or company* and not in the ship. No person may be registered as owner of a fractional part of a share. All the necessary particulars as to the ship and its owners must be given to the Registrar, who enters them in the "Register Book," and issues a "Certificate of Registry" containing the details entered in the Register Book. The Register may be inspected by any person upon payment of a fee not exceeding one shilling. (*See* Bill of Sale (Shipping), Co-owners, Mortgage of a Ship, Port of Registry.)

Broker.—"An agent employed to make bargains "and contracts in matters of trade, commerce, or "navigation between other parties for a com-"pensation commonly called brokerage."

Brokers are distinguishable from factors, in that factors have the possession of the subject matter of the contract, whilst brokers have not; further, a broker cannot sue or act in his own name, whilst a factor can. Having no possession of the subject matter, a broker consequently has no right of lien, but there are exceptions in the case of an insurance broker who, generally speaking, has a lien on the policy for his general balance.

A broker is generally not liable on the contract if it be made known that he contracts as a broker.

Unless otherwise agreed, however, a marine insurance broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the insured for the amount which may be payable in respect of losses, or in respect of returnable premium. (Marine Insurance Act 1906, section 53.) (*See* Agent, Factor, Jobbers.)

Brokerage.—The remuneration of a broker for negotiating the purchase or sale of certain goods, stocks, shares, &c., generally by way of a commission or percentage of the price of the subject matter. In particular the remuneration payable to a shipbroker, usually by way of percentage of the freight, for securing a charter for a ship.

Although section 89 of the Companies Act 1908 restricts the payment of commissions, and prohibits the application by a company of its shares by way of commissions for subscribing or agreeing to subscribe or procuring subscriptions for shares in such company, the power to pay such *brokerages* as are lawful is expressly reserved to a company. (*See title* Underwriter.)

Bucket Shop.—A slang term applied to the offices of outside brokers—that is, men who are not members of the Stock Exchange.

Building Lease.—A lease of land for a long term of years at a ground rent, the lessee agreeing to erect and maintain during the term certain edifices which are to revert with the land to the lessor at the end of the term. (*See titles* Reversion, Reversion Duty.)

Building Societies.—The secretary or other officer of every building society under the Building Societies Acts (1874 to 1894) must, once in every year at least, prepare an account of all the receipts and expenditure of the society since the preceding statement, and a general statement of its funds and effects, liabilities and assets, showing the amounts due to the holders of the various classes of shares respectively, to depositors and creditors for loans, and also the balance due or outstanding on their mortgage securities (not including prospective interest), and the amount invested in the funds or other securities. Every such annual account and statement must be made up to the end of the official year to which it relates, and must be in the form prescribed for general use by the Chief Registrar of Friendly Societies. In particular the statement must give full information with regard to the mortgages to the society, distinguishing between:—

(1) Mortgages upon each of which the debt does not exceed £5,000 (not being mortgages included under (3) and (4) below).—Grouped in classes as regards amount.

(2) Mortgages where the repayments are not upwards of 12 months in arrear, and the property has not been upwards of 12 months in possession of the society, and where the debt exceeds £5,000.—Set out in detail.

(3) Mortgages of property of which the society has been upwards of 12 months in possession.—Set out in detail.

(4) Mortgages where the repayments are upwards of 12 months in arrear, and the property has not been upwards of 12 months in possession of the society.—Set out in detail.

The annual account and statement must be examined by auditors. Notwithstanding anything in the rules of any society, one at least of the auditors of the society shall be a person who publicly carries on the business of an accountant. The auditors in attesting the accounts are required either to certify that the "account and statement" is correct, duly vouched, and in accordance with the law, or to report to the society in what respect they find it incorrect, unvouched, or not in accordance with the law. In addition, the mortgage deeds and other securities belonging to the society must be produced to the auditors, and they must certify, when certifying the accounts, that they have at that audit actually inspected such deeds and other securities, stating the number of properties the deeds with respect to which they have actually inspected.

Every member, depositor and creditor for loans is entitled to receive a copy of the annual account and statement from the society, and a copy must be sent to the Chief Registrar of Friendly Societies within fourteen days after the general meeting at which it is presented, or within three months after the expiration of the official year of the society, whichever period expires first. (Building Societies Acts: 1874, section 40, and 1894, sections 2 and 3.)

Bull and Bear.—A *bull* is a speculator who buys stock with a view of selling the same at some future date at a *higher* price, and thus profiting by the difference, whilst a *bear* is a speculator who hopes to benefit by the reverse operation, *i.e.*, by selling stock of which he is not possessed, but which he expects to be able to buy at a *lower* price at a future date.

In view of the confusion often experienced in distinguishing between these two terms, one of the suggested origins of the terms may assist materially in this direction, viz.:—

A "bull" is called so because he speculates for a *rise*, and a bull's natural method of attack is to *toss up* with its horns.

A "bear" is called so because he speculates for a *fall*, and a bear is inclined to *press down* its adversary with its paws.

By-Products.—*See* Residual Products.

C

Cable Transfers.—*See* Telegraphic Transfers.

Calendar Month.—In all Acts of Parliament since 1850 the term month means calendar month.

If four bills of exchange were drawn at two months' date on the 28th, 29th, 30th, and 31st December 1897 respectively, they would all have become due and payable on the 3rd March 1898, allowing the days of grace. So if a bill had been drawn on 28th February 1899 at three months' date, it would have become due and payable on the 31st May following.

Call Book.—A book recording all "calls" made at an establishment, stating the name of caller, date and time, and person attending thereto. It is principally used in professional offices.

Calls.—Instalments of the share capital or debentures of a joint stock company which the members or holders are from time to time called upon to pay.

The procedure for making calls on shares is regulated by the articles of association, although, as regards the first issue, the prospectus of a company often provides for the payment of the whole of the moneys due under the shares and specifies the due dates of payment.

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. (Companies (Consolidation) Act 1908, section 39.)

Every call made becomes a debt due to the company and is of the nature of a specialty (1908 Act, section 14), for which the company can sue within twenty years. The regulations of the company usually provide for the payment of interest upon calls in arrear, or, in extreme cases, subject to the prescribed procedure, the forfeiture of the shares in default.

(*See title* Interest on Moneys in advance of Calls.)

Compulsory Liquidation.

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.

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. (1908 Act, section 166.)

The Rules prescribe the circumstances and conditions under which the liquidator as an officer of the Court, and subject to the control of the Court, and with either the special leave of the Court or the sanction of the committee of inspection, may make calls, viz.:—

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.

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.

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.

The sanction of the committee shall be given by resolution, which shall be passed by a majority of the members present.

Where there is no committee of inspection the liquidator shall not make a call without obtaining the leave of the Court. (Rule 83.)

An application to the Court for leave to make any call on the contributories, or any of them, for any purpose authorised by the Act, 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. (Rule 84.)

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 Form 58, with such variations as circumstances may require, making the call. (Rule 85.)

When, in pursuance of a resolution of the committee of inspection, or an order of the Court, a call has been made by the liquidator, a copy of the resolution or order 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. (Rule 86.)

Various powers with reference to the enforcement of the payment of calls are conferred upon the Court by the Companies Act 1908, sections 165 *et seq.*

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. (Rule 87.) (*See title* Balance Order.)

A liquidator in compulsory winding-up may, with the sanction of the Court or of the committee of inspection, compromise all calls and liability to calls. (1908 Act, section 214.)

Winding-up under Supervision.

For the purposes of making and enforcing calls, an order for a winding-up subject to the supervision of the Court shall be deemed to be an order for winding-up by the Court. (1908 Act, section 203.)

Voluntary Liquidation.

Where a company is being wound up voluntarily the liquidator may from time to time exercise the powers of the Court of settling the list of contributories and may make such calls as he may deem necessary to pay the debts and liabilities of the company, and the costs of winding-up the company, and for the adjustment of the rights of the contributories between themselves (1908 Act, section 186), and the liquidator may, in making a call, take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the same.

The liquidator should make a call by an instrument in writing, but no special formalities are to be complied with.

The liquidator in voluntary liquidation settles the list of contributories, but the list is only *primâ facie* evidence of the liability of the persons named therein (1908 Act, section 186), therefore if any calls be not duly paid in a voluntary winding-up, payment must be enforced either by action brought by the liquidator in the name of the company against the defaulting contributories, or by proceeding under section 193 of the 1908 Act, which gives power to (voluntary) liquidators to apply to the Court in respect to the enforcing of calls and other matters whereon the Court may exercise any powers which it might have done in case the company were being wound up by the Court. This latter procedure is considered the better to adopt.

A voluntary liquidator may, with the sanction of an extraordinary resolution of the company, compromise calls and liability to calls. (1908 Act, section 214.)

DEBENTURES.

A contract with a company to take up and pay for debentures may be enforced by an order for specific performance. (Companies Act 1908, section 105.)

Cambist.—One skilled in the values of foreign coins, weights and measures, and the exchanges in connection with same. A trader and dealer in promissory notes and bills of exchange.

Cancellation of "Scrip."—When a share certificate is lodged with an instrument of transfer in respect of the whole or part of the shares comprised in the certificate, it is necessary to cancel such certificate when issuing a new certificate to the transferee for his shares, and another to the transferor called the "balance scrip," for the shares (if any) retained by him. A company incurs a serious responsibility in issuing new certificates, except in exchange for the old ones, which latter should be immediately cancelled. This is usually done by a cross-cut through the certificate, cancelling the seal and signatures of the directors.

Sometimes a certificate is issued in pursuance of the regulations of the company, in place of one which has been lost or destroyed; but under such circumstances a satisfactory indemnity should be required.

The cancelled certificate or the indemnity (as the case may be) should be retained for production to the company's auditor upon request.

Cancellation of Vouchers.—The marking or defacing of a voucher for payment, or any other matter, *e.g.*, by the initial of the person examining same, so that he may not only know which vouchers he has examined, but also prevent the same from being fraudulently presented a second time. If due care is exercised in examining and comparing the *dates* of the various vouchers, the danger of a second presentation is further guarded against.

Capacity.—"Capacity must be distinguished from "authority. Capacity means power to contract "so as to bind oneself. Authority means power "to contract on behalf of another, so as to bind "him. Capacity to contract is the creation of "law. Authority is derived from the act of the "parties themselves. Want of capacity is "incurable; want of authority may be cured by "ratification. Capacity or no capacity is a ques- "tion of law; authority or no authority is usually "a question of fact." [Chalmers.]

Capital.—

A. *Economic.*

That part of a person's possessions which he constitutes as his fund for the purpose of reproduction. The question whether a fund is or is not capital does not depend upon the *class* of commodities which constitute the fund, but solely upon the *intention* of the capitalist; for, however ill-adapted the property in question may be for the particular object, it is none the less capital so soon as it is set apart for reproductive purposes.

Some economists divide capital into fixed and circulating, and also into positive and negative.

Fixed Capital is wealth expended upon land, buildings, factories, canals, railways, docks, and such like things which are not intended to be

sold, but to be retained to produce additional wealth. Although called fixed capital it is not absolutely so, but only as compared with circulating capital; for " wear and tear " and depreciation are inevitable, necessitating ultimate replacement, notwithstanding constant repair during the " life " of the particular property.

Circulating Capital is wealth used in the production of commodities, the character of which is changed by a single use, such as (*a*) raw materials, and (*b*) cash for the payment of wages, collectively used to produce a manufactured article. The term " circulating " is derived from the circumstance that this portion of capital is in constant circulation.

Cash is employed in the purchase of stock-in-trade; when sold again takes the form of a book debt, the ultimate collection of which restores the capital (generally with a profit) to its original form of cash ready for further circulation. Thus cash, stock-in-trade, and book debts are instances of circulating (sometimes called floating) capital.

Again, machinery is the stock-in-trade (the circulating capital) of its manufacturer, and becomes the fixed capital of the person who acquires it for reproductive purposes.

Positive Capital is represented by money, land, buildings, stock-in-trade, and all material objects, whilst *Negative Capital* is composed of credit, such as the right to demand payment of a debt.

B. Commercial.

It may be said that the *whole* of the property and assets of an undertaking constitutes its capital irrespective of the existing liabilities; for if it be absolutely necessary to possess the whole of such property and assets to allow of the business being carried on profitably, then it follows that if credit were not obtainable (to the extent of the liabilities referred to) the proprietor would need to increase *his* investment in the business to the extent of those liabilities. In such a case, a statement showing the proprietor's financial position would be a mere schedule of property and assets, the total thereof being the proprietor's capital in the business. But the question as to what *constitutes* capital does not depend upon and vary with the extent of the credit obtainable by respective proprietors, hence: (1) The *capital of a concern* is the total amount of the property and assets employed therein, contributed partly by the proprietor and partly by those who have chosen to give him credit; and (2) the capital of the *proprietor in that concern* is the surplus of the property and assets over the liabilities to third parties.

C. Legal.

(1) *Administration.*—Where property is given to one for life or other limited period, *e.g.*, widowhood, and remainder to another, the " tenant-for-life " is entitled to the income from such property, and the " remainderman " to the *corpus* or capital. The capital may be either a specific sum of money, an investment, or (say) the residuary estate of the testator. In the administration of the trust great care is necessary to distinguish between capital and income so that the original fund may be kept intact. The distinction depends largely upon the circumstances of each case, instances of which are dealt with under the titles "Apportionment" and "Executorship Accounts."

(2) *Joint Stock Companies.*

(*a*) *Authorised Capital, Nominal Capital, Registered Capital.*—These are synonymous terms, being the amount of capital which a company is authorised to issue, or with which it is registered, as the case may be.

Companies registered under the Act of 1908 must pay a registration fee based by scale according to the amount of the capital (or number of members when the capital is not divided into shares), and in addition an *ad valorem* stamp duty of 5s. for every £100 or fraction thereof of the registered capital.

(*b*) *Issued Capital, Subscribed Capital.*—Capital which has been issued, subscribed for, and allotted to holders of shares or stock.

(*c*) *Unissued Capital.*—Authorised capital which has not been issued; that is to say, which has not been subscribed or agreed to be subscribed for by any person.

(*d*) *Paid-up Capital.*—That portion of the issued capital which has either been paid up in cash, or is considered to have been paid up. (*See* Registered Contract in respect of Shares.)

(*e*) *Uncalled Capital.*—The unpaid portion of the subscribed capital which the holders have not been formally called upon to contribute, but in respect and to the extent of which they remain liable.

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 of, and for the purposes of, the company being wound up, and thereupon that portion of capital shall not be capable of being called up, except in the event and for the purposes aforesaid. (Companies Act 1908, section 59.)

A resolution to the above effect amounts to an alteration of the memorandum of association, and it would appear that the alteration cannot be recalled by a subsequent special resolution.

Where directors are empowered either expressly or by *necessary* implication to borrow upon the security of the future calls (that is, the uncalled capital) they may do so, but in the absence of such power it would be *ultra vires* to charge the uncalled capital. The articles of association sometimes give the directors power to authorise the mortgagee to make the calls upon the members so that he may be better secured.

But where a company has passed a resolution in pursuance of section 59 of the Act of 1908 (*supra*) appropriating any portion of its uncalled capital for the purposes of winding-up the portion so appropriated cannot be mortgaged. (*Bartlett v. Mayfair Co.*, 1898.)

Legally, it is only the share capital which is considered as *the* capital of a company, and the holders of such shares (or stock) are members of the company. Although money raised by (1) mortgage, (2) debentures, or (3) other forms of loan, is capital from a commercial point of view, and is often referred to as *Loan Capital*, it must be carefully distinguished from the share capital, as the mortgagees or lenders are obviously creditors and not members of the company.

The Companies Act 1908, section 65, expressly requires a company to include in its abstract of receipts an account of its capital (part of the prescribed information to be issued in the statutory report for the first meeting of shareholders) moneys received from debentures as well as from shares.

The capital of a registered company or of other corporations differs from that of the proprietors of an ordinary partnership concern, for whilst (say) the accumulating losses of the latter will affect the amount of capital from time to time this is not the case with a corporation, the original capital being, by a legal fiction, deemed to exist until formally reduced by statutory methods. (*See also title* Double Account System.

That the capital of a corporation is in point of law something distinct from either the commercial or economic view of the term may be seen from the following extracts:—

(1) The Companies Act 1908 confers power on a company (subject to certain procedure being followed) to reduce its capital by way (*inter alia*) of cancelling capital which is lost or unrepresented by available assets. (Section 46.)

Here the Legislature recognises the technical existence of capital and confers power and provides formalities whereby a company may cancel such capital, although in so far as the same has already been lost, or is admittedly unrepresented by available assets, it is *ipso facto* non-existent.

(2) It is quite obvious that with respect to such a property as a mine or mineral deposit every ton of stuff got out of that which was bought with capital represented a portion of capital. It was said that the division of the profit arising from the sale of such was a returning of capital. If that was so, it was not at all events such a return of capital as is prohibited by the Companies Acts. . . . The notion that the company is debtor to its capital may be convenient from an accountant's point of view, but it has nothing to do with law.

If a company is formed to acquire or work a property of a wasting nature (*e.g.*, a mine, quarry, or patent), the capital expended in acquiring the property may be regarded as sunk and gone, and if the company retains assets sufficient to pay its debts, any excess of money obtained by working the property over the cost of working it may be divided among the shareholders, and this is true although some portion of the property itself is sold, and in *one sense* the capital is thereby diminished. (Lindley, L.J., *Lee v. Neuchâtel Co.*)

For Increase, Reduction, and other alterations of Capital see "Memorandum of Association," "Registered Capital," and "Reserve Liability."

The following notes as to verification of share capital may be found of assistance to the auditor of a joint-stock company:—

(1) At the first audit of the accounts of a company and at each succeeding audit until the full amount of authorised capital has been issued and paid up:—

(*a*) Compare amount issued with memorandum of association, and resolutions altering the capital (if any).

(*b*) Check Application and Allotment Forms and Bank Pass Book with Application and Allotment Book.

(*c*) Check entries from Application, &c., Book into Register of Members, Journal, and Cash Book, and postings into Ledger.

(*d*) Repeat same operations with regard to each call.

(*e*) Check allotments and calls made with the Minute Book, and see that any special provisions contained in prospectus are complied with.

(*f*) See that Statutory Return of Allotments has been duly filed with the Registrar of Joint Stock Companies.

(*g*) If allotment is for consideration other than cash, examine a copy of each contract in connection therewith, and see that the original contract or the prescribed particulars have been filed.

(*h*) Take out balances shown by Register of Members, and agree with Share Capital Account in books of account.

(*i*) Compare Register of Members with Share Certificate Book and Register of Transfers.

(*j*) Check Register of Transfers with Transfer Deeds.

(2) At audits after the full amount of authorised capital has been issued and paid up it will only be necessary to apply tests (*a*), (*h*), (*i*), (*j*) (above), but special care should be directed to the Share Certificate Book. The issue of every new certificate should be substantiated by the production of the old certificate (or certificates) in the case of transfers, and by the production of a proper indemnity where the old certificate is alleged to have been lost.

Capital Expenditure.—An exchange of one property for another; a payment of cash or the creation of a liability for an equivalent value of real estate, machinery, merchandise, &c. In its more restricted sense the term implies the expenditure of the capital receipts of a company or other body upon the construction of a particular work, *e.g.*, a railway.

Capital Receipts.—These are in the nature of contributions from shareholders and debentureholders, &c., in the case of a joint stock company, although moneys raised on loan are not (legally) capital. The term is, however, of general application, distinguishing cash received on account of capital from receipts on account of income.

For the purposes of the account required for the statutory report to be issued in connection with the first (statutory) meeting of a company, receipts on account of capital are expressly required to include receipts from an issue of debentures. (Companies (Consolidation) Act 1908, section 65.)

Card Ledgers.—*See* Slip Bookkeeping.

Carriage and Cartage.—Payments made by a trader for the transport of goods by rail and road respectively. Such expenditure may be divided into "Inward" and "Outward," the former being treated as part of the "purchase price" of the goods, whilst the latter forms part of the cost of distribution. The reason for this distinction is based upon the assumption that if the goods were purchased "carriage paid" or "delivered" the price of same would be increased to the extent of the cost of transport. This argument would appear to apply equally to a sale, as more would be obtained for goods to be delivered by the seller than under an arrangement requiring the buyer to pay the cost of transit, but it is usual to charge "carriage inward" to the Trading Account, and treat "carriage outward" as an item of expense in the Profit and Loss Account. Some persons, however, deduct "carriage outward" from the total value of the sales.

In some trades it is customary for the seller to deliver all goods, for which he is entitled to make a small charge. Such "recovered carriage" should be carefully distinguished in the Sales Book from the price of the goods themselves, so that the total amount recovered may be credited to the "Carriage and Cartage Account," and information be thus obtained as to whether the transport department "pays its way." All payments to railway companies and other carriers, stable expenses, wages of carters and porters, are types of expense of transport, and it is often important to know to what extent the "carriage recovered" reduces such expenditure.

Carrier.—A common carrier is one who undertakes to carry for hire from place to place the goods of anyone who may employ him. A person who carries passengers only is not a common carrier.

Duties.—He must carry all goods delivered to him, provided:—

(1) They are of the class he usually carries.

(2) The consignor is prepared to pay the charge or hire; and,

(3) There is room in the carriage.

The goods should be carried by the ordinary route (not necessarily the shortest) without undue delay.

Liabilities.—Prior to the passing of the Carriers Act 1830 common carriers were liable for every loss or injury to the goods they carried, however much such loss or injury might involve, and whether the carrier knew or not of the valuable character of the goods, *unless* the loss or injury was caused by

(1) The act of God,

(2) The King's enemies,

(3) The consignor's neglect (wholly), or

(4) The inherent vice or defect of the subject-matter of carriage.

The Act of 1830 provides that no common land carrier for hire is to be liable for loss of, or injury to, any article or articles or property of the descriptions following, viz.:—

Gold, silver, precious stones, jewellery, watches, clocks, bills and other securities for money, maps, paintings, writings, title-deeds, glass, china, silks, and such like valuables, contained in a parcel and delivered to him to be carried for hire, or to accompany the person of any passenger, when the value of the property exceeds the sum of £10, unless at the time of the delivery thereof to the carrier the value and nature of the property be expressly declared by the consignor and an increased rate of charge be accepted by the carrier.

The Act requires the carrier to exhibit a public notice in some conspicuous part of his office stating the increased rate of charge to be paid as compensation for the greater risk and care to be taken of the goods. If the carrier does not exhibit such notice he is not entitled to the benefits of the Act.

Prior to the Act carriers endeavoured to limit their liability by exhibiting a public notice to the effect that they would not be responsible beyond a stated sum, but section 4 provides that no land carrier shall limit his liability by *public notices*, except to the extent provided by the Act in respect of valuables exceeding £10 in value. Section 6, however, allows carriers to make a special contract (limiting their liability) with each person delivering goods. This latter privilege was largely availed of by means of printed conditions and limitations on the *back* of the receipt tickets, which were, in all probability, not noticed by the consignor; and although all carriers other than railway companies and canal companies may still limit their liability in this way, the latter classes of carriers cannot avoid responsibility without complying with the Railway and Canal Traffic Act 1854, which provides (1) that public notices limiting their responsibility are ineffectual, and (2) that special contracts may be made with a view of restricting liability, provided that

(*a*) The contract be signed by the person delivering the goods, and

(*b*) The contract contains conditions which are just and reasonable in the opinion of the Judge before whom any question relating thereto is tried.

The various points in connection with sea-carriage are dealt with in their appropriate places.

Carry-over.—*See* Settling Days.

Case of Need.—*See* Reference in case of need.

Cash.—In its strict sense, the term "cash" is applied to coined money, but Bank of England notes are now treated as cash, being legal tender in England and Wales for sums of £5 and over. In its widest sense *cash* may be said to mean money, banknotes, cheques and bills payable on demand.

Cash Account.—An account of the receipts and payments of the party rendering such account. An account in the Ledger showing the cash transactions (in aggregate) where the Cash Book totals are posted (but *see title* Cash Book).

Cash Book.—The book wherein all receipts and payments of cash are recorded. Some advocate the entering of the bills (receivable and payable) through the Cash Book, but the better opinion is that it is more correct to pass them through the Journal or Bill Books.

Cash Books are devised at the present time with a view of saving labour and facilitating the balancing of the books. In some cases the "Sectional Ledger" system necessitates columns in the Cash Book to correspond with the various Ledgers, whilst in many businesses the receipts or payments, or both, are analysed by means of appropriate columns, the totals only being posted periodically to the Ledger.

The majority of Cash Book "rulings," however, are still restricted to a separate record of cash, bank, and discount transactions.

The audit of a Cash Book is considerably facilitated if each item entered therein, particularly on the payments side, is given a consecutive number in a special column, such number also being placed upon the voucher therefor. Vouchers are thereby more readily placed in order, and are then more easily compared with the respective entries.

Apart from any question of analysis by means of columns, the Cash Book, in a system of book-keeping by double entry, may be said to perform *three* distinct duties, viz.:—

(1) It forms a record of the cash and bank transactions showing the balance of cash in hand and at the bank from time to time.

(2) The entries for a specified period constitute a Journal entry in a convenient form, the receipts being in the form of cash *Dr.* to the sundry persons or accounts from whom, or in respect of which, the cash has been received; the payments being the reverse.

(3) It is unusual to post the totals of the receipts and payments to a Cash Account in the Ledger, the Cash Book itself being generally treated as a Ledger Account, necessitating the inclusion of the Cash Book balances in the Trial Balance of the Ledger.

Thus each and every entry in the Cash Book is (as it were) doubly posted by *one* entry in the Ledger. A receipt is posted to the credit of the payer, and by *adopting* the Cash Book as the Ledger Account, the " corresponding debit " is effected by the already existing entry in the Cash Book. Many students find the " cross post " from the Cash Book difficult to comprehend, but it may be explained as follows:—

A Cash Book contains (say) one month's transactions, and it is required to post such transactions to the Ledger. The operator will say, " I " adopt the Cash Book *en bloc* as my Cash " Account in the Ledger." The theoretical effect of this is that all the receipts (on the debit side of the Cash Book) have been bodily posted to the debit side of the Ledger, and all the payments to the credit side of the Ledger. The operator, then, using his pen for the *first* time, commences to make the " opposite entries " in detail, and, as he naturally obtains such details from the Cash Book, the *actual postings* he makes from that book are the cross postings only.

To verify the amount of cash in hand stated in a Balance Sheet, the auditor should either count the cash on the date to which the accounts are made up, or attend at some later date and check the balance then in hand, vouching back the Cash Book to the earlier date. (*See* Vouching Back.)

Cash Creditor.—One whose claim has arisen out of cash transactions or loans, as distinct from a trade creditor, whose claim arises from trading transactions, such as the delivery of goods, &c. For bankruptcy purposes there is, under ordinary circumstances, no distinction between these two classes, but *see* Postponed Creditors.

Cash Discount.—*See* Discount, Trade Discount.

Cash Order.—An inland draft on demand drawn by one trader on another and (as a rule) passed through a bank for collection. Many banks object to the practice. Cash orders are subject generally to the law of bills of exchange.

Cash Sales.—Sales made for cash payment at the time of sale or delivery. They are sometimes termed " till-takings." (*See that title.*)

Casting Vote.—A vote given by the chairman of an assembly or meeting when the votes of those present for and against a given proposition are equal, so that a decision may be arrived at.

A chairman at common law has no casting vote, so that the privilege must be expressly conferred by the meeting or the regulations governing the same.

In some cases the chairman is not allowed to vote *except* to give a casting vote—that is, when the votes of the other persons present for and against a given proposition are equal, but the articles of association of a company generally confer a casting vote in addition to any vote or votes to which the chairman may be entitled as a member, whether on a show of hands or at a poll.

Catching Bargain.—One made for an inadequate consideration, under such circumstances that the aggrieved party was not in a position to negotiate upon equal terms; such as a purchase from an expectant heir of his expectancy by one having a better knowledge of its real value.

Caveat.—A warning. To " enter a caveat " is to endeavour by legal process to stay some projected act, *e.g.*, to stay the probate of a will, the granting of letters of administration, the issuing of a lunacy commission, &c.

Caveat emptor.—Let a purchaser beware. (*See* Warranty.)

Certificate.—*Share Certificate:* A document which testifies to the ownership of stock or shares in a joint stock company. Ordinarily it is issued under the common seal of the company, and signed by one or more directors, and generally countersigned by the secretary. Section 23 of the Companies Act 1908 provides that 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. But in order to complete the title of the member the purport of the certificate must be recorded in the register of members. This applies only to the member *named* in the certificate, or his legal representative, for the title to the shares, &c., can only be transferred by the registration of an instrument of transfer, whereupon a new certificate is issued to the transferee. A share certificate must be distinguished from a share warrant in this connection. A company may be estopped from denying the truth of what is stated in a share certificate issued by it. Thus, where shares were allotted for a consideration other than cash, and no contract had been filed under section 25 (now repealed) of the Companies Act 1867, the company having issued a certificate stating that the shares were fully-paid was estopped from denying this to a third party who had taken the shares in good faith and for value, on the strength of the company's certificate. (*In re Ottos Kopje Diamond Mines, Lim.*, 1893, 1 Ch. 618.)

Again, if a company by means of a forged transfer purporting to transfer shares from A. to B., is induced to issue a share certificate to B., it will be estopped from denying to C. that B. is, in fact, a shareholder if C., *on the strength of the certificate*, has, in good faith, given value for the shares to B., and the company will therefore be liable to him in damages when A., whose title is not defeated by the registration of the forged transfer, requires the restoration of his name to the register. On the other hand, the company would be entitled to be indemnified by the person presenting the transfer for registration, who impliedly held it out as a genuine document. (*Sheffield Corporation v. Barclay & Co.*, 1905.) The case of a *bonâ fide* certificate, issued in error to a person not in fact entitled to it, on the faith of a forged *transfer*, should, however, be distinguished from the issue of a forged share certificate. The secretary of a company for his private ends fraudulently affixed the company's seal to a certificate and forged the signatures thereto of two of the directors. It was held that a certificate so issued could raise no estoppel against the company; it was a forged document, and consequently a nullity. (*Ruben and Ladenburg v. Great Fingall Consolidated, Lim.*, A.C., 1906.)

Issue of Certificates.

Every company must 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, unless the conditions of issue otherwise provide.

If default is made in complying with the foregoing, the company, and every director, manager, secretary, or other officer knowingly a party to the default, are liable to a fine not exceeding £5 for every day during which the default continues. (Companies Act 1908, section 92.)

In the event of a certificate being lost, a new one will be issued upon a proper indemnity being given by the member and satisfactory explanations as to the non-production of the certificate being offered. Generally, a share certificate contains a statement to the effect that without the production of a certificate no transfer of the shares referred to therein can be registered. But it has been held that, notwithstanding this notice, the company is not compelled to refuse to register a transfer of shares without production of the share certificate for same if satisfied with the explanations for its non-production. In the case in question, the shareholder transferred his shares for value and deposited the share certificate therefor with the transferee. Subsequently he executed a second transfer to another person of the same shares for value, and this transfer was registered on the directors of the company being satisfied as to the reasons given for the non-production of the share certificate. When the first transfer was presented for registration it was refused, and an action was taken against the company for damages. Farwell, J., in giving judgment in favour of the company, held that such a note on a certificate is not notice to all the world to deal with the certificate on the footing of a contract

by the company with the holder for the time being that no transfer will be registered without its production, but rather a warning to the owner of the certificate that he should take every care of the certificate because he cannot compel the company to register a transfer of the shares to which it refers, without its production and surrender. The Court of Appeal reversed the judgment of Farwell, J., but its decision was based on different grounds, and it was found unnecessary to consider the effect of the note on the certificate. (*Rainford v. Keith*, 1904 and 1905.) Mr. Justice Farwell's views as to the effect of the note on the certificate were adopted by Channell, J., in *Guy and others v. Waterlow Bros. & Layton, Lim.* (25 T.L.R. 515). Generally a small fee is charged for a " subsequent " certificate (whether the original be lost, worn out, or otherwise), but the Stock Exchange authorities object to a charge for the *first* certificate, and in practice such a charge is not made. (*See* Auditor, Balance Scrip, Register of Transfers, Scrip, Share Warrants.)

Certificate of Deduction.—A certificate given by the secretary of a company, a mortgagor or a lessee, to the effect that in paying a dividend, mortgage interest, or ground rent respectively, he has deducted income-tax therefrom, so that the amount so deducted may be recovered from the Inland Revenue by the shareholder, mortgagee, or lessor, as the case may be, provided he is not liable to pay the tax.

Certificate of Incorporation.—On the registration of the memorandum of association 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.

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. (Companies (Consolidation) Act 1908, section 16.)

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.

A statutory declaration by a solicitor of the High Court 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. (Section 17.)

It will be observed that section 16 of the Act states that a company on incorporation shall be capable forthwith of exercising all the functions of an incorporated company, but section 87 provides that a company other than a private company shall not commence any business or exercise any borrowing powers until certain formalities have been complied with and a (second) certificate has been obtained entitling the company to commence business.

(*See* Commencement of Business.)

The documents required to be filed with the Registrar of Joint Stock Companies in connection with the issue of a certificate of incorporation and the events which usually ensue are as follow:—

Private Company.

(1) Memorandum of Association.

(2) Articles of Association, containing the provisions required by section 121 of the Act. (*See* Private Company.)

(3) Statement of Nominal Capital for stamp duty purposes.

(4) Declaration of compliance with requirements as to registration by a solicitor engaged in the formation, or a director or secretary named as such in the Articles. (See above.)

(5) Notice of situation of registered office.

(6) Copy of Register of Directors.

(7) Return of Allotments (within one month after allotment of shares), together with the relative contract where any shares are allotted as fully or partly paid up otherwise than in cash. (*See* Allotment.)

(8) Statement as to the amount or rate per cent. of commission payable in connection with subscriptions for shares. (*See* Commission.)

(9) Prescribed particulars of any mortgage or charge. (*See* Register and Registration of Mortgages.)

Public Company.

Any consent to act as a director, and any contract to take and pay for his qualification shares required by section 72 (*see title* Directors), must be signed and filed by the director or proposed director *himself, or by his agent authorised in writing*. The documents to be filed on behalf of the *company* are:—

(1) Memorandum of Association.

(2) Articles of Association (if special articles are adopted).

(3) Statement of Nominal Capital for stamp duty purposes.

(4) Declaration of compliance with requirements as to registration by solicitor, or director, or secretary, &c. (See above.)

(5) List of persons who have consented to be directors. (*See title* Directors.)

(6) Notice of situation of registered office.

(7) Copy of Register of Directors.

(8) Prospectus or statement in lieu of prospectus, as the case may be.

(9) Return of allotments, &c. (See No. 7 under Private Company.)

(10) Statutory Meeting Report. (*See title* Statutory Meeting.)

(11) Prescribed particulars of any mortgage or charge. (*See* Register and Registration of Mortgages.)

(12) Declaration of compliance with conditions precedent to commencement of business, by secretary or director. (*See title* Commencement of business.)

Certified Transfer.—An instrument of transfer, bearing a certificate, generally in the margin, to the effect that the "scrip" in respect of the stock or shares intended to be transferred has been lodged either with the secretary of the company in question or the secretary of the local Stock Exchange, as the case may be.

The certificate affords satisfaction to the buyer, and enables the purchase money to be taken up on delivery of the instrument of transfer.

Cestui que Trust.—A person having the enjoyment of the rents and profits of or other beneficial interest in property, the legal possession of which is vested in a trustee. (*See* Trust.)

Cestui que vie.—The person for whose life an estate is held.

C.F.I. (generally stated C.I.F.). Cost, freight, insurance.—When goods are sold and the price is quoted "c.i.f.," it includes the cost of the goods, the freight and the insurance. (*See* F.O.B.)

Chairman.—The person who presides at a meeting of members, directors, a committee, creditors, or other persons. The chairman of a meeting may be elected by those present from among themselves unless otherwise provided by any regulations governing the particular meeting. For instance, the articles of association of a joint stock company generally provide that the chairman of directors shall be chairman at any meeting of shareholders, whilst the Official Receiver, or his nominee, is *ex officio* chairman of the first meeting of creditors in bankruptcy and the first meetings of creditors and contributories in compulsory winding-up procedure. At common law the power to adjourn a meeting apparently rests with the chairman, but if he improperly vacates the chair the meeting may elect another chairman and proceed. (*See* Casting Vote.)

Champerty.—A bargain between one of the parties to a suit and a third party (otherwise not interested) whereby in consideration of the financial support of the latter towards the costs of the action, the proceeds thereof (if they are successful) are to be divided; such an arrangement is illegal. (*See* Maintenance.)

Charges Account.—The Ledger Account containing particulars of all expenses incurred in connection with carrying on a business. The modern practice, however, is to subdivide the expenditure into convenient classes, so that comparisons of the expenses of different periods may be more readily instituted.

Charges Recoverable.—Payments made by a merchant, agent, or other trader on account of clients or principals in connection with their particular merchandise, such expenditure being recoverable from the clients or principals, as the case may be. Pending recovery, such payments are treated as assets (book debts) in the books of the payer.

Charging Order.—An order of the Court binding the stocks or funds of a judgment debtor with the judgment debt. (*See* Distringas.)

Charterer.—A person who hires or charters a ship for a voyage or a period.

Chartering Broker.—One who obtains charters for ships or finds ships for employment for a commission.

Charter-Party.—An agreement in writing whereby a shipowner engages to provide a ship for a specified voyage or period for the carriage of goods for a sum of money called *freight*.

Amongst other things the agreement generally specifies or provides

(1) The burthen of the ship,

(2) Rate of freight,

(3) That the ship is seaworthy and will be ready to take her cargo on a certain day,

(4) Shall sail when loaded, and

(5) Deliver her cargo at the port of destination,

(6) That the charterer shall load and unload the ship within a certain number of days called *lay* days (*running* days or working days, as the case may be),

(7) Or pay an extra sum per day beyond such days called *demurrage*, and also

(8) Pay the agreed freight.

Note.—The lay days may be fixed either running (*i.e.*, consecutive) days, or only working days, but after the agreed number of days has expired (whether running or working) demurrage is payable upon running days. The converse of demurrage is called "despatch," and sometimes provision is made for an allowance to the charterer of a certain sum per day for all days saved out of the agreed lay days.

A charter-party requires a 6d. stamp.

Chattels.—Goods movable and immovable, except such as are in the nature of freehold or parcel of it. They are either Personal or Real.

Chattels Personal are such as belong immediately to the person of the owner.

Chattels Real are such as do not appertain immediately to the person of the owner, but depend upon some other thing, such as a leasehold of lands.

Checkweigher.—A person appointed by the majority (by ballot) of the persons employed in a coal mine, where they are paid according to the weight of coal raised. His duties are to check the weights of the coal raised, and to see that the miners are properly credited therewith. The miners have to maintain the checkweigher at their own cost.

Cheque.—A bill of exchange drawn on a banker payable on demand. (Bills of Exchange Act 1882, section 73.)

A cheque should be presented to the banker for payment within a reasonable time. (*See* Unpresented Cheques.)

A cheque may be revoked by

(1) Countermand of payment.

(2) *Notice* of the drawer's death. (Section 75.)

(3) Notice of an available act of bankruptcy committed by the drawer.

A cheque is not a good subject of *donatio mortis causâ*, for the donee cannot sue the drawer's executors, not being a holder for value, whilst the banker's authority to pay is revoked by notice of the drawer's death. But see *Re Beaumont* (1902, 1 Ch. 889).

On payment of a cheque by the banker the cheque becomes the property of the drawer, but the banker may retain same as a voucher for the payment. London bankers generally return the paid cheques to the drawer, but in the provinces it is usually necessary to certify as to the accuracy of the Bank Account before taking up the paid cheques should they be required by the drawer as vouchers for his own account.

Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

A cheque requires a penny stamp only, whatever the amount involved, and the stamp may be either impressed or adhesive. When a cheque is made payable to order it requires the indorsement of the payee, but such indorsement, in the event of the amount in the cheque being for £2 or over, is only evidence of payment and not a discharge for the amount paid. To operate as a discharge the indorsement in such a case would need to be over another penny stamp. Some companies and firms provide their own form of cheque, but such designs can only be adopted on receiving the assent of the banker. In the special form of "cheque" used by some firms a form of receipt is attached, which must be duly signed (and stamped if the amount is for £2 or over) before the banker will pay the "cheque." Such a document, however, is not a cheque within the meaning of the Bills of Exchange Act 1882; it is not an unconditional, but a *conditional*, order for the payment of money. At least one consequence of this is that bankers are deprived of the protection afforded by section 82 of the Act. (*Bavins & Sims v. London and South-Western Bank*, 1899.)

In *Landes v. Marcus and Davids* (25 T.L.R. 478) the facts were as follow:—A cheque drawn in favour of the plaintiff was stamped near the top with the words "B. Marcus & Co., Lim." and was signed by the two defendants, "B. Marcus, Director; S. H. Davids, Director; ————, Secretary," the space for the signature of the secretary being left blank. The name of the company did not appear anywhere except at the top of the cheque. It was held that under sections 26 and 55 of the Bills of Exchange Act 1882 the defendants were personally liable on the cheque, not having explicitly stated that they were signing *on behalf of* the company, and the word "director" being descriptive merely.

(*See* Crossed Cheque, Not negotiable, Signature.)

Cheque Book (Counterfoil).—The counterfoils of the cheques drawn upon a banker by any concern are utilised as a check upon the banking account, and in some instances are called over with the "bank entries" by the auditors.

Some concerns take a "press copy" of every cheque they draw, and call the Bank Book over with same, whilst others obtain the "originals" from the bank at the end of each half-year. Yet another plan exists; some Cheque Books are designed so that the cheques are upon alternate leaves, the intervening leaves consisting of plain paper, allowing of a copy of each cheque being taken by means of carbon paper.

A recent system of account keeping makes use of the counterfoils of the cheque book as a posting medium, whence the items are transferred direct to the Ledger.

Chief Rents.—Annual payments arising out of a charge upon freehold lands. (*See* Ground Rent.)

Chose in Action, Chose in Suspense, or Thing in Action.—Personal property of an incorporeal nature whereof a person has not the actual or constructive enjoyment, but merely a right to recover it by action at law, as in the case of a debt.

Choses in action were formerly not assignable at common law, it being considered that such a course would tend to increase litigation; but assignments of equitable choses in action for valuable consideration have always been enforced in equity.

The chief exceptions to the common law rule were:—

(1) Negotiable instruments (formerly by the law merchant, but now by the Bills of Exchange Act 1882).

(2) Where the debtor assented to the transfer of the debt.

(3) Bills of lading.

(4) Policies of life and marine insurance.

But now the Judicature Act 1873 provides that any *absolute* assignment (*a*) in writing, under the hand of the *assignor* of *any* debt or other legal chose in action, of which (*b*) express notice has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to claim such debt, is effectual in law to pass the legal right, and all remedies in respect of such chose in action, but *subject to all equities—e.g.*, set-off—that would have availed against the assignor.

Notice of the assignment is necessary to prevent (1) the debtor paying the assignor, or (2) a subsequent assignee obtaining priority by notice.

Notice further operates to take debts due to an assignor, in the course of his trade or business, out of his order and disposition in the event of his bankruptcy, and in the case of legal choses in action enables the assignee to sue in his own name.

A person may validly assign all or any of the book debts due and owing, or which during the currency of a given period may *become* due and owing to him, provided that in order to give the assignee of a *future* chose in action a right to the same it must, upon coming into existence, answer the description in the assignment—that is to say, it must be capable of being identified as that which it was *intended* should be so assigned. (*Tailby v. Official Receiver*, 1888, 13 App. Cas. 523.) (*See* Book Debts.)

Chose in Possession.—That which a person not only has the right to enjoy, but of which he has also the actual enjoyment.

C.I.F.—*See* C.F.I.

Circular Letter of Credit.—A letter addressed to several bankers or merchants residing in different places, for the accommodation of a person travelling. A person about to visit several distant places, and requiring a large sum at certain of the principal cities or towns, may purchase a letter of credit before departing. The issuer of the letter advises his various correspondents and supplies them with a specimen of the holder's signature. The holder may then present his letter at the various places and obtain such moneys as he may require, within the limits provided for. The advances are duly noted upon the letter of credit at each place, and on the holder's return he may recover such moneys from the issuer as may still be to his credit. This system relieves a traveller of the necessity of carrying large sums of money about with him.

Circulating Capital.—*See* Capital, Fixed Capital, Floating Capital.

Citation.—A summons to appear; where a party has a prior right to administration of a deceased person's estate, he must generally be cited or consent before the Court will grant administration to another.

The Court may also cite before it all persons named or demonstrated as executors in a will, to the intent that they may either prove or refuse to prove such will.

So where a person named executor has once elected to act or has acted as such, and afterwards attempts to renounce his office, the Court will cite him to take probate, and his disobedience will be a contempt.

Clean Bill of Lading.—One stating that the goods therein referred to have been shipped in good order and condition, rendering the master liable to deliver in such condition. This liability is usually avoided by inserting the words, "*weight, contents, and value unknown.*"

Clearance.—*See title* Clearing a Vessel.

Clear Days.—If a given number of days must be *clear days*, the day the notice is given, and the day of the event, should not be counted as part of the required notice (but *see* General Meetings).

Clearing.—A method adopted by bankers, railway companies, and others, whereby they adjust their various cross-demands, and deal with differences only.

The following is a short description of the method in vogue amongst the clearing bankers in London :—

All cheques, &c., paid into a bank (say the A.B. Bank) for collection are sorted and listed according to the banks at which they are payable. Those payable by clearing bankers are taken at frequent intervals during the day to the chief Clearing House, and handed to the various representatives of the paying bankers, together with the lists, or "charges," as they are technically termed. The representative of the A.B. Bank of course receives cheques in like manner from the other bankers, and at the end of the day a statement is made up on behalf of each bank represented, showing the amounts due to and from the other banks, and a balance is struck. This balance gives the net amount owing to or by each bank by or to the other clearing bankers, and after all the statements have been checked with one another, and the total net debtor balances found to agree with the total net creditor balances, signed orders are issued to the Bank of England to debit or credit the various bankers, as the case may be, in settlement of the balances.

The utility of this system is obvious. Formerly a bank had to settle its accounts with the other banks individually, in cash, whereas, through the medium of the Clearing House, transactions amounting to several millions daily are settled without the use of a bank note or coin. It is stated that one bank, by obtaining admission to the Clearing House, was enabled to reduce its cash balance by £150,000.

Clearing a Vessel.—The entry of a vessel's name and an account of her cargo in the Custom House books on her entering or leaving the port, and the compliance with all necessary formalities to enable the vessel to discharge or proceed.

Closing Entries.—The term used to express the adjustments necessary to enable a set of books to be "closed" and the final accounts prepared. Generally, it may be said that the closing entries are those which transform the Trial Balance into the Balance Sheet.

Club Statement of Purchases.—The secretary of every registered club must deliver to the Commissioners of Inland Revenue in the month of January in every year, or within such further time as the Commissioners may in any case allow, a statement of the purchases during the preceding calendar year of intoxicating liquor to be supplied in or to the club or on behalf of the club to the members thereof in such form and containing such particulars as may be prescribed by the Commissioners. Every such statement shall be charged with an Excise Duty of 6d. for every £ of the purchases shown in the statement.

Failure to deliver the statement after notice in writing renders the secretary liable to penalties.

If any such duty remains unpaid after the first day of March in any year the duty may be recovered by distress on the club premises, provided that notice in writing requiring payment has been first given. Non-compliance with the provisions as to the statement or payment of the duty also renders the club liable to disabilities. (Finance (1909-10) Act 1910, section 48.)

Code.—A collection or system of laws; a collection of words, figures, or other signs, each with a respective meaning or conveying a particular phrase, thus enabling the possessors to communicate by telegraph, cable, or otherwise, more economically and with greater secrecy.

Code de Commerce.—*See* Foreign Systems of Accounting.

Codicil.—A supplement to a will, to add to, explain, or revoke the contents or part contents of the will. It must be executed with all the formalities of a will. In the Wills Act 1837 the term "will" includes a codicil.

Collateral Security.—One given as security for a debt in addition to the principal one already existing. (*See* Secured Creditor.)

Colonial Companies.—*See titles* Colonial Register, Foreign Companies, Land.

Colonial Register.—The Companies (Consolidation) Act 1908 provides as follows:—

Section 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.

Section 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.

Section 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 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.

Colonial Stock Act 1900.—*See* Trust Investments.

Columnar System.—A system of accounting by means of columns appropriately ruled in the books of account. It is particularly adapted to Departmental Accounts, analysis of sales, purchases, expenditure, &c., and reduces the volume of clerical work, the postings being effected in total sums instead of single items. The totals of the columns also serve as a check upon much of the work, varying according to the precise system adopted.

Commencement of Business (Restrictions on).—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.

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.

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.

Note.—This applies to all contracts—not merely those concerning the particular business to be acquired by the company (*Re Otto Electrical Manufacturing Company*, 1906); therefore the guarantee of the promoters or directors should be obtained in doubtful cases before outlay is incurred on behalf of a company which will require a certificate to commence business but has not at the time actually obtained it.

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.

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.

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. (Companies Act 1908, section 87.)

(*See* Profits prior to Incorporation, Certificate of Incorporation.)

Commencement of the Bankruptcy.—*See* Act of Bankruptcy, Relation Back.

Commencement of the Liquidation.—*See* Winding-up.

Commission.—Commercially, the order under which one person negotiates business for another; the remuneration of a broker or other agent, generally by way of an agreed percentage

upon the value of the subject-matter involved. (*See* heading Remuneration under title Agent; also title Corruption, Prevention of.)

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.

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.

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. (Companies (Consolidation) Act 1908, section 89.) (*See title* Underwriter.)

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. (Section 90.)

Full particulars of commissions paid in connection with any issue of debentures must also be filed when the debentures are being registered with the Registrar.

(*See also title* Annual List and Summary.)

Commissioners for Oaths.—Solicitors and any other fit and proper persons whom the Lord Chancellor appoints to administer oaths and take affidavits. (*See* Oath.)

Commission in Lunacy.—An inquiry as to whether a person alleged to be a lunatic is so or not.

Committee.—A body of persons elected to conduct some particular business. In special cases, however, a committee may consist of one person only.

Committee of a Lunatic.—A committee (which may consist of one person only) to whose care and custody the person and property of a lunatic are entrusted by the Court.

Committee of Inspection.—

BANKRUPTCY.

A committee consisting of not more than five nor less than three persons, appointed for the purpose of superintending the administration of a bankrupt's property by the trustee.

The members of the committee are selected by the creditors by ordinary resolution, and any creditor or the holder of a general proxy or general power of attorney from a creditor may be

appointed, whether the debt be proved or not, provided that the creditor must prove his debt, and his proof must be admitted before he (or his proxy or attorney) *acts* upon the committee. The committee meet at such times as *they* shall from time to time appoint, and, failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

They may act by a majority of their number present, provided a majority of the whole committee is present at the meeting. The continuing members of the committee may act, notwithstanding any vacancy in their body, provided there be not less than two such continuing members. On the occurrence of a vacancy the trustee must forthwith call a meeting of creditors to fill same.

No defect or irregularity in the election of a member of a committee of inspection shall vitiate any act done by him in good faith.

Where the number of members of the committee is, for the time being, less than five, the creditors may elect additional members, but the total number of members must not exceed five.

Any member of the committee may resign his office by notice in writing delivered to the trustee, and any member may be removed by an ordinary resolution at any meeting of creditors, of which notice has been given stating the object of the meeting.

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, his office thereupon becomes vacant. (Bankruptcy Act 1883, sections 22 and 143; Bankruptcy Act 1890, section 5.)

Any alteration in, or addition to, the committee should be at once notified to the Inspector-General in Bankruptcy by the transmission of a certified copy of the resolution effecting such alteration or addition. (Board of Trade Regulations.)

Powers.

The committee may be empowered by the creditors to appoint a trustee and to fix his remuneration (*see title* Trustee in Bankruptcy, *sub-titles* Appointment and Remuneration), and the trustee may consult the committee upon all important matters in connection with the administration of the estate. In particular, the trustee may not do the following things without the permission of the committee, viz.:—

(1) Carry on the business of the bankrupt, so far as may be necessary for the beneficial winding-up of the same.

Notes.—The word "necessary" in the same connection as regards company liquidation has been held to mean "highly expedient under all the circumstances of the case," and not to be synonymous with "beneficial." (*Wreck Recovery Co*, 1880.)

The business ought not to be carried on with the object of paying dividends out of profits, or of increasing the value of the goodwill. Such a practice necessarily involves risk of loss to which the creditors ought not to be exposed, and has, moreover, been held to be contrary to law. (Board of Trade Circular.)

(2) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt.

Note.—Where a trustee *brings an action* on behalf of the estate, although no personal benefit can accrue to him as a result of the litigation, he will be personally liable for the costs; so that, if the estate of the bankrupt is insufficient for the payment of any of such costs, the trustee would have to pay them (or the balance of them) personally. The proper course, therefore (and the usual course), for the trustee is to obtain an indemnity against the costs from the committee of inspection or the creditors personally before commencing litigation. (*Ex parte Angerstein.*) Where an action is *brought against* a trustee (or the Official Receiver) as representing the estate of the debtor, or where a trustee (or the Official Receiver) is *made a party* to a cause or matter on the application of any other party thereto, he shall not be personally liable for costs unless the Court otherwise directs. (Rule 108.)

(3) Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection.

Note.—The sanction for the employment must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction. (1890 Act, section 15.)

(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security or otherwise as the committee think fit.

(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.

(6) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times and generally on such terms as may be agreed upon.

(7) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy.

(8) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made, or capable of being made, on the trustee by any person, or by the trustee on any person.

(9) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(10) Appoint the bankrupt himself to superintend the management of the property of the bankrupt, or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors or in any other respect to aid in administering the property in such manner and on such terms as may be directed.

(11) Make such allowance as may be considered just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up the estate. The amount of allowance may be reduced by the Court, and such allowance must be in money, unless the creditors by special resolution determine otherwise.

The permission of the committee of inspection which is required in respect of the foregoing, must not be a general permission to do all or any of the above-mentioned things, but must only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

(1883 Act, sections 57 and 64.)

Any postponement beyond the prescribed date with regard to the *first* dividend, or any postponement beyond the limit of two months of a declaration of dividend, after notice of *intention* to declare same has been gazetted, must be sanctioned by the committee of inspection. (1883 Act, section 58, and Rule 232.)

Duties.

The committee must audit the trustee's Cash Book at least once every three months, and certify same. If the trustee carries on the business of the bankrupt, the "Trading Account" must be audited by the committee at least once every month. (Rules 288 and 308.)

Generally, it is the duty of the committee to control the trustee in the administration of the estate—powers are conferred upon the committee, and it is their duty to exercise those powers. (*See* Powers, *supra.*) The trustee must have regard to any directions of the creditors or the committee, but in case of conflict the direc-

tions of the creditors in general meeting override any directions given by the committee. (1883 Act, section 89.)

A member of the committee is debarred from purchasing any part of the bankrupt's estate without leave of the Court, either directly or indirectly, by himself or any partner, clerk, agent, or servant. Any such purchase may be set aside by the Court upon the application of the Board of Trade or any creditor. (Rule 316.)

No member of a committee of inspection shall, except with 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 bankruptcy, or to receive out of the estate any payment for services rendered by him in connection with the administration of the estate, or for any goods supplied by him to the trustee for or on account of the estate. If it appears to the Board of Trade that any such profit or payment has been made, they may disallow such payment or recover such profit, as the case may be, on the audit of the trustee's account. (Rule 317.)

The cost of obtaining (or applying for (?)) the sanction of the Court under Rules 316 and 317 must be borne by the person in whose interest such sanction is obtained (or applied for (?)) and cannot be charged against the estate. (Rule 316A.)

The sanction of the Court to payment being made for services rendered to the estate by a member of a committee of inspection will only be given when the services performed are of a special nature.

No payment will be allowed under any circumstances to a member of a committee of inspection for services rendered by him in the discharge of the duties attaching to his office *as a member* of such committee. (Rule 317A.)

The members of the committee may be paid their actual out-of-pocket expenses *necessarily* incurred provided the approval of the Board of Trade be obtained. (Rule 125.)

If there be no committee of inspection appointed by the creditors, any act or thing, or any direction or permission, which by the Bankruptcy Act 1883 is 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 trustee, and any functions which devolve on the Board may (subject to any special directions) be exercised by the Official Receiver. (1883 Act, section 22, and Rule 337.)

Upon every application by a trustee to an Official Receiver acting as the committee of inspection, a fee is payable as follows:—

Where the assets are certified by the Official Receiver as not likely to realise more than £500, 5s.

Where the assets are likely to exceed £500, 10s.

Deeds of Arrangement.

Usually a committee of inspection is appointed, either by the deed or by the creditors, to supervise the trustee. There are no statutory provisions as to the duties of the committee, but bankruptcy procedure is followed to a great extent.

Company Liquidation.

When a winding-up order has been made by the Court, 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.

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.

In case a liquidator is not appointed by the Court the Official Receiver shall be the liquidator of the company. (Companies (Consolidation) Act 1908, section 152.)

Note.—If the Official Receiver is liquidator of the company no committee of inspection is appointed.

The appointment of a committee of inspection must be advertised by the liquidator (in such manner as the Court directs) immediately after the appointment. (Rule 55.)

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.

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.

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.

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 shall thereupon become vacant.

Note.—In Bankruptcy procedure his office becomes vacant if absent for five consecutive meetings *with or without* leave of his co-members.

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 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.

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 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. (1908 Act, section 160.)

Note.—Any functions which so devolve upon the Board of Trade may (subject to special directions) be exercised by the Official Receiver. Upon every application by a liquidator to an Official Receiver acting as a committee of inspection a fee of 10s. is payable.

Control over the Liquidator.

The liquidator in a winding-up by the Court shall have power, with the sanction either of the Court or of the committee of inspection—

(1) To bring or defend any action or other legal proceeding in the name and on behalf of the company:

(2) To carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof:

(3) 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:

(1908 Act, section 151.)

(4) Pay any classes of creditors in full:

(5) 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:

(6) 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.

In the case of a winding-up by the Court the exercise by the liquidator of all the foregoing powers 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.

(1908 Act, section 214.)

The liquidator shall not make any call upon contributories without either the special leave of the Court or of the committee of inspection (section 173), and application to the Board of Trade for a local Bank Account (*see that title*) where such is desired must be made by the committee. (Section 154.) The bankruptcy rules (*supra*) as to members of the committee (1) purchasing or dealing with the estate, or (2) making any profit thereout, or (3) receiving payment for services rendered, apply equally to winding-up procedure. For the committee's duties relative to the audit of the accounts of the liquidator *see title* Liquidator's Accounts.

The committee have the power (unless the Court otherwise orders) to fix the remuneration of the liquidator and to sanction a postponement of the payment of dividends. (*See title* Liquidator [*sub-titles* Remuneration and Dividends].)

Voluntary Liquidation.

At the meeting of creditors to be called by any liquidator of a company being wound up voluntarily within twenty-one days after his appointment, the creditors, in addition to determining whether an application shall be made to the Court for the appointment of any person in the place of or jointly with the liquidator appointed by the company, must also determine whether application shall be made for the appointment of a committee of inspection. If the creditors so resolve, the application may be made 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, and the Court on the application may make any such order as, having regard to the interests of the creditors and contributories of the company, may seem just. There will be no appeal from the order.

The Court shall make such order as to the costs of the application as it may think fit, and if it should be 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 to be paid out of the assets of the company, notwithstanding that such application is dismissed or otherwise disposed of adversely to the applicant.

(Companies (Consolidation) Act 1908, section 188.)

This procedure was first provided by section 27 of the 1907 Act, and the question arose as to what powers the committee if appointed possessed, and what were their duties. Now that the Acts have been consolidated, rules will no doubt be issued in due course settling these matters.

Common Seal.—The seal used by a corporation as a symbol of its incorporation. (*See* Seal.)

Commutation.—Conversion; the giving of one thing in satisfaction of another; the payment of

a lump sum instead of annual or other payments, as in the case of tithes, land tax, and certain of the death duties.

Companies Acts.—This term included all the Acts of Parliament relating to joint stock companies which prior to 1st April 1909 were to be construed as one with the principal Act of 1862. These Acts, as set out below (except to the extent that they had been in whole or part previously amended or repealed), were consolidated by the Companies (Consolidation) Act 1908, which came into force on 1st April 1909.

(1) Companies Act 1862	The Principal Act.
(2) Companies Seals Act 1864	Seals in Foreign Countries.
(3) Companies Act 1867	Unlimited Liability of Directors. Reduction of Capital. Associations not for Profit. Subdivisions of Shares. Calls upon Shares. Share Warrants to Bearer. Contracts. &c. &c.
(4) Joint Stock Companies Arrangement Act 1870	Arrangements with Creditors.
(5) Companies Act 1877	Interpretation of Act of 1867.
(6) Companies Act 1879	Banking Companies, and other matters.
(7) Companies Act 1880	Returning Accumulated Profits.
(8) Companies Act 1883	Defunct Companies, &c.
(9) Companies Act 1886	Colonial Registers.
(10) Companies Act 1890 (Memorandum)	Power to alter the objects of the Company.
(11) Companies Act 1890 (Winding-up)	Winding-up Procedure.
(12) Directors' Liability Act 1890	Liability of Directors and others for statements in Prospectuses, &c.
(13) Companies Act 1893	Amendment of Section 10 of the Winding-up Act 1890.
(14) Companies Act 1898	Amendment of Section 25 of 1867 Act.
(15) Companies Act 1900	Conclusiveness of Certificate of Incorporation. Qualification of Directors. Restrictions on Allotment and Underwriting. Restrictions on commencement of business. Requirements as to filing and issue of Prospectus. Statutory Meeting. Registration of Mortgages and Charges. Audit and Auditors. &c. &c.
(16) Companies Act 1907	Obligations of Companies where no Prospectus is issued. Payment of Interest out of Capital. Registration of Mortgages and Charges. Re-issue of Redeemed Debentures in certain cases. Audit and Auditors. Filing of Balance Sheets. Rights of Shareholders to demand Accounts. Rights of Creditors in Voluntary Winding-up. Requirements as to Companies incorporated outside the United Kingdom. Filing of Accounts of Receivers and Managers. Creation of Private Companies.
(17) Companies Act 1908	Colonial Companies and Land in United Kingdom.

In addition to the above there are:—

(1) Preferential Payments in Bankruptcy Act 1888 Repealed and re-enacted by the Companies (Consolidation) Act 1908 as regards Sections 1, 2, and 3, so far as they relate to Companies.	Priority in Winding-up of certain Rates, Taxes, and Wages.
(2) Preferential Payments in Bankruptcy Act 1897 Repealed and re-enacted by the Companies (Consolidation) Act 1908.	Priority of the above to Debentures secured by a floating charge.
(3) Workmen's Compensation Act 1906	Priority in Winding-up of moneys due for compensation in certain cases.
(4) Assurance Companies Act 1909	Life Assurance, Fire and Accident Insurance, and Bond Investment.
(5) Companies Clauses Consolidation Act 1845	Companies Incorporated by Special Act.
(6) Companies (Converted Societies) Act 1910	Validity of Conversion of certain Friendly Societies into Companies.

Company.—"A society of persons joined in a "common interest, generally for the purpose of "carrying on some commercial or industrial "undertaking."

In the Companies (Consolidation) Act 1908 "company" means a company formed and registered under that Act or under the Joint Stock Companies Acts or under the Companies Act 1862. (Section 285.)

Companies may be incorporated or unincorporated. An unincorporated company is really an ordinary partnership and has many disadvantages compared with a corporation. A company, association, or partnership formed after 1862, having for its object the acquisition of gain, and consisting of more than twenty persons (or ten in the case of a banking business), is illegal if unregistered. (*See* Corporation, One-man Company, Private Company.)

Comparative Statement.—A statement, generally in digest form, showing comparatively the particular matters with which it deals. It is especially useful in connection with matters of account, such as trading results for different periods, and often includes quantities (where available and useful) as well as the values and the percentages of the various items.

Compensation.—Making amends; that which is paid in satisfaction of an injury to property or person. (*See* Goodwill [Compensation], License [Compensation], Workmen's Compensation.)

Compensatory Errors are such as do not prevent the arithmetical balancing of a set of accounts, one error being neutralised by one or more other errors having a similar effect in the contrary direction. For instance, a short post of £10 to the debit side of the Ledger would "compensate" for the errors of a short post of £6 and a "miss-post" of £4 to the credit side of the Ledger.

Competent to dispose.—A person is deemed competent to dispose of property (within the meaning of the Finance Act 1894) if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property. (*See* Estate Duty, Succession Duty.)

Competitive Proof.—Where the joint estate of a firm or the separate estate of a partner is being administered, no partner in the firm may prove in competition with the creditors of the firm either against the joint estate of the firm or against the separate estate of any other partner until all the debts of the firm have been paid in full.

Exceptions:—

(1) Where distinct and separate businesses have been carried on and the indebtedness has arisen in the *ordinary* way of business.

(2) Where there has been fraudulent conversion of the property of the firm to the use of a partner or *vice versâ*.

(3) Where a partner, having been a bankrupt, has been discharged and afterwards becomes a creditor of the firm or another partner, the discharge having released him from the firm's liabilities.

A partner may also prove against the separate estate of another partner if the result of so doing is not to deprive the joint estate of a surplus or to be the means of reducing same—that is to say, proof may be made if the debtor-partner's estate is insolvent, even if the creditor-partner's claim be excluded. (*Ex parte Topping*, 1865.)

It was doubted whether a creditor-partner could prove against a debtor-partner, even though within the last-mentioned rule, if such creditor-partner's estate showed a surplus without the aid of a dividend receivable from the estate of the debtor-partner, the suggestion being that as the surplus of the creditor-partner's estate would go to the joint estate. the admission of the proof against the debtor-partner's estate in effect enabled the joint creditors to prove against a separate estate, in so far as the dividend upon such proof increased the surplus to be transferred from the creditor-partner's estate to the joint estate. Such a proof would, however, be allowed, it having been held that, by the time the dividend in the form of an increased surplus has reached the joint estate, it has ceased to be part of the separate estate of the partner out of whose estate it was originally paid. (*Re Head*, 1894.) Circumstances are conceivable, moreover, where the trustee of one partner might prove against the estate of another, and by so doing deprive the joint estate of a surplus or be the means of reducing same to the apparent detriment of the joint creditors; and yet such proof would be the means of increasing the surplus of the creditor-partner's estate to a greater extent than that by which it has reduced the other partner's surplus. The joint creditors would thus eventually benefit by a proof which was primarily a competitive one. This result would happen where (1) the creditor-partner was solvent without the dividend his estate would so receive; and (2) such dividend was greater than the surplus on the debtor-partner's estate, which would have existed but for the admission of the creditor-partner's proof.

The executor of a deceased partner is in no better position than the deceased would have been. (*Nanson v. Gordon*, 1876.)

Completed Audit.—One conducted after the accounts have been completed and submitted for examination, or at least after the completion of the Trial Balance. (*See* Continuous Audit.)

Composition.—An agreement between an insolvent debtor and his creditors providing for payment of a portion only of the various debts in full satisfaction of the whole. The consideration for the unpaid portion of the debts arises out of the mutual forbearance of the various creditors. (*See* Deed of Arrangement.)

Compounding.—Making an arrangement with creditors for payment of a composition.

Compounding a Felony.—Where a party is robbed and knows the thief, he compounds a felony if he agrees not to prosecute on surrender of his goods; this is an offence punishable by fine and imprisonment.

Compound Interest.—*See* Interest.

Compulsory Order (Winding-up).—An order to wind up a company made by the Court, as distinct from a voluntary winding-up which is the result of a resolution of the company. A winding-up under such an order is carried out by the Court (through the liquidator). The Court may make an order upon the application of the company itself, but such an order, when made, can hardly be termed compulsory, although the subsequent procedure is the same. (*See* Petition to wind-up, Winding-up.)

Concurrent Consideration.—*See* Consideration.

Condition.—A stipulation; a restraint placed upon a thing.

Where a contract for the sale of goods is subject to a condition, the buyer may, upon the breach of such condition by the seller, either:—

(1) Repudiate the contract; or

(2) Waive the condition and adopt the contract; or

(3) Elect to treat the breach of condition as a breach of warranty, adopt the contract and claim for the consequent damage.

Provided that, where the contract is not severable, *and* the buyer has accepted the goods or part of them, *or* where the contract is for specific goods the property in which has passed to the buyer, a breach of condition by the seller can *only* be treated as a breach of warranty, unless there be a term in the contract, express or implied, to the contrary.

In the absence of a contrary intention, there is an implied condition that the seller has a right to sell the goods, or will have such right at the time the property is to pass.

The remaining implied conditions in a contract for the sale of goods are dealt with (for convenience) under the head of Warranty. (*See* Defeasance.)

Conditional Acceptance.—*See* Acceptance.

Conditional Indorsement.—*See* Indorsement.

Conditional Legacy.—A contingent legacy. (*See* Legacy.)

Conditions of Sale.—The written conditions upon which property, goods, or any interest therein is to be sold.

Conduct Money.—Money paid to a witness for his travelling expenses.

Consanguinity.—The relation of persons descended from the same stock or common ancestor. It is either lineal or collateral. *Lineals* are descended in a direct line, such as grandfather, father and son, whilst *collaterals* do not descend directly, although they descend from a common ancestor (*e.g.*, brothers and cousins). (*See* Affinity.)

Consecutive Order.—Succeeding in regular order. Documents, book entries, &c., may be placed in consecutive order, either alphabetically, chronologically, or numerically, according to circumstances.

Consideration.—The price or subject matter which induces a contract. Consideration is one of the essentials of a simple contract, but with the exception of (1) those tending to the restraint of trade, and (2) those of which specific performance is required, contracts under seal (specialties) do not require consideration to make them binding, some writers stating that the solemnity of a deed "imports consideration," whilst others assert that the law presumes sufficient consideration, which the parties are estopped from denying. It would appear, however, that the more correct view is that given by Sir William Anson, to the effect that a deed owes its efficacy entirely to its form, which statement is historically supported, inasmuch as a contract under seal was in full efficacy *before* the doctrine of consideration had been developed.

Where consideration is required to support a contract, it must be valuable, *i.e.*, legal. The following are amongst the various classes of consideration :—

Valuable consideration.—" Some right, in- " terest, profit, or benefit accruing to the one " party, or some forbearance, detriment, loss or " responsibility given, suffered, or undertaken by " the other."

This is sufficient to support a contract, and provided the consideration is fairly within the definition, the Courts will not inquire into the sufficiency of it, provided it is not a mere pretence—it is for the parties themselves to say what the terms of their bargain shall be.

Good consideration.—An equitable consideration based upon natural love, affection, and gratitude; it is insufficient of itself to support a contract.

Moral consideration.—One based upon a moral obligation, which a person feels bound in honour and integrity to fulfil. This also is insufficient of itself to support a contract.

Illegal consideration.—One which violates the principles of the statute law or the common law, including in the latter public policy and morality. Such consideration may be either wrong in itself or wrong because it has been positively prohibited. A contract based upon such a consideration cannot be enforced.

Impossible consideration.—One the performance of which is beyond the limit of human capacity. A contract to perform an act which is absolutely impossible will not be binding, but if such an act is possible at the time of entering into the contract, and subsequently becomes impossible, the person so contracting will be liable for the breach.

Executed consideration.—(1) An act or forbearance given for a promise which simultaneously constitutes the proposal (or acceptance) and the consideration for the promise given in return for it, or (2) the offer of an act for a promise, or (3) the offer of a promise for an act.

This must be distinguished from a *past* consideration.

Past consideration.—Some act or forbearance in time past by which a person benefits without incurring any legal liability, but in respect of which he subsequently, from personal or other motives, makes a promise. Such a " consideration " has no legal effect, and cannot be enforced, being based upon motive, and not upon consideration.

Three exceptions to this rule are said to exist :—

(1) A past consideration will support a subsequent promise, if the consideration was given at the request of the promisor in contemplation of the subsequent promise.

(2) A debt barred by the Statutes of Limitation is sufficient consideration for a subsequent promise to pay it.

(3) Where a " plaintiff voluntarily does that " whereunto the defendant was *legally* " *compellable*, and the defendant after- " wards in consideration thereof expressly " promises, he will be bound by such " promise."

Note.—It would appear that this last exception is not of general application, having arisen *solely* out of the liability of parish authorities *inter se*, respecting the expenses of paupers incurred in parishes other than their own.

(*See also title* Consideration for a Bill of Exchange.)

An interesting instance of voluntary payment occurs in the case of the formation of a company. A person voluntarily paid the registration fees of a company, but it was held by the Court of Appeal in *Re National Motor Mail Coach Co., Lim.* (1908, 2 Ch. 515), that it did not create an obligation to repay on the part of the company. Kennedy, L.J., in the course of his judgment, said he could not differentiate between " a payment made without request in " the case of a statutory obligation (*i.e.*, to pay " such fees) and a similar payment in case of any " other obligation, and it was certainly not the " law that a person can recover money paid by " him (without request) because the person on

" whose behalf it was paid was under a legal " obligation to pay." This creates a somewhat anomalous position, for, as a company cannot come into existence until the preliminary fees are paid, and cannot request anything to be done on its behalf until it comes into existence, every company could according to this decision successfully repudiate liability, if it so desired, for the money paid to bring it into existence. This obviously requires rectifying by statute.

Executory consideration.—One to be performed subsequently to the promise, as in the case of mutual promises. This will support a contract if otherwise legal.

Concurrent consideration.—One performed simultaneously with the making of the promise. (*See* Executed Consideration, *supra.*)

Continuing consideration.—One executed or performed in part only, the remainder requiring to be performed subsequently. This will support a contract if otherwise legal. (*See* Executory Consideration, *supra.*)

The consideration for a contract must move from the promisee, and a stranger to the consideration cannot maintain an action upon a contract, for the consideration " must have passed " from the person seeking to enforce the " promise which was made in return for it." (*Tweddle v. Atkinson*, 1861). But a third party may have rights under a contract as *cestui que trust*, if words amounting to a declaration of trust are used by one of the contracting parties. (*Empress Engineering Co.*, 1880.)

In a marriage settlement the children are " within the consideration," and as beneficiaries they can enforce the terms of the settlement. Even children by a *former* marriage are within this rule, but under a " separation deed " the children are deemed strangers to the contract.

A principal may enforce the terms of a contract made by an agent, but he can hardly be deemed a stranger to the consideration.

Consideration for a Bill of Exchange.—Valuable consideration for a bill may be constituted by:—

(*a*) Any consideration sufficient to support a simple contract; or

(*b*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time. (Bills of Exchange Act 1882, section 27.)

The consideration for a bill is presumed in favour of the holder, unless fraud or illegality be admitted or proved in connection with the acceptance, issue, or subsequent negotiation of the bill, in which case the holder must prove that subsequent to the alleged fraud or illegality value has in good faith been given for the bill. (Section 30.)

Want of consideration is a matter of defence between immediate parties, but not against a remote party who is a holder in due course; thus the donee of a bill cannot sue the donor thereon, but if the donor were a holder in due course, the donee can sue all parties prior to the donor whom the latter could have sued. Although it is usual to insert the statement as to value in the bill, such as " Value received," " Value in account," " Value in merchandise," &c., it is not essential (section 3) because of the legal presumption of consideration. On the other hand, extrinsic evidence is admissible between immediate parties to impeach the consideration by showing its absence or illegality even where the bill expresses that value has been given therefor. (*See* Accommodation Bill, Accommodation Party.)

Consideration for Annuities Granted.—Money received by an assurance company in consideration of which it undertakes to provide an annuity for life or for a term of years (to be presently enjoyed or deferred) to the individual or individuals by whom or on whose behalf such payment is made. The money so paid to the assurance company becomes its absolute property, and it takes the risk of finding so much per annum for the agreed number of years or for the life of the annuitant, as the case may be.

The Government carry on the same kind of business in a small way, through the medium of the Post Office, the consideration for the annuities granted being used to cancel Consols.

A company granting annuities upon human life is an assurance company within the meaning of the Assurance Companies Act 1909, and is subject to its provisions. (*See title* Assurance Companies Act.)

Consideration for Stock, &c., transferred.—The sum named in the instrument of transfer may not agree with the amount receivable by the original seller (who signs the document as transferor) owing to a subsale by the original purchaser, and so on through other hands at different prices. The price paid by the *last* buyer is the one which fixes the *ad valorem* duty payable upon the transfer.

Usually when the transfer is not the outcome of a purchase and sale (*e.g.*, a transfer by way of security for a loan) a nominal consideration is inserted, and a ten-shilling stamp is required irrespective of the amount of stock being transferred. (*See* Nominal Consideration.)

Consignment.—The sending or delivering of goods to another person (generally in another town or country) for the purpose of sale. The person who sends the goods is called the consignor and the general property in the goods remains in him until they are sold by the agent. The person receiving the goods is called the consignee, agent, or factor, and occupies a position of trust as regards his dealings with the goods. He must lawfully account to the consignor for the proceeds. The goods themselves are also referred to as a consignment. (*See* Consignment Ledger.)

Consignment Account.—*See* Consignment Ledger.

Consignment Ledger.—A Ledger used for recording separately the transactions in connection with the various consignments (for sale) of a trader, or agent.

CONSIGNOR.

So far as regards the consignor, the consignment merely amounts to a transfer of a portion of his stock-in-trade from one place to another, and he must record the consignment at "stock" prices, adding any proper expenses incurred in connection with the transit. These amounts will be posted to the debit of the particular Consignment Account, and any cash received on account credited to the Personal Account of the consignee. On receipt of the account sales from the consignee showing the gross proceeds of the consignment and his expenses and commission, the Consignment Account may be adjusted and the amount due from the consignee brought to the debit of his Personal Account, whilst the profit or loss on the consignment may be transferred from the Consignment Account to the General Profit and Loss Account of the trader, or to a Summary of Consignment Accounts, as the case may be.

Until the account sales is received from the consignee, enabling the Consignment Account to be finally adjusted, it is usual (at all events, more correct) to treat the balance of the Consignment Account when closing the books merely as so much unsold stock in the hands of the consignee. Special circumstances, such as a "certain sale" or otherwise, may, however, affect this general rule. *Per contra*, it may be necessary to make a provision against probable loss.

CONSIGNEE.

With regard to the consignee, as he is really liable for the goods in specie, the property in the same remaining in the consignor until the goods are sold, the Consignment Ledger kept by him should merely record the *quantities* and all necessary particulars to enable him to account for the disposal of same. Obviously a consignee should not mix consigned goods with his own stock (if any). The entries in the books of account of the consignee should be in respect of the proceeds of the goods as and when he receives same, his expenses (including commission) and the remittances to the consignor.

Special circumstances may here also affect the general rules—for instance, where the consignee acts as a *del credere* agent, and he is required for the facility of settlement to treat the proceeds of the various sales as cash in his hands irrespective of the time of payment by the purchaser. In this case he would debit the purchaser and credit the consignor with the proceeds immediately upon sale.

Sometimes an invoice at a suggested selling price, or at the cost price, is forwarded to the consignee, but such prices must be regarded as mere guides to the agent, as he cannot be held responsible for the *price* of the goods if he has used all reasonable care and diligence, and has, nevertheless, failed to sell the goods or to realise the expected prices.

Consolidation of Loans.—This is a financial arrangement sometimes entered into by a local authority. It consists of the actual amalgamation of a number of existing loans into one loan, so that a uniform sinking fund instalment is necessary periodically for the redemption of the loans so consolidated, instead of separate sinking fund instalments for each of the pre-existing loans. Consolidation may be effected as a mere internal arrangement by which the lenders are in no way affected; or the scheme may involve the issue of a new loan, out of the proceeds of which the several existing debts are repaid. As in most cases the loans consolidated are redeemable at different dates and by different methods, their consolidation generally necessitates the equation of the periods allowed for the existing loans. (*See* Equation of Loan Periods.) The Local Government Board has power to sanction consolidation schemes in respect of certain classes of loans, but apparently not in respect of loans sanctioned under the Public Health Act 1875. The exclusion of such loans from any scheme of consolidation would render the scheme of little worth, and as a consequence most schemes for the consolidation of loans are effected by a special Act of Parliament.

Consolidation of Mortgages.—If a person has mortgaged lands to another, and subsequently mortgages *other lands* to the same person for a further advance, the right to treat both advances as secured upon the whole of the lands is called a right of consolidation. The right has been extended to the case of mortgages of different lands to different persons by the same mortgagor becoming vested by transfer in the same mortgagee.

The right of consolidation has been considerably curtailed by the Conveyancing Act 1881, section 17 providing that, unless a contrary intention is expressed in the mortgage deeds, or one of them, a mortgagor seeking to redeem any one mortgage may do so without redeeming any other mortgage.

The distinctions between consolidation and tacking are mainly:—

(1) Consolidation is the right to throw together upon *one* estate several advances made upon *different* estates, whilst tacking is the right to amalgamate several advances made upon the *same* estate.

(2) Consolidation prejudices the borrower, but tacking affects an intermediate incumbrancer.

(3) Tacking depends entirely upon the protection afforded by the *legal estate*, but consolidation does not.

(4) Notice of the intermediate advance at the time of making a subsequent loan is fatal to a right of tacking. (*See* Tacking.)

Consolidation of Shares.—*See* Memorandum of Association.

Consols.—A contraction of the term "consolidated funds" and "consolidated stock." Various funds (income) of the Government have been consolidated, and various classes of the public debt have been similarly treated, so that the consolidated funds are pledged for the payment of the interest on the consolidated stock. (*See* Exchequer Bills, Exchequer Bonds, Inscribed Stocks, Treasury Bills.)

Constructive Total Loss.—*See* Total Loss.

Constructive Trust.—One "raised by construction "of equity in order to satisfy the demands of "justice without reference to any presumable "*intention* of the parties, either express or "implied," *e.g.*, a vendor's lien upon land for the unpaid purchase-money in respect of same.

Consul.—An officer appointed to represent a country in another country, in order to facilitate commerce between the two. He has also to attend to the grievances of, and afford the necessary protection to, all persons belonging to the country appointing him, who may be resident in or visit his official area.

Contango.—*See* Settling Days.

Continental System.—*See* Foreign Systems of Accounting.

Contingent Account.—An account to which a sum is transferred by a charge to Revenue Account, as a provision against (1) unforeseen liabilities; or (2) liabilities known to exist, but uncertain as to amount.

Some businesses maintain a "Contingent Account" merely from conservative considerations as a matter of prudence. In such a case, the amount at the credit of the Contingent Account, not being pledged for the purposes of any contingency, is really a reserve or a surplus according to circumstances.

Contingent Legacy.—*See* Legacy.

Contingent Liability.—A liability which will only exist definitely upon the happening of some event which may or may not happen. For instance, a party (other than the acceptor) to a bill of exchange which is in other hands is contingently liable thereon until the bill is paid or otherwise satisfied, the liability only attaching definitely on the default of all prior parties.

Contingent Remainder.—A remainder limited so as to depend upon an event or condition which may never happen or be performed. (*See* Reversion.)

Continuation.—*See* Settling Days.

Continuing Consideration.—*See* Consideration.

Continuing Guarantee (or Guaranty).—An undertaking by one to answer for the continuing liabilities of or for the performance of a series of duties by another—a common instance of which is afforded by the guarantee of a current account.

It is often difficult to decide whether a guarantee was intended to be a continuing one or only for a single transaction or duty. It appears that no rule can be drawn from the cases, each having been decided upon the particular facts involved.

The Partnership Act 1890 provides that:—"A "continuing guaranty . . . given either to a "firm or to a third person in respect of the "transactions of a firm is, in the absence of "agreement to the contrary, revoked as to "*future* transactions by any change in the constitution of the firm to which, or of the firm "in respect of the transactions of which, the "guaranty . . . was given."

Although a contrary intention to the above cannot be inferred from the fact that the *primary* liability (that is, the liability of the principal debtor) is an indefinitely continuing one, such a contrary intention "may appear 'by "necessary implication from the nature of the "firm' where the members of the firm are "numerous and frequently changing, and credit "is not given to them individually, as in the "case of an unincorporated insurance society."

In the absence of special circumstances a continuing guarantee may be withdrawn at any time, as regards *future* transactions, and death (with notice thereof) relieves the estate of the guarantor from liability in respect of advances or transactions made or entered into subsequently, but where and whilst there is a *continuing relationship* (*e.g.*, a tenancy which has been created on the faith of the continuing guarantee) the guarantee cannot be withdrawn at will, nor will death, in such a case, release the guarantor's estate from continuing liability.

A surety on a joint and *several* continuing guarantee will be liable for advances made after the death of his co-surety (and notice thereof to the creditor), unless he gives notice to the creditor determining his liability.

The particular instrument of guarantee may contain provisions expressly modifying the foregoing. (*See* Guarantee.)

Continuous Audit.—One conducted by frequent visits during the course of the period under review—that is to say, weekly, monthly, or otherwise; sometimes pre-arranged and regular visits; in other cases, irregular and without notice.

Some of the advantages of a continuous audit, over what is termed a completed audit, are:—

(1) Earlier rectification of errors.

(2) Errors more readily discovered.

(3) Books of account kept up to date; and

(4) As a consequence, the accounts can be completed and a more exhaustive examination made by an earlier date after the close of the financial period than would otherwise be the case.

The most serious objection to this class of audit is the possibility of the figures and entries being tampered with after they have been passed by the auditor. (*See* Completed Audit, Investigation.)

Contra.—Against; the opposite side. At the present time the term is restricted in bookkeeping to the heading of the payment side of the Cash Book, but in the earlier works on bookkeeping (*e.g.*, Cory, 1839) the Ledger Accounts are similarly treated, the *title* of the account appearing at the head on the debit side and the word *contra* on the credit side.

Contra accounts are those in respect of which parties give and take mutual credit.

Where accounts are "set off" the debtor on balance paying over to the creditor only the balance due, the transaction may be recorded in the Cash Book in one of two ways, namely:—

(1) The full amount due from the other party as a receipt and the full amount due to him as a payment.

(2) The net amount of cash actually passing as a receipt or payment as the case may be.

Where method (1) is employed it is suggested that the cashier should give and take receipts for the *full* amount due *to* and *from* his principals. The objection to this method is that it places in the hands of the cashier a receipt for a larger sum than he has actually paid away, and an auditor should carefully ascertain whether the cashier has given a receipt for the full amount due *to* his principals. The same objection applies to method (2) unless (*a*) the cashier takes a receipt for the net amount only, or (*b*) the fact that the settlement is in respect of a contra transaction is distinctly stated upon the receipt.

It is difficult to lay down a hard and fast rule, but it will be seen that the point is one upon which special care is required on the part of an auditor.

From the point of view of bookkeeping as distinct from audit, method (1) is probably the better one. The effect of it is to keep the sales to and purchases from each customer as distinct as if they were transactions with different concerns although they may be contained in the same Ledger Account. It also prevents confusion and unnecessary Journal transfers where "Sundry Debtors" and "Sundry Creditors" accounts are kept in "total" form, for sectional balancing purposes.

The correct statement of contra accounts in Balance Sheets is of importance, and particularly so in "Statements of Affairs" prepared by or on behalf of insolvent debtors: the net balance only should be brought into the statement, as the inclusion of gross figures might give a materially inaccurate view of the position.

For treatment of contra accounts in bankruptcy *see title* Mutual Credits, &c.

Contract.—An agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others. (Anson.)

Contracts may be subdivided into:—

Formal—

(*a*) Contracts of record.

(*b*) Contracts under seal.

Simple—

(*a*) Contracts required to be in some form other than under seal.

(*b*) Contracts for which no form is required, and which may be either express or implied.

(*See* Chose in Action, Consideration, Deed, Express Contract, Implied Contract, Simple Contract.)

Contract Book.—In general, a book recording particulars of contracts entered into by the proprietor of a business; *e.g.*, a builder or an engineer.

In particular, when a broker makes a contract the terms thereof are entered into his Contract Book and signed by him, a memorandum thereof being sent to each party—that is, a bought note to the buyer and a sold note to the seller. In the event of any difference between the terms in the bought and sold notes, the entry in the Contract Book provides the terms of the agreement, Lord Ellenborough having decided that the entry in the Contract Book is the binding contract.

Where the notes differ, and no entry is made by the broker in his book, there is no contract.

(*See* Contract Note.)

Contract Note.—A brief statement of the terms of a contract. The term is commercially applied to bought and sold notes issued by brokers in respect of produce, stock, or marketable securities. Notes relating to stock or marketable securities are liable to stamp duty as follows:—

When the stock bought or sold is of the value of £5 or upwards, but not exceeding £100, the duty is sixpence.

When the stock bought or sold is of the value of £100 or upwards the duty is an *ad valorem* duty varying from one shilling to £1 (the latter amount being payable when the value of the stock bought or sold exceeds £20,000.) The stamp duties are to be denoted by an adhesive stamp appropriated to a contract note, and the stamp must be effectively cancelled by the person by whom the note is executed.

Where a note advises the purchase or sale of more than one description of stock or marketable security, the note is deemed, for the purposes of stamp duty, to be as many contract notes as there are descriptions of stock purchased or sold. For purposes of stamp duty the provisions as to contract notes apply to sale or purchase of options.

Any stamp duty on a contract note may be added to the charge for brokerage or agency; but any person who makes or executes a contract note which is chargeable with duty, not duly stamped, incurs a penalty of £20, and has no legal claim for his brokerage in respect of the contract. A broker is also subject to a penalty of £20 if he neglects to send a contract note to his principal when such contract note would, if sent, be chargeable with duty.

For the purposes of the Finance (1909-10) Act 1910 the term "contract note" is defined as:—

"The note sent by a broker or agent to his "principal, or by any person who by way of busi- "ness deals, or holds himself out as dealing, as "a principal in any stock or marketable securi- "ties, advising the principal or the vendor or "purchaser, as the case may be, of the sale or "purchase of any stock or marketable security."

(*See* Contract Book.)

Contract of Affreightment.—An agreement between a shipowner, or person acting through or for him, and another person whereby the shipowner agrees to carry goods by water, or provide a ship for that purpose, in consideration of a sum of money to be paid to him called *freight*.

When the agreement is to carry a *complete* cargo, or to furnish a ship for that purpose, the contract of affreightment is called a *charter-party* (*q.v.*), and when the agreement is to carry goods which form only part of the intended cargo of the ship, the contract of affreightment as to each parcel of goods shipped is evidenced by a *bill of lading* (*q.v.*).

Contribution.—The payment or performance of a share of the liability under a contract by each of two or more persons liable thereon.

A right of contribution must be distinguished from a right of *recoupment*. For instance, the remedy of co-surety against co-surety is for contribution, whilst the remedy of the sureties against the principal debtor is for recoupment. (*See* Contributory, Co-surety, Partnership [distribution of assets].)

Contributory.—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. (Companies (Consolidation) Act 1908, section 124.)

Notes.—(1) A winding-up order or an effective resolution to wind up alters the position of members or shareholders and *makes* them contributories.

(2) The holder of fully-paid shares is a contributory, and is entitled to the benefit of the provisions for the adjustment of the rights of contributories amongst themselves, and he, if otherwise qualified, may also present a petition for winding up the company. But a fully-paid shareholder is not liable to be placed upon the list of contributories unless he so desires, for he is not liable to contribute anything to the assets of the company.

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 :

(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.

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.

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. (Section 123.)

The liability of a contributory shall create a debt 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. (Section 125.)

Married Woman.—

The husband of a female contributory married before the date of the commencement of the Married Women's Property Act 1882 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.

Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act 1882. (Companies (Consolidation) Act 1908, section 128.)

The Married Women's Property Act 1882, section 7, provides that shares in any company which after the commencement of that Act shall be allotted to, or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, and in respect of which, so far as any liability may be incident thereto, *her separate estate shall alone be liable* whether the same shall be so expressed in the document whereby her title to the shares is created or certified, or in the book or register wherein her title is entered or recorded, or not. Section 13 further provides that a woman, after marriage, shall continue to be liable in respect and to the extent of her separate property for all contracts entered into before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed upon the list of contributories, under and by virtue of the Acts relating to joint stock companies. Section 14 provides that a husband (married after 1882) shall be liable for his wife's ante-nuptial debts, contracts, and torts, including any liabilities as a contributory, *but only to the extent of any property belonging to his wife* which he acquired or became entitled to from or through his wife.

Bankruptcy.—

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. (Companies (Consolidation) Act 1908, section 127.)

(*See* Debts provable in Bankruptcy.)

Although a contributory who is also a creditor of a company is not allowed to set off moneys due to him as a creditor against moneys (calls) due from him as a contributory, an exception is made when a contributory becomes bankrupt. In such a case the trustee in bankruptcy may set off against the calls any moneys due by the company to the bankrupt (except money due to the bankrupt as a member) and a claim may be made for the balance (if any) either in the bankruptcy or the winding-up, as the case may

be. If any moneys are due from a bankrupt contributory his trustee is placed upon the list of contributories, and is deemed to represent the bankrupt for the purpose of the winding-up, unless he has disclaimed before a call has been made, for (notwithstanding section 153 of the Companies Act 1862, now section 205 of the Act of 1908) he may disclaim after a winding-up has commenced. In the event of a disclaimer there is, of course, a right of proof against the contributory's estate for the resulting injury.

Death.—

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 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.

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. (Section 126.)

"The liability of a contributory is (by section "125) a specialty debt, *debitum in præsenti*, "*solvendum in futuro*, and may be enforced, so "long as the shares are left standing in the "deceased member's name, or in that of his "executors as executors merely, both against "his personal estate and against his real estate "in the hands of devisees.

"If the personal representatives make default "in payment of calls, the personal and real "estates of the deceased member may be "administered. The heirs and devisees need not "necessarily be placed on the list of contributories as well as the personal representatives, "but may be added when the Court thinks fit." (Subsection 2.)

"Upon the death of a member, and until his "shares are personally accepted, transferred, or "disposed of by the executors, the deceased "member—that is, his estate—remains a "member, and his representatives are on the one "hand entitled to the benefits accruing upon, "and, on the other, are in their representative "capacity, but not necessarily personally, "liable for calls in respect of his shares. But "for the purpose of determining the number of "members neither the dead man nor his "executors are members.

"Whether the shareholder dies after the commencement of the winding-up, and either before "or after he has been placed on the list of contributories, or whether he had died many years "before the winding-up, but his shares have not "been either personally accepted or otherwise "disposed of by his executors, the liability of his "estate is the same, and is that which would "have been the liability of the shareholder if "living.

"Executors should be careful, before proceeding to distribute the estate among the beneficiaries, to see that they have provided for the "contingent liability in respect of such shares "as they have not disposed of, for otherwise "they may become personally liable."—*Buckley.*

Executors, when placed upon the list of contributories in respect of their testator's shares, are liable only in their representative capacity and not personally, unless (1) they have personally accepted the shares, or (2) they have made themselves liable for a *devastavit*. The mere recording in the Share Register of the names of the representatives of a deceased member on production of probate or letters of administration does not *per se* amount to an election on the part of the representatives to become registered as the holders of the shares of the deceased member; there must be a "distinct and intelligent request" on the part of the representatives. (Cairns, L.C., *Re Buchan.*)

Trusts.—

No notice of any trust, expressed, implied, or constructive, can be entered on the Share Register (1908 Act, section 27), the object being to free the company from the responsibility of inquiring after persons for whom shares are held in trust; the trustee, therefore, cannot evade personal liability in respect of the shares standing in his name. If there are several trustees *each* is liable for the *total* amount due in respect of the shares of which he is one of the joint holders.

The entry of the Public Trustee by that name in the books of a company does not constitute notice of a trust.

As between the trustee and his *cestui que trust*, the latter is bound to indemnify the trustee against all liabilities attaching to the shares.

Infancy.—

The articles of association of a company sometimes prohibit the allotment or transfer of shares to an infant, but even apart from such a clause the company cannot be compelled to admit an infant as a member. If, however, shares be held by an infant transferee the company may, on ascertaining that fact, apply for a rectification of the register, so as to restore the name of the transferor.

If a shareholder be an infant at the date of winding-up he cannot be placed upon the list of contributories, but if he originally held the shares as an infant, and is of full age at the date of winding-up, it is then a question whether or not he has elected to take the shares.

If, on coming of age before the winding-up, he has elected to take the shares he will be liable as a contributory. Such election may be evidenced by (1) exercising any act of ownership over the shares, or (2) failure to repudiate the shares within a reasonable time after coming of age.

List of Contributories.—

As soon as may be after making a winding-up order the Court shall settle a list of contributories, and in settling same shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others. (Section 163.)

There may be one, or more than one, class of contributories, according to the constitution of the company, for the members may as between themselves be liable in a different degree, or in a different order, for the payment of the debts of the company. Apart from these distinctions, the Act also provides for two classes of contributories, viz., *present members*, *i.e.*, those who are members of the company at the commencement of the winding-up, and *past members*, *i.e.*, those who have ceased to be members within a year next before the commencement of the winding-up.

The lists of contributories are settled as soon as may be after the commencement of the winding-up. The present members are recorded upon what is commonly called the "A" list, the past members being placed upon the " B " list. But the " B " list is in many cases not settled at all, and is never settled unless it *appears to the Court* that the contributories on the "A" list will be unable to satisfy the debts and liabilities of the company. For procedure as to settling the lists see *infra*.

Transfers of Shares (after winding-up).—

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.

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. (Section 205.)

Note.—A liquidator in voluntary winding-up has, therefore, the power to register a transfer after winding-up, and the transfer when registered will have full effect. (*Re National Bank of Wales*, 1897.)

The "A" list of contributories will, as already indicated in detail, consist of the following:—

(1) Every person who was a member at the commencement of the winding-up, who has not since died or become bankrupt (subject to the provisions as to infancy stated above).

(2) The personal representatives of every member who has died since the commencement of the winding-up, or, having died previously, whose shares were not personally accepted by his representatives.

(3) The trustee in bankruptcy of any contributory, provided the shares have not been disclaimed before a call has been made.

(4) The husband of a female shareholder, subject to the provisions of the Married Women's Property Act 1882, which are expressly reserved by the Companies Act 1908, section 128 (*supra*).

The " B " list of contributories will consist of all persons who have ceased to be members within a year next preceding the commencement of the winding-up, and, in the case of successive transfers of shares within the year, although as between themselves each transferor has a right to be indemnified by *his* transferee, yet, as regards the company, all parties to such transfers are liable to be placed upon the " B " list, and the liquidator may apparently come upon any one of them for the calls, leaving them to settle their rights *inter se*. (*See* Measure of Liability, *infra*.)

For the purpose of determining the year preceding the winding-up *see title* Winding-up.

Procedure.—

In the winding-up of a company by the Court, or under the supervision of the Court (1908 Act, sections 163 and 203), the procedure in settling the list of contributories is as follows:—

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, and shall also distinguish between persons who are contributories in their own right, and persons who are contributories as being representatives of, or liable for, the debts of others. (Rule 77.)

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. (Rule 78.)

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. (Rule 79.)

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 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. (Rule 80.)

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 twenty-one days from the date of the service on such person of notice of the settlement of the list. (Rule 81 (1).)

The liquidator may, from time to time, vary or add to the list of contributories, but any such variation or addition shall be made in the same

manner in all respects as the settlement of the original list. (Rule 82.)

Where a company is being wound up *voluntarily*, the liquidator settles the list, and, although it is advisable to follow the procedure of a compulsory winding-up, it is not essential to do so. The list, however, in any case, when settled by a voluntary liquidator, is only *primâ facie* evidence of the liability of the persons named therein to be contributories. (1908 Act, section 180.)

Measure of Liability.—

The "A" list contributories are primarily liable to pay the debts of the company, and before the Court will sanction a call upon the " B " list contributories (*i.e.*, the past members), proof must be given (1) that debts remain unsatisfied which were existent at the dates the respective contributories ceased to be members, and (2) that the assets of the company and the contributions recoverable from the whole of the contributories on the "A" list will be insufficient to satisfy all the debts.

Even when the liability of a " B " list contributory has arisen, it is limited:—

(1) In the case of a " limited company," to the amount left unpaid on the specific shares he formerly held, after allowing for the contributions (if any) received from the "A" contributory; and

(2) Whether a limited or unlimited company, to the balance unpaid of such debts of the company as were existent at the date he ceased to be a member, after allowing for the amounts paid in respect of same out of the assets of the company, including the contributions which have exhausted the present members on the "A" list.

Although the existence of the debts referred to above (No. 2) is the direct cause of liability attaching to " B " list contributories, their contributions, when received, are not distributable exclusively among such " old " creditors, but are treated as a common fund, *i.e.*, as part of the general assets of the company, and applied for the benefit of all the creditors of the company.

" You will apply all that you can get from the " *existing* members in payment of the existing " debts, no matter of what date. If after you " have done that, there remain debts unsatisfied, " so that you have to resort to members who " have passed away from the company within a " year, then you will be compelled to classify the " *residuum* of the debts so remaining, and ascer- " tain what part of that residuum is to be " attributed to past debts—that is, to debts which " pre-existed the transfers made by past " members, and what portion is to be attributed " to the new debts, which have arisen subse- " quently to the date of the last transfer. When " you have ascertained the proportion which is " attributable to debts which existed when the " transfers were made, if there have been several " transfers within the year, you will be com- " pelled of necessity to subdivide that portion of " the residuum into several portions, according " as you find that transfers have been made " within the past year." (Lord Westbury in *Webb v. Whiffin*, L.R., 5 H.L., 711.)

There is, however, no rule requiring the liquidator to exhaust the later members of the " B " list before calling on the earlier ones. All are simultaneously liable as regards debts incurred whilst they were respectively members. With regard to successive transferees of the *same share* during the year preceding the winding-up, all (being on the " B " list) are apparently liable for the sum due in respect of such share, subject to a right of indemnity by each transferor from his transferee. (*Brett's* case and *Morris's* case, 1873.)

Where the registration of an out-and-out transfer of shares has not been obtained by any falsehood or concealment practised by the transferor towards the company, the company is bound by such registration, and the liquidator in the winding-up of the company is not entitled to take advantage of any equitable rights which the transferee may have as against the transferor to have the transfer set aside. (*In re The Discoverers' Finance Corporation, Lim.; Lindlar's* case (1910), 1 Ch. 312.)

The liability of a " B " list contributory with regard to the costs and expenses of winding-up is restricted to such costs and expenses as have been necessarily incurred in calling upon him for contributions in respect of debts.

Adjustment of the Rights of Contributories inter se.—

When the assets of a company in the course of being wound up have been realised and collected, and the debts, costs, and expenses have been paid, the Court where the winding-up is being conducted by the Court (section 170), or under the supervision of the Court (section 203), or the liquidator where the company is being wound up voluntarily (section 186), shall adjust the rights of the contributories among themselves—*i.e.*, divide any surplus among them according to their respective rights and interests. No contributory who is indebted to the company for calls or otherwise can participate in the distribution, unless and until he pays the amount due from him. If a contributory becomes bankrupt and a dividend (only) is paid in the bankruptcy upon the company's claim for unpaid calls, the trustee of the contributory's estate cannot participate in any distribution in respect of fully-paid shares. Before making a distribution amongst the general body of contributories, the claims of those who were debarred from a right of set-off in respect of dividends and other sums due to them *quâ* members must be taken into account.

Where a call has been made upon " B " list contributories, and it is afterwards ascertained that the contributions were sufficient to the extent that such " B " list contributions need not have been made, the " B " contributories have a preferential right against the surplus for any sums they may have so paid. (*Helbert v. Banner*, 1871.)

In the absence of special provisions the general distribution of assets must be made in such a manner as to allot the loss of capital to the members in proportion to the nominal amounts of capital respectively held by them.

To give this result where all the shares were fully paid, or, being of the same nominal amount, had equal sums paid up thereon, the distribution would be *pro ratâ;* but in some companies some of the shares are fully paid up and others only partly paid, so that in order to allot the loss of capital in proportion to the nominal amounts of capital held it would be necessary to (1) call up the difference between the " short paid " shares and the " fully paid " shares, and (2) distribute the assets (augmented by the calls just made upon the " short paid " shares) amongst the contributories *pro ratâ*. Where certain shares had been issued at a discount the holder was held liable to pay up the amount of such discount in cash to the liquidator, even though the liabilities of the company had been paid, and the " call " had been made merely to adjust the rights of the contributories between themselves. (*Welton v. Soffery*, 1897.)

In *Birch v. Cropper* (*Bridgewater* case) (1889) the House of Lords held that the surplus remaining after discharging the liabilities and repaying the capital was to be divided among all the shareholders in proportion to the nominal amount of the shares held by them, and not in proportion to the amounts respectively paid up thereon.

Express provision is, however, generally made by the memorandum or articles of association for the distribution of the surplus assets after payment of debts, particularly providing for the prior payment out of the assets of the preference share capital, for without some such provision preference shares do not confer a preferential right to return of capital in a winding-up; but on the other hand, in the absence of any restricting clause, the preference shares would be entitled to participate rateably with the ordinary shares in respect of any surplus remaining after paying off the whole of the paid-up capital.

With regard to the necessary qualifications of a " contributory " to entitle him to present a petition to wind up a company, *see title* Petition to Wind up a Company. (*See also* Absconding Contributory, Calls, Surplus Assets.)

Controlling Accounts.—*See* Sectional Ledgers.

Control over Debtor.—Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the Official Receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the Official Receiver, special manager, or trustee, or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the Official Receiver, special manager, trustee, or any creditor or person interested.

He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.

If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the Official Receiver, or to the trustee, or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly. (Bankruptcy Act 1883, section 24.)

The debtor cannot, however, be compelled to submit himself to a medical examination, so that the trustee may be enabled to effect an assurance on his life. (*Board of Trade v. Block*, 1888.)

(*See* Discovery, &c., Public Examination, Re-direction of Letters.)

Conversion of Shares into Stock.—*See* Memorandum of Association.

Conversion of Stock.—The exchange of one class of stock (newly created) for another class (to be extinguished). The conversion is generally made to equalise the rate of interest payable upon the whole or the greater part of a certain class of stock—for instance, suppose a stock to be divided into 4 per cent. and 3 per cent. classes, the class bearing interest at 4 per cent. could be converted into 3 per cent. stock, the holders being allotted such a nominal amount of the 3 per cent. stock as would afford them the same income as previously, *e.g.*, a holder of £300 of 4 per cent. stock would receive £400 of 3 per cent. stock on the conversion.

Where such a conversion of stock causes an increase in the nominal capital, additional *ad valorem* stamp duty must be paid upon such increase of capital. (*Midland Railway Co. v. Attorney-General*, H.L., 1902.)

Where, however, a duly stamped statement has been delivered by a company in respect of *loan* capital which has been wholly or partly applied for the purpose of the conversion or consolidation of existing *loan* capital, the company can claim repayment in respect of the duty charged on the statement so delivered at the rate of 2s. for every £100 of the capital to which the statement relates which has been applied for the purpose of the conversion or consolidation. (Finance Act 1907, section 10.)

(*See title* Memorandum of Association [Capital].)

Conveyance.—A term of wide application, but in practice restricted to a transfer of freehold property from one person to another.

Stamp duty is chargeable per *ad valorem* scale on the basis of £1 per cent. unless the value of the consideration for sale does not exceed £500, in which case the scale of duty is at the rate of 1ns. per cent.

Co-owners.—Co-owners are not necessarily partners, the distinctions between co-ownership and partnership being:—

(1) Partnership is based upon agreement, but co-ownership is not necessarily the result of agreement.

(2) Partners are, unless restricted, agents for each other, but co-owners are not so unless specially authorised.

(3) Partners cannot ordinarily dispose of their partnership shares without the consent of the other partners, but a co-owner has a right of free disposition over his property without the consent of his co-owners.

(4) Partnership involves the idea of working for a profit, but co-ownership does not necessarily imply this.

Partnership may, and invariably does, include co-ownership, but it cannot be said that the reverse will apply.

Although a partnership may not consist of more than 20 persons (in the case of a *banking firm*, the limit is 10 persons) there may be numerous co-owners—for instance, there may be 64 co-owners of a ship, each owning one sixty-fourth share in such ship, trading with their common property with a view of profit, but such co-ownership does not *per se* create a partnership.

Co-partnership.—*See* Partnership.

Copyhold.—A base tenure founded upon immemorial custom and usage. The tenant's estate partakes of the nature of a freehold, but because it is held by a base instead of a free tenure it is called a copyhold. The evidence of the copyholder's title is the court-roll, which he can inspect, and, should he desire, he can make copies of entries thereon. As this class of tenure derives its whole force from immemorial custom, no copyhold estate can be created at the present day. A fine is payable to the lord of the manor on every grant or descent of the copyhold. The manorial rights may, under certain circumstances, be commuted and the lands enfranchised, so that they become freeholds. (*See* Land Transfer Act.)

With regard to a copyhold held by a bankrupt, his trustee may either (1) disclaim same, or (2) deal with it as if it had been duly surrendered, or conveyed to such uses as he may appoint, and any appointee of the trustee is to be admitted or otherwise invested with the property accordingly. The trustee is not bound to be admitted to the land himself.

Copyright.—The sole and exclusive privilege or liberty of printing or otherwise multiplying copies of any book, volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan.

The copyright of a book, &c., published in the lifetime of the author endures for his lifetime and seven years after his death, or for 42 years after the date of first publication, whichever is the longer term. If the work is first published after the author's death the copyright exists for 42 years from the date of first publication, and belongs to the proprietor of the manuscript.

Copyright is created by statute, and does not depend upon registration, which is permissive only, and not compulsory. The copyright thus *commences* from the date of first publication, but no proprietor of copyright in any book, &c., can take any proceedings in respect of any infringement of his copyright unless before commencing his proceedings he has registered his book; the infringement complained of may thus precede registration. A proprietor of copyright desiring to register at Stationers' Hall must lodge there a demand in the prescribed form, setting forth the particulars of the book, &c., for the purpose of registration. The demand must be signed by the proprietor and duly witnessed, and a fee of 5s. is payable on registration. A book cannot be registered *before* it is published.

Copyright is an incorporeal right, is personal property, and may be bequeathed by will. In the case of the owner's bankruptcy it vests in his trustee as property available for the creditors.

Copyright can be assigned (wholly or in part), but the assignment must be in writing, not necessarily under seal. If the original proprietor has been registered, the assignment must also be registered before the assignee can *sue* thereunder.

If, however, the copyright has not been registered prior to assignment, the latter document need not be registered, as the assignee can be registered as though he were the original proprietor—but, in any case, registration must precede any action in respect of the copyright.

The Act of 1842 provides a mode of assignment by entry of the assignee's name and address by the proprietor in the register at Stationers' Hall, on payment of a fee of 5s., and such assignment is as effective as an assignment by deed, and is not liable to any stamp duty.

An amount representing copyright invariably appears in the accounts of publishers, newspaper proprietors and others, being based upon (1) cost; (2) accumulated expenditure (advertisements, losses in earlier years, &c.); (3) a stated number of past years' profits, or otherwise, according to circumstances.

The treatment of copyright in the accounts involves to a great extent considerations similar to those affecting Goodwill (*q.v.*). The precise character of the work or works, the length of period unexpired, and the probability of the work retaining its commercial value during the period of copyright, must all be considered in dealing with the item.

Accumulated expenditure does not necessarily represent the *value* of a copyright, although it may be said that (indirectly) it represents the *cost of acquisition*, and in assessing its value for Balance Sheet purposes this fact must be taken into account.

Where the system of valuing upon a basis of a stated number of past years' profits (say four years) is adopted, the annual fluctuation, be it increase or decrease, is not a revenue item. The general tendency, however (particularly in the case of joint stock companies where the capital cannot be affected by adjustments), is either to leave the item undisturbed as regards amount, or interfere with it only with the idea of its ultimate elimination from the accounts by instalments out of profits.

Corporation.—" Corporations are artificial persons " created by law and endowed by it with the " capacity of perpetual succession. They con- " sist of collective bodies of men or of single " individuals; the first are called corporations " aggregate, the second corporations sole (*e.g.*, " a bishop). The existence of corporations is " constantly maintained by the succession of new " individuals in the place of those who die or " are removed."

Thus a corporation is considered as a distinct individual from the persons composing it. The property of the corporation and not that of its members is liable for its debts, although the members may be liable to contribute to the assets of the corporation. The corporation may sue and be sued by its own members (but *see* Public Officer).

The public trustee appointed under the Public Trustee Act 1906 is a corporation sole.

Although a corporation " has neither body to " be kicked, a soul to be saved, nor a mind to " harbour ill-will," it apparently may be sued for wrongful acts. So, in the case of a company registered under the Companies Acts *an intent* to prefer a creditor may be proved against the company in the event of winding-up (upon evidence of any act in relation to the company's property, which, if done by an individual trader, would have been deemed a fraudulent preference in the event of his bankruptcy), and the act rendered invalid accordingly. (*See* Company, Public Trustee.)

The Interpretation Act 1889 provides that the expression " person " shall, unless the contrary intention appears, in every Act passed since 1889, include any body of persons, corporate or unincorporate.

Corpus.—*See* Capital (Legal).

Corruption, Prevention of.—If any agent *corruptly* accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to

do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person *corruptly* gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses *with intent to deceive* his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal

he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both such imprisonment and such fine, or on summary conviction to imprisonment with or without hard labour for a term not exceeding four months, or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine.

For the purposes of this Act the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another; and the expression "principal" includes an employer.

A person serving under the Crown or under any corporation or any municipal borough, county or district council, or any board of guardians, is an agent within the meaning of this Act. (Prevention of Corruption Act 1906.)

Cost Accounts.—The term "Cost Accounts" in its widest sense implies a system of accounting for the materials and labour employed, and in some cases the working expenditure incurred, in the manufacture of a commodity or commodities, or a class of commodities, or in connection with a given work, so as:—

I. *To ascertain* the prime cost or cost of production (according to the system employed)—

(*a*) As estimated beforehand for quoting or tendering for work, &c.

(*b*) As actually incurred in doing work, &c., so that:—

(1) Where the price is *fixed* for the work the profit or loss can be ascertained, and where the cost as estimated is not borne out by results the errors in estimating may be detected, and where such errors are errors of principle the method of estimating may be amended. Thus similar discrepancies may be avoided on future occasions.

(2) Where the price is *not fixed* the price to be charged can be ascertained upon a sound basis, fair to the customer and safe as regards profit to the "contractor." In this connection accurate costing avoids two evils—(1) Loss being sustained on work actually obtained; (2) failure to obtain future work through overcharges.

II. *To constitute* a check upon:—

(*a*) The amount paid for productive wages.

(*b*) The amount paid for materials; and,

(*c*) The goods placed in store and used on the various products of work in small quantities, for if:—

(1) The cost of materials consumed and labour employed be charged against the cost of the various productions, and such costs of production are not excessive, but yield a satisfactory margin of profit, and are substantially in agreement with the original estimates (if any);

(2) The aggregate of such margins of profit (as ascertained from the costs of the various commodities) agrees approximately with the corresponding balance shown by the financial books.

then it follows that the expenditure in respect of materials and labour has been justified, and that the system of costing is a sound one.

The question as to whether it is practicable or necessary (1) to ascertain the cost of each article produced, or (2) to ascertain the cost of each department only, or (3) to ascertain both individual and collective costs, must depend upon the particular circumstances in each case.

The precise *method* adopted will necessarily vary with the different classes of business or commodities, and even vary as between two similar businesses. Almost every business demands (if only in some minor respect) some special arrangement in its costing system. The goods or work may be similar, but the process different. The goods and manufacturing processes of two businesses may be identical, yet the general organisation of each respectively may be such as to require different methods of costing. The principles involved will always be the same although methods vary, but the system adopted for *determining* the cost of manufacture should always be such as will also afford means for *controlling* the cost where unsatisfactory.

There are various classes of *Cost Accounts*, viz.:—

(1) *Multiple Costs.*—The term used where the products are made in parts—such as boots, agricultural implements, bicycles, and household furniture—where the standardisation of the parts is a special feature.

(2) *Terminal Costs.*—Are those where definite terminating work is concerned—such as a terrace of houses, a steamship, or a bridge.

(3) *Process Costs.*—Are those where the necessary conversion of material takes place—*e.g.*, bread baking, chemical products.

(4) *Single Costs.*—Are applicable where a common unit can be used as a base—such as in collieries (ton), gold mines (ounce), quarries (cubic foot).

(5) *Operating Costs.*—Are applicable to the costs of working railways, tramways, gasworks, and such like undertakings, the bases being ton-mile, car-mile, or 1,000 cubic feet, &c.

Ingredients of Cost:—

(1) *Materials.*—Raw or partly manufactured or wholly manufactured (including carriage inward).

(2) *Fittings*, and ornamental work.

(3) *Wages* directly productive.

(4) *Factory Expenses:*—

Coal, power, light.

Foremen's wages and other costs of supervision.

Rent, rates, and insurance of factory.

Compensation insurance, depreciation of machinery.

(5) *Patterns and Plant* (the whole cost, or an apportionment thereof, according to circumstances).

(6) *Establishment Charges:*—

Management salaries (proportion).

Office rent and rates (proportion).

Law charges (proportion).

Audit fee (proportion).

The cost of the materials and directly productive wages form the prime cost of the commodity or work, and the other expenditure, being indirect, is called the *on-cost*, the two together making the full *cost of production*.

(Costs of distribution—such as agents' and travellers' salaries and expenses, advertising, outward carriage, and bad debts—are excluded.)

Materials obtained solely and specially for a specific work or class of commodity should be charged direct to the Cost Account of that work or class.

Materials obtained for general purposes should be charged to a Stores Account, for which the storekeeper will be held responsible, any goods supplied or given out for specific work being credited to Stores Account and charged to the particular work. (*See title* Stores Account.) Wages should be charged directly against the work where specific, and apportioned where not so. All other expenditure—establishment and such like—must

be apportioned to the various jobs either by a percentage based upon (1) material used, (2) wages, (3) time occupied, or (4) total prime cost, or upon some other basis depending on and varying with circumstances, and even differing in the same business, *e.g.*, some items may be apportioned according to time occupied, and others according to total cost, and so on.

Owing to fluctuations of output the apportionment of the establishment expenses, however carefully done, is often a matter of difficulty and a cause of error, either by way of overcharge or undercharge, and the basis of such apportionment requires careful consideration and readjustment from time to time should serious discrepancies be discovered.

Many costing systems are now grafted on to the financial records, and with the assistance of minor adjustments (chiefly in connection with the apportionment of the establishment charges) are balanced with and form part of the double-entry records.

This is obviously the best possible type of costing system, but it is by no means generally adopted as yet. The usual source of error in costing, as in many other branches of accounting work, is that of omission to charge some item forming part of the cost. But even without actually incorporating the costs and finances as one system, it is possible to ascertain in aggregate that the purchases made, the stores given out, and the direct wages paid are substantially accounted for in the Costing Records.

(*See* Cost of Production, Manufacturers' Accounts, Stores Account.)

Cost Book Mining Company.—A company formed by a number of persons who have decided to contribute capital in certain proportions in order to search for ores, or work a mine. They appoint an agent called the purser, who conducts the affairs of the mine. The purser keeps a Cost Book wherein are entered the names of the shareholders and the number of shares respectively held by each. The minutes of all proceedings are also recorded in this book, and are required to be signed by all present at the various meetings. The purser enters all receipts and payments in respect of the mine in the Cost Book and prepares a statement periodically showing the financial position. This must be done once at least in every sixteen weeks, but it is generally done about once in every two months. A meeting of the shareholders is called to consider the purser's reports and accounts, and if a profit has been made, to declare a dividend. Subject to any special provision to the contrary a shareholder in a Cost Book partnership may relinquish or transfer his shares upon paying to the purser his share of the liabilities (if any) to date. Where the shares are relinquished notice must be given to the purser, and where they are transferred an entry of the transfer must be made by the purser in the Cost Book.

Although a Cost Book mining company is practically a partnership, it does not constitute a partnership within the meaning of the Partnership Act 1890. These companies appear to occupy an intermediate position between an ordinary joint stock company and an ordinary partnership.

This class of company is peculiar to the Stannaries of Devon and Cornwall.

Cost of Production.—The *total* expenditure incurred in the production of a commodity, as distinct from the prime cost, which is the original or *direct* cost of same. (*See titles* Cost Accounts, Manufacturers' Accounts.)

Co-surety.—One who is a surety in conjunction with another or others.

One of several sureties on paying the debt has a right of contribution from his co-sureties (1) whether they are bound jointly or severally; (2) in the same or in different instruments; and (3) whether aware or ignorant of their mutual relationship, *provided* they are sureties for the same debtor and the same transaction.

They must contribute in the same proportions as those for which they have agreed to become sureties, and in default of such agreement, they must contribute equally.

No contribution can be recovered from a co-surety for any sum beyond the amount for which he has agreed to be bound, nor does the right to recover contribution *arise* until a surety has paid more than his just and proper proportion as agreed between him and his co-sureties, although he may have paid a considerable sum and his co-sureties have paid nothing.

Where, however, a creditor has obtained a judgment against one or more of co-sureties for the *whole* of the debt, the surety may, *without paying the debt*, bring an action against a co-surety for help to meet the amount of the judgment, for it is clear that if there are two or more sureties equally liable, the satisfaction of a judgment for the full amount of the debt by one surety will involve a payment by him in excess of his due proportion, and give rise to a right of contribution. But, as already stated, the surety is not in such a case called upon possibly "to ruin himself before seeking relief."

Co-sureties are entitled to the benefit of all securities obtained by one of their number, whether they were aware of such securities or not.

In addition to his right of contribution from co-sureties in respect of any payment in *excess* of his just proportion, a co-surety has his right of recoupment from the principal debtor for the *whole* amount he has paid to discharge his obligation, after deducting, of course, any sums received from co-sureties.

In the event of the insolvency of one or more of a number of co-sureties, the due proportions for which the solvent sureties were liable are correspondingly increased. Thus, if there were originally five co-sureties and two became bankrupt (the estates providing no dividend) any surety paying the whole of the debt guaranteed would be entitled to recover contribution to the extent of one-third from each of the other solvent co-sureties, instead of the one-fifth for which they were originally liable. But where three persons signed a guarantee which it was intended should be signed by four persons as a joint and several guarantee, and the fourth person did not in fact execute the document, it was held that the three who had signed were not liable on the guarantee. (*National Provincial Bank v. Brackenbury*, 1906.)

The liability of a bankrupt co-surety to contribution, although unascertained at the time of the bankruptcy proceedings, is a debt provable in the bankruptcy. The discharge of a bankrupt, or the acceptance by a creditor of a composition or scheme under the Bankruptcy Acts, does not release any person who was jointly bound or had made any joint contract with the bankrupt or debtor.

The Statute of Limitation does not begin to run against a surety suing a co-surety for contribution until the liability of the surety is ascertained, *i.e.*, until the claim of the principal creditor has been established against him; although at the time of the action for contribution the statute may have run as between the principal creditor and the co-surety. (*See* Guarantee.)

Countersign.—The signature of a subordinate officer upon a document, to vouch for the authenticity of the signature or signatures of his superior officer or officers upon the same document—*e.g.*, the signature of the secretary of a joint-stock company upon a cheque verifying the signatures of the directors.

Country Notes.—The bank notes of all banks of issue, other than the Bank of England.

They do not constitute legal tender.

Coupon.—A piece cut off. The interest payable upon debenture bonds and the like is sometimes distributed by means of coupons. Upon or after the issue of a bond a sheet is issued, containing a certain number of "pay orders," representing the successive periods in which interest will become payable. As each due date comes round the particular section of the sheet must be detached, and payment will be made thereon, as and where indicated upon the coupon itself.

A coupon for interest attached to or issued with any security, or with any agreement or memorandum for the renewal or extension of time for payment of a security, is exempt from

duty (of 1d.)—Stamp Act 1891—and the exemption applies whether the coupons are issued with the security or issued subsequently in a sheet. (Finance Act 1894.)

Covenant.—An agreement under seal between two or more parties, by which one (or more) of the parties pledges to the other, or others, either that some act has been done or will be done, or stipulates for the truth of certain facts.

Cover.—Securities in the form of bonds, scrip, certificates, &c., deposited with a lender as security for a loan, generally with a margin in value, to cover the risk of loss in the event of the default of the borrower.

The term is also applied to the deposit sometimes required by stockbrokers before entering into speculative transactions on behalf of a client.

Cover Note.—A note issued by an insurance company (generally fire, accident, or guarantee) setting forth the terms and subject matter upon which a proposal for insurance has been made, and declaring that subject to certain conditions the proposer shall be "covered" until a policy has been prepared and issued in conformity therewith, or until notice be given that the proposal has been declined. A cover note generally remains in force for 30 days only. As to Marine Insurance, *see title* Slip.

Coverture.—The (legal) state of a woman during marriage. Formerly it gave rise to certain disabilities in respect of property, but since 1882 these have been almost entirely removed.

Credit.—Trust or confidence; commercially a person is said to give credit when he advances money upon loan, or transfers goods or other property to another, without stipulating for immediate payment.

In economics credit is treated as negative capital, for it enables those who have an industry but no (positive) capital—or an insufficiency of it—to carry on such industry, credit being the capital of others which serves to supplement and render more complete the available resources of the trader.

In bookkeeping the term credit is applied to all entries corresponding with, or as opposed to, the debit entries. The placing of an amount to the credit of a personal account records either a right of the particular person to demand such amount, or else the satisfaction of an equivalent cross demand. The general *rule* in bookkeeping is to place all credit entries upon the right-hand side of the various books of account, the debit entries being placed upon the left-hand side.

This is, however, a rule ensuring uniformity of practice rather than a bookkeeping principle. (*See* Debit.)

Defoe (writing in 1731) makes the following observations in his *Complete English Tradesman*:—

"A tradesman ought to consider and measure "well the extent of his own strength; his stock "of money and credit is properly his beginning; "for credit is a stock as well as money. He that "takes too much credit is really in as much "danger as he that gives too much credit; and "the danger lies particularly in this, if the "tradesman overbuys himself, that is, buys "faster than he can sell, buying upon credit, the "payments perhaps become due too soon for "him; the goods not being sold, he must answer "his bills upon the strength of his proper stock—"that is, pay for them out of his own cash; if "that should not hold out, he is obliged to put "off his bills after they are due, or suffer the "impertinence of being dunned by the creditor. ". . . This impairs his credit; and if he "comes to deal with the same merchant or "clothier, or other tradesman again, he is "treated like one that is but an indifferent pay-"master; and, although they may give him "credit as before, yet, depending that if he "bargains for six months, he will take eight or "nine in the payment, *they consider it in the "price and use him accordingly;* and this "impairs his gain, so that loss of credit is, "indeed, loss of money, and this weakens him "both ways.

" It is not possible in a country where there " is such an infinite extent of trade as we see " managed in this kingdom, that either on one " hand or another it can be carried on without " a reciprocal credit both taken and given; but " it is so nice an affair that I am of opinion as " many tradesmen break with giving too much " credit as break with taking it. The danger, " indeed, is mutual and very great. Whatever, " then, the young tradesman omits, let him " guard against both giving and taking too much " credit."

(*See* Bookkeeping, Capital.)

Credit Note.—An advice, acknowledgment, or admission of indebtedness sent or made in writing by a debtor to his creditor. The term is used commercially in connection with the note of allowance made by a vendor in respect of:—

(1) Goods returned;

(2) Short weight;

(3) Abatement in price;

(4) Packages returned, &c.

The issue of credit notes should be as carefully supervised as the issue of receipts for cash, either by means of consecutively numbered carbon copies or other counterfoil books.

Creditor.—One who credits, believes, or trusts another; commercially one to whom a sum of money is due. (*See* Secured Creditor.)

The verification of the amount stated in a Balance Sheet as the total sum due to " creditors " necessarily forms part of an auditor's duty.

Liabilities to creditors may be divided into three classes:—

(1) On bills payable.

(2) On open account.

(3) On loan account.

(1) The liabilities stated in the Balance Sheet as bills payable should agree with the balance at the credit of the Bills Payable Account in the Ledger, and should be compared by an auditor with a list of the unpaid bills extracted from the Bills Payable Book. (*See* Bills Payable Account.) The payments stated to have been made to meet bills during the year may be vouched by the production of the returned bills themselves.

(2) *Creditors on Open Account.*—The total of the list of balances should be compared with the Balance Sheet. The balances themselves should be compared in detail with the Ledger, and debit balances in accounts usually in credit should be scrutinised closely, and explanation should always be required of the payment of any round sum which appears in whole or in part as a debit balance in an account which ordinarily would have a credit balance. The explanation may be that the amount in question is a payment on account in respect of a transaction for which only a *pro formâ* invoice has been rendered. In such a case it should be ascertained that no part of the consignment has been taken into stock or (alternatively) treated as the subject of a sale.

Ledger Accounts should be examined with special regard to the possible omission of invoices just prior to stocktaking date (say December 31st), *e.g.*, that in what appears to be a regular monthly account the " December invoice " is included.

Where a special examination is called for, all items passed to the credit of the creditors' accounts may be compared with the invoices, or in view of the possible omission of invoices, the creditors' statements may be compared with the detailed list of balances.

(3) *Loan Accounts.*—These should be compared with the Ledger Accounts, and attention should be directed to the interest (if any) periodically paid thereon.

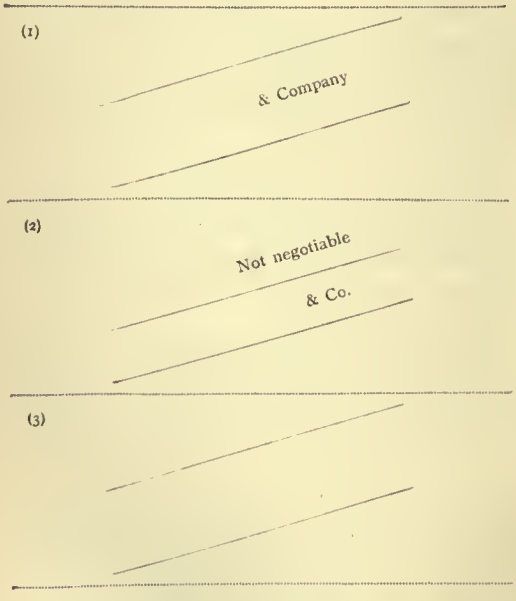
Some distinction must be made between unsecured and secured creditors. If creditors have a " floating " charge or hold security belonging to the firm or company owing the money, it is essential that the fact should be stated on the face of the Balance Sheet, and where a security takes the form of a charge upon a specific asset it is desirable to deduct the amount of the advance from the value of the asset so charged.

But whatever form of distinction be adopted, liabilities which are secured by a mortgage, or charge, or the deposit of security, should not be merged in the amount due to creditors who are not so secured.

Credit Sales.—Sales made, in respect of which payment is postponed, the price being recorded in the books of account of the vendor. The buyer becomes a debtor, and the price of the goods a book debt.

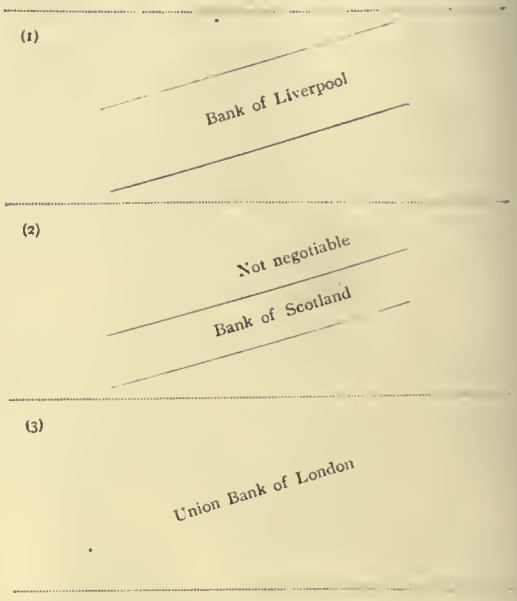
Cross Bill.—*See* Re-draft.

Crossed Cheque.—When a cheque bears across the face the addition of two parallel transverse lines, either with *or without* the words "and Company," or any abbreviation thereof, or with *or without* the words "not negotiable," that addition constitutes a crossing and the cheque is crossed generally. Thus:—



Note.—The above are instances of "general crossings."

When a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker, thus:—



Note.—The above are instances of "special crossings."

The Bills of Exchange Act 1882 does not recognise the words "account payee," or the name of the payee in full (written across the face of a cheque) as part of the crossing.

The drawer may issue a cheque, crossed either generally or specially, or he may issue it uncrossed. Where uncrossed the holder may cross it generally or specially, or being crossed generally he may cross it specially, and whether crossed generally or specially he may add the words "*not negotiable.*" Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself, and where a cheque is crossed specially to a banker, *that banker* may cross it again to another *banker* for collection.

The crossing is a material part of the cheque, which cannot be lawfully obliterated or altered except as stated above. (1882 Act, sections 76, 77, 78.)

A crossed cheque is only payable through a banker, that is to say, the holder cannot obtain a direct cash payment from the banker (as can be done in the case of an "open" cheque), but must pass the cheque through a banking account, either with the banker upon whom the cheque is drawn, or with some other banker.

Where a banker pays a cheque crossed generally, otherwise than to a banker, or if crossed specially, otherwise than to the banker to whom it is crossed (or his agent for collection being a banker), he is liable to the true owner of the cheque for any loss the latter may sustain owing to the cheque having been so paid, provided that where a cheque is presented for payment which does not at the time of presentment appear (1) to be crossed, or (2) to have had a crossing which has been (*a*) obliterated, or (*b*) added to, or (*c*) altered otherwise than as authorised by the Bills of Exchange Act, the banker paying the cheque in *good faith* and *without negligence* shall not be responsible or incur any liability, nor shall the payment be questioned by reason of having been made (under such circumstances) otherwise than to a banker, or to the banker to whom the cheque is or was crossed, or his agent for collection being a banker, as the case may be. (Section 79.) Where a banker (in good faith and without negligence) pays a crossed cheque according to the terms of the crossing, he is protected to the extent that he is in the same position as if payment of the cheque had been made to the true owner thereof. (Section 80.)

Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title, or a defective title, thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment. (Section 82.) A banker receives payment within the meaning of the section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof. (Crossed Cheques Act 1906.)

Cross Proof.—*See* Joint and Separate Estates.

Crown Debts.—Debts due to the Crown. The Crown claims priority for its debts over all other creditors. In bankruptcy and winding-up procedure the Preferential Payments Act 1888 and Companies (Consolidation) Act 1908 provide for the prior payment of such taxes as may be due to the Crown, having become due and payable within a year previous to the receiving order or winding-up order, as the case may be; whilst an order of discharge does not release the bankrupt from any debt with which he may be chargeable at the suit of the Crown, unless the Treasury certify in writing their consent to his being discharged therefrom. (Bankruptcy Act 1883, section 30.)

The Crown is bound by the provisions of the Bankruptcy Acts so far as regards (1) priorities of debts, (2) remedies against property, (3) the trustee's right of disclaimer, (4) the *effect* of a composition, and (5) the *effect* of the debtor's discharge, but the Crown is not affected by the "relation back" of the trustee's title. (1883 Act, section 150, and *Re Bonham*, 1879, 10 Ch.D. 595.)

In the administration of the estates of deceased persons the debts due to the Crown after payment of reasonable funeral and testamentary expenses rank in priority to all other debts of the deceased.

Cum Dividend.—With dividend. When a stock is sold it is presumed to carry with it any accruing dividend, unless there is an agreement to the contrary or the Stock Exchange Committee has declared the stock "ex dividend." If the transaction takes place after the Transfer Books have been closed (and it is a registered stock) the purchaser may either collect the dividend from the seller, or, if already declared and ascertained, he may deduct same from the purchase-money. If, however, the stock be sold "ex dividend" the seller has the right to retain or recover from the purchaser (if collected by the latter) the dividend just paid or about to be paid.

(*See* Apportionment.)

Cumulative Legacy.—*See* Legacy.

Cumulative Preference Shares.—*See* Preference Shares and Stock.

Current Account.—*See* Account Current.

Custodian Trustee.—*See* Public Trustee.

Custom.—Long usage. If a custom be universal it is common, but if it affect only certain districts or classes then it is particular, and should present the following characteristics in order to be upheld and be judicially noted, viz.:—Reasonable, certain, compulsory, legally possible, and immemorial.

Channell, J., has held that a custom judicially noted is not a *rule of law*, but a judicial *recognition of a fact*—the fact being that the practice so recognised as customary generally prevailed. The recognition of such a custom would be withdrawn upon proof that as a matter of fact a *new practice* generally prevailed, in place of the former.

Custom House.—The building where Government officials receive duties on imported goods, and where vessels are "entered" on arrival, and "cleared" when leaving port.

Customs.—Duties charged upon commodities on their importation into, or exportation out of, a country.

Customs of Merchants.—*See* Law Merchant.

Cy-près.—Near to it. "The principle of this "doctrine is that where a testator has two "objects which are incompatible and one is "primary or general and the other is secondary "or particular, the latter is sacrificed so that the "testator's intention may be carried out *as near* "*as may be* according to law."

D

Damage Survey.—An inspection held by surveyors, or other competent persons, to ascertain the nature and extent of the damage to a vessel or cargo.

Data.—Grounds whereon to proceed; facts from which to draw a conclusion.

Date.—The time (generally the day) an event happened or something was done or is intended to be done.

A deed (unless it be an escrow) takes effect from the date of its delivery, so that, provided the date of delivery can be proved, a deed will be good even though it is not dated, or contains a false or impossible date (*e.g.*, 31st February).

A bill of exchange is not invalid by reason only that it is not dated, is ante-dated or post-dated, or bears the date of a Sunday. (Bills of Exchange Act 1882, sections 3 and 13.)

The date of an acceptance or indorsement is deemed to be the true date in the absence of evidence to the contrary (section 13), but the presumption may be rebutted, *e.g.*, for the purpose of avoiding the effect of the Statute of Limitation.

Where a bill is issued undated, and is payable at a fixed period after date or sight, any holder may insert therein the true date of issue, and the bill shall be payable accordingly, provided that where a wrong date has been inserted the bill shall nevertheless be deemed to be correctly dated as regards a holder in due course, and also as regards the party who inserted the date if he made the mistake *bonâ fide*. (Section 12.)

Except where an indorsement bears a date after the maturity of a bill every negotiation is *primâ facie* deemed to have been effected before the bill was overdue (section 36), and in the absence of evidence to the contrary, indorsements are deemed to have been made in the order in which they appear on the bill. (Section 32.)

Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment. The term " month " in a bill means calendar month. (Section 14.)

A will is to be construed with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears in the will.

Dating Forward.—A practice adopted by some sellers of goods of dating an invoice some agreed period *later* than the time the goods in question are actually delivered. The object is to attract buyers by the long credit which such a system offers, but as the sellers must necessarily charge (by increase of price) for such accommodation and increased risk of making bad debts, it is not a system which can in any way be recommended. Apart from the principles involved, such a system of " dating forward " intensifies the difficulty of obtaining a correct account of the purchases of a concern in respect of a particular period, and the stock on hand at the end thereof, particularly so where the practice is carried on largely. (*See* Credit.)

Day Book.—A book containing a chronological record; commercially a record of transactions day by day. The term is usually applied in book-keeping to the Sales (Day) Book, or the Purchases (Day) Book, wherein are recorded the sales and purchases respectively, although obviously the term is of wider application.

Days of Grace.—The time of indulgence allowed to an acceptor for payment of a bill of exchange or promissory note.

In the United Kingdom, three days called days of grace are added to the time of payment of the bill or promissory note, and ordinarily the bill or note is due and payable on the last day of grace.

There are no days of grace allowed on :—

(1) Bills payable on demand; and

(2) Bills expressed to be payable " without grace."

(*a*) When the last day of grace falls on a Sunday, Christmas Day, Good Friday, or a public fast or thanksgiving day,

the bill is due and payable on the *preceding business* day (with the exception mentioned in (*c*) below).

(*b*) When the last day of grace is a Bank holiday (other than Christmas Day and Good Friday) or

(*c*) When the last day of grace is a Sunday and the second day of grace is a Bank holiday,

the bill is due and payable on the *succeeding business* day. (Bills of Exchange Act 1882, section 14.) Thus :—

Days of Grace	Cases under (*a*)		Cases under (*b*)		Case under (*c*)
1		*			
2	*	Sunday		Christmas Day	Bank Holiday
3	Sunday, Christmas Day or Good Friday	Christmas Day	Bank Holiday	Bank Holiday	Sunday
			*	Sunday	*
				*	

(The asterisk shows the day upon which the bill is payable.)

Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where the bill is payable. That is to say, if an English bill were payable in a country which allowed no days of grace, the bill would be payable on the date fixed by the instrument, but a foreign bill payable in England would be entitled to three days' grace.

Dead Charges.—The term applied to the expenses of a manufacturer which are not directly chargeable against the cost of any process or com-

modity, *e.g.*, office salaries, travelling expenses, &c. (*See* Cost Accounts, Establishment Expenses, Head Office Charges, Manufacturers' Accounts.)

Dead Freight.—That portion of the freight payable by a shipper (who has agreed to supply, but has not supplied, a full cargo) at the agreed rate upon the quantity short shipped.

Dead Rent.—*See* Royalty.

Death Duties.—Duties levied upon the estates of deceased persons, or upon persons to whom any benefits accrue by the death of others. (*See* Estate Duty, Legacy Duty, Settlement Estate Duty, Succession Duty.)

Death of Bankrupt or Debtor.—If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive. (Bankruptcy Act 1883, section 108.) If a debtor against whom a bankruptcy petition has been filed dies before service thereof, the Court may order service to be effected on the personal representatives of the debtor or on such other persons as the Court may think fit. (Rule 156*a*.)

If a debtor dies after a receiving order has been made against him, an order of adjudication may nevertheless be made (*Re Walker*, 1886), but after the death of a bankrupt the trustee cannot exercise a general power of appointment vested in the deceased. (*Re Nichols*, 1885.) (*See* Deceased Insolvent.)

Debenture.—An acknowledgment of a debt; "securities given by companies."

Under the common law rule a company's only remedy as regards unpaid moneys under a contract to subscribe for debentures was to sue for the damages (if any) sustained by the breach of contract, but a contract to take up and pay for debentures may be enforced by an order for specific performance. (Companies (Consolidation) Act 1908, section 105.)

A debenture issued by a company takes the form of an instrument under the seal of the company, containing a covenant to repay the principal sum for which the company therein admits indebtedness, together with interest thereon at an agreed rate. The debenture usually contains a charge upon all or some of the company's property, and is issued subject to such conditions as may be agreed upon, which are generally indorsed upon the debenture.

Where a debenture contains such a charge, or is issued with, and in pursuance of, a trust deed which contains such a charge, it is called a *mortgage debenture*. Where there is no charge incorporated in the debenture, it is called a *simple debenture* or *naked debenture*.

Where the debentures are further secured by a trust deed (*see* Trust Deed) the freeholds and leaseholds of the company are usually conveyed to trustees for the debenture-holders, thus protecting the debenture-holders against the danger of having their claims postponed to those of subsequent mortgagees in respect of the property so conveyed, the other property of the company, stock-in-trade, book debts, &c., being subject to a charge contained in the debentures called a floating charge. (*See* Floating Charge.)

Every mortgage or charge created by a company (since 1st January 1901) for the purpose of securing any issue of debentures must be "registered" (see *infra*), but this must not be confused with what are termed "Registered Debentures" as distinct from "Debentures to Bearer," which form two of the classes into which debentures are commonly divided.

Registered debentures are those which are expressed to be payable only to the registered holder. To effect a change of ownership they must, therefore, be transferred (as in the case of shares or stock) and the instrument of transfer duly registered with the company. The stamp duty upon registered debentures is per scale (based upon the rate of 2s. 6d. per cent.), and the stamp duty upon the transfer thereof is at the rate of 10s. per cent. It has been held that where debentures are issued as redeemable at a

premium at some future date the stamp duty payable on issue (2s. 6d. per cent.) must cover the amount of the premium as well as the "face value" of the debenture (*Rowell's* case, 1897, 2 Q.B. 194.) But in *Knight's Deep v. Commissioners* (1900, 1 Q.B. 217) it was held that stamp duty was not payable on a premium payable only if redemption took place at the company's *option* at an earlier date than that originally fixed. (*See* Redeemable Debentures.) Of course, in the event of a transfer, the 10s. per cent. is payable upon the *consideration for such transfer.*

Debentures to bearer are those which are payable to the bearer thereof, and which pass by delivery. The holder is not registered, nor is any written assignment necessary, the transfer stamp duty being thus avoided, but the stamp duty payable upon the debenture itself is two shillings for every ten pounds or fractional part of ten pounds of the money secured.

Debentures to bearer are not issued so frequently as registered debentures. (*See* Negotiable Instruments.)

A further distinction must be made, viz., between redeemable or terminable debentures and irredeemable or perpetual debentures.

Redeemable debentures are those which provide for repayment of the principal sums (1) upon specified dates, (2) upon being "drawn" for redemption, or (3) after certain notice has been given of intention to repay.

Irredeemable or Perpetual debentures are those which are issued upon condition that the principal sums secured are repayable only (1) on default of payment of interest, (2) on the winding-up of the company, or (3) on default as regards some special condition.

Section 103 of the Companies (Consolidation) Act 1908 declares that a condition contained in *any* debentures, or in *any* deed for securing any debentures, 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.

Debentures issued by a company may, therefore, be classified as follows:—

(1) *Charge*—
  (*a*) Under trust deed, with a charge, either with or without covering debentures.
  (*b*) Without a trust deed, but debenture containing a charge.
  (*c*) Without any charge.

(2) *Holder*—
  (*a*) Registered.
  (*b*) Bearer.

(3) *Repayment*—
  (*a*) Redeemable or terminable.
  (*b*) Irredeemable or perpetual.

There is no statutory limit imposed as to the amount a company can borrow upon debentures, but the articles of association sometimes impose such a limit. The company must, however, have power to borrow, and this will depend upon its memorandum and articles of association. Generally, the memorandum expressly authorises the issue of debentures, but it appears that a company may borrow upon an implied power in the memorandum. Authority to borrow upon the security of the uncalled capital requires to be in more definite terms, but the power may be contained in either the memorandum or the articles, a provision in the latter being sufficient if the memorandum is silent thereon; but such a power in the articles will be of no avail if inconsistent with the memorandum. Where the memorandum *and* articles are silent upon the point, the articles may be altered by special resolution so as to enable the company to charge the uncalled capital.

The rights and remedies of a debenture-holder having a charge upon the company's property are:—

(1) To sue for repayment of principal, interest, and costs.
(2) To present a petition to wind up the company.
(3) To prove in the winding-up.
(4) To appoint a receiver.

The last named is the most usual course, but, as a general rule, these rights accrue only on the

default of the company, in respect of all or any of the conditions under which the debenture was issued.

Issues at a Premium, at Par, or at a Discount.

Debentures may be issued at par, at a premium, or at a discount, but the actual liability of the company so issuing is measured by the *nominal* amount (or par value) of the debentures in question. Where the debentures are issued at a discount the par value must appear among the liabilities, and the discount among the assets. The latter should, of course, be written off by instalments over a period of years, and be entirely written off by, or before, the date the debentures are redeemable. In the case of an issue of debentures *redeemable* at a premium, the *contingent* liability in respect of such premium must be recognised, and, where redemption at the premium is certain or probable to take place, gradually provided for.

Where debentures are issued at a premium and are redeemable at par, the premium is available for dividend unless the terms of issue or the articles of association of the company provide otherwise. But as a rule, irrespective of any such restrictions, a company making such an issue reserves the premium for further working capital.

In any case any expenses incurred in connection with the debenture issue should be charged against the premiums received.

The total amount of the sums paid or allowed by way of commission or discount in respect of any debentures must also be stated in the annual summary made next after the payment of the commission, or the allowance of the discount (Companies (Consolidation) Act 1908, section 26), and the total amount thereof, or so much thereof as has not been written off, shall be stated in every Balance Sheet until the whole amount thereof has been written off. (Section 90.)

Reissue.

In *Tasker & Sons, Lim.* (1905), it was held that although debentures may be transferred from one holder to another (either by written assignment or by delivery, according to the terms of the debenture) they cannot be transferred to the company itself, or assigned "in blank" and subsequently reissued. It was said that once the debenture is paid off by the company the debt and the security therefor are non-existent, and the subsequent issue of a debenture to a third party purporting to be a mere transfer of the original debenture would be inoperative. As from 28th August 1907 a company is deemed always to have had power to keep the debentures alive for the purposes of reissue, unless (1) the articles of association of the company, or (2) the conditions of issue of the debentures expressly otherwise provide, or unless (3) 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. For the purposes of stamp duty, but *not* for the purposes of any provision limiting the amount or number of debentures, the reissue is deemed a new issue. (1908 Act, section 104.)

Registration.

Every mortgage or charge created by a company since 1st January 1901, being a mortgage or charge for the purpose of securing any issue of debentures, "shall, so far as any security on "the company's property or undertaking is "thereby conferred, be *void* against the liqui- "dator and any creditor of the company, unless "filed with the Registrar 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" (*i.e.*, the debt due by the company may be good, but the remedies available for enforcement of such debt will only be those open to an unsecured creditor).

The foregoing was enacted by the Act of 1900, but it was repealed as from 1st July 1908, and re-enacted by section 10 of the Companies Act 1907, with the proviso that where a mortgage or charge thus becomes void, the money secured thereby shall *immediately become payable.*

These provisions are now embodied in the Consolidation Act of 1908.

The "manner" of registration "required by he Act" is the entry by the Registrar on payment of the prescribed fee in a register to be kept by him of (1) the date of creation of the harge, (2) the amount secured, (3) short particulars of the property charged, and (4) the ames of the mortgagees or persons entitled to he charge. With respect to a series of *pari assu* debentures, it is only necessary to record 1) the total amount secured, (2) the dates of he resolutions authorising the issue of the series nd of the covering deed (if any), (3) a general escription of the property charged, and (4) the ames of the trustees (if any) for the debenture-olders.

Where more than one issue is made of debenures in the same series, there shall be sent to he Registrar for entry on the register particulars of the date and amount of each issue, ut an omission to do this shall not affect the alidity of the debentures issued.

Where any commission, allowance, or discount as been paid or made, either directly or ndirectly, by the company to any person in conideration of his subscribing or agreeing to subcribe, whether absolutely or conditionally, for ny debentures of the company, or procuring or greeing to procure subscriptions, whether absoute or conditional, for any such debentures, the articulars required to be sent for registration s above shall include particulars as to the mount or rate per cent. of the commission, disount, or allowance so paid or made, but an mission to do this shall not affect the validity f the debentures issued. Provided that the eposit of any debentures as security for any ebt of the company shall not for the purposes of his provision be treated as the issue of he debentures at a discount.

The Registrar must give a certificate of such gistration (which certificate is conclusive evince of compliance with the requirements), and he company must cause a copy of this certificate be indorsed on every debenture or certificate debenture stock issued by the company, the ayment of which is secured by the mortgage or harge so registered.

It is the duty of the company to supply the Registrar with the necessary particulars for registration, but the charge *may* be registered on the application of any person interested therein, and he is entitled to recover from the company any fees properly paid by him to the Registrar.

The register is open to inspection *by any person* on payment of the prescribed fee, not exceeding 1s. for each inspection. (Companies Act 1908, section 93.)

A copy of every instrument creating a charge requiring registration as aforesaid is to be kept at the registered office of the company, and to be open to inspection *by the members and creditors* of the company free of charge. A copy of one debenture is sufficient in the case of a uniform series. (Companies Act 1908, sections 93 and 101.)

In the event of omission to register or the misstatement of any particular, a Judge of the High Court is given discretionary power to order, on the application of the company or of any person interested, that the time for registration be extended, or that the omission or misstatement be rectified. (Companies Act 1908, section 96.) In *Re Joplin Brewery Company, Lim.* (1902, 1 Ch. 79), Mr. Justice Buckley stated that in cases where the time for registration is extended, the order (following the practice upon similar applications under the Bills of Sale Act 1878 (section 14)) ought to contain the words: "But this order "is to be without prejudice to the rights of "parties acquired prior to the time when such "debentures shall be actually registered."

In *Re Erhmann Bros., Lim.; Albert v. Erhmann Bros., Lim.* (1906), it was first of all held that by virtue of these words any unsecured creditors whose debts had been incurred before the date of the registration were to take *pari passu* with the debenture-holders registered under the order, the share of the assets which such debenture-holders would have taken if they had been duly registered within the prescribed time. The Court of Appeal, however, reversed this decision, holding that the unsecured creditors do not come within the terms of the proviso, which is only meant to protect intervening

rights—that is to say, the rights of creditors who may have acquired a charge on the assets subsequently to the issue but prior to the actual registration of the debentures.

The Registrar may order a memorandum of satisfaction to be entered on the register on proof that a registered charge has been satisfied, and shall, if required, furnish the company with a copy thereof. (Companies Act 1908, section 97.)

The company and its officers who wilfully make default in registration of any mortgage or charge, and any persons who permit the delivery of a debenture without indorsement thereon of the copy certificate, are liable to penalties. (Section 99.)

In addition to the register kept by the Registrar, the company is required to keep one. (Section 100.) (*See* Register and Registration of Mortgages.)

AUDIT.

It is important that an auditor should examine the conditions upon which debentures have been issued, for although it may not be incumbent upon him or advisable in all cases to inform the shareholders that a breach of such conditions has been committed, it is desirable that he should acquaint himself with the facts, so that he can exercise his judgment as to whether or not he should refer in his report to any such breach.

An example of a breach of condition is the creation of specific mortgages on freeholds or leaseholds ranking in priority to existing debentures, notwithstanding an undertaking of the company not to do so.

An auditor should also examine the Register of Mortgages.

The term *debenture* is also a Custom House term used to signify the certificate given by the Customs authorities to an exporter of goods upon which drawback is allowed entitling him to receive the amount therein specified. (*See* Debenture-holders, Drawback.)

(*See titles* Debenture-holders, Drawback, Execution Creditor, Floating Charge, Preferential Payments, Redeemable Debentures, &c., Trust Deed.)

Debenture-holders.—As applied to companies, the persons to whom the interest and principal moneys secured by debentures are payable, and who possess the rights and privileges conferred either by the debentures themselves or by the trust deed by which the debenture-holders are further secured. (*See title* Debenture.) They are creditors of the company, and where the debenture (as is usual) confers a floating charge they rank before the unsecured creditors, ranking only after specific mortgages (if any), and the preferential payments provided for by the Companies (Consolidation) Act 1908. (See sections 107 and 209.)

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. This section shall not apply to a private company, nor to a company registered before the first day of July nineteen hundred and eight. (Section 114.)

Debenture-holders may inspect the Register of Members kept by the company (section 30), and the documents filed with the Registrar of Joint Stock Companies (section 243), the Register of Mortgages, and copies of instruments creating mortgages requiring registration (section 101), and the Register of Debenture-holders. (Section 102.)

(*See* Debenture, Execution Creditor, Floating Charge, Receiver, Register and Registration of Mortgages.)

Debenture Stock.—In reply to the self-imposed question, "What is the difference between debentures and debenture stock?" Sir F. B. Palmer says:—"Debenture is the name given to "an instrument embodying a *contract* usually "under seal. Debenture stock is the name given "to a *debt* usually created by a trust deed or "debenture. Hence they differ as much *inter se* "as a mortgage *deed* and a mortgage *debt*."

Ordinarily debenture bonds are only transferable in their entirety, but debenture stock may

be transferred in whole or part, provided that such part does not involve a fraction of a stated amount. Usually the stock is made transferable in multiples, say, of £10, and in some cases each of the multiples has a distinguishing number, similar to the method of identifying shares.

Debit.—In bookkeeping the term "debit" is applied to all entries corresponding with or opposed to the credit entries. The placing of an amount to the debit of a Personal Account records either a right to demand such amount from the particular person, or the satisfaction of an equivalent cross demand. The general *rule* in bookkeeping is to place all debit items on the left-hand side of the various books of account, the credit entries being placed upon the right-hand side.

With regard to items placed upon the debit side, such as will ultimately be received or continue to be enjoyed (*e.g.*, book debts and lands purchased) are to be considered as assets, and those which will not be recovered (*e.g.*, trade expenses) represent losses or charges against profits. Conversely, items placed upon the credit side which will ultimately have to be paid (by the person whose accounts are under review) must be treated as liabilities, whilst the credit items which do not involve a liability (*e.g.*, commissions received) are to be treated as profits. (*See* Bookkeeping, Credit.)

Debit Note.—An advice of indebtedness sent or made in writing by a creditor to his debtor; a statement of goods sold or expenses incurred.

Debt.—A sum of money due from one person to another. (*See* Chose in Action.)

Debtor.—A person who owes a sum of money to another. (*See* Book Debts, Bills Receivable.)

Debtors Act 1869.—Any person adjudged bankrupt . . . shall in each of the cases following be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour: that is to say,

(1) If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud:

(2) If he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud:

(3) If he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud:

(4) If after the presentation of a bankruptcy petition against him . . . or within four months next before such presentation . . . he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud:

(5) If after the presentation of a bankruptcy petition against him . . . or within four months next before such presentation . . . he fraudulently removes any part of his property of the value of ten pounds or upwards:

(6) If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud:

(7) If knowing or believing that a false debt has been proved by any person under the bankruptcy . . . he fail for the period of a month to inform such trustee as aforesaid thereof:

(8) If after the presentation of a bankruptcy petition against him . . . he prevents the production of any book, document, paper or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs, or to defeat the law:

(9) If after the presentation of a bankruptcy petition against him . . . or within four months next before such presentation . . . he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs, or to defeat the law:

(10) If after the presentation of a bankruptcy petition against him . . . or within four months next before such presentation . . . he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs, or to defeat the law:

(11) If after the presentation of a bankruptcy petition against him . . . or within four months next before such presentation . . . he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering or making any omission in any document affecting or relating to his property or affairs:

(12) If after the presentation of a bankruptcy petition against him . . . or at any meeting of his creditors within four months next before such presentation . . . he attempts to account for any part of his property by fictitious losses or expenses:

(13) If within four months next before the presentation of a bankruptcy petition against him . . . he by any false representation or other fraud has obtained any property on credit and has not paid for the same:

(14) If within four months next before the presentation of a bankruptcy petition against him . . . he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud:

(15) If within four months next before the presentation of a bankruptcy petition against him . . . he, being a trader, pawns, pledges, or disposes of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud:

(16) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy.

(Section 11.)

Section 11 of the Debtors Act 1869 shall have effect as if there were substituted therein for the words "if within four months next before the "presentation of a bankruptcy petition against "him," the words "if within four months next "before the presentation of a bankruptcy petition "by or against him, or in the case of a receiving "order made under section 103 of the Bankruptcy Act 1883, before the date of the order." (Bankruptcy Act 1890, section 26.)

If any person who is adjudged a bankrupt . . . after the presentation of a bankruptcy petition against him . . . or within four months before such presentation . . . quits England and takes with him or attempts or makes preparation for quitting England and for taking with him any part of his property to the amount of twenty pounds or upwards, which ought by law to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of felony, punishable with imprisonment for a time not exceeding two years with or without hard labour. (Debtors Act 1869, Section 12.)

Any person shall in each of the cases following be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour: that is to say,

(1) If in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud:

(2) If he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property: (*Semble* under the Act of Elizabeth and/or the Bankruptcy Acts.)

(3) If he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

(Section 13.)

If any creditor in any bankruptcy . . . wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of a misdemeanour punishable with imprisonment not exceeding one year, with or without hard labour. (Section 14.)

Where a trustee in any bankruptcy (or the Official Receiver) reports to the Court . . . that in his opinion a bankrupt has been guilty of any offence under this Act, or where the Court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the bankrupt has been guilty of any offence under this Act, the Court shall, if it appears to the Court that there is a reasonable probability that the bankrupt may be convicted, *order the trustee to prosecute* the bankrupt for such offence. (Section 26.)

Debts Provable in Bankruptcy.—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, with the following exceptions:—

(*a*) Unliquidated damages arising out of a tort, and

(*b*) Debts which, in the opinion of the Court, are incapable of being fairly estimated. (Bankruptcy Act 1883, section 37.)

If judgment has been obtained in an action of tort, before the date of the receiving order, the claim becomes a judgment debt and is provable, but the consideration for a judgment debt may be inquired into. "If a judgment were conclusive, "a man might allow any number of judgments "to be obtained by default against him by his "friends or relations without any debt being due "on them at all." (James, L.J.)

With regard to a debt contracted by a person with the debtor, after notice of an available act of bankruptcy having been committed by the debtor, it has been held that section 37 (2) of the Bankruptcy Act 1883 does not provide that such a debt is "not provable" in the bankruptcy, but only that the creditor is under a personal disability in respect of proof. (*Buckwell v. Norman*, 1898.) If, therefore, the debt (but for the notice of the act of bankruptcy) would have been a provable debt, the creditor has no remedy—he cannot prove in the bankruptcy, being *personally* debarred, nor can he sue the debtor after he has obtained his discharge, for the discharge releases him from all debts provable in the bankruptcy.

Note.—This provision does not apply to a bill holder, who being himself liable on the bill, was *compelled* to take up the bill after notice of an act of bankruptcy. (*McKinnon v. Armstrong*, 1877.)

Although ordinarily debts provable in bankruptcy are in respect of obligations incurred before the *date of the receiving order*, where a debtor is adjudged bankrupt upon the annulment of a composition or scheme which has been previously sanctioned by the Court (but for some

reason not carried out), in such cases any debt provable in other respects which has been contracted before the *date of the adjudication* will be provable in the bankruptcy. (1890 Act, section 3(15).)

The following are some special instances of debts which are, or are not, provable, as the case may be:—

Life Annuities.—The value of these can be estimated and proved for.

Alimony.—There can be no proof for arrears of alimony which have become due since the date of the receiving order. An order for the payment of alimony may be varied from time to time according to the means of the husband; there is, therefore, no means of placing a value upon the future payments for the purpose of proof in bankruptcy. (*Linton v. Linton*, 1885.) The uncertainty as to the continuance of the obligation to make the payments exists not only as to future payments but also as to arrears, for the Divorce Court can and will wholly or partially relieve a husband from payment of arrears if it is just to do so, and it was decided in *Kerr v. Kerr* (1897) that arrears of alimony, even though due at the date of the receiving order, were not provable in the bankruptcy.

Voluntary Bonds.—Proof will be admitted in respect of these (ranking *pari passu* with the other creditors), provided they are not fraudulent as against creditors, and there are no special circumstances to justify rejection.

Debts founded upon fraud or an illegal consideration, or statute-barred debts, are not provable.

Calls on Shares.—A company, whether in liquidation or not, may prove for arrears of calls and the liability to future calls in the event of the bankruptcy of a contributory. (1908 Act, section 127, and *Fuller v. McMahon*, 1900, 1 Ch. 173.)

But if the shares are marketable the claim for future calls can be avoided by a sale and transfer to some person acceptable to the company. The contingent liability to be placed upon the "B" list in the event of a winding-up order being made within twelve months of the transfer may, however, need to be considered in some cases.

Arrears of salary and commission (apart from the Preferential Payments Act) may be proved for, but there is apparently no right of proof for future commissions. Where a manager or other servant is under an agreement for a period of years, he may prove for *future* salary for the unexpired portion of the term, less an allowance for the probability of his obtaining other employment (*Yelland's* case, L.R. 4 Eq. 350), and *quære*, less an allowance for the probability of his decease, if a long period.

Section 37 (8) of the Bankruptcy Act 1883 provides:—

"*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.

(*See* Competitive Proof, Differences, Disclaimer, Double Proof, Empties, Interest in respect of Proof of Debt, Joint and Separate Estates, Postponed Creditors, Proof in respect of Bills of Exchange, Proof of Debt, Secured Creditors.)

Debts Provable in Winding-up.—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. (Companies Act 1908, section 209.)

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 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. (Section 207.)

Thus, if a company is insolvent, a claim for unliquidated damages arising otherwise than by reason of a contract promise or breach of trust is not provable; but such a claim would be provable against a solvent company.

Where the articles of association of a company provide for the payment out of the funds of the company of a stated annual sum by way of remuneration to the directors, such remuneration is not deemed as being due to them in their character of members of the company, but under a separate and distinct contract, and the directors are, therefore, entitled to prove and rank as ordinary creditors in the winding-up of the company for any unpaid fees. (*New British Iron Co.*, 1898.) 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. (Section 169 of Act of 1908.) (*See* Debts Provable in Bankruptcy.)

Deceased Insolvent.—Any creditor, whose debt would have been sufficient to support a bankruptcy petition had his debtor been alive, may, after the death of the latter, present a petition praying for an order for the administration of the debtor's estate, according to the law of bankruptcy. A fee stamp of £5 is payable upon every such petition. (Bankruptcy Act 1883, section 125.) "Creditor" means one or more creditors *qualified* to present a bankruptcy petition as provided by the Bankruptcy Act. Such a petition may not be presented after proceedings have been commenced in any Court other than the Bankruptcy Court; but upon proof of the insolvency of the estate, that other Court *may* transfer the proceedings to the Bankruptcy Court, whether any creditor makes application for such transfer or not.

The mere fact that a creditor who has commenced proceedings in the Chancery Division wishes the case to be retained there is not a sufficient reason for refusing to transfer it to the Bankruptcy Court, but (1) where questions of difficulty will arise necessitating references to the Judge from time to time, or (2) where the proceedings have already been far advanced, the Chancery Court will consider it better to retain the case and not transfer it. (*In re Eade*, 1906.)

One advantage to creditors arising from the transfer from the Chancery Court to the Bankruptcy Court would be the limitation of the landlord's right of distress, which would not be imposed in the Chancery Court. (*Fryman v. Fryman*, 1888.)

On the making of an administration order the personal representative must lodge *in duplicate* with the Official Receiver an account of his dealings with, and administration of, the deceased's estate, a list of the creditors, a statement of the assets and liabilities, and such other information as may be required by the Official Receiver. The account, list, and statement are to be made out and verified, as nearly as may be, in accordance with the practice, for the time being, of the Chancery Division of the High Court. The expense of preparing, making, verifying, and lodging these documents, after being taxed, and on production of the necessary allocatur, is allowed out of the deceased's estate.

The creditors have the same powers as to the appointment of a trustee and committee of inspection as they have in other bankruptcy

cases, and the general provisions of the Bankruptcy Acts, *mutatis mutandis*, apply, subject to the exceptions stated below.

The provisions of the Bankruptcy Acts as to the examination of witnesses, &c. (section 27 of the Act of 1883 and Rule 66), and as to the avoidance of voluntary settlements and fraudulent preferences (sections 47 and 48, *ibid*), were held, prior to 1890, not to apply to administration orders in respect of a deceased person's estate (*Re Hewitt*, 1885, and *Re Gould*, 1887, 19 Q.B.D. 92), and the provisions of section 21 of the 1890 Act have apparently not affected these decisions.

The Court held, in *Re Gould* (*supra*), that section 125 applied only to the *mode* of administration and not to the *subject-matter* which was to be administered; also, that the effect of the section was not to enlarge the assets of the deceased insolvent (by avoiding settlements or preferences), but only to provide the mode of administration in respect of the existing assets. This principle was upheld by the Court of Appeal in *Hasluck v. Clark* (1899), when it was decided that section 45 of the Act of 1883, and sections 11 and 12 of the Act of 1890 (restricting the rights of execution creditors), were not applicable to administrations under section 125. But the provisions of 13 Eliz., cap. 5, apply to the estate of a deceased insolvent whether the estate be administered by the Bankruptcy Court or not. (*Taylor v. Coenen*, 1876, 1 Ch. 636.)

The payment of proper funeral and testamentary expenses is to be made in full out of the deceased debtor's estate, in priority to all other debts; this priority is specially reserved in the Preferential Payments in Bankruptcy Act 1888. The priority of debts prescribed by the latter Act, and *semble* by the Workmen's Compensation Act 1906, applies in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition is deemed, in the event of an order for administration being made thereon, as an equivalent to notice of an *act of bankruptcy*, and after such notice no payment or transfer of property made by the personal representative will operate as a discharge between himself and the Official Receiver or trustee (if appointed), provided that nothing shall invalidate any payment made or any act or thing done in good faith, by the personal representative before the date of the *order of administration*.

Where an administration order is made, such order is gazetted and advertised in the same manner in all respects as an order of adjudication is gazetted and advertised.

Not only has an executor the right to retain his own debt prior to notice of the presentation of a petition, but the Court of Appeal (confirming the decision of the Court below) ruled, in *Re Rhoades* (1899), that an order for administration did not affect the right of retainer. The executrix in this case, in ignorance of her rights, had in fact actually paid over the whole of the funds in her hands to the Official Receiver and lodged a proof in respect of her debt. The funds were more than sufficient to pay the executrix in full, and after withdrawing her proof of debt she was held entitled to recover from the Official Receiver the full amount of her debt.

Where any surplus remains in the hands of the Official Receiver or trustee, after payment in full of all the debts due from the deceased debtor, together with costs of administration and interest, as provided by the Bankruptcy Acts, such surplus must be handed over to the personal representative of the deceased debtor.

(1883 Act, section 125; 1890 Act, section 21; and Rules 275 and 278.)

(*See* Death of Bankrupt or Debtor, Public Trustee.)

Sometimes the administration of the estate of a deceased insolvent is conducted by the executor or administrator with the consent and under the supervision of the creditors or a committee of them. As to this *see title* Administration of Assets.

Decimal System.—A system of money, weights, and/or measures, in which the standard unit in the ascending series is multiplied by ten, and in the descending series is divided by ten.

(*See* Metric System.)

Declaration.—The Statutory Declarations Act 1835 provides for the making of solemn declarations without oath before a Justice of the Peace, notary public, commissioner for oaths, &c. The instrument of declaration requires a 2s. 6d. stamp, *unless* the declaration is within the exemptions in the Stamp Act 1891 (as amended).

Declaration of Transfer.—*See* Bill of Sale (shipping.)

Declaratory Statutes.—Those which declare the law as it previously existed according to the common law.

Deed.—An instrument in writing or printing on paper or parchment, sealed and delivered. In practice it is always signed. The parties to a deed are identified by their respective seals, whilst the deed is operative from the date of its delivery. With regard to the " sealing " of deeds by individuals the practice is to affix a wafer beforehand, and the party in executing the instrument merely touches the wafer and adopts it as his seal, and formally "delivers" the document as his deed. In the case of a company (corporation) the act of " sealing " imports delivery. Thus the attestation clause affixed to the deed of an individual usually reads:—Signed, sealed, and *delivered* in the presence of ————; whereas in the case of a company or corporation the attestation clause merely recites that " the common " seal of the company (or corporation) was " affixed hereto in the presence of ————" (*i.e.*, the director or directors and/or secretary of the company, or officers of the corporation, as the case may be). (*See title* Seal.)

When a deed is delivered subject to a condition it does not take effect unless and until such condition has been fulfilled, but on the performance of the condition the effect of the instrument is retrospective. Such a document is called an *Escrow*, an example of which is afforded in the execution of a conveyance of land by a vendor and delivery to his solicitor, on the condition that the deed is delivered only upon payment of the purchase money.

A deed is also termed (*a*) a contract under seal, (*b*) a specialty contract, or (*c*) a formal contract.

The characteristics of a deed are:—

(1) Estoppel.

(2) Merger.

(3) Right of action thereunder is generally barred after twenty years from the time the right first accrued.

(4) Its efficacy rests upon its form and not upon valuable consideration (*see title* Consideration), therefore a gratuitous promise is binding if made under seal. There are, perhaps, two exceptions to this: (*a*) Contracts in restraint of trade must be reasonable, and consideration would form an element of reasonableness; (*b*) specific performance cannot be obtained of a gratuitous promise even if made under seal.

A deed requires a 10s. stamp.

The terms of a deed cannot be amended or rescinded either by an agreement under hand or by a verbal arrangement, but only by another deed. (*See* Contract.)

Deed of Arrangement.—A deed of arrangement, or private arrangement made between a debtor and his creditors, is one whereby those creditors who may assent to it, in consideration of each other's assent, accept either:—

(1) An assignment of the debtor's property;

(2) A stated composition; or

(3) Payment in full by instalments in discharge of their respective debts, either absolutely or upon stated conditions.

Any conveyance or assignment made by any company registered under the Companies Acts (now the Act of 1908) of all its property to trustees for the benefit of all its creditors shall be *void* to all intents. (1908 Act, section 210.)

Note.—This does not prohibit any arrangement with creditors *other* than by way of assignment, but the Companies Act 1908 provides more appropriate schemes of arrangement, which, moreover, bind minorities. (*See title* Arrangements (Joint Stock Companies).)

The Deeds of Arrangement Act 1887 defines a deed of arrangement for the purposes of that Act as including "any of the following instruments, "*whether under seal or not*, made by, for, or in "respect of the affairs of a debtor for the benefit "of his creditors generally (otherwise than in "pursuance of the law for the time being in force "relating to bankruptcy), that is to say:—

"(*a*) An assignment of property.

"(*b*) A deed of or agreement for a composition.

"And in cases where creditors of a debtor "obtain any control over his property or "business:—

"(*c*) A deed of inspectorship entered into for "the purpose of carrying on or winding "up a business.

"(*d*) A letter of licence, authorising the debtor "or any other person to manage, carry "on, realise, or dispose of a business with "a view to the payment of debts.

"(*e*) Any agreement or instrument entered into "for the purpose of carrying on or wind- "ing up the debtor's business, or autho- "rising the debtor or any other person to "manage, carry on, realise or dispose of "the debtor's business, with a view to the "payment of his debts." (Section 4.)

Note.—The term "creditors generally" includes all creditors who may assent to, or take the benefit of, a deed of arrangement. (Section 19.) (*See* "Creditor's Assent," *infra.*)

Every such deed as defined above is void unless registered with the Registrar of Bills of Sale within seven clear days after the first execution thereof by the *debtor* or any creditor, or if it is executed in any place out of England, then within seven days after the time at which it would in the ordinary course of post arrive in England if posted within one week of the execution thereof. (Section 5.) The Court upon being satisfied that the omission to register within the prescribed time was accidental or due to inadvertence, or to some cause beyond the control of the debtor and not imputable to any negligence on his part, may on the application of any party interested and upon such terms as are *just and convenient* extend the time for such registration. (Section 9.) It will be noted that an extension of time for registration is in effect to revive under Section 9 a deed already void under Section 5. Presumably the words "just and convenient" will protect the rights of persons who may meanwhile have obtained rights against the property affected by the deed, *e.g.*, the sheriff. If the deed is not registered it is void *ab initio*, and as a consequence it is not even binding on the debtor, so that on its avoidance he can collect the assets in his own name. The deed *must* be executed by the trustee or assignee before registration, but where a deed was executed by the debtor, the trustee, and one creditor only before registration, and was subsequently executed by other creditors, this fact was held not to be such an alteration of the deed as to vitiate its registration. (*Ex parte Milne; re Batten*, 1889, 22 Q.B.D. 685.) The "deed" must be stamped with the proper inland revenue duty (10s. if under seal), and in addition a stamp denoting a duty of one shilling per £100 or fraction of £100 of the value of the property passing, or (where no property passes under the deed) the amount of composition payable thereunder. The stamps must be affixed before production of the deed to the Registrar. There is also an *ad valorem* "filing duty" of £1 per £1,000 or fraction thereof (with a maximum of £5 duty), payable upon the value of the property passing or the amount of composition payable under the deed, as the case may be. Where an *ad valorem* fee cannot be applied, a fixed fee of £2 is payable.

The registration is effected as follows:—A true copy of the deed, and of every schedule or inventory thereto annexed or therein referred to, must be presented to and filed with the Registrar within seven clear days after execution, together with an affidavit by some person present thereat verifying the time of execution, and con-

taining a description of the residence and occupation of the debtor, and of the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of composition (if any) payable thereunder, and the names and addresses of his creditors. (Section 6.)

Care should be exercised in the preparation of the documents accompanying the deed when presented for registration, for attempts are sometimes made by judgment-creditors to set aside a deed by proving some informality in connection with the registration. The debtor in his affidavit must state the total estimated amount of his property comprised under the deed and the net amount after deducting the value of securities, if any, held by creditors. He must also state the total estimated amount of his liabilities included under his deed, and the net amount thereof after deducting the amount (if any) which will be satisfied by the value of the securities held by creditors. Thus the net assets available for the unsecured creditors are disclosed. The debtor must also give in a schedule to his affidavit the names of his creditors, with their addresses and the amount of debt due to or claimed by each respectively. The schedule must be signed by the debtor. With regard to this schedule of creditors it should be pointed out that the " deed " is presumed to be for the benefit of " creditors generally," and this means all creditors who may assent to or take the benefit of the deed, viz., unsecured creditors, and the official form of the schedule demands " the amount of debt due to " or claimed by each creditor after the deduction " of the value of securities held by the creditor." Thus partly secured creditors need only be included for the amount for which they hold no security, and fully secured creditors need not be scheduled. (*Chaplin v. Daly*, 2 Mans. 1.)

An honest omission to include a creditor in the schedule, or the omission of a claim honestly disputed or believed to be contingent only, would not invalidate the deed so far as registration is concerned. (*Maskelyne & Cook v. Smith*, 1903, 1 K.B. 671.) The Court upon being satisfied that an omission or misstatement of the name, address, or description of any person was accidental or due to inadvertence, or to some cause beyond the control of the debtor, and not imputable to any negligence on his part, may, on the application of any party interested, and on such terms as are just and expedient, order such omission or misstatement to be supplied or rectified. (Section 9.)

The omission of an important claim from a schedule of a debtor's liabilities may, however, affect the position as regards creditors who have been induced to assent to the deed upon the basis of figures showing a probable dividend which will be substantially reduced if the claim so omitted is admitted to rank for dividend.

The register is open to public inspection upon payment of the prescribed fee, viz.:—

For searching the register (*i.e.*, for every name inspected) and on inspecting the filed copy of the deed, including the extracts allowed by the rules, the fee of 2s. 6d.

Note.—The extracts are limited to the dates of execution and registration, the names, addresses, and descriptions of the parties to the deed, and a short statement of the nature and effect of the deed.

A deed of arrangement, as already stated, is void if not registered in accordance with the Act of 1887, and section 17 provides that " nothing " in this Act shall be construed to repeal or shall " affect any provision of the law for the time " being in force in relation to bankruptcy, or " shall give validity to any deed or instrument " which by law is an act of bankruptcy or void " or voidable." So that such a deed may be avoided notwithstanding registration—

(1) If it contravenes the provisions of 13 Eliz. chap. 5, relating to frauds upon creditors, and

(2) By a receiving order being made against the debtor (followed by adjudication) upon a petition presented within three months after the date of the deed.

Note.—The Public Trustee Act 1906 provides that the Public Trustee shall not accept any trust under a deed of arrangement for the benefit of creditors or for the administration of any estate known or believed by him to be insolvent.

Deed of Assignment.

A deed by which a debtor assigns his property, real and personal, land, houses, furniture, stock-in-trade, book debts, &c., to a trustee, whether himself a creditor or not, in trust to realise same, and after payment of the expenses and the preferential claims to distribute the balance *pari passu* amongst the assenting creditors, who in consideration of (1) the assignment and (2) the dividends received (if any) release the debtor (either absolutely or conditionally) from the debts respectively owing to them.

Where a deed provides for the disposal of the *whole* of the proceeds of sale of the debtor's estate thereby assigned, *i.e.*, where the trust is "to divide the sum realised *amongst the creditors* "in rateable proportions according to the amount "of their debts," there will be no resulting trust in favour of the debtor as regards any surplus, should the proceeds be more than sufficient to pay the creditors in full, for in such a case the assignor divests himself of all interest in the property, and the creditors (accepting the assignment "for better for worse") agree to release the debtor in consideration thereof. But if the deed does not provide for the disposal of the whole of the proceeds, *i.e.*, where the trust is "to *dis-* "*charge* the debts or to divide the proceeds of "sale of the estate assigned in or towards pay-"ment of the debts" the property assigned is placed in trust for a limited purpose, and if in such a case the deed does not expressly provide for the disposal of any surplus there may chance to be after payment of the debts in full, there will be a resulting trust in favour of the assignor. (*Smith v. Cooke*, 1891, A.C. 297.)

Although deeds are usually employed, it is not absolutely essential to the validity of an assignment of personal property that it be under seal.

It is customary to exclude from the deed any leasehold property of the debtor, particularly where it is subject to onerous covenants, the deed, however, generally expressing that "the "debtor shall stand possessed of all leasehold "property to which he is now entitled upon trust "for the trustee and the creditors," and further declaring that the debtor "shall assign and dis-"pose of the same and any income arising there-"from in such manner as the trustee shall from "time to time direct," the net proceeds of every such disposition being payable to the trustee, who must apply the same in accordance with the provisions of the deed.

This is done because the trustee has no power of disclaimer (such as is possessed by a trustee in bankruptcy), and should the leaseholds vest in the trustee, he would be personally liable for the rent and covenants thereof whilst he continued to hold the property.

Should the trustee sell a leasehold interest which has been excluded from the assignment but is held by the debtor at the disposition of the trustee, he will require the debtor to execute the necessary instrument of transfer. Such a document has been held to be mere "conveyancing machinery," so as to give the trustee title to that over which he had formerly only power of control, and consequently does not require registration under the Deeds of Arrangement Act of 1887. (*Re Cranmer's Contract*, 1903.)

Where the deed comprises "lands, messuages, "tenements, and hereditaments, corporeal or "incorporeal, of *any tenure*" it should not only be registered under the Deeds of Arrangement Act 1887, but also under the Land Charges Registration, &c., Act 1888, which provides that every deed of arrangement shall be *void* as against a purchaser for value of any land comprised therein or affected thereby, unless and until such deed is registered at the Office of Land Registry and Deeds of Arrangement. The deed may be so registered upon the application of the trustee under the deed, or an assenting creditor. The effect of non-registration is that a purchaser of the land for *value* from the debtor (with or without notice of the deed) would be entitled to the land as against the trustee and the creditors.

The method of administering the estate, its realisation and distribution, is invariably detailed in the deed itself, the bankruptcy procedure being as a rule adopted, and a Committee of Inspection appointed.

Where any employer has entered into a contract with any insurers in respect of any liability under the Workmen's Compensation Act 1906 to any workman, then, in the event of the employer *making a composition or arrangement with his creditors*, the rights of the employer against the insurers as respects that liability shall be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any *greater* liability to the workman than they would have been under to the employer. (Workmen's Compensation Act 1906, section 5.)

Where the benefits under a life policy have been assigned as part of the debtor's estate, care should be taken to notify the insurance company, and, where necessary, to obtain the special form of assignment required by the particular company. Where any of the property is subject to the risk of fire or burglary (*e.g.*, a jeweller's stock-in-trade), steps should be taken to insure against same, or, if already insured against, to have the policies duly indorsed by the company in favour of the trustee. The trustee should also give express and specific notice of the deed to all debtors in respect of any book debts assigned, because, of course, he cannot take legal proceedings to recover such debts until he has done so, and the mere fact that the trustee has made a previous written demand for the money due is not sufficient notice. The deed of assignment must be expressly referred to in some written communication, otherwise the trustee will fail to obtain judgment, and it now seems settled that he cannot maintain an action as trustee until his title has become absolute by the expiry of the necessary period of three months undisturbed by the presentation of a successful bankruptcy petition. (*Potter v. Pickering*, 1907.)

A conveyance or assignment by a debtor of his property to a trustee for the benefit of his "creditors generally" constitutes an act of bankruptcy, and is available to creditors for the presentation of a petition within three months after the date of the deed; and this is so even where the deed is not stamped or registered. (*Ex parte Heapy*, 1889.) But a creditor who has assented to such an assignment cannot take advantage of it as an act of bankruptcy (*Ex parte Stray*, 1867), unless he has been induced to assent by misrepresentation, or some fraud has been practised upon him in connection therewith. Nor can a creditor who has assented to the assignment sue the debtor; but a creditor who has not assented thereto can sue the debtor, provided that if the deed has become *irrevocable* he has no remedy against the property assigned, except by bankruptcy procedure.

Note.—"Irrevocable" must be distinguished from "absolute." (See below.)

The execution by partners of a deed of assignment of the joint estate for the benefit of the joint (*i.e.*, the firm's) creditors is not an act of bankruptcy available to enable a (separate) creditor of one of those partners to present a petition in bankruptcy against that partner. (*Re Phillips*, 7 Mans. 277.)

In order to render a deed of assignment irrevocable and a protection against an execution creditor at least one other creditor should have already assented (either in writing or verbally) to the deed (*Harland v. Binks*, 1850, 15 Q.B. 713), for an assignment of property to trustees for the benefit of creditors is regarded rather as an arrangement for the convenience and accommodation of the debtor than as being intended to create a trust in favour of the creditors, so that until a creditor has become a party to the deed, or has so acted that his conduct amounts to assent (the assent of a creditor being necessary to create a trust), the debtor may revoke the deed and reclaim his property or may vary the terms of the deed of assignment. Where the trustee under a deed of assignment seeks to set up the assignment as against an execution creditor, the onus of proof that the deed is irrevocable is on the trustee. (*Admitt v. Hands*, 57 L.T. 370.) It must moreover be shown that the deed was irrevocable before the writ of execution was issued to the sheriff. (*See* Execution Creditor.)

While an assenting creditor has the ordinary rights of a *cestui que trust*, a non-assenting creditor has no remedy against the trustee for

non-performance of his duties under the deed. (*See* Creditor's assent *infra*.)

A trustee, under a deed of assignment, cannot safely deal with or distribute the estate of the debtor until after the expiration of three months from the date of the deed even though he is certain that all the creditors have assented to the deed, or at all events that the dissenters are insufficient in the aggregate to present a petition. In practice no risks are taken, and the general rule is to postpone distribution for the full three months, for if a receiving order is made against the debtor (followed by adjudication), upon a petition presented within three months of the date of the deed, the title of the trustee in bankruptcy will relate back to the earliest act of bankruptcy committed by the debtor within the three months next preceding the presentation of the petition. This necessarily will include the property comprised in the deed of assignment, and upon bankruptcy ensuing the position of the trustee under the deed will be:—

(1) He may be treated as a trespasser and the trustee in bankruptcy can claim the property unconverted, and the *value* of such as may have been converted—*not* an account of moneys received in respect of dealings with the property: or

(2) He may be treated as an agent, and the trustee in bankruptcy may call for an account as between principal and agent of the moneys received, or which ought to have been received, under the deed. (*Ex parte Vaughan*, 1884, 14 Q.B.D. 25.)

The trustee in bankruptcy must, however, make his *election*—he cannot treat the trustee under the deed as both a trespasser and an agent.

If the trustee under a deed of assignment becomes liable to account to the Official Receiver as a result of the debtor being adjudged bankrupt, any persons who have paid moneys to such trustee with knowledge of the deed (act of bankruptcy) will be liable to make such payments a second time to the Official Receiver where the trustee does not specifically account for the same to the Official Receiver. (*Davis v. Petrie*, 1906, 2 K.B. 786.)

In accounting for his dealings, the trustee under the deed is entitled to all "proper allowances," but with regard to his remuneration he is in an unenviable position. Under ordinary circumstances a trustee under a deed of arrangement which is avoided by subsequent bankruptcy proceedings cannot recover or retain (as the case may be) anything in respect of his remuneration for acting under the avoided deed, even though the latter document makes provision for same.

Note.—Provision should be made in the deed for the remuneration of the trustee, otherwise some difficulty might arise in respect thereof, whether bankruptcy ensued or not.

In exceptional cases, however, allowances are made by the Court out of the bankrupt's estate, for services rendered thereto by a trustee under an avoided deed, where the estate has clearly benefited by such services.

The following decisions bear directly upon this point:—

Money paid *bonâ fide* by a debtor to defray counsel's fees and other legal expenses in opposing proceedings in bankruptcy that have been commenced against him cannot, should adjudication follow, be recovered from the solicitor by the trustee in bankruptcy, even though the solicitor knew of the acts of bankruptcy on which the proceedings were based. (*In re Sinclair*, 1885, 15 Q.B.D. 616.)

In *Ex parte Ball* (1894, 1 Q.B. 433) Vaughan Williams, J., said:—

"The next question is whether these gentlemen (accountants and solicitors) are entitled to retain these moneys on account of their charges. I think they are clearly not entitled to retain them. What was decided in *In re Sinclair* was, that when a man comes with ready money in his hand and asks for legal assistance with regard to his financial affairs, or his financial position, the lawyer, or it may be the accountant, is not bound to ask the person coming with ready money where it comes from. But there is nothing in the

" decision in *In re Sinclair* which enables a solici-
" tor or an accountant to take from the debtor a
" charge upon the debtor's property to secure
" payment for the services to be rendered, because
" in such a case the very fact informs the
" solicitor, or accountant, as the case may be,
" that the money which he is looking to for pay-
" ment is the money of the bankrupt, and,
" potentially, the money of his creditors; and it
" seems to me that just the same consideration
" arises with regard to moneys which the
" accountant or solicitor may be collecting for the
" debtors, which were due to them in the course
" of their trade.

" But I am asked to say whether the trustee
" can properly make any allowance to either the
" accountant or solicitor in respect of the work
" which they did. What I understand to be the
" rule as to the matter is this: If the trustee in
" the exercise of his discretion thinks that the
" creditors have derived profit from the work
" which has been done, at the direction of the
" debtor, the trustee may adopt those services and
" pay for them. But, although that is to my
" mind the rule, I by no means think that it is a
" rule which would justify the trustees in at all
" liberally or freely spending the money of the
" creditors in paying the expenses of the meetings
" of creditors which the debtor, or debtors, may
" have thought fit to call before their bank-
" ruptcy. On the contrary, I think that the
" trustee ought to be very slow indeed to adopt
" any such services. One knows quite well that,
" in the hope of avoiding bankruptcy, debtors in
" difficulties will catch at a straw and always
" hope that something may avoid that disagree-
" able result. They always will call their
" creditors together, not from any sense really
" that it is the best thing to do for the creditors,
" but because they hope somehow or another, if
" there is a meeting of creditors, they may avoid
" bankruptcy. That being so, I should say that,
" generally speaking, a trustee ought to decline
" to adopt the services of the solicitor or account-
" ant with regard to these meetings which
" debtors, in the expectation of a probable bank-
" ruptcy, call of their creditors. But I am unwill-
" ing to say that there may not be a case in
" which the trustee may properly adopt a portion
" of the services. It is said here that the
" accountants prepared a statement of affairs
" which was very useful to the creditors at the
" time of this meeting, and enabled them to deter-
" mine with full information what was the best
" course for the creditors to adopt. That par-
" ticular item of charge is a charge for a service
" which I can quite understand the trustee might
" say was a very useful service, and he might
" pay for it.

" The solicitor may, for aught I know, neces-
" sarily have been employed to get that statement
" prepared; but I should have said *primâ facie*
" that the employment of a solicitor for that pur-
" pose was quite unnecessary, and I should have
" thought that the debtors might have given their
" instructions directly to the accountant. At the
" present moment, not having the bill before me,
" I cannot say whether there are any services
" of the solicitor which the trustee may properly
" adopt and pay for as having been useful to the
" creditors. He must exercise his own discre-
" tion, and when he has done so, then, if anyone
" feels aggrieved by the exercise of his discre-
" tion, the matter may be brought before the
" Court; but the rule that I lay down, and
" intend that the trustee should act upon, is that
" he should be very strict in this matter of adopt-
" ing services of this sort and paying for them,
" and he must go through the items of the bill
" of costs, and only pay for such items as he is
" clearly satisfied have been incurred in such a
" way as that a benefit to the extent of the charge
" has resulted to the creditors."

The same learned Judge followed this rule in *Re Foster* (1895, 72 L.T. 364) and allowed the trustee under an avoided deed to retain the sum of £5 for his trouble, although the Official Receiver in the exercise of his discretion had refused to make an allowance. The trustee had claimed £10.

An allowance was also made to the trustee under a deed in *Re Appleton* in the Liverpool County Court (25th February 1898), although the Official Receiver (after consulting with the Board of Trade) had declined to allow any such remuneration.

A trustee may, however, protect himself not only as regards his remuneration, but in respect of liability for (*a*) carrying on the business of the debtor, (*b*) realising the estate, and (*c*) distributing same, by obtaining from the creditors or some of them, or a committee of inspection appointed by them or by the deed, an indemnity in respect of any such liabilities, responsibilities, or losses to which he may consider himself subjected by virtue of his office as trustee under the deed. But such an indemnity is seldom obtained.

The trustee has a right of indemnity out of the trust assets in respect of any personal liabilities properly incurred by him in connection with the administration of the trust, provided bankruptcy does not ensue, and the persons to whom the trustee has made himself personally liable can (because of and through the trustee's right of indemnity) obtain payment of their debts out of the trust assets in priority to the creditors who have assented to the deed.

In the event of an assignment being set aside by bankruptcy proceedings, the Board of Trade has a right to object to the trustee under the assignment being appointed trustee in the bankruptcy, for the former becomes, as a general rule, an accounting party to the latter. (*Re Martin*, 1888, 21 Q.B.D. 29.)

Deed of Composition.

An agreement whereby creditors agree to discharge a debtor from the claims they have against him in consideration of receiving a certain composition thereon, payable at a stated time or in stated instalments, in money or bills, with or without a surety, the creditors further covenanting not to sue the debtor unless and until he makes default in the terms or one of the terms of the arrangement. Although the general rule is that a liquidated and undisputed debt cannot, even with the consent of the creditor, be discharged by the payment of a smaller sum by the debtor in the same way in which he was bound to pay the whole sum, unless, of course, the consent of the creditor be under seal, an arrangement for a composition made with *more than one* creditor is valid (apart from the provisions of the Act of 1887 as to registration), even though not under seal, for the composition payable is supplemented by further consideration, viz., mutual forbearance, each creditor taking a composition in full discharge in consideration of the other creditors doing the same.

The creditors of a person may, however, assign or agree to assign absolutely their respective debts to a nominee of the debtor in consideration of an agreed composition, thus conferring a right upon such nominee to sue the debtor for the "face value" of the claims, and the assignee may be a person selected solely on account of the debtor's confidence in his nominee's forbearance. Such right to sue being therefore nominal, the assignment has the effect of giving the debtor a discharge from his creditors generally in consideration of a composition, without recourse to a document requiring registration under the Act of 1887.

As a matter of fact, in many of such arrangements actual assignment is not called for.

A deed of composition must be based upon good faith between the debtor and his creditors and also between the creditors themselves. In particular, any *secret* bargain to give any creditor or creditors an advantage over the others will avoid the whole arrangement. (*Ex parte Milner*, 1885.) Nor will a person who has assented to a deed of composition be bound thereby if the assent was given on the faith that other creditors would also join, and the latter do not assent. (*Reay v. Richardson*, 1835.) A composition arrangement is not *of itself* an act of bankruptcy, nor need the document *necessarily* contain such a notice of suspension of payment as would amount to an act of bankruptcy, but in practice it will be found difficult to avoid the formal announcement to the creditors, or one of them, that the debtor "has suspended, or that he is about to suspend, payment of his debts."

Creditors generally agree to release their debtor upon *payment* of the stated composition—that is, upon the *performance* of the covenant and not upon the debtor's promise, and in such cases upon the failure of the debtor to carry out the covenants, which were made a condition precedent to his obtaining his release. the unpaid portions of the original debts revive with their

attendant rights and remedies. Where, however, an arrangement is made to accept the new agreement in discharge of the old debts, these debts would be released upon the promise of the debtor, and upon default in the performance the old debts would *not* revive and the creditors' only remedies would be for and in respect of the new debts, viz., the amounts of composition respectively payable and unpaid under the deed. This state of things, however, is hardly ever allowed—certainly not with intention.

Where promissory notes are given for the amounts of composition payable, the deed, if properly drawn, will make the release by the creditor conditional upon the *payment* of the notes, as and when they mature, then if the debtor makes default in meeting the notes, the old debts revive with the *original* rights and remedies, the arrangement thereby falling through. Where, as is often the case, the promissory notes for the amount of the last instalment of a composition are signed by a surety, the position on default is this: The debtor is liable for the whole amount of the original debts remaining unpaid, but the surety is not concerned therewith; the latter is, however, still liable to the extent of the notes he has signed. The creditors, upon default, may therefore sue the debtor upon the respective balances of their *original debts*, and sue the surety upon the notes for such portion only as they are unable to recover from the debtor, limited, of course, to the amount of the notes in each case.

The reason for this was explained in *Glegg v. Gilbey* (2 Q.B.D. 6, and 209), viz.:—The surety must be taken to have contracted subject to the well-known rule of law by which, if the debtor fails to pay the composition, the creditors are remitted to their old debts. The surety has thus contracted that, subject to that rule, if the debtor does not pay, he will do so (to the extent guaranteed), and his position is therefore *in no way altered* by allowing the creditors to sue the debtor *first* for the *whole* amount of their debts which remain unpaid.

Provision is invariably made for the payment in full of the debts set out in the Preferential Payments in Bankruptcy Act 1888. *See* also section 5 of the Workmen's Compensation Act 1906, quoted under heading "Deed of Assignment" (*supra*).

Deed of Inspectorship.

A Deed of Inspectorship is one used in conjunction with either a prospective assignment or a composition, where it is desirable to carry on the business of the debtor, and/or *gradually* wind up the same under the supervision of a committee of inspection selected from the creditors.

The creditors agree not to sue the debtor until default as regards some provision in the deed, but no release is granted.

Letter of Licence.

A Letter of Licence is an instrument of arrangement whereby the creditors agree to give time to the debtor, and forbear to sue for a stated period, in order that he may retrieve his position. Creditors, by assenting to such an arrangement as this, do not necessarily release any portion of their debts, nor does the entering into same necessarily constitute an act of bankruptcy on the part of the debtor.

Creditor's Assent.

A private arrangement between a debtor and his creditors is only binding upon, and only enures for the advantage of, those creditors who assent thereto. The best possible evidence of assent is the creditor's signature to the deed itself, but it is not essential that the assent be proved in this way. Creditors may assent to a deed of arrangement in a separate writing, or even verbally or by conduct. It is not safe, however, to rely upon a verbal assent, because of the difficulty of proof. The rule in the case of "an arrangement" is that where a creditor verbally agrees with other creditors to accept the composition he cannot afterwards refuse to do so, for having held himself out to other creditors as assenting, it would amount to a fraud upon the latter to allow him to withdraw, the consideration for the assent of the other creditors being "mutuality of assent."

Although an honest omission of a claim from the schedule of liabilities filed with the registered deed may not of itself invalidate such deed,

it may affect the position of creditors who have been induced to assent thereto upon the basis of figures showing a probable dividend which will be substantially reduced if the claim so omitted is subsequently admitted to rank for dividend.

As already stated, a creditor cannot set up as an act of bankruptcy an assignment or other arrangement to which he has assented or been privy, and a creditor who had presented a bankruptcy petition on the grounds of " notice of suspension of payment " and the execution of a deed of assignment was (ultimately) unsuccessful, the Divisional Court, on appeal, deciding that as the petitioning creditor had attended a meeting of creditors which involved an act or acts of bankruptcy, and at which a proposal for an assignment was considered and agreed to, he must be deemed to have acquiesced in the deed, although he did not expressly assent, if, being present, he did not *dissent at the time* the proposal was put to the meeting. (*Ex parte Crosland, Accountant* Law Reports, 1897, 125.)

A more recent case is that of *Re Carr; ex parte Jacobs* (85 L.T. 552), where a creditor *having notice* of the deed, and not having expressed his dissent therefrom, and not having explained the delay, presented a bankruptcy petition at the expiration of two months. The petition was dismissed because the creditor was deemed to have assented to the deed.

On the other hand, a creditor will not be prejudiced by his attendance at a meeting if at the meeting he expressly reserves his decision as to assent or otherwise. (*In re Walker*, 26 T.L.R. 260.)

Where a creditor had endeavoured to obtain a secret advantage over the other creditors and had threatened that, if the debtor did not concede it, a bankruptcy petition would be presented, it was held in *Re Shaw* (C.A. 1901) that on such a petition being presented there was " sufficient cause " under section 7, subsection 3, of the Bankruptcy Act 1883, for the Court to decline to make a receiving order.

Where a creditor had supplied goods to the trustee under a deed of assignment, as such, and had received payment for same, he was held to have recognised the deed and to have taken an advantage under it, and could not afterwards present a bankruptcy petition founded upon the ground that the deed was an act of bankruptcy, and void as against him and the other creditors. (*In re Brindley; ex parte Taylor & Co.*, 1906, 1 K.B. 377.)

In practice, where the deed itself cannot be presented to the various creditors, an epitome of its contents is in some cases prepared, and printed copies thereof, together with " forms of assent," issued to each of the creditors for their signatures. In the majority of cases, however, the usual contents of a deed of arrangement being well known, a " form of assent " only is issued to the creditors.

Creditors whose claims are guaranteed by a third party, *i.e.*, a surety, should require a clause in the *deed itself* reserving their rights against the surety, or else obtain the permission of the surety before assenting to a deed of arrangement, for although in bankruptcy it is expressly provided that sureties are *not* discharged—the payment of a dividend and the discharge of the debtor being a legal result—this does not apply in the case of a private arrangement, which is an act of the parties themselves. To assent to a private arrangement without such permission or reservation of rights might operate as a release of the surety.

Where a deed of arrangement is set aside by bankruptcy proceedings, the creditors are not bound by any release they may have given in the deed, but may prove in the bankruptcy for the whole of the unpaid balances of their respective debts. (*Re Stephenson*, 1888, 20 Q.B.D. 540.)

Accounts.

Every trustee under *any* deed of arrangement as defined by the Deeds of Arrangement Act 1887 must within 30 days of the first day of January in each year transmit to the Board of Trade an account of his receipts and payments as such trustee.

The term " trustee " here includes any person appointed to distribute a composition or to act in any fiduciary capacity under any deed of arrangement. (Bankruptcy Act 1890, section 25.)

The accounts should be made up to 31st December in each year, but if the trusts are completed during the month of January, the Board of Trade will accept a *completed* account. (Board of Trade Regulations.)

The accounts must be in the prescribed form and verified by affidavit. Where the trustee carries on the business of the debtor, a separate Trading Account must be kept and a copy thereof supplied to the Board of Trade as a *distinct* account, the totals only of the receipts and payments on Trading Account being incorporated in the yearly account. (Rule 9 of 1890.) The audit of the Trading Account by the Committee of Inspection (if any) is optional.

Where the deed has been made by debtors in partnership, distinct accounts must be kept (and transmitted) showing the receipts and payments of the joint estate and of each of the separate estates. (Rule 13.)

In every account each receipt and payment must be entered in such a manner as will sufficiently explain its nature. (Rule 8.) In the case of rent, rates, taxes, and wages, the period covered by the payment should be stated. (Board of Trade Regulations.) Petty expenses must be entered in the accounts in sufficient detail to show that no estimated charges are made. (Rule 10.) Where property has been realised the gross proceeds of sale must be entered under receipts in the account, and the necessary disbursements and charges incidental to sales must be entered as payments. (Rule 11.) Where such charges have been paid by the purchaser the fact should be stated in the account, together with the amount of the charges, if within the knowledge of the trustee. If any property has been disposed of by private treaty, or by tender, the fact should be stated in the account. (Board of Trade Regulations.) Where dividends or instalments of composition are distributed under the deed, the total amount of each dividend or instalment of composition must be entered in the trustee's account as one sum, and the trustee must forward with his *final account* under the deed a statement in the prescribed form, showing the amount of the claim and the amount of dividend or composition payable to each creditor, distinguishing in such list the dividends or instalments of composition paid, and those remaining unclaimed. (Rule 12.)

It is not necessary that the payments into and withdrawals from the bank should be shown in the account of receipts and payments, but where a special banking account has been opened in the name of the trustee, a memorandum summarising the lodgments and withdrawals should be made on the receipts and payments account. Where no special banking account has been opened the fact should be stated.

Where law costs are charged in the account, the trustee should state what portion of such costs is (*a*) in connection with the preparation and registration of the deed, and (*b*) in connection with legal work done for the trustee. Where the costs of the preparation and registration of the deed are not charged in the account a note should be added at the foot as to whether the debtor himself made any, and if so, what, payment in respect of such costs. (Board of Trade Regulations.)

The accounts must bear an *ad valorem* (bankruptcy) stamp based upon the gross amount of the assets realised and brought to credit, or the gross amount of the composition distributed *during the period* comprised in the account.

For the purpose of assessing this duty, the payments made upon Trading Account and payments to secured creditors in respect of their securities may be deducted from the receipts. The stamp fees are:—

Upon every £100 or fraction of £100 up to £500, 5s.

Upon every £100 or fraction of £100 above £500, 2s. 6d.

This scale is not cumulative; that is to say, in assessing the stamp duty upon the *second* account filed, the amount upon which duty has already been paid in the *first* account must not be considered.

Where a trustee has not since the date of his appointment or last account, as the case may be, received or paid any money as such trustee, he

must forward an affidavit of "no receipts and payments." (Rule 15.)

Where the trustee has either—

(1) Realised all the property included in the deed of arrangement or so much as can probably be realised, and made a final distribution of dividend or composition, or

(2) Fulfilled the trusts and obligations in any other way,

he must transmit with his final account an affidavit to that effect, and no further accounts will be required from him. (Rule 16.)

When it appears to the Board of Trade that an account of receipts and payments in the prescribed form may *for special reasons* be dispensed with, the trustee may be permitted to transmit such a summary or modified statement of accounts as the Board of Trade may think sufficient. (Rule 17.)

Where the Board of Trade consider the accounts incomplete, or that they require amending or explaining, they may make such requisitions upon the trustee thereupon as they may think necessary. (Rule 14.)

The accounts transmitted to the Board of Trade may be inspected by any creditor upon payment of one shilling, and the Board of Trade will supply copies of same, or extracts therefrom, to any creditor upon payment of fourpence per folio of 72 words or figures.

Unclaimed Dividends.

A trustee under a deed of arrangement is not required, like trustees in bankruptcy and liquidators of companies, to pay over undistributed balances and unclaimed dividends to the Bank of England. Many trustees desiring to obtain a complete discharge from their trust have voluntarily offered to pay over unclaimed dividends to the Bankruptcy Estates Account, but the Board of Trade have no power to accept them, and they accordingly remain in the hands or under the control of the trustees.

A professional accountant who acts as trustee under private deeds in a considerable number of cases can meet the difficulty by paying all unclaimed dividends into a special banking account in his own name (not that of his firm if he is in partnership), allowing the same to accumulate, and keeping a careful record of them as regards (1) the estate, (2) the creditor entitled, and (3) the amount.

He would then be prepared to meet the effect of any future legislation in reference thereto on the lines of a well-known section of the Bankruptcy Act of 1883.

Deed of Inspectorship.—*See* Deed of Arrangement.

Deed Poll.—A single deed in the form of a declaration of the grantor's act or intention. So called because formerly deeds made by one party had a polled or smooth-cut edge, as distinct from an indenture. (*See* Indenture.)

Defaulter.—When a member of the Stock Exchange is unable to carry out or satisfy his obligations to the market he is officially declared a defaulter. A notice to that effect is read to all the members after their attention has been called by three strokes with a wooden hammer upon the rostrum from which the notice is read. The member is then said to have been "hammered."

The Stock Exchange appoint liquidators called official assignees, who deal with all defaulting members' estates so far as regards Stock Exchange matters.

All open transactions are closed at current prices immediately the default is announced, and all debts due to a defaulter by members of the Exchange are paid to the assignees, who distribute the proceeds of all assets which come to their hands *pari passu* among those members who are creditors.

Thus, unless there be unsatisfied creditors outside the Stock Exchange, the defaulter does not require to go through the Bankruptcy Court, for the members who were creditors have to bear any loss there might be.

The defaulter cannot transact any further business in the House after default, but if his estate pays 10s. in the £, and he has not been guilty of misconduct, he may be readmitted to membership.

In the event of the defaulter being declared bankrupt by the Court by reason of unsatisfied "outside" creditors, the trustee has no claim upon the fund collected by the official assignee from the members (*Ex parte Grant*, 1880), but he is entitled to any private assets which the defaulter may have handed over to the official assignee.

Defeasance.—Something which defeats the operation of a deed, but is contained in another document. If it is contained in the same deed it is called a "condition."

Deferred Creditor.—*See* Postponed Creditors.

Deferred Life Annuity.—An annuity for the life of a purchaser or his nominee, but deferred until a stated time, near or remote, according to the sum paid for the annuity. If the annuitant die before the annuity commences, the purchase money is lost.

Deferred Ordinary Shares, or Stock.—Shares or stock entitling the holders (generally) to the residue of the earnings after all prior shareholders or stockholders (such as preference or ordinary) have been satisfied.

The Regulation of Railways Act 1868 provides that any railway company which has for the year preceding paid a dividend upon its ordinary stock of not less than 3 per cent. may resolve to divide the (paid-up) ordinary stock into two classes, one to be called preferred ordinary and the other deferred ordinary. The division must be in equal proportions, and the preferred ordinary stock will bear a fixed maximum dividend of 6 per cent. per annum, and will rank for such dividend (only) in priority to any dividends payable on the deferred ordinary stock, and *pari passu* with any undivided ordinary stock created or to be created, but the maximum dividend of 6 per cent. will be dependent upon the profits of each particular year, *i.e.*, it is non-cumulative.

In each year after the 6 per cent. has been paid upon the preferred ordinary stock, the holders of deferred ordinary stock, in respect of all dividend exceeding the 6 per cent. already paid to the holders of ordinary stock, will rank *pari passu* with the last-named.

In other words, if there are undivided ordinary, preferred ordinary, and deferred ordinary stocks, in the *first* distribution the last-named stand out, and when the two former have received 6 per cent. then the preferred ordinary stand out, and any further dividend available is distributed *pari passu* between the undivided and deferred ordinary. Thus the undivided ordinary receive a 6 per cent. dividend *and* a supplementary dividend (as it were), the preferred ordinary receive 6 per cent., and the deferred ordinary only receive the supplementary dividend.

Every prospectus issued by a company governed by the Companies Acts must state the number of deferred shares (if any), and the nature and extent of the interest of the holders in the property and profits of the company. (Companies Act 1908, section 81.) But no provision is made for the insertion of such particulars in the "Statement in lieu of Prospectus" (*see that title*), which is to be filed by certain companies.

Deficiency Account.—The account to be prepared by a bankrupt, or the officers of a company being wound up by the Court, showing how the deficiency or surplus represented upon the respective statement of affairs has arisen.

The Deficiency Account is in a similar relation to the summary statement of affairs (generally referred to as the "front sheet") as the ordinary Profit and Loss Account is to the commercial Balance Sheet—that is to say, it forms a connecting link between the present position of affairs and that at some antecedent date, and serves to show how the difference in the state of affairs at the two dates respectively has arisen.

In the case of a bankrupt the account must commence from a date twelve months before the making of the receiving order, or such other period as the Official Receiver may fix.

In the case of a company the account must commence from a date three years before the making of the winding-up order; in the event of the winding-up order being made within three years from the formation of the company, the account must cover the whole period of the company's existence. (*See title* Statement of Affairs.)

Where the accounts of the debtor have been kept on a proper double-entry system, the preparation of the Deficiency Account becomes to a considerable extent a matter of analysis, although the points mentioned below as to assets and expenditure outside the business must not be lost sight of.

In many cases, however, proper books of account will not have been kept. The following suggestions will, no doubt, be found useful under such circumstances:—

(1) Ascertain the position at the antecedent date fixed by the Official Receiver, by means of Bank Pass Book, Invoices, Debt Book, &c.

(2) If this is impracticable, a Sales Book or Takings Book will generally be available, the percentage of gross profit will be known, and expenses, such as rent, rates, wages, &c., can be calculated.

(3) Accounting backwards from these figures the balance of profit or loss can be ascertained approximately, and after including the other items required in the Deficiency Account, the commencing "capital" or "deficiency" can be obtained.

(4) Bring into account at their then value such private assets now included on "front sheet" as were in existence at "commencing date"—*e.g.*, household furniture, life policies, and jewellery.

Note.—It is advisable to examine the debtor, *in advance*, as to his idea of the state of his affairs at the antecedent date fixed by the Official Receiver.

(5) Bring into account any private income of the debtor, such as dividends from investments, and satisfactorily explain on the opposite side of the account in what manner it has been disposed of.

(6) Ascertain by examination of Bank Pass Book and other means, such as interrogation of the debtor, the amount of his personal expenditure and household expenses.

(7) The amount stated as "bad debts" should agree with the amount shown to have been lost under this head according to list of book debts, schedule "I."

(8) "Other losses and expenses" which are sometimes only elicited by examination of the debtor, are—(*a*) Interest on borrowed money; (*b*) Premiums on life policies; (*c*) Special travelling expenses; (*d*) Professional charges, &c.

(9) The official form states that the "total amount to be accounted for" must agree with the "total amount accounted for." But it is submitted that where the difference is trifling it may be added to or deducted from one of the estimated items, so long as the narration of such item is prefixed by the word "estimated," but where the difference is substantial, it should be set out as "balance unaccounted for."

Where a company has incurred losses in trading so that a debit balance exists in the Revenue Account, such balance, of course, will appear on the asset side of the Balance Sheet, but it should be so recorded that the item cannot be mistaken for an asset, for which purpose, instead of the narration "Revenue Account—balance," it is preferable to state, "Revenue Account—deficiency."

Defunct Companies.—*See* Registrar of Joint Stock Companies.

Del Credere Agent.—*See* Agent.

Delegatus non potest delegare (a delegate cannot delegate).—An agent cannot delegate his authority.

"The maxim, when analysed, merely imports "that an agent cannot, without authority from "his principal, devolve upon another obligations "to the principal which he has himself undertaken to personally fulfil; and that, inasmuch "as confidence in the particular person employed "is at the root of the contract of agency, such an "authority cannot be implied as an ordinary "incident in the contract. But the exigencies "of business do from time to time render neces-"sary the carrying out of the instructions of a "principal by a person other than the agent

" originally instructed for the purpose, and " where that is the case the reason of the thing " requires that the rule should be relaxed, so as, " on the one hand, to enable the agent to " appoint what has been termed a ' sub-agent ' " . . . and, on the other hand, to constitute " in the interest of and for the protection of the " principal, a direct privity of contract between " himself and such substitute. And an authority " to the effect referred to may and should be " implied where from the conduct of the parties " to the original contract of agency, the usage " of trade, or the nature of the particular busi- " ness which is the subject of the agency, it may " reasonably be presumed that the parties to the " contract of agency originally intended that " such authority should exist, or where in the " course of the employment unforeseen emer- " gencies arise which impose upon the agent " the necessity of employing a substitute." (Thesiger, L.J.)

Delivery Order.—A written or printed document, entitling any person named therein or the legal holder thereof to the delivery of any goods, wares, or merchandise lying in any dock, port, wharf, or warehouse.

There is no stamp duty payable. (Finance Act 1905, section 5 (2).)

Delivery orders are often deposited with bankers and others as security for advances.

Demand (Payable on).—A bill is payable on demand (*a*) which is expressed to be payable on demand, or at sight, or on presentation, or (*b*) in which no time for payment is expressed. Where a bill is accepted or indorsed when it is *overdue*, it shall, as regards the acceptor who so accepts or any indorser who so indorses it, be deemed a bill payable on demand. (Bills of Exchange Act 1882, section 10.)

A cheque is a bill of exchange drawn on a banker payable on demand. (Section 73.)

Where a bill is payable on demand, presentment for payment must be made within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable. Where a promissory note payable on demand has been indorsed it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the *indorser* is discharged. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade with regard to similar instruments, and the facts of the particular case. (Sections 45 and 86.) (As to a cheque *see title* Unpresented Cheques.)

A bill of exchange payable on demand requires a penny stamp irrespective of the amount stated in the bill, but a promissory note payable on demand is subject to *ad valorem* stamp duty.

Demonstrative Legacy.—*See* Legacy.

Demurrage.—A penalty payable for detaining the subject-matter of hire for a longer period than agreed upon; *e.g.*, railway wagons or a ship. In the latter case the charterer is usually allowed a certain number of days, called lay days (which may be either running or working days), for receiving and discharging the cargo, after the expiration of which he is liable to pay an agreed sum per running day so long as the ship is further detained. (*See* Charter-Party.)

Denoting Stamp.—A stamp placed upon a copy of a document stating or denoting that the original has been duly stamped.

Where the stamp duty with which an instrument is chargeable depends upon the duty paid upon another instrument, the payment of such last mentioned duty will, on production of *both* instruments duly executed, be denoted upon such first mentioned instrument.

Departmental Accounts.—A system of accounting whereby the transactions of several departments of one business are separately recorded in the accounts. The stocks on hand are valued separately, and the sales and purchases, by means of columns in the respective books, are analysed and allotted to the various departments; a record is also kept of all *transfers* from one department to another, the latter items being treated upon a strictly cost-price basis.

With regard to working expenses, *direct* charges are placed against the respective departments, the remainder being apportioned either in respect of turnover or otherwise, according to circumstances. The apportionment of the working expenses amongst the various departments, however, is not a usual practice, the *raison d'être* of Departmental Accounts not being to ascertain the *final* result of each department, but rather to determine the percentages of gross profit realised in each case, as the different percentages realisable on the various classes of goods are so irregular, and the fluctuations of turnover, comparing one department with another, are in many instances so great as to render most misleading any attempt to average the results which a proprietor considers ought to be obtained.

Deposit.—Bonds, share certificates, money or other property, as the case may be, placed in the hands of a person or company (1) for safety, (2) in order to obtain interest thereon, (3) as security for a debt or otherwise, or (4) as an earnest to secure the performance of a contract, particularly a contract of sale.

Money lodged with a banker, and, by arrangement with him, kept separate from the depositor's current account (if any), to be withdrawn only on notice being given and upon special terms as to interest (if any), is termed "money on deposit," and the receipt given therefor by the banker is called the "deposit note." This note requires no stamp. The depositor's right against the banker is merely that of a creditor.

Bills deposited with a banker for collection or for any other special purpose do not pass to the trustee in the event of the banker's bankruptcy (*see* Short Bills), and this also applies to bonds and other valuables deposited for safe keeping.

A deposit of the title-deeds of lands as security for the repayment of a loan constitutes an equitable mortgage, notwithstanding the provisions of section 4 of the Statute of Frauds, it having been held that the *deposit itself*, without even a verbal communication, will create a valid charge. (*See* Frauds, Statute of.)

The Court of Probate Act 1857 provides that any person may deposit his will for safe custody in the depository of the Court.

(*See* Redeemable Debentures, &c.)

Depositors' Ledger.—One recording the accounts of depositors, in the case of building societies, savings banks, and the like. A good form of ruling for such a Ledger is one which provides for the date being placed in the centre column, the deposits paid in and interest credited occupying columns to the right, the deposits withdrawn and interest debited being placed to the left. This allows of every transaction being recorded in strictly chronological order, and as each transaction, debit or credit, is written on a separate line, the balance day by day can be readily perceived, and this is an important matter in this class of accounts.

The system adopted by the savings banks necessitates one column only, deposits being added and withdrawals deducted, so that the balance is always known for ready comparison with the depositor's Pass Book.

Depreciation.—The term is used in accountancy to represent the shrinkage in value of any particular property, buildings, machinery, plant, &c. (1) arising from wear, tear, and breakages as a consequence of its employment in trading or for manufacturing purposes; (2) by mere effluxion of time; (3) by becoming obsolete; or (4) from any other cause.

The subject of Depreciation is a very wide one, as almost every class of property is entitled to be considered upon its own peculiar merits in this respect.

That the loss arising from the diminished value of an asset should be charged against the revenue derived from its use appears incontestable in principle, yet many difficulties are encountered in practice in assessing the amount so chargeable.

Engineers and such like experts may be relied upon by an auditor for assessments of current values of assets, their probable working life and the probable ultimate residual or break-up value of

plant, fixtures, and machinery, but the auditor must none the less accept a certain amount of responsibility if he expresses opinions at all upon the question of sufficiency or insufficiency of the provision for depreciation.

The main factors in determining the amount of depreciation chargeable are:—

(1) The original cost or value of the property.

(2) The probable life thereof.

(3) The repairs and renewals to be undertaken during such life.

(4) The break-up or residual value.

Referring to these points *seriatim*:—

(1) The *original cost* is not necessarily synonymous with the original value, and the circumstances connected with the purchase may need to be considered.

(2) The *probable life* may be ascertained from experience, or from some independent expert, although it may to a great extent be controlled by the circumstances of each case; for instance, certain machinery will last longer if it is used at normal speed and is carefully tended than will be the case if subjected to undue pressure or if it is neglected by those in charge. On the other hand, although in an excellent state of preservation, the machinery may fall in value or even become obsolete as a result of some new and improved means of production being devised.

(3) With regard to *repairs and renewals:* to repair is to make good for all practical purposes; to renew is to make again absolutely. Despite repairs, machinery and plant will ultimately require to be renewed—that is to say, to be made again absolutely. Upon the basis of these propositions an eminent accountant has stated that if revenue is charged with the cost of repairs, and proper provision is also made for renewals out of revenue, it follows that provision has thereby been made for depreciation also, even for that imperceptible depreciation which is taking place every day, and which can only be made good when the thing so depreciated is renewed or restored to its first or original state. Thus, theoretically at least, an *adequate* charge for repairs and renewals against revenue dispenses with the necessity for a further charge for depreciation; but it is difficult to apply this principle in practice.

It is conceivable that many objects cannot be tinkered with—they do not need repairing, while their efficiency is fully maintained for years. But in the course of time they collapse and require to be replaced entirely. This amounts to a renewal, no doubt necessary, say, after ten years, but as the revenue of the ten years in question should bear this expense, the annual provision out of revenue for *future renewal* is in effect a recognition of the gradual depreciation of the particular object.

To charge revenue with repairs and renewals, only as and when such repairs and renewals are necessary and have been duly effected, is clearly tantamount to a postponement of proper provision, affecting the accuracy of the Balance Sheet during the life of the various objects: for, notwithstanding the gradual approach of the renewing period, the machinery and plant would appear in the statement at cost, without any provision for the pending expenditure which the mere lapse of time will necessitate. Thus, if depreciation is not to be charged against revenue periodically, some *periodic* provision must be made for repairs and renewals whether actually expended during the particular period or not. So that so far as the Revenue Account is concerned, it is of little importance whether an annual charge be made in the name of depreciation or as a provision against future renewals so long as the charge is adequate.

(4) The *residual value* is important. It may be large or small and so affect the amount of depreciation. Suppose a certain machine costs £100; that with proper

repairs it will perform its work efficiently for ten years, and it is estimated that at the end of that time the residual value, say, as scrap iron, will be £20. Here the depreciation is £80, so that, apart from interest questions, the annual charge to revenue would be £8 for depreciation or future renewal, plus the cost of the necessary repairs meanwhile.

With regard to machinery, the conditions to which it will be subjected, and the possibility of its obsolescence before it will be worn out in the ordinary sense because of new and improved means of production being devised, must be considered in connection with the question of depreciation, for the possibility of obsolescence is an important factor in determining the " life " of a given machine. This risk of obsolescence is, however, in the nature of a contingency which may or may not arise, rather than an inevitable shrinkage, and it is as a consequence a difficult matter to provide against satisfactorily.

It is advisable to classify as far as possible the different classes of property which are subject to depreciation, so that the various rates of depreciation applicable to each class may be more easily adopted in the accounts. In determining the rate of depreciation of property the question as to whether the rate will be based each year (or other period) upon the original valuation or upon the diminishing values brought about by the amount of depreciation periodically passed to credit must be considered, for it is obvious that a much larger percentage of depreciation will be necessary in the latter case if the same ultimate *result* is required. The system of basing the depreciation upon the diminishing value has, however, the effect of relieving the later years of a proportion of the charge for depreciation at the expense of the earlier years, but when it is remembered that with certain classes of assets repairs and maintenance are necessary, and that such charges generally fall more heavily upon the later years, it is a question for consideration whether the " diminishing value " principle is not the better one, as it serves to equalise matters by charging the earlier years with little in the way of repairs and a larger proportion of depreciation, whilst the condition of things in the later years is reversed.

The rate per cent. of depreciation employed when diminishing balances are adopted as the base from time to time must be assessed carefully, and, in so assessing, the precise effect of a given rate per cent. should be ascertained. If £100 is written off at the rate of 10 per cent. per annum upon the original sum the whole sum obviously will disappear at the end of ten years. But if the 10 per cent. be based upon the annual balances (as diminished), then £34 17s. 4d., or over one-third of the original sum, will remain after ten years.

The formula for ascertaining the residual value at the end of any number of years at any rate per cent., based upon diminishing balances, is:—

$$A\left(\frac{100 - r}{100}\right)^n = R,$$

where A equals the original amount of the asset, R the residual value at the end of the required period, r the proposed rate per cent. of depreciation, and n the desired number of years. Applying the foregoing formula to the example already given

$$100\left(\frac{100 - 10}{100}\right)^{10} = R.$$

$$100\left(\frac{90}{100}\right)^{10} = R.$$

$$100 \times {\cdot}9^{10} = R = £34{\cdot}8678.$$

The valuation of a lease or the premium paid therefor may be written off in fixed annual sums, or upon the annuity principle, employing interest at an agreed rate in the accounts, such interest being passed to credit of Profit and Loss Account. As the premium paid for a lease is theoretically the present value of the excess of annual value of the premises over the actual rent paid, it follows that the amounts periodically charged to Profit and Loss Account in reduction of the " premium " are, in reality, so much more *rent*.

Some authorities contend that the only method by which reliable allowances can be made for depreciation (from whatever cause arising) is

by periodical valuation, the differences in such valuations being written off as they arise. This would generally lead to irregular charges against Revenue Account comparing one year with another. Moreover, such valuations would necessarily be expressions of the opinions of the particular (expert) individuals engaged, and although admittedly opinions might differ as to the particular percentages to be applied in order to make regular periodical provisions for depreciation, such differences of opinion would also arise to a greater extent in connection with valuations.

The revaluation method is, however, specially applicable to such assets as horses, carts, loose tools, and utensils.

(*See* Fixed Capital, Goodwill, Income Tax, Municipal Accounts (Trading), Profits available for Dividend, Repairs and Renewals, Wear and Tear.)

Devastavit. (He has wasted.)—The wasting of the estate of a deceased person by his executor or administrator arising through extravagance or a misapplication of the assets.

The loss arising therefrom is chargeable against the person committing the waste, but in the case of two or more executors, one will not be protected, by mere passiveness, from liability in respect of a *devastavit* committed by one of his co-executors, for it is the duty of co-executors to watch over the conduct of each other.

Deviation.—A voluntary departure by the master of a ship from the usual course of the voyage. In the absence of express stipulation the owner of a vessel impliedly undertakes to the shippers of cargo that he will proceed without unnecessary deviation.

With regard to contracts of marine insurance, section 46 of the Marine Insurance Act 1906 provides that where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

Deviation arising from the ignorance of the captain would probably be deemed as being "without lawful excuse," as also that made purposely to save property, but efforts to save life which involve deviation are allowed.

If a master receives reliable information that if he continues in the usual course of his voyage he will expose his ship and cargo, or either of them, to perils, such as capture, pirates, icebergs, or other dangers of navigation, he will be justified in making a reasonable deviation to avoid them.

Devise.—A gift of realty by will.

(*See* Bequeath, Legacy, Succession Duty.)

Differences.—The amounts payable or receivable, as the case may be, by a speculator in stocks, shares, or produce in respect of the fluctuations in price of the subject-matter of speculation between given dates, *i.e.*, settling days.

The Gaming Act 1845, 8 & 9 Vict. c. 109, provides that all contracts, whether by parol or in writing, by way of gaming or wagering are null and void, and no action can be brought or maintained for recovering any sums of money alleged to have been won upon any wager, or which shall have been deposited in the hands of a third person to abide the event on which any wager shall have been made.

The contracts referred to, it must be noted, are not made illegal, but merely void and unenforceable at law.

"It has been decided that agreements between "*buyers and sellers* of shares and stocks to pay "or receive the differences between their prices "upon one day and their prices on another day, "are gaming and wagering transactions within "the meaning of the (above) statute." (Lindley, J., *Thacker v. Hardy*, 1878.)

But where the parties to the agreement are not the *buyer and seller* respectively, but a broker (as buyer or seller according to instructions) and his client, the nature of the transaction is altered.

"The essence of gaming and wagering is that "one party is to win and the other to lose upon "a future event, which at the time of the con- "tract is of an uncertain nature—that is, if the "event turns out one way A. will lose, but if it "turns out the other way he will win. But that "is not the state of facts (where a client instructs "a broker to buy or sell for him even with *no* "*intention* of taking or making delivery). The

" broker was to derive no gain from the trans-
" action; his gain consisted in the commission
" which he was to receive whatever might be the
" result of the transaction to the client. There-
" fore the whole element of gaming and wagering
" was absent from the contract." (Cotton, L.J., *ibid.*)

When a client employs a broker to speculate for him the agreement between the parties renders it necessary that the broker should himself, as principal, enter into *real contracts* of purchase or sale with jobbers. If, in carrying out his agreement with the client, he enters into contracts and incurs obligations with the jobbers, for non-performance of which actions could be brought against him, then upon the general principles of agency he (the broker) is entitled to be indemnified by his principal (the client) against liabilities incurred in executing his orders.

When a client so instructs his broker he does not authorise him to make a " time bargain " in the strict sense of the term.

"A *real* time bargain is a very rare occurrence.
" What are *called* time bargains are, in fact, the
" result of two distinct and perfectly legal
" bargains, namely, first, a bargain to buy and
" sell; and, secondly, a subsequent bargain that
" the first bargain shall not be carried out. It
" is only when the *first bargain* is entered into
" upon the understanding that it is not to be
" carried out that a time bargain, in the sense
" of an unenforceable bargain, is entered into."
(Lindley, J., *ibid.*)

Stated shortly, although a gaming contract is unenforceable, gambling of itself is not illegal, and an agent does nothing illegal in carrying out the instructions of his client; he is therefore entitled to be indemnified against losses thereby sustained, and in the event of the bankruptcy of his principal he may prove for such losses. (*Ex parte Rogers*, 1880.) But where the parties act as *principals* to a contract to pay " differences " the case comes within the Gaming Act and is unenforceable. Where there is a bargain for the payment of differences, with an *option* to the buyer, for some further consideration, to demand delivery of the stock or other subject-matter of the transaction, the option does not, of itself, take the transaction out of the operation of the Gaming Act, if but for such option the Act would render the contract unenforceable. The seller cannot compel the buyer to take delivery, for the latter may decline to exercise his option and pay the differences only. (*Re Gieve*, 1899.) (*See titles* Jobbers, Wager, Wager Policy.)

Differences in Exchange.—*See* Rate of Exchange.

Differentiation.—For income-tax purposes a distinction is made between earned and unearned income in the case of a person whose total income from all sources does not exceed £3,000 per annum. The normal rate of tax is now (February 1911) 1s. 2d. in the £, but the *earned* portion of all incomes totalling not more than £2,000 is to be taxed at 9d. only, and the earned portion of all incomes exceeding £2,000 but not exceeding £3,000 is to be taxed at 1s. only. (Finance Act 1907, section 19; Finance (1909-10) Act 1910, section 67.) In other words, the effect is to extend the abatements as regards *amount* by a further abatement as regards *rate* of tax. Subsection 7, section 19, of the 1907 Act defines " Earned Income " as follows:—

(*a*) Any remuneration from any office or employment of profit held by the individual, or any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office given in respect of the past services of the individual, or of the husband or parent of the individual in any office or employment of profit whether the individual, or husband, &c., shall have contributed to such pension, &c., or not.

(*b*) Any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual; and

(*c*) Any income which is charged under Schedules B or D in the Income Tax Act 1853, or the rules prescribed by Schedule D in the Income Tax Act 1842, and is *immediately* derived by the individual from the carrying on or exercise by him of his profession, trade, or vocation, either as an individual, or in the case of a partnership as a partner personally ACTING therein.

In cases where a wife's profits are deemed to be profits of the husband, any reference in this provision to the individual includes either the husband or the wife.

Where the income is partly earned and partly unearned, the abatement (if any) as regards amount (varying by scale from £160 to £70) will first be deducted from the *earned* portion, and the balance only (if the earned portion should be insufficient) from the unearned portion.

Example:—

Earned.	*Unearned.*	*Total.*
£300.	£190.	£490.

Abatement of £150 will be allowed as a deduction from the £300 earned income and the taxpayer will pay on £150 at 9d., and on £190 at 1s. 2d.

The same principle will be followed as regards insurance premiums.

The burden of proof will be on the taxpayer to show that his income is derived from his own personal labour, and also that the total does not exceed £2,000 or £3,000, as the case may be, and he must make his claim at the time of making his "return" *before* the 30th day of September in the year of assessment.

Note.—This provision is strictly construed, and some officials contend that the claim must be received by them not later than the 29th September in order to constitute a literal compliance with the words "before the 30th day of September."

No relief will be allowed in respect of income on which the taxpayer is entitled to deduct tax out of any payment made to another person.

Dilapidation.—Decay. The term is used to signify the want of repair to property for which a tenant is held liable to a landlord when yielding up demised premises at the end of a term, when such premises were held under a lease requiring the premises to be delivered in good repair.

Diminishing Balances.—The term used to signify the values at which a property stands in the books and accounts from time to time, such values (or balances) diminishing by and to the extent of the amounts periodically passed to credit of the account as and for depreciation or otherwise. (*See* Depreciation.)

Directors.—The officers who conduct the affairs of a joint stock company. They are the special, not general, agents of the company, for they can only exercise such powers as are conferred upon them by the memorandum and articles of association. As all persons dealing with a particular company are presumed to have knowledge of the contents of these documents, they are deemed to have notice of the extent of the directors' powers, and the nature of the special restrictions (if any) placed upon them by the memorandum and articles.

The regulations as to appointment, qualification, remuneration, and retirement, are also contained in the articles.

Appointment and Qualification.—

Directors are generally appointed in one of the following ways:—

(*a*) By name mentioned in the articles of association.

(*b*) By the signatories to the articles of association in accordance with express power given thereunder.

(*c*) By the shareholders in general meeting.

(*d*) By the other directors in order to fill a vacancy.

Sometimes—although rarely—they are appointed for purposes of formation only, and are either re-elected or replaced at the statutory meeting.

Clause 70 of Table "A," Companies (Consolidation) Act 1908, requires the directors of companies adopting its provisions to hold at least one share in the company appointing them as a qualification for office, and the articles of association of most companies provide for a share qualification—in fact, the London Stock Exchange require it before granting a quotation for the shares. There are, however, many companies having directors who do not possess any share or stock qualification, the articles of association of such companies not imposing any.

Beneficial ownership of qualifying shares is not absolutely necessary—they may be held in trust for some other person (*Pulbrook v. Richmond Consolidated Mining Company*, 1878), and even where the articles of association expressly state that the director must hold the shares in his own right, it is merely a stipulation that the company may deal with him as the owner of the shares whatever his real interest in them may be (*Bainbridge v. Smith*, 1889), but shares belonging to another company which was in liquidation and registered in the name of the liquidator as such, were held not to be his in his own right for qualification purposes. (*Boschoek Proprietary Company v. Fuke*, 1906.)

Sir F. B. Palmer suggests that where it is required that directors should be beneficially interested in their qualification shares the articles of association should provide that " the qualifica- " tion of a director shall be the holding of (a " stated number of) shares as sole absolute " beneficial owner, and not merely as trustee."

The Companies (Consolidation) Act 1908 provides as follows:—

Section 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.

Section 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 qualification; and a person vacating office under this section shall be incapable of being reappointed 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.

Note.—The provisions of the above sections do not impose a qualification, they merely enforce the requirements (if any) of the company's regulations in this respect.

Where a share qualification is necessary the holding of share warrants is not sufficient qualification. (Companies (Consolidation) Act 1908, section 37.)

The number of shares (if any) fixed by the articles of association as the qualification of a director must be stated in the prospectus (Companies Act 1908, section 81), but no provision is made for the insertion of such particulars in the "Statement in lieu of Prospectus" (*see that title*) which is to be filed by certain companies before the first allotment of shares or debentures.

The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. (1908 Act, section 74.)

Remuneration.—

Directors are only entitled to remuneration if the articles of association so provide (*Dunston v. Imperial Gas Company*, 1832); and any such provision must be stated in the prospectus. (Companies Act 1908, section 81.) No provision is, however, made for the insertion of such particulars in the "Statement in lieu of Prospectus" referred to above.

The regulations of some companies provide for the remuneration of the directors out of the *profits* of the company, whilst others make the remuneration payable out of the company's funds—an obvious distinction.

Where the articles of association provide for the payment by the company of a stated annual sum by way of remuneration to the directors, it has been held that even where directors must of necessity be members such remuneration is not due to them in their character of members of the company, but under a separate and distinct contract, and directors are therefore entitled to prove and rank as ordinary creditors in the winding-up of the company for any unpaid fees in pursuance of the articles of association. (*New British Iron Co.*, 1898, 1 Ch. 324.)

A director of a company who is appointed to a place on the board of another company, and holds his qualification shares in the latter company in trust for the former, is not liable to account to the "parent" company for remuneration earned as a result of such appointment: the remuneration is received by him by way of payment for work done. (*In re Dover Coalfield Extension, Lim.*, C.A. 24 T.L.R. 52.)

If the articles provide, or a resolution passed in pursuance of the articles states, that the directors are to be remunerated at *the rate of* so much a year, they will be entitled to an apportioned part for services for part of a year (*Salton v. New Beeston Cycle Co.*, 1899), but if a director is entitled to a stated sum per annum by way of remuneration, he is not entitled, while the company *is a going concern*, to any part thereof unless he acts for the full year. (*Inman v. Acroyd & Best, Lim.*, 1901, 1 K.B. 613.)

Where it is intended, when voting directors' remuneration at the first general meeting of a company governed by Table A, that the first directors shall be remunerated for past services rendered since their appointment by the subscribers of the memorandum of association, the resolution should clearly state the intention. (*See In re London Gigantic Wheel Company*, C.A. 24 T.L.R. 618.)

Unless specially provided for, directors cannot be paid their travelling expenses in connection with attending the board meetings, or the income-tax upon their remuneration.

Responsibilities.—

Directors are not only the agents of the company in respect of the transactions they enter into on its behalf, but also quasi-trustees for the company, as the funds of a company may be regarded as a trust-fund of which the directors have the administration. It is said that directors are also trustees "*for the shareholders* of the powers which have been committed to them."

A director stands in a fiduciary relation towards the company, and as a consequence he cannot contract with the company, unless the articles otherwise provide, but it is customary to allow directors to contract with the company, provided they do not vote when any question relating to their particular contracts is being considered by the directors as a body.

It follows that in order to render valid a resolution in regard to a proposal in which any director is financially interested, there must be

present a quorum of directors *exclusive* of the particular director so interested.

Directors may be held personally responsible for acts *ultra vires* which are also *ultra vires* the company, or which, though *intra vires* the company, the members decline to ratify—unless such acts are the result of an honest mistake or an error of judgment, and they have otherwise acted in good faith.

If the acts are *ultra vires* the directors but *intra vires* the company, they may be ratified by the members in general meeting, but if the acts are *ultra vires* the company they cannot be ratified.

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. (Companies Act 1908, section 279.)

Ordinarily, the liability of a director, apart from fraud and acts *ultra vires*, is that of an ordinary member in respect of the shares he may hold, but the Companies Act 1908 (sections 60 and 61) provides that the liability of the directors of a limited company may be unlimited if so provided by the memorandum of association (as originally prepared or as altered by special resolution). This provision is, however, not taken advantage of, and may be regarded as a "dead letter."

The fact that some of the directors of a company have acted irregularly in transacting business on behalf of the company when a quorum was not present, will not be allowed to prejudice third parties who have acted without notice of the irregularity, for although all persons having dealings with a company are fixed with notice of its memorandum and articles as regard *external* affairs, they are not presumed to have knowledge of its "indoor management." But as regards the liability of a company in respect of bills of exchange improperly negotiated by a director for his own benefit see *Premier Industrial Bank, Lim. v. J. & W. Crabtree, Lim.* (25 T.L.R. 17).

In any case, anything alleged to have been done on behalf of a company at a meeting of directors, where a quorum was not present, may be subsequently ratified and confirmed at a duly constituted meeting of directors; when so ratified, the act will be valid *ab initio*.

A special liability attaches to directors in connection with the issue of a prospectus and also as to irregular allotments.

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. 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. (Companies (Consolidation) Act 1908, section 75.)

The annual list and summary must specify the names and addresses of the persons who at the date of the return are the directors of the company. (Section 26.)

(*See* Allotment, Governing Director, Local Director, Managing Director, Prospectus, Statement in lieu of Prospectus, Statutory Meeting, Substituted Director.)

Directors' Liability Act 1890.—The Act was repealed by, and its provisions re-enacted in, the Companies (Consolidation) Act 1908, as from 1st April 1909.

(*See title* Prospectus.)

Discharge of a Bankrupt.—A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court will appoint a day for hearing the application, but such application will not be heard until the

public examination of the bankrupt has been concluded. A bankrupt intending to apply for his discharge must produce to the Registrar a certificate from the Official Receiver specifying the number of his creditors of whom the Official Receiver has notice (whether they have proved or not). The Registrar shall, not less than 28 days before the day appointed for hearing the application, give notice of the time and place of the hearing of the application to the Official Receiver and trustee, and the Official Receiver shall forthwith send notice thereof to the Board of Trade for insertion in the *Gazette*. The Official Receiver must also send to each creditor a notice of the day appointed for the hearing of the debtor's application for discharge, not less than 14 days before the day so appointed. But it is not necessary in summary cases to send notices to creditors of less than £2.

The application must be heard in open Court.

The Official Receiver must make a report upon the bankrupt's conduct and affairs, and the Court takes the report into consideration upon the hearing of the application, and *may* either (1) grant or (2) refuse an absolute order of discharge, or (3) suspend the operation of the order for a specified time, or (4) grant an order of discharge subject to conditions as to future earnings or after-acquired property, provided that the Court *shall refuse* the discharge in all cases where the bankrupt has committed any misdemeanour under the Debtors Act 1869 (*q.v.*) or the Bankruptcy Act 1883, or any other misdemeanour, or any felony in connection with the bankruptcy, unless the Court for special reasons shall otherwise determine.

The Court shall also, upon proof of any of the facts hereinafter mentioned, either:—

(1) Refuse the discharge, or

(2) Suspend the discharge for a period of not less than two years, or

(3) Suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors, or

(4) Grant an order of discharge conditionally upon the bankrupt assenting to judgment being entered against him by the Official Receiver or trustee for the balance or *part of any balance* of the debts provable in the bankruptcy, such amount to be payable out of future earnings or after-acquired property, but execution thereon not to be levied without leave of the Court. Such an order may be modified by the Court if after the expiration of two years the bankrupt satisfies the Court that there is no reasonable probability of his being in a position to comply with the terms of the order.

Note.—If a bankrupt by arrangement consented to judgment being entered against him for such a sum as with the dividend coming from his estate would allow of a further dividend, making (say, only) three shillings in the pound in all, he could obtain an immediate discharge if a friend forthwith discharged the judgment on his behalf, provided, of course, the bankrupt had not been guilty of any serious bankruptcy offences.

The facts hereinbefore referred to are:—

A. That the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible.

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

"The omission to keep proper books is "not a slight but a serious offence against "trading morality. It is not enough that "there should be books with entries in "them which would require a prolonged "examination by a skilled accountant in "order to ascertain the result of them.

"That is not keeping proper books. The "books should be properly kept and "balanced from time to time, so that at "any moment the real state of the "trader's affairs may appear at once. "Those are the books which traders "ought to keep." (Lord Esher.)

C. That the bankrupt has continued to trade after knowing himself to be insolvent.

"When a man is insolvent he has no "right to take upon himself to decide "whether his business is or is not to be "sold, or whether his business is or is not "to be carried on. When he is insolvent "he really is carrying on his business at "the risk and expense of his creditors. "Sometimes he may, by great good "fortune, succeed in pulling through, if "he is not too deeply involved, but, as a "general rule, one knows from experience "that is not so, and that going on with "trading under those circumstances leads "to bankruptcy in the end and to a "greater deficiency than there would be if "the debtor were to pull up as soon as he "found he was insolvent. A man, there-"fore, is not justified in going on or in "selling, or, in fact, taking any step at a "time when he is insolvent without the "concurrence of the creditors, who have to "bear the burden if that step turns out to "be a disastrous one." (Cave, J.)

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

E. That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities.

F. That the bankrupt has brought on, or contributed to, his bankruptcy, by rash and hazardous speculations, or by unjustifiable extravagance in living or by gambling, or by culpable neglect of his business affairs.

"A man is bound, not to keep up "appearances but to pay his debts, and if "his profits will not allow of his living at "the particular rate he has been accus-"tomed to live at, then his plain duty is to "reduce his scale of living, and not to go "on living out of the money of creditors." (Cave, J.)

G. That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him.

H. That the bankrupt has within three months preceding the date of the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action.

I. That the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they became due, given an *undue* preference to any of his creditors.

Note.—An undue preference is wider than a fraudulent preference, for although a preference may not be such as would be avoidable as a fraudulent preference, it may nevertheless be deemed *undue*, and affect the debtor's discharge.

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

K. That the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors.

L. That the bankrupt has been guilty of any fraud or fraudulent breach of trust.

The onus of proof of any of the foregoing facts (except where stated otherwise) lies on the person or persons opposing the application for a grant of discharge.

The Court may also refuse or suspend an order of discharge, or grant an order subject to conditions, where the bankrupt has made a fraudulent or unjustifiable marriage settlement.

The powers of the Court of suspending and of attaching conditions to a bankrupt's discharge may now be exercised concurrently.

An order of discharge *does not release* the bankrupt—

(1) From any debt on a recognisance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown, or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence, unless the Treasury certify their consent in writing to his being discharged therefrom.

(2) From any debt or liability incurred by means of any fraud or *fraudulent* breach of trust to which he was a *party*, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a *party*. (1883 Act, section 30.)

(3) From any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability. (1890 Act, section 10.)

The onus lies on the bankrupt to show some special reason why the Court should make an order under section 10 of the Act of 1890 releasing him from the liability for the debts specified in section 10.

With the foregoing exceptions, an order of discharge releases the bankrupt from all debts provable in the bankruptcy.

With regard to debts contracted by a person with the debtor after notice of an available act of bankruptcy having been committed by the debtor, it has been held that the Bankruptcy Act 1883 (section 37 (2)) does not provide that such a debt is non-provable in the bankruptcy, but only that the *creditor* shall not prove in respect thereof. (*Buckwell v. Norman*, 1898.) The effect of this decision is important, for as the debt is not deemed non-provable, the bankrupt will be released therefrom on obtaining his discharge. So that the creditor (1) may not prove in the bankruptcy by reason of a personal disability, nor (2) may he at any time sue the debtor therefor.

An order of discharge does not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

An order of discharge is conclusive evidence of the bankruptcy and of the validity of the proceedings therein, and in any proceedings that may be instituted against the bankrupt who has obtained an order of discharge in respect of any debt from which he is released by such order, the bankrupt may plead that the cause of action occurred before his discharge, and may give the Bankruptcy Acts and the special matter in evidence.

Where one member only of a firm has been adjudicated bankrupt his discharge operates to release him from his joint as well as his separate debts (*Ex parte Hammond*, 1873), and where all the members of a firm have been adjudicated bankrupt and each has been granted his discharge they are released from the separate and joint liabilities. (*Howard v. Poole*, 1734.)

A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and if he fails to do so he will be guilty of a contempt of Court, and the Court may also, if it thinks fit, revoke his discharge.

(1890 Act, sections 8 and 10; and Rule 235.)

Where a bankrupt is discharged subject to the condition that judgment shall be entered against him, or subject to any other condition as to his future earnings or after-acquired property, it shall be his duty, until such judgment or condition is satisfied, from time to time to give the Official

Receiver such information as he may require with respect to his earnings and after-acquired property and income, and not less than once a year to file in the Court a statement showing the particulars of any property or income he may have acquired subsequent to his discharge. (Rule 244.)

Any statement of after-acquired property or income filed by a bankrupt whose discharge has been granted subject to conditions shall be verified by affidavit, and the Official Receiver or trustee may require the bankrupt to attend before the Court to be examined on oath with reference to the statement contained in such affidavit or as to his earnings, income, after-acquired property, or dealings. Where a bankrupt neglects to file such affidavit or to attend the Court for examination when required so to do, or properly to answer all such questions as the Court may put or allow to be put to him, the Court may, on the application of the Official Receiver or trustee, rescind the order of discharge. (Rule 244A.)

Upon every application for an order of discharge a fee of £1 10s. is payable (which includes the expense of gazetting), and a further fee is payable at the rate of one shilling for each creditor who has to be notified of the application. A bankrupt is not entitled to have any of the costs of or incidental to his application for his discharge allowed to him out of his estate. (Rule 239.) (*See* Undischarged Bankrupt.)

Discharge of a Bill of Exchange.—A bill is discharged when all rights of action thereon are extinguished. It then ceases to be negotiable, and subsequent holders acquire no right of action on the instrument. The discharge of a bill does not, however, extinguish any right of action which a party to the bill may have in respect of a transaction which arose out of the bill, but which is nevertheless independent of it. For example, a bill is discharged by payment in due course, by or *on behalf* of the drawee or acceptor (1882 Act, section 59), and although payment of a bill by one of joint acceptors operates as a discharge of the bill, the payer still has his right of contribution from his co-acceptors.

If a bill (duly accepted) be given for a debt, and the acceptance is paid, both the debt and the bill are discharged.

Where an accommodation bill is paid in due course by the *party accommodated* the bill is discharged (section 59), but if paid by an accommodating acceptor he has a personal right of action for indemnity from the party accommodated.

The discharge in bankruptcy of an acceptor does not operate as a discharge of the bill; it operates only as a discharge of the acceptor to the extent of the amount proved for, and as a discharge of the drawer and indorsers to the extent of any dividends received. In any case, the holder cannot receive more than 20/- in the £. (*See* Proof in respect of Bills of Exchange.)

The discharge of a bill must also be carefully distinguished from the discharge of one or more parties thereto by reason of want of notice of dishonour, or some other informality.

" Payment in due course " for the purpose of determining the discharge of a bill means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective. (Section 59.) Part payment of a bill in due course operates as a discharge *pro tanto*.

When the acceptor of a bill is or becomes the holder of it at or after its maturity in his own right the bill is discharged. (Section 61.)

When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged. The renunciation must be in writing unless the bill is delivered up to the *acceptor*. (Section 62.)

The importance of this formality has been emphasised by the Court. A drawer renounced his rights on a bill *verbally*, but delivered the bill to a legatee of the acceptor (the latter having died). On the death of the drawer also, the executors of the drawer sued upon the bill and recovered, the *ratio decidendi* being " that the " bill had not been renounced in writing nor had " it been delivered up to the acceptor, the latter " at the time being dead."

Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged. The intentional cancellation by the holder, or his agent, of the signature of a party liable on a bill operates as a discharge of *that* party and also of those who would have had a right of recourse against him. (Section 63.)

The unintentional cancellation of a bill, or of a signature or a cancellation made under a mistake or without authority, is inoperative on proof that the cancellation was made unintentionally, or under a mistake or without authority. (Section 63.)

The right of action under a bill of exchange is (under ordinary circumstances) barred after six years from the date it falls due. (*See* Alteration, Renewal of a Bill.)

Disclaimer.—

BANKRUPTCY.

A trustee in bankruptcy may disclaim land of any tenure burdened with onerous covenants, unprofitable contracts, shares, stocks, or other property unsaleable or not readily saleable owing to its possession entailing the payment of money or the performance of onerous acts. This right is not affected by the exercise of any act of ownership by the trustee over the property, whether in an endeavour to sell, in taking possession of it, or otherwise. The disclaimer must be in writing, signed by the *trustee* (the signature of the trustee's solicitor is not sufficient), and made within twelve months of the first appointment of a trustee, or if the existence of the property should not come to his knowledge within one month of his appointment, the disclaimer should be made within twelve months after the trustee first becomes aware of it. Should, however, any person interested make application in writing requiring the trustee to decide whether he will disclaim or not, he must so decide within 28 days after the receipt of such application, otherwise he loses his right of disclaimer, and in the case of a contract, if the trustee after such application does not within the proper period disclaim the contract, he is deemed to have adopted it (but see *infra*). The period of twelve months commences to run from the date of the first appointment of a trustee other than the Official Receiver (under section 21 of the Act of 1883) and not from the date of the order of adjudication, on which date the Official Receiver *becomes* trustee until a trustee is appointed by the creditors. (*Re Cohen*, Court of Appeal, 1905.) All the above periods may, however, be extended by the Court in a proper case.

Leaseholds cannot be disclaimed without the leave of the Court *except*—

(1) Where the premises have not been sub-let nor any mortgage created on the lease, *and*

  (*a*) The rent is less than £20 per annum, or

  (*b*) The estate is being summarily administered, or

  (*c*) The lessor has been served with notice of intention to disclaim, and does not within seven days give notice that he requires the matter to be brought before the Court; or

(2) Where the premises have been sub-let or a mortgage has been created on the lease, and the lessor, sub-lessee, or mortgagee has been served with notice of intention to disclaim and none of such persons has within 14 days required the matter to be brought before the Court.

A disclaimer made without leave of the Court in pursuance of the above rule will not be void or otherwise affected on the ground *only* that the notice required by the rule has not been given to *some* person who claims to be interested in the demised property. Where any person claims to be interested in any part of the property of the bankrupt burdened with onerous covenants he must, at the request of the Official Receiver or trustee, furnish a statement of the interest so claimed by him.

Where the trustee is entitled to disclaim without leave, the Court cannot impose terms (*e.g.*, order compensation to the landlord). (*Ex parte Zerfass*, 1885.)

Where a trustee disclaims a *leasehold* interest he must forthwith file the disclaimer with the proceedings in Court, and the disclaimer must contain particulars of the interest disclaimed, and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the trustee it is inoperative.

A disclaimer operates to determine from the *date of the disclaimer* the rights and liabilities of the bankrupt, and also discharges the trustee from all *personal* liability in respect of the property disclaimed as from the date when it *vested* in him, but, except so far as is necessary for releasing the bankrupt and his property and the trustee from liability, a disclaimer does not affect the rights of other persons.

Note.—Notwithstanding the latter portion of the above subsection (55 (2) of 1883 Act), the Court of Appeal held in *Stacey v. Hill* (1901) that the guarantor of the rent of the premises tenanted by the bankrupt was relieved from liability for any rent accruing after the date of the disclaimer of the lease by the trustee.

If the trustee does not disclaim a lease he becomes *personally* responsible for the rent and covenants as from the date of his appointment —that is, from the date the lease first vested in him, irrespective of the question of actual or beneficial occupation by him. (*Titterton v. Cooper*, 1882.) But the trustee is entitled to indemnity from the estate.

As the disclaimer of an onerous lease is not now retrospective, but operates from the date of the disclaimer (if duly filed in Court), the trustee may before disclaiming remove the tenant's fixtures or call upon the landlord to take them over at a valuation. Should the landlord decline to pay for the fixtures he must give the trustee reasonable time and opportunity to remove them.

On the application of any party claiming an interest in any disclaimed property the Court may make a vesting order on such terms as it may think fit, and the property vests without further conveyance or assignment. In the case of leaseholds the vesting order will be made in favour of a sub-lessee or mortgagee on the condition that he takes the property with the same liabilities as the bankrupt was subject to at the date of the petition, but under the Act of 1890 (section 13) the Court has now a further discretion in the matter, and may vest the property subject to the same liabilities and obligations as if the lease had been *assigned* at the date of the petition, and (if it be necessary) as if the lease comprised only the property dealt with in the vesting order. If no person claiming *under* the bankrupt is willing to accept a vesting order under such terms, the Court may vest the bankrupt's interest in any person in any way liable to perform the lessee's covenants, but freed and discharged from all incumbrances created by the bankrupt.

The intention of the Legislature was, while they were providing for the relief of the trustee from liability in respect of onerous obligations of the bankrupt, including the obligations arising under a lease, to do so with as little disturbance as possible of the rights and liabilities of third persons, by reason of the disclaimer. But the conditions of the lease and the exact state of things, as between the lessor, the bankrupt lessee, and the sub-lessee or mortgagee, will be carefully considered.

It is now settled that the lessor may apply for a vesting order as well as the parties claiming *under* the bankrupt. (*Ex parte Shilson*, 20 Q.B.D. 343.)

A trustee in bankruptcy may disclaim shares held by the bankrupt in a company (registered under the Companies Acts) either before or after the commencement of the winding-up, notwithstanding the provisions of section 205 of the Companies (Consolidation) Act 1908.

With regard to onerous contracts which have not been disclaimed, some difference of opinion exists as to the meaning of the words of section 55, subsection 4, of the Bankruptcy Act 1883, to the effect that if the trustee does not disclaim the contract "*he shall be deemed to have adopted it.*"

(1) In case of adoption the trustee will be held to be personally liable in respect of the contract, subject to such indemnity as he may be entitled to out of the estate. (Robson.)

(2) The effect of the provision as to adoption of the contract is not to make the trustee personally liable, but only to effect a *novation* by which the trustee as representing the body of creditors is substituted as the party liable for the trustee as representing the bankrupt contractor. (Williams; also Benjamin on Sale.)

Any person injured by the operation of a disclaimer is deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy. but if it is the true interpretation that a trustee who adopts a contract is personally liable thereon. there would apparently be no right of proof against the bankrupt's estate in respect of a breach of contract after the date the trustee was deemed to have adopted it. Again, the Board of Trade, in the regulations issued to trustees, notifies them that any neglect on their part to disclaim onerous contracts, &c., will be taken into consideration when application is made for release, presumably because such neglect is deemed prejudicial to the respective estates being administered.

The Court may, on the application of any person who is as against the trustee entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order *rescinding* the contract on such terms as to payment by or to either party, of damages for the non-performance of the contract or otherwise as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy. The above provision as to power to apply for rescission does not appear to be limited as to time; if, therefore, an application to rescind the contract be made after the trustee is deemed to have adopted the contract, the effect of an order rescinding a contract would be to relieve the trustee personally of any liabilities he may have incurred in the meantime, for it is expressly provided that the damages (if any) payable under the order shall be proved as a debt under the bankruptcy.

In the case of a lease, the measure of damages under a disclaimer would ordinarily be the present value of the rent payable under the lease, less the rent obtainable for the residue of the term in the event of the premises being re-let; if there is a liability for dilapidations that would need to be considered also. Where the premises can be re-let immediately at a similar rent there would be no injury (so far as regards rent) as a result of the disclaimer. Compensation may also be payable to a lessor in respect of occupation by the trustee where such occupation has produced a benefit to the bankrupt's estate " or was contemplated as likely to produce a benefit."

Where a lease is of value, and it contains a forfeiture clause in the event of the lessee's bankruptcy, it is inoperative as against the trustee in bankruptcy by reason of the trustee's right of disclaimer.

In the case of shares of a company, the company may prove for the whole amount due on the shares, whether by way of arrears of calls or the liability to future calls. The measure of damage as to shares is also subject to any value in the shares which the company may acquire by reason of the disclaimer. (But *see* Debts Provable in Bankruptcy.)

The provisions of the Bankruptcy Acts relative to a trustee's power of disclaimer are binding on the Crown.

(1883 Act, sections 55 and 150; 1890 Act, section 13, Rule 320.)

Company Liquidation.

A liquidator of a duly registered company has no power of disclaimer, for he does not by taking or retaining possession become personally liable for the rent and covenants of leases; the company's property does not *vest* in him, and the occupation is not that of the liquidator but of the company, whose " ministerial officer " the liquidator is whilst the company remains in existence. (*Wearmouth Co.*, 19 Ch.D. 640.)

Assignment.

A trustee under a deed of *assignment* will become personally liable for the rents and

covenants reserved by any lease which may be comprised in the property assigned, and as the trustee has no power of disclaimer it is usual in practice to exclude from the deed any leaseholds under rack-rent or burdened with onerous covenants, the assignor declaring that he stands possessed of same upon trust for the trustee and the creditors. Should the deed include a leasehold in respect of which the trustee becomes liable for the covenants he may rid himself of all *subsequent* liability by assigning the lease to another, even though the assignee be a "man of straw."

Disclosure of Contracts.—*See titles* Prospectus, Statement in lieu of Prospectus.

Discount.—An abatement from a debt or any principal sum. The difference between a sum due at a future date and its present value. There are various classes of discount, viz.:—

Cash Discount.—A deduction (in the nature of interest) made in consideration of payment on or before a fixed date, or for prompt payment, as the case may be. The amount allowed depends—

(1) Upon the period of credit generally allowed in the particular trade;

(2) The length of the unexpired period of credit at the date of payment; and

(3) The rate per cent. allowed.

There are two kinds of cash discount, viz., true discount and banker's (or mercantile) discount.

When discounting a bill (*i.e.*, paying the cash value of the same prior to maturity) the banker deducts such an amount as represents the rate per annum on the *face* value of the bill for the period prior to maturity, but the true discount would be the difference between the present value of the bill at the required rate of discount (or interest) and its face value; for in the latter case the amount advanced would be such a sum as, with the required interest *thereon*, would amount to the face value of the bill at the date of maturity.

Trade Discount.—An allowance made according to the particular class of trade or goods, and irrespective of the time of payment therefor. The rate allowed also varies according to the extent of the trade done with the various customers; thus, instead of quoting different prices according to the volume of business done, traders are enabled to issue "standard list prices" applicable to all, the adjustment of the actual prices paid being regulated by the varying rates of trade discount.

These "standard" lists also enable traders to cope with fluctuations in price, occasioned by the rise and fall of raw materials, &c., by means of an alteration merely in the rate of trade discount allowed.

Allowance.—Sometimes an abatement is made from a debt for no special reason other than to induce a settlement or to make the sum payable an even amount. This should not be confused with a credit in respect of "goods returned."

In preparing a Trading Account and Profit and Loss Account, trade discount and returns should be deducted from "sales," while cash discount and allowances should be treated as an expense in the Profit and Loss Account. (*See* Allowance, Debts Provable in Bankruptcy, Gross Profit, and Underwriter.)

Discovery, Examination, &c.—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 its sitting and allowed by it, the Court may, by warrant, cause him to be appre-

hended 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 Official Receiver or trustee, at such time 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 the 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 thinks 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. (Bankruptcy Act 1883, section 27.)

The provisions of this section have been held not to apply to orders for the administration of the estates of deceased insolvents. (*Re Hewitt*, 1885.)

Every application to the Court under section 27 shall be in writing, and shall state shortly the grounds upon which the application is made. Where the application is made on behalf of the trustee, Official Receiver, or Board of Trade, it need not be verified by affidavit. (Rule 78.)

The Court has (*mutatis mutandis*) similar powers in connection with the winding-up of companies. (Companies (Consolidation) Act 1908, section 174.)

(*See* Public Examination.)

Dishonour (Notice of).—When a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged, provided that—

(1) Failure to give notice of dishonour by *non-acceptance* does not prejudice the rights of a subsequent holder in due course without notice of the omission, and

(2) Where notice of dishonour by non-acceptance has been given it is unnecessary to give a subsequent notice of dishonour by non-payment unless the bill has been accepted in the meantime. (Bills of Exchange Act 1882, section 48.)

The rules as to notice of dishonour requisite for a valid and effectual notice may be summarised thus:—

By whom given.—The holder or any indorser liable on the bill at the time of giving notice, or any person acting on their behalf. Notice to a party enures for the benefit of all parties having a right of recourse against that party.

How given.—In writing, or verbally, or both. It may be informal so long as it is unmistakable as to effect. A misdescription of the bill is not material unless the party is really misled thereby. To return the bill itself is sufficient notice of dishonour as regards form. Due notice is deemed to have been given if properly addressed and put into the post office, notwithstanding its miscarriage.

To whom given.—To a party liable or his agent. Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them unless one has authority to receive notice for the others. The notice may be given when a party (*a*) is bankrupt, to him or the trustee; (*b*) is dead, to his personal representative; (*c*) is a company in liquidation, to the liquidator.

When given.—Notice *may* be given at once, but *must* be given within a reasonable time. In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless:—

(1) Where the party giving and the party receiving notice reside in the same place the notice is sent off so as to be *received* the day after the dishonour of the bill.

(2) Where they reside in different places the notice is *sent off* the day after the dishonour of the bill, or if no post at a convenient hour on that day, by the first post thereafter.

An agent of a party, which includes a branch bank as regards the head office, or another branch, is treated as an independent party for the purpose of giving notice of dishonour, and may give notice to his principal or to any parties liable. Where a party to a bill receives notice he has the same period of time for giving notice to antecedent parties as the holder has after dishonour. (Section 49.)

Excuses for delay.—Delay in giving notice is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence.

Notice dispensed with.—Notice is dispensed with—

(*a*) When, after reasonable diligence, notice cannot be given to, or does not reach, the party sought to be charged.

(*b*) By waiver, express or implied, before or after the time for giving notice has arrived.

(*c*) As regards the drawer:—

(1) Where the drawer and drawee are the same person.

(2) Where the drawee is a fictitious person or one incapable of contracting.

(3) Where the drawer is the person to whom the bill has been presented for payment.

(4) Where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill.

(5) Where the drawer has countermanded payment.

(*d*) As regards an indorser:—

(1) Where the drawee is a fictitious person or one incapable of contracting, and the indorser was aware of the fact at the time of indorsing the bill.

(2) Where the indorser is the person to whom the bill has been presented for payment.

(3) Where the bill was made or accepted for the accommodation of the indorser.

(Section 50.)

It is not necessary to give notice of dishonour to the acceptor of a bill in order to render *him* liable thereon. (Section 52 (3).)

Dishonoured Bill (of Exchange).—A bill which on due presentment has been refused acceptance or payment, or of which acceptance or payment has been neglected, as the case may be.

When a bill is duly presented for acceptance, and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he does not, the holder loses his right of recourse against the drawer and indorsers. (1882 Act, section 42.)

When a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder and no presentment for payment is necessary (section 43), but such right of recourse will be suspended where the holder resorts to a "case of need" and obtains an acceptance for honour (*q.v.*). (Section 65.)

When a bill is duly presented for payment and payment is refused or cannot be obtained, or when presentment for payment is excused and the bill is overdue and unpaid, the bill is dishonoured by non-payment, and an immediate right of recourse against the drawer and indorsers accrues to the holder (section 47) unless payment for honour (*q.v.*) has been obtained. (Section 68.)

Where a bill is dishonoured the measure of damages, which are deemed to be liquidated damages, is as follows:—

(1) The *holder* may recover from any party liable on the bill, and the *drawer* who has been compelled to pay the bill may recover from the acceptor, and an *indorser* who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser:—

(*a*) The amount of the bill.

(*b*) Interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case.

(*c*) The expenses of noting, or when protest is necessary, and the protest has been extended, the expenses of protest.

(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages the holder may recover from the drawer or an indorser, and the drawer or indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange (*q.v.*), with interest thereon until the time of payment.

(3) Where interest is recoverable as damages, such interest may, if justice require it, be withheld wholly or in part; and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper. (Section 57.)

Dissolution.—*See titles* Limited Partnership, Partnership, Winding-up.

Distinguishing (or Distinctive) Numbers.—The consecutive numbers given to each of a succession of things whereby they may be distinguished from each other; or numbers given to a series of things in order to identify them. The sections of an Act of Parliament, the clauses of articles of association, articles of partnership, and memoranda of association are instances in one direction, whilst the shares in a public company, and debenture bonds, admission tickets to public gatherings, invoices for goods purchased, vouchers for money paid, are also given distinguishing numbers for identification and reference.

Distress.—The seizure of goods and chattels as a pledge for the satisfaction of a demand. All chattels and personal effects found upon the premises may be distrained upon by a landlord for rent *due* to him, whether they belong to the tenant, an under-tenant, or a stranger, with the exception of:—

(1) Fixtures which, having once been removed, cannot be restored to their original condition.

(2) Goods delivered to a person in the way of his trade, *e.g.*, a chattel for the purpose of repair.

(3) Wearing apparel and bedding of the tenant or his family, and the tools and implements of his trade, to the value of £5, unless the tenant's interest has expired, and distress has not been made until seven days after a demand has been made for possession.

(4) *Loose* money.

(5) Goods in the custody of the law, *e.g.*, the sheriff, under a writ of execution.

(6) Goods belonging to any lodger, under-tenant, or stranger, provided such lodger, under-tenant, or stranger serves the superior landlord or agent with the notice prescribed by the Law of Distress Amendment Act 1908, and gives such undertaking as to payment of any *rent* due or to become due by him to his immediate landlord as is required by the Act.

(7) Goods belonging to the Crown.

There are other exceptions in addition to the above, subject to special conditions, but the foregoing are the most important.

A distress must be made between sunrise and sunset.

A purchase by a landlord of the goods distrained on by him is invalid. (*Moore, Nettlefold v. Singer*, 1903.)

A landlord as such is neither a secured nor a preferential creditor in respect of rent due to him from a bankrupt (or a company being wound up). He is an unsecured creditor, but possesses

a right of distress subject to certain limitations and conditions.

Where a lease or tenancy provides that the rent shall be payable in advance it may be distrained for in advance, and where the rent is payable in advance " if demanded " the demand need not be made at the commencement of each period to entitle the landlord to distrain; he may make such demand at any time during the period. (*London & West Loan Co. v. London & North-Western Railway Co.*, 1893.)

Bankruptcy.

Rent due from a " bankrupt " may be distrained for either before or after bankruptcy. provided that, if the distress be levied after the *commencement* of the bankruptcy, it is available only for six months' rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for any surplus due, for which the distress may not have been available. (1883 Act, section 42; 1890 Act, section 28.)

Where in order to avoid distress a trustee undertakes to treat a landlord's claim for rent as a first charge upon the proceeds of the goods which were so liable to distress, he must satisfy the landlord's claim out of such proceeds before deducting the cost of administration. (*Re Chapman; ex parte Goodyear*, 10 T.L.R. 449.)

If a trustee does not disclaim a lease he becomes personally liable for the rent as from the date of his appointment—that is, from the date the lease first vests in him. And it is not necessary to show, in order to make the trustee liable, that he has had beneficial or actual occupation of the property. (*Titterton v. Cooper*, 1882.) But the trustee is entitled to indemnity from the estate.

A landlord may distrain for rent accruing due if the trustee remains in possession without disclaiming, even though it be rent which under the terms of the lease is payable in advance. (*Ex parte Hale; re Binns*, 1 Ch.D. 285.)

Company Liquidation.

Section 211 of the Companies (Consolidation) Act 1908 provides that a distress against the estate or effects of a company (being wound up by or under the supervision of the Court), after the commencement of the winding-up, is void to all intents.

This section, however (when forming section 163 of the 1862 Act), was held to be subject to, and to be controlled by, sections 85 and 87 of the same Act (now also incorporated in the 1908 Act, sections 140 and 142), so that the right of a landlord to distrain *after the commencement* of the winding-up is in the discretion of the Court; but ordinarily such distress is not allowed in respect of rent accrued due *prior* to the commencement of the winding-up.

As regards rent accrued *after* the commencement of the winding-up, the Court may, upon the application of the landlord or other person, give liberty to distrain, or direct payment of such rent, for, under ordinary circumstances, the company or the liquidator will be responsible for the rent of premises demised to the company during the period of the company's or the liquidator's beneficial occupation, if possession has been retained by the liquidator.

These restrictions do not apply to a landlord who is a "stranger" to the company, *e.g.*, where the company is in possession under an assignment of a lease which has been made without the landlord's consent (*Ex parte Heavan*, 6 Ch. 462), for the landlord cannot prove as a creditor of the company, and, therefore, his only remedy is to distrain upon the goods on the land.

In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt, or a company being wound up, within three months next before the date of the receiving order or the winding-up order respectively, the debts to which priority is given by the Preferential Payments Act 1888, or the Companies Act 1908, section 209 (*i.e.*, wages, rates, &c.), are constituted a first charge upon 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 attains the same rights of priority as the person to whom such payment is made.

Note.—The date referred to throughout subsection (1) of section 209 of the Companies (Consolidation) Act of 1908 (being the date to which the various accruing preferential debts are to be computed) is defined by subsection 5 of the said section, according to the particular mode of winding up, whether compulsory, voluntary, or under supervision, whereas subsection 4, which imposes conditions upon a landlord's right of distress (as set out above), refers to the date of a winding-up order only, and it is suggested that such restrictions upon a landlord's right of distress might possibly be held not to apply to a voluntary liquidation, inasmuch as in such a case there is no winding-up order made.

When any rent or other payment falls due at stated periods, and the receiving order (or order or resolution to wind up, as the case may be) 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 receiving order (or winding-up order or resolution) as if the rent or payment grew due from day to day. (Bankruptcy Act 1883, 2nd Schedule, Rule 19, and Winding-up Rule 95.) (*See* Rent.)

Distribution, Statutes of.—Statutes of Car. II. providing for the distribution of the effects of a deceased intestate, after payment of his debts and funeral and testamentary expenses.

The estate is distributable amongst the next-of-kin of the deceased (if any) in certain proportions, according to the nature of their relationship.

In the event of a married woman dying intestate, her husband takes the whole of the personal estate, and by the Intestates Act 1890 an important alteration was made in the law as regards the provision for the widow of a man dying intestate, this Act providing that, where an intestate leaves a widow, *but no issue*, his real and personal estate passes absolutely to the widow to the value of £500. If the total estate is less than £500, the widow takes the whole; if the estate exceeds £500 in value, the widow obtains a charge upon the estate rateably out of realty and personalty for £500, with interest at 4 per cent. per annum from the date of the death until the date of payment; in addition to which the widow will take out of the balance of the estate such proportion as she would have been entitled to under the law previously in force.

If a person leaves a will, but only part of the estate is effectually disposed of, he is, for the purpose of the Statutes of Distribution, deemed to be intestate as to the balance and his next-of-kin become entitled thereto.

But it has been held (*In re Twigg's Estate*, 1892, 1 Ch. 579) that such a person does not "die intestate" within the meaning of the Act of 1890, for at least part of his estate has been disposed of by will.

In a later case (*Re Cuffe*, 1908, 2 Ch. 500), although there was a will, the deceased was held to have died intestate because the executor and all the intended beneficiaries had pre-deceased the testator, so that the will had become wholly inoperative, and, having left no issue, the widow was granted the benefit of the Act of 1890.

(*See* Hotchpot.)

Distringas (that you distrain).—Formerly a *distringas* was issued to restrain the transfer of stock or the payment of dividends by the Bank of England, but the Rules of the Supreme Court provide that no such *distringas* shall in future be issued, and substitute therefor a "notice in lieu of *distringas*," which has the same effect upon *any company* served therewith, as a writ of *distringas* would have had against the Bank of England.

Where any person claims to be beneficially interested in any stock, shares, or securities or dividends thereon of a company, whether incorporated or not, such person may make and file at the Central Office of the High Court of Justice an affidavit in the prescribed form setting forth his title to the stock, shares, or securities, and annexing thereto a notice in the prescribed form.

An office copy of the affidavit, and a sealed duplicate of the notice, may then be served upon the company sought to be affected.

On receipt of notice, the company will not transfer the stock, shares, &c., or pay dividends thereon (if dividends are included) without giving eight days' notice to the persons so claiming to be beneficially interested.

The notice may be withdrawn by the person by whom, or on whose behalf, it was given, on a written request signed by him, or its operations may be made to cease by an order of the Court obtained by any other person claiming to be interested in the stock, shares, &c.

The object of serving a " notice in lieu of *distringas* " is to prevent improper dealings with securities registered in the names of trustees, for the person who serves the notice, or someone on his behalf, upon being informed by the company that application has been made to transfer the securities, may take steps to obtain a restraining order. This must be done within the eight days allowed, otherwise the effect of the *distringas* ceases.

Having regard to the fact that no notice of any trust, express, implied, or constructive, shall be entered on the Register of Members of any company registered under the Companies (Consolidation) Act 1908, section 27, the power to issue a " notice in lieu of *distringas* " is important.

Dividend.—Something to be divided; commercially, the sum distributed periodically amongst the shareholders and stockholders of a railway, banking, or other company.

Dividends become due from the time they are declared, and then become debts due to the respective shareholders. (*Re Severn Railway Co.*, 1896, 1 Ch. 559.) But the articles of association generally provide that dividends shall not bear interest against the company. Table A (1908 Act) so provides.

(*See title* Unclaimed Dividends.)

The dividend is apportioned among the various holders of stock or shares, usually in proportion to the paid-up amounts of stock, shares, &c., they respectively hold, in accordance with the particular rights attached thereto, as prescribed by the company's regulations.

The term is also applied to the sum or sums distributed among the creditors and/or contributories of a bankrupt or of a company in liquidation, as the case may be.

Although, strictly, the term " dividend " is applicable to the *total* sum distributable, it is usually adopted when referring to the portion received by any one holder of stock, &c. (*See* Apportionment, Profits available for Dividend.) (For dividends in winding-up and bankruptcy procedure *see* Liquidator and Trustee respectively.)

Dividend Warrant.—An order or authority (generally issued upon a banker) by means of which shareholders, stockholders, and others obtain payment of their dividends. The document must be stamped as a bill of exchange, so that if payable upon demand a penny stamp (either adhesive or impressed) is necessary. The following, *inter alia*, are exempt from stamp duty:—

(1) Coupons or warrants for interest, &c., whether attached to and issued with any security or issued subsequently in a sheet.

(2) Warrants for the payment of interest or dividend out of the Government Funds.

Section 95 of the Bills of Exchange Act 1882 enacts that: " The provisions of this Act as to " crossed cheques shall apply to a warrant for " the payment of dividend."

Section 97, subsection 3, clause *d*, of the same Act recognises as valid " any usage relating to dividend warrants or the indorsement thereof." The practice of paying dividend warrants payable to the order of two or more persons upon the indorsement of *any one* of such persons has thus received the sanction of the Legislature, although the regulations of the company issuing a warrant may affect this.

Docket.—A slip or ticket. Petty cash dockets are memoranda (as distinct from formal receipts) given by employees and others, stating the particulars of petty expenditure.

(*See also title* Slip Bookkeeping.)

Dock Warrant.—A receipt given by the owner of a dock for goods deposited with him. The receipt must bear a 3d. stamp, and will pass the property in the goods by indorsement. Dock warrants are often deposited with bankers as security for advances.

Document of Title.—The expression "document of title" (within the meaning of the Factors Act 1889) includes any bill of lading, dock warrant, warehousekeeper's certificate and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or delivery, the possessor of the document to transfer or receive goods thereby represented. The Act (*supra*) further provides that a pledge of the documents of title to goods is deemed to be a pledge of the goods. (*See* Factor.)

Domicile.—The place where a person has his home; legally, his principal place of abode, to which whenever absent he *intends* to return.

There are three kinds of domicile—origin, choice, and operation of law.

The domicile of a limited company is its registered office for the time being.

A creditor is not entitled to present a bankruptcy petition against a debtor unless (*inter alia*) such debtor is domiciled in England, or within the preceding year has ordinarily resided or had a dwelling-house or place of business in England. This requirement, however, is only applicable to petitions, for it has been held that a receiving order can be made against a foreigner in lieu of a committal order (under section 103, Act of 1883).

Donatio mortis causâ.—A gift of personal property made by a person who anticipates death, the gift being evidenced either by manual delivery by him (or by another in his presence at his direction) to the donee or someone for him, either of the property itself or of the means of obtaining same, and upon the condition that the gift is only to take effect absolutely in the event of the death of the donor from the existing disorder and before revocation of the gift.

It would appear that the subject of a valid *donatio mortis causâ* must be property, the title, or the evidence of title, to which will pass by delivery.

A *donatio mortis causâ* differs from a legacy and resembles a gift *inter vivos*, thus:—

(1) It takes effect (*sub modo*) from the delivery in the donor's lifetime; and

(2) It requires no assent upon the part of the executor.

It differs from a gift *inter vivos* and resembles a legacy thus:—

(1) It is revocable during donor's lifetime;

(2) It is liable to donor's debts on a deficiency of assets; and

(3) It is subject to estate and legacy duty.

Note.—A gift *inter vivos* is, however, also subject to estate duty, if made by the deceased within three years of his death, unless made or effected for public or charitable purposes. (*See title* Estate Duty.)

Dormant Partner.—One whose name does not appear, and who is not known to be a partner, except perhaps to comparatively few. He is sometimes referred to as a sleeping or silent partner. He has all the rights of a partner as regards profits, and has all the liabilities of a partner, but he remains passive, taking no part in the conduct of the business. On retirement, however, he ceases to be liable for debts contracted subsequently, and does not need to notify the world at large of his retirement, but merely those (if any) who were aware of his position. (*See title* Holding Out.)

On and after 1st January 1908 all partners are deemed to be either "general" partners or "limited" partners, but a dormant partner will ordinarily be a general partner. It may, however, be found convenient to register a partnership which includes a dormant partner amongst the members of the firm under the Limited Partnerships Act 1907. (*See title* Limited Partner.)

Double Account System.—A system of accounting adopted where the capital of a company is contributed by the shareholders for a specific purpose, such as the construction of a railway or the acquisition of a gas undertaking, &c., the amount actually paid for or in respect of same being shown against the total capital raised in the form of receipts and payments, the balance only being brought into the General Balance Sheet; in other words, the Balance Sheet is divided into two parts. The Double Account system is compulsory in the case of certain railway and tramway companies, and all gas companies incorporated by special Act of Parliament. The system is applicable, however, to many classes of companies which sink their capital in what are called "permanent assets," and it is frequently adopted by such companies.

The difference between computing profits by Double Account and Single Account respectively is one of principle, and invariably affects the financial result. The system of Single Account recognises the principle that wastages of capital should be made good out of revenue in ascertaining the profits. Double Account regards capital and revenue as distinct accounts, so that an excess of receipts on Revenue Account over revenue expenditure is regarded as profit, irrespective of capital losses. Single Account endeavours to ascertain the true profit by providing for wastage of capital out of revenue; Double Account only recognises the necessity for repairs, renewals, and maintenance, disregarding depreciation and all fluctuations in the value of the capital assets other than the sale of existing assets and the purchase of additional property.

The following example will show the difference of treatment and the effect thereof of the same transaction under the two systems:—

A station built for £21,000 is at the end of 20 years pulled down, £1,000 being received for old materials. No depreciation has been provided. Owing to the advance in the cost of building materials and labour, the station, if rebuilt on original lines, would now cost £30,000. It is eventually decided to build a larger station costing £75,000.

1.—Single Account.

Old Asset Account.

Dr.	£
To Original Cost	21,000
Cr.	
By Cash for Old Materials	1,000
" Revenue Account	20,000

New Asset Account.

Dr.	£
To Cost New Station	75,000

Revenue Account.

Dr.	£
To Cost of Old Asset less residual value of old materials	20,000

2.—Double Account.

Capital Expenditure Account.

Dr.		£
To Original Cost of Asset		21,000
" Cost of New Station	£75,000	
Less proportion chargeable to revenue	30,000	
		45,000
		£66,000

Revenue Account.

Dr.		£
To proportion of Cost of New Station representing replacement of previously existing asset	£30,000	
Less received for Old Materials	1,000	
		29,000

Thus in this instance, if the "Single Account" system be adopted, the charge to Revenue is £20,000 only and £75,000 is treated as Capital Expenditure, but if the "Double Account" system be adopted, the charges are £29,000 and £66,000 respectively.

Depreciation has been ignored in the illustration, but had periodical provision been made therefor, the result would not be affected, the charge to Revenue in both systems being merely apportioned over the whole period.

The terms "double account" and "single account" must be carefully distinguished from the terms "double entry" and "single entry." Profits may be ascertained by double *account* or by single *account*, and the particular system adopted will generally affect the amount shown as profit. Books may be kept by double *entry* or by single *entry*, but the particular system adopted should not affect the amount shown as profit, although the procedure is different and the result under single entry is not confirmed. (*See titles* Bookkeeping, Profit, and Single Account System.)

Double Entry.—*See* Bookkeeping.

Double Insurance.—The effecting of an insurance with two different insurers for the same loss in respect of the same subject-matter. As insurance (save in certain cases of life assurance) is a contract of indemnity only, the assured can only recover the amount of his loss, but he may recover against either insurer, the one paying being entitled to recover contribution from the other. Sometimes it is provided in policies that if there are other insurances on the same subject-matter, the insurer's liability shall only be in proportion to his ultimate liability, to obviate the necessity of recovering contribution from other insurers who may also be liable. Under certain circumstances where the insurer has really *never* been under risk for the *whole* amount of the policy, a proportion of the premium may be recovered.

Double Proof.—If a debtor, at the date of the receiving order, be liable in respect of *distinct* contracts as a member of two or more *distinct* firms, or as a sole contractor and also as a member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts against the properties respectively liable thereon. (Bankruptcy Act 1883, 2nd Schedule, Rule 18.)

That is, if there are distinct contracts, and distinct estates being wound up, a creditor may prove against the *respective* estates, but double proof is not allowed in respect of the *same debt* on any *one estate*, although there may be two distinct contracts. (*Re Oriental Commercial Bank*, 1871.) Thus a surety cannot prove for a debt in respect of which the creditor has already proved. In the case of *Re Pyke; Davis v. Jeffreys* (1910) the debtor executed a deed of assignment in the usual form upon trusts for realisation and distribution according to the law of bankruptcy. The plaintiffs had guaranteed the bank overdraft, and the bank proved under the deed for the amount of the principal and interest due at the date of the deed and received a dividend. It was held that the plaintiffs were not entitled to prove for the deficiency of principal made good by them to the bank, but that under their covenant to pay interest so long as the debt should be subsisting, the guarantors were entitled to claim that the interest from the date of the deed until payment, should be ascertained, and that such claim should be admitted for dividend. (*See* Joint and Separate Estates, Proof in respect of Bills of Exchange.)

Doubtful Debts Ledger.—A Ledger to which all debts are transferred from the Debtors' Ledger so soon as they are considered doubtful, in order that they may not be overlooked (as they might be amongst so many other accounts), but rather receive special attention. Such a Ledger is usually specially ruled to allow of extra information being recorded, both as to the circumstances connected with the debt, and as to the progress made in respect of same since its transfer to the Doubtful Debts Ledger. It is also found useful to arrange the book alphabetically, similarly to a Sundries Ledger (*q.v.*)

This class of Ledger, *if properly attended to*, affords considerable assistance to an auditor when engaged upon the question of the debts outstanding. (*See* Bad and Doubtful Debts.)

Draft.—A written order for the payment of a sum of money addressed to some person who holds money in trust, or who acts in the capacity of agent or servant of the drawer. A draft must be distinguished from a *bill*, in so far as the former is not drawn upon a *debtor*. The terms "bill" and "draft" appear, however, to be used indiscriminately in business circles.

Draft against Cargo.—Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure the acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

Drawback.—A term applied to those duties of Customs or Excise which are repaid by the Government after a certain period, when the goods, upon which the duties have been previously levied, are exported. Thus the exporter can sell his goods in a foreign market unburdened with duties. The certificate given to the exporter by the Custom House authorities, entitling him to receive payment of the duties, is called a "debenture." Drawback must be distinguished from a bounty. A bounty enables a commodity to be sold abroad for *less* than its natural cost, whereas a drawback enables it to be sold at its natural cost, so far as taxation is concerned.

Drawee.—The person on whom a bill of exchange is drawn. He is not liable on the bill until he has signed it, when he becomes the acceptor. (Bills of Exchange Act 1882, section 23.) He must be named or otherwise indicated in the bill with reasonable certainty. Capacity to incur liability on a bill is co-extensive with capacity to contract. There may be two or more drawees, whether partners or not, but alternative or successive drawees are not permissible. (Section 6.) Where in a bill the drawer and the drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may, at his option, treat the instrument either as a bill of exchange or as a promissory note. (Section 5.) (*See* Acceptance of a Bill, Acceptor.)

Drawer.—The person who makes a bill of exchange and addresses it to the drawee. Capacity to incur liability on a bill is co-extensive with capacity to contract, provided that a corporation may incur no liability on a bill either as drawer, acceptor, or indorser, unless it is competent so to do under the law for the time being in force relating to corporations.

Where a bill is drawn or indorsed by an infant or a corporation having no capacity or power to incur liability on a bill, a holder may nevertheless enforce payment of the bill against any *other* party thereto. (Bills of Exchange Act 1882, section 22.)

The drawer engages that on due presentment the bill shall be accepted and paid according to its tenor, and that if dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided due notice of dishonour be given, and the drawer is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse. (Section 55.) The drawer is not liable on the bill until he has signed it as such (section 23) and delivered the bill (section 21), and then he becomes secondarily and conditionally liable thereon to the holder, the primary liability resting with the acceptor. Where a bill is payable to the order of the drawer and the drawer is a fictitious person *within the contemplation of the bill* it may be treated as payable to bearer. (*See* Fictitious Person.)

Drawings.—The term applied to the sundry sums withdrawn by a proprietor out of the business funds on account of the accruing profits, or in reduction of his capital. In a partnership concern the drawings are sometimes regulated in proportion to profits, so that interest need not be computed thereon. In other instances, an amount is allotted to each partner, free of interest, irrespective of his proportion, whilst another system is to treat with interest in current account, and allow each partner to draw the amount or amounts he may think fit, provided such amounts are reasonable under the circumstances. There should be no "drawings" in the accounts of a joint-stock company, the officers receiving fixed sums as prescribed. Should (say) a director draw moneys of the company on account of dividend on the ground that he holds a large proportion of the share capital, such moneys are really loans from the company,

and apart from the impropriety of the proceeding such sums should bear interest, because dividends, however certain, do not belong to the shareholders until actually declared.

Such drawings should be stated separately in the Balance Sheet of the company and not included amongst "sundry debtors."

Duces tecum subpœna.—A summons to appear at a trial in Court or before an arbitrator (Arbitration Act 1889), requiring the person upon whom the summons is served to bring with him and produce at the trial certain written documents which it is desired shall be put in evidence thereat.

Due.—A debt is *due* immediately it comes into existence as a debt, although it may be *payable* at a future time. For instance, the liability of a member of a company registered under the Companies Acts creates a debt in respect of the money payable on his shares at the time he becomes a member, but such debt is payable as and when *calls* are formally made upon the members. The word *due* may, however, mean either "owing" or "payable," according to the context in special cases. Rent and other periodical payments, although deemed to accrue from day to day, are not *due* until the expiration of the particular period in question, the Apportionment Act providing that, on the apportionment of an accruing amount, the apportioned part is to be payable when the next *entire* portion shall have become due. So, where a testator directed his executors "to forgive to any tenant all rent or arrears of rent which may be due and owing from him at the time of my decease," it was held that this only applied to rent *due* at the quarter-day preceding the date of the death, and not to the accruing rent apportioned to the date of the death, but where rent is by agreement payable in advance it is not subject to apportionment, for under such circumstances the *whole* of the rent for a period is deemed to have already accrued due on the first day of each period. (*Ellis v. Rowbotham*, App. Cas. 1900.)

A covenant in a mortgage deed for "punctual payment" has been held to mean "payment upon the day fixed for payment."

(*See also title* Dividend.)

Dues.—Charges for accommodation of various kinds afforded to ships, such as:—

Dock Dues or Harbour Dues.—For use of a dock or harbour.

Canal Dues.—For the right of passing through a canal.

Light Dues.—A levy on vessels as a contribution towards the expense of maintaining lighthouses, lightships, &c.

Dummy Men.—The term applied to fictitious names placed upon a wage sheet by a fraudulent clerk, or number of clerks acting together, whereby money is obtained for the (extra) wages alleged to be due, and fraudulently retained by the perpetrators. (*See* Wages.)

Dunnage.—Pieces of wood, planks, mats, or other articles used for protection in stowing a vessel's cargo.

Duress.—Compulsion, either by unlawful and tortious imprisonment, or by threats, whereby the person subjected thereto is in fear of either himself or his wife, parent or child, suffering bodily harm. A contract entered into by a person under duress is voidable at the option of the party so compelled, provided the duress was practised by the other party to the contract, or some person acting with his knowledge and for his advantage.

Dutch Auction.—Ordinarily, at a sale by auction, the highest bidder in an ascending scale of competition becomes the purchaser; but in what is called Dutch auction the article is put up at a certain nominal price which is gradually lowered, and the first person who offers to pay the sum mentioned by the auctioneer becomes the purchaser. No licence is required by a person conducting a Dutch auction.

Duty Paid Stock.—*See* Bonded Stock.

E

Earned Income.—*See* Differentiation.

Earnest.—A sum (generally nominal) given by a buyer of goods to the seller with the express intention of ratifying the contract of sale. An earnest is one of the alternative requirements of the Sale of Goods Act 1893, as evidence of a contract for the sale of goods of the value of £10 or upwards.

Easement.—A privilege which the owner of one neighbouring tenement has of another, in respect of their several tenements, *e.g.*, a right of way over another's land.

Elective Auditors.—*See* Borough Auditors.

Eleemosynary Corporations.—Corporate bodies constituted for the perpetual distribution of alms.

Elegit.—(He has chosen.) A writ of execution, so called because a creditor "has chosen" this writ in preference to others. Prior to the Bankruptcy Act 1883, by means of this form of writ, a creditor could come upon the goods and chattels of his debtor and value them, instead of selling; he would then take delivery of the goods and chattels to himself at such valuation, in satisfaction or part satisfaction of his judgment debt. If he had not fully satisfied his debt by this means, he could *then* take possession of the lands.

As, in the above procedure, the goods were not *sold*, it did not amount to an act of bankruptcy to suffer execution of this writ, but now, as a result of section 146 of the Bankruptcy Act 1883, the sheriff is no longer allowed to deliver *goods* under a writ of elegit.

Embargo.—A prohibition to pass; a detention of ships imposed by belligerent States in time of war.

Embezzlement.—The taking of the moneys of an employer by his servant or clerk for his own use. Embezzlement is distinguished from larceny, as the subject-matter is not at the time of the embezzlement in the actual possession of the owner.

Emblements.—Such vegetable products as yield an artificial annual profit as a result of labour bestowed upon land. They are personal property, and are included in the term "goods" within the meaning of the Sale of Goods Act 1893.

Employers' Liability.—*See* Workmen's Compensation.

Empties.—The treatment of "empties" is of importance in the accounts of many trading concerns where casks, cases, boxes, bottles, or sacks are used. In some concerns a Memorandum Ledger is kept, in which there is an account with each customer, recording in numbers the casks, cases, &c., supplied and returned. The balances of this Ledger are treated as "stock."

Other concerns charge the packages, &c., at given prices, and credit is given at the same prices for all returns, so long as their condition is such as to permit of their further use. Another useful method is to divide the accounts in the Sales Ledgers into two columns, viz., Packages and Goods.

In stating the value of "book debts" in the Balance Sheet, the balances due on Packages or Empties Account, whether the "count" or "money" system be adopted, must be subjected to some proper allowance (dependent upon circumstances) for loss likely to arise from non-return or non-payment, as the case may be.

With regard to proof of debt against an insolvent estate where an amount for "empties" forms part of the claim, the trustee of the insolvent estate cannot call upon the creditor to rank for dividend upon the gross sum and subsequently demand credit for any empties he may return at the same price at which they are charged in the claim, but he is entitled to reduce the claim at the same rates charged for any empties he may return, and permit the creditor to rank for dividend on the balance. So if the trustee should dispose of the stock-in-trade, including any empties which he may not have returned, and the creditor shall have received a dividend on the whole claim, including an amount which has been charged for packages, the person who has purchased from the trustee the packages or empties, as the case may be,

cannot claim to be allowed by the creditor the full sum originally charged to the insolvent for such packages. In such a case there has been no contract between the creditor and the sub-purchaser, and irrespective of the amount the sub-purchaser may have paid to the trustee of the insolvent estate for the packages the creditor can only be called upon to allow on their return such a sum as would be equivalent to the dividend he received upon that portion of his claim represented by the packages ultimately returned. In other words, the creditor must not be placed in a worse position than he would have been had the empties been returned by the debtor or the trustee of the insolvent estate and the amount charged therefor deducted from the sum to be admitted for dividend.

Endowment.—The application of moneys to some special purpose; the creation of a fund to provide for the maintenance of an institution.

Endowment Policy.—One in respect of which the premium is payable only (1) for a stated number of years should the assured survive, or (2) until death should it occur before the maturity of the policy. The sum assured is payable at the end of a fixed period or at death, whichever event happens first. The premium payable upon an endowment policy is much heavier than that which would be required for a "whole life" policy for a similar amount.

Enfranchisement.—Making free. The conferring of a right of voting at a Parliamentary election. The conversion of a copyhold tenure into a freehold.

Entail.—An estate or fee settled with regard to the rule of its descent. In England an estate tail is an estate limited to a man and the heirs of his body (tail general), or to a man and the heirs male or female of his body (tail male or female general), or to a man and the heirs of his body by a particular wife (special tail).

Entering a Vessel.—The act of announcing its arrival to the Custom House authorities and lodging the necessary documents, such as the manifest. (*See titles* Bill of Entry, Post Entry.)

Entering Short.—*See* Short Bills, Stated Short.

Entry.—A record of a transaction in the appropriate book. When a transaction is set down in writing for the first time in the books of account such entry is called the original entry, and the book containing same is termed a "book of original or first entry." All subsequent dealings with the original entry in the books of account are called "post entries," and the operations are termed "posting."

Equation of Loan Periods.—Where a local authority obtains Government sanction to borrow money for a certain object the loan is ordered to be repaid within a given number of years. The period is fixed as nearly as can be gauged either to correspond with, or at least having regard to, the "life" of the object to be acquired. But where the length of life varies with the respective component parts of a scheme (*e.g.*, the land, tramway track, and rolling stock of a tramways undertaking) the practice has grown up of granting an equated period for the repayment of the loan instead of fixing separate periods according to the lives of those parts.

Actuarially the equated period is equivalent to the various periods that might otherwise have been fixed, but obviously it allows of the debt in respect of "short lived" assets being extended many years after the assets will have been exhausted or abandoned. Where such assets require renewing, the Local Government Board will only sanction reborrowing for such renewal to the extent that the original debt in respect of such assets has been paid off or provided for.

The following example will illustrate the method of ascertaining an equated period for the repayment of (say) three different sums, by the annuity method of redemption, taking interest in all cases at 3 per cent. per annum.

Amounts of Loans for three different classes of Expenditure	Periods which would have been allowed for the repayment of each loan, if they had been separately dealt with	Annual Sinking Fund Instalments per £1 respectively	Total Annual Sinking Fund Instalments necessary for the respective periods	Present Value of £1 per annum for the respective periods	Present Value of Sinking Fund Instalments for the respective periods
£		£	£	£	£
20,000	12 years ..	·070462	1409·24	9·9539	14027·47
30,000	26 "	·025938	778·14	17·8768	13910·65
20,000	40 "	·013262	265·24	23·1147	6130·94
£70,000					£34069·06

Thus the present worth of the three different sinking fund instalments amounts to £34,069.06, and such sum would amount at 3 per cent. to £69,255.38 in 24 years, and to £70,000 in (approximately) 24 years and four months. Therefore the equated period would be fixed at 24 years, and the necessary annual instalment of principal and interest (combined) to redeem the £70,000 in 24 years would be £2,033.32.

The effect of the equation of the periods upon the various years' contributions compared with those payable if the separate periods were adopted is shown as regards the foregoing example by the following table:—

	Sinking Fund Instalments payable if separate periods for the different loans were adopted	Sinking Fund Instalments payable where an equated period is adopted (excluding any cost of Renewals)
	£	£
First 12 years	2452·62 per ann.	2033·32 per ann.*
Next 12 „	1043·38 „	2033·32 „ *
24 „		
Next 2 „	1043·38 „	Nil
Next 14 „	265·24 „	Nil
40 „		

* Plus such voluntary contributions as may be decided upon to meet the unredeemed portion of the debt upon the short-lived assets when they require renewing—as explained later.

The method adopted for obtaining an equated date for payment where compound interest is not involved (*see title* Equation of Payments) is not applicable in computing an equated period where the annuity method (*i.e.*, equal instalments of principal and interest *combined*) is adopted, and compound interest necessarily forms part of the problem.

In the foregoing example it has been shown that the equated period is 24⅓ years (approximately), but by means of "products" it would appear to be 26 years exactly, thus:—

£20,000	for 12 years	=	£240,000	for 1 year.
30,000	„ 26 „	=	780,000	„ 1 „
20,000	„ 40 „	=	800,000	„ 1 „
£70,000			£1,820,000	

Then—

$\frac{1,820,000}{70,000} = 26$ years as the apparent equated period.

The 26 years here shown is, however, the equated period only in such cases where the method of repayment takes the form of equal instalments of principal (plus such interest as may be owing from time to time on the diminishing balances of the loan).

This can be shown by an example confined for convenience to a small number of years.

Loan	Period	Products	Annual Instalments if separate periods were adopted	Equated Annual Instalments
£		£		
1,000	2 years	2,000	£500 per ann. for 2 yrs.	£3200 for 5 yrs.
2,000	3 „	6,000	666·66 „ „ 3 „	
8,000	4 „	32,000	2,000 „ „ 4 „	
5,000	8 „	40,000	625· „ „ 8 „	
£16,000		£80,000		

Amounts paid under separate periods.	*Interest.*	*Principal.*
1st year	£480·00	3791·66
2nd „	366·25	3791·66
3rd „	252·50	3291·66
4th „	153·75	2625·
5th „	75·00	625·
6th „	56·25	625·
7th „	37·50	625·
8th „	18·75	625·
	£1440·	£16000·

Amounts paid under equated periods.	*Interest.*	*Principal.*
1st year	£480	3200
2nd „	384	3200
3rd „	288	3200
4th „	192	3200
5th „	96	3200
6th „	—	—
7th „	—	—
8th „	—	—
	£1440	£16000

The system of equating the periods for the redemption of various loans for diverse objects whether (*a*) when originally raised, or (*b*) under some scheme of consolidation, is not to be commended. However carefully the equated period may be computed, it works out unsatisfactorily in practice. If land and buildings, tram track, overhead equipment, and rolling stock be acquired and constructed for a given tramway undertaking, and (say) 30 years be granted for the whole of the cost, confusion arises when the tramcars have been scrapped, though only about one-half of the debt may have been redeemed. The fact is not generally appreciated that, as the direct effect of the equated period, so much of the debt as is not redeemed in respect of short-lived and exhausted assets has been (theoretically at least) over-redeemed on the more lasting assets still remaining to the undertaking.

And while the practice of the Local Government Board is to allow an authority to borrow for the purpose of the renewal of an exhausted asset before the expiration of the equated loan

period, that permission is restricted to the amount which has up to the time of renewal been set aside towards repayment of the cost of the original asset. But as only one-half of the cost may have been redeemed under an equated loan period, the balance of the cost of renewal must be provided out of revenue or accumulated revenue, to wit, the Renewals Reserve Fund.

This means that during the earlier portion of the equated period the cost of the short-lived assets must be wholly provided for out of revenue by the time they will require to be renewed:—

(1) By sinking fund contributions at the rate necessary under the equated period, and

(2) By voluntary contributions to a Reserve Fund to make up the shortage of Sinking Fund contributions by the time the renewal of the short-lived assets becomes necessary.

The theory underlying an equated period for redemption is the extension of the period for the short-lived assets, and the shortening of the period for those of a more lasting character. But, as already indicated, the practical effect is to reduce the period for the redemption of the cost of the more abiding assets, and to confine the period for providing out of revenue (by the two methods just mentioned) the cost of the short-lived assets to the actual length of their life.

In commercial accounting detailed classification of assets is attempted, so that the varying rates of depreciation can be more closely assessed; so in the case of municipal accounting the outlay and corresponding loans cannot be too minutely classified if the periods for the redemption of the various loans are to be fixed satisfactorily, and closely in proportion to the respective lives of the assets. Of course, the classification and sub-classification could be carried out indefinitely, for even if tramcars (say) are treated separately from (say) overhead equipment the various parts of a tramcar would be capable of subdivision according to their respective lives. But this undoubted fact is no reason why classification of assets with appropriate loan periods should not be carried further than is the practice at present.

The operation of equating the periods of loans is also resorted to in connection with the consolidation of existing loans, whereby under such a scheme loans may be grouped or consolidated and made subject to redemption within an equated period, with a single annual payment for the (joint) redemption, although the loans so consolidated may originally have been granted subject to redemption within some other period which was itself an equated period. (*See title* Consolidation of Loans.)

Equation of Payments.—An arithmetical operation whereby a date is determined upon which a single payment can be made in lieu of several payments upon various dates.

Suppose it is necessary to find the average date (or equated date) of the following advances:—

July	1	...	...	£465
Aug.	9	...	...	29
Sept.	20	...	...	350
Oct.	4	...	...	216

The method of making these calculations may be stated in general terms as follows:—Take any date from one of the dates mentioned in the question, multiply each of the amounts mentioned in the question by the number of days' interval between that date and the date previously fixed, divide the sum of the products by the sum of the original amounts, and the quotient will be the number of days between the average due date and the date originally taken.

Applying this rule, suppose we take as our arbitrary date July 1st, the first date mentioned in the question; then the position appears as follows:—

Amounts.	Days.	Products.
£465	× 0 =	0
29	× 39 =	1,131
350	× 81 =	28,350
216	× 95 =	20,520
£1,060		50,001

Dividing £50,001, the sum of the products, by 1,060, the sum of the original amounts, we find a quotient of, approximately, 47. The average due date is thus 47 days after July 1st—that is, the 17th August.

Now, supposing, instead of taking July 1st, we had selected October 4th as our arbitrary date from which to base our calculations, then the position would be as follows:—

£465	× 95 =	44,175
29	× 56 =	1,624
350	× 14 =	4,900
216	× 0 =	0
£1,060		50,699

Dividing the sum of the products by the sum of the amounts as before, the result is that the average due date is nearly 48 days previous to October 4th—that is, the 17th August, or the same result as that shown previously.

It is not essential, however, that either of the outside dates should be selected as the basis of calculation, the only modification necessary being that, if one of the inside dates is employed, then the *difference* must be taken between the products previous to, and subsequent to, that date.

Thus, supposing we select the 20th September as the basis of our calculation, the problem works out as follows:—

£465	× 81 =	37,665
29	× 42 =	1,218
350	× 0 =	0
216	× 14 =	3,024

The sum of the amount is, as before, 1,060; but in this case we have to deduct the last product from the two previous, giving a net sum of the products of 35,859. Dividing this by the 1,060 as before, we produce a quotient of 34 nearly; and as the products are the higher previous to the date selected, this means 34 days *before* the 20th September—that is, the 17th August as before.

In practice, it is convenient to take one of the dates named in the problem, as there is then one less product to be calculated (any figure multiplied by 0 producing 0); but the same result would be produced whatever date be taken. On the score of convenience, also, it is preferable to select either the first or the last date, rather than an intermediate one.

In order to average accounts—that is to say, ascertain an equated date whereon to pay the balance of *debit* and *credit* items of varying dates:

(1) Treat *each side independently* (as shown in the above example) and ascertain the respective totals of the debit and credit "products."

(2) Divide the *difference between the debit and credit products* by the actual balance of the account.

(3) The quotient shows the number of days from the "base" date.

This method is applicable to the equation of periods for the repayment of loans where the repayment is effected by equal instalments of principal, plus interest upon such balances of the loan as may from time to time be owing; but a different method is necessary where the annuity system (equal instalments of principal and interest combined) is employed and as a consequence compound interest is involved in the problem. (*See title* Equation of Loan Periods.)

Equitable Assets.—*See* Legal Assets.

Equitable Execution.—Where the only property of a judgment debtor is such that it cannot be taken in execution under the ordinary process of the Court, a receiver may be appointed by the Court by way of equitable execution. Instances of this are where the property consists of an equity of redemption or the reversionary interest under a will, or the share of a partner in the profits and assets of a partnership business. For the purposes of the Bankruptcy Acts an execution against an equitable interest is *completed* by the appointment of a receiver. (Bankruptcy Act 1883, section 45 (2).)

"Equitable execution is not like legal execution; it is the equitable relief which the Court "gives because execution at law cannot be had. "It is not execution, but a substitute for "execution." (Bowen, L.J.)

Equitable Lien.—*See* Lien.

Equitable Mortgage.—A contract for a mortgage; it may take the form of:—

(1) A written agreement (only) to make a mortgage, or

(2) A deposit of title deeds of land with a creditor with or without a written memorandum, or even without a verbal communication. This has been referred to as an apparent "judicial repeal" of the Statute of Frauds. (*See* Frauds, Statute of.)

The memorandum of deposit (if any) must bear an *ad valorem* stamp duty of one shilling for every £100 or fraction thereof of the charge thereby created upon the property.

Charges of this kind, when made by a company registered under the Companies (Consolidation) Act 1908, should be recorded in the Register of Mortgages. (*See* Legal Mortgage, Register and Registration of Mortgages.)

Equity.—*See* Law.

Equity of Redemption.—The right of a mortgagor to compel the mortgagee to reconvey the legal estate of the mortgaged lands to him upon payment of principal, interest, and costs. The right must be exercised before foreclosure, or within 12 years from the date the mortgagee took possession, or from the date of the *last written* acknowledgment of the mortgagor's title.

Although the conveyance to the mortgagee is absolute at law, in equity it is regarded as security only, and ordinarily no arrangement between the parties is allowed which will tend to clog the borrower's right to redeem; but where a mortgage deed provided for the continuance of the loan for five years, and the mortgagor covenanted that he would not take, during the continuance of the loan, any malt liquors except such as were purchased from the mortgagee (the latter covenanting to supply same at stated prices) it was held that as the covenant as to the malt liquors was not unconscionable or oppressive, and did not interfere with the right of redemption, the mortgagee was entitled to an injunction against its breach.

On the other hand, in *Rice v. Noakes* (1900, 1 Ch. 213), where the mortgagor of the lease of a licensed house had covenanted in the mortgage deed not to purchase during the lease any malt liquors except from the mortgagees, it was held that upon paying off all principal, interest, and costs, the mortgagor was entitled to a reconveyance of the leasehold, free from the "tie" as to liquors, although the lease did not expire for a further 20 years.

"It is idle to say that the equity of redemption would not be clogged if a house which was mortgaged as a 'free' house was to be taken back by the mortgagor as a 'tied' house." (Rigby, L.J.)

Again, in *Morgan v. Jeffreys* (26 T.L.R. p. 324) it was held that a clause precluding redemption of a mortgaged security (also clogged by a condition as to purchase of intoxicating liquors) for a term of 31 years could not be enforced, and that the mortgagor was entitled to redeem the security on tendering principal and interest with six months' interest in lieu of notice.

Error.—Errors in accounts may be divided into three main classes—principle, commission, and omission.

Examples of errors of principle may be given from the accounts of a joint-stock company, viz.:—

(*a*) Capitalising revenue items, and *vice versâ*.

(*b*) Preparing the accounts in a form other than that prescribed in the company's regulations.

(*c*) Issuing share capital or borrowing in excess of or outside the scope of the company's powers; and

(*d*) Anticipating profits as a result of some improper method adopted in valuing the stock-in-trade or other assets.

The computation of depreciation upon the "reducing balance" of an asset at the same rate per cent. as should be periodically deducted from the original cost is a specific instance of an error of principle.

Errors of commission take the form of entering items in the books of account which ought not to be so treated, or of recording transactions (legitimate in themselves) incorrectly as regards (*a*) amount or (*b*) the particular Ledger Account.

One type of error of commission is termed an error of "transposition." For instance, an entry of £7 4s. 0d. instead of 7s. 4d.

Errors of omission arise from the failure to enter in the books of account, transactions which are essential to a correct record.

Errors of commission and omission may be either intentional or arise through inadvertence. Errors (whether of commission or omission) made with an intention to defraud are generally difficult to detect—certainly more so than a clerical error (*i.e.*, a mistake in entering or copying made inadvertently). It may also be said that errors of omission, whether accidental or intentional, are generally more difficult to trace than those of commission.

There is another type of error (or rather errors) whereby the effect of one or more of them will obscure the effect of another or others. For instance, a "short-post" of £10 to the debit side of one Ledger Account would be neutralised by a "short-post" of £6 to the credit side of another Ledger Account, and (say) a "mis-post" of £4 in respect of the credit side of another Ledger Account. The arithmetical accuracy of the accounts may thus appear to have been tested by means of a Trial Balance, if constructed with Ledger balances or Ledger totals only, although these compensatory errors have not been discovered and corrected.

An auditor may commit an error through want of knowledge of the technical point involved, or he may commit an error of judgment by (say) relying upon some statement made to him which, upon personal examination, would have proved untrustworthy.

Errors and Omissions Excepted.—(E. and O. E.) A note sometimes appended at the foot of an account sales, invoice, or other such document, reserving the right to amend the account in question should any errors be subsequently discovered.

Escrow.—*See* Deed.

Establishment Account—This is an account chiefly met with in the accounts of publishing concerns, such as music publishers, newspaper proprietors, &c. Taking a newspaper concern as an example, the earlier years of its existence usually result in an excess of expenditure over income, and in any case a considerable expenditure is necessarily entailed in "establishing" the paper, the full benefit of which will not accrue until a future period. It is, therefore, customary to capitalise some portion of this expenditure either temporarily or permanently. In so far as the expenditure can be shown to be equivalent to the purchase of a goodwill the principle is sound, but a limit should be set to the number of years during which additions are allowed to be made to the account, and an auditor should see that the nature of the "asset" is clearly set out in the accounts which he signs. The considerations as to writing down an Establishment Account are the same as those which apply in connection with goodwill. (*See that title.*)

Establishment Expenses.—The general expenses of a manufacturing concern which cannot be *directly* charged against any particular process or commodity. (*See titles* Cost Accounts, Head-Office Charges, Manufacturers' Accounts.)

Estate.—Technically, the *quantity* of interest a person possesses in property; as commonly applied, the property itself. An estate may be legal, customary, or equitable.

The assets of a deceased person or of a bankrupt, or the lands, houses, &c., of a landlord, are colloquially referred to as "the estate."

Estate Duty.—A duty created by the Finance Act 1894, which, with the exceptions expressly provided by that Act, is payable upon the *principal value* of all property, real and personal, settled or not settled, which passes on the death of any person dying after 1st August 1894. Property passing on the death is deemed to include (*inter alia*) for the purposes of estate duty:—

(1) Property of which the deceased was at the time of his death competent to dispose.

(2) Property in which the deceased, or any other person, had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the

cesser of such interest, but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office or recipient of the benefits of a charity, or as a corporation sole.

(3) Gifts of realty or personalty (*e.g.*, *donationes mortis causâ*) purporting to operate as immediate gifts *inter vivos* made within a year preceding the death.

Note.—The provisions of the Finance Act 1894 were extended in respect of surrenders and dispositions of property prior to death by section 11 of the Finance Act 1900, and section 59 (1) of the Finance (1909-10) Act 1910 has extended the period from one year to *three* years in the case of a person dying on or after 30th April 1909 making gifts or dispositions other than for public or charitable purposes on or after 30th April *1908*.

The following are exempted:—

(1) Gifts in consideration of marriage.

(2) Gifts which, having regard to the circumstances, are normal and reasonable.

(3) Gifts in the case of any donee which do not exceed £100 in the aggregate. (Finance (1909-10) Act 1910, section 59 (2).)

(4) Gifts, *inter vivos*, of realty or personalty, even when made over twelve months from the death, if there has been reserved, by contract or otherwise, some interest or benefit to the donor.

But if by subsequent surrender or otherwise the property is enjoyed to the entire exclusion of the donor for a period of three years prior to the death, the property is not to be deemed to pass. (Finance (1909-10) Act 1910, section 59 (3).)

(5) Any annuity or other interest purchased or provided by the deceased, either by himself alone, or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased (subject to Exemption No. 2 below).

[Moneys payable under a policy of assurance on the life of the deceased taken out for his own benefit by another person having an insurable interest, all the premiums having been paid by that person, are *not* deemed to be property passing at the death.]

Immovable property situate out of the United Kingdom is not chargeable with estate duty, but movable property so situate is chargeable where (1) the deceased was the owner and was domiciled in the United Kingdom at the time of his death, or (2) speaking generally, where the deceased was only interested for life, and at his death the property formed the subject of a British trust, or was vested in a British trustee.

Exemptions (inter alia):—

(1) Estates under £100 gross value.

(2) A single survivorship annuity not exceeding £25, or if more than one such annuity, the first only.

(3) Property held by the deceased as trustee only.

(4) Property passing only because of a *bonâ fide* purchase from the person under whose disposition it passes, for full valuable consideration paid to the vendor for his own benefit.

(5) The property of common seamen, marines, or soldiers, who are slain or die in the service of the Crown.

[Further remissions of duties in respect of the estates of officers and men may be made under certain circumstances (*see* section 14 of the Finance Act 1900).]

(6) Works of art, &c., given for national purposes, if the Treasury remit the duty; and pictures, prints, books, manuscript, &c., and other things not yielding income which appear to the Treasury to be of national, scientific, or historic interest, and settled so as to be enjoyed in kind in succession by different persons; provided that the

exemption will only continue until the property is sold or comes into the possession of a person competent to dispose of it.

In the case of any person dying on or after 30th April 1909 the exemption applies, whether the property is settled or not; objects of *artistic* interest are also included and the duty is only to become chargeable when the property is *sold*, and then only in respect of the *last* death on which the property passed.

Valuation:—

The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners of Inland Revenue, such property would bring if sold in the open market at the time of the death of the deceased; provided that in the case of agricultural property (when not affected by expectation of increased income therefrom) the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment, but are allowed under the Succession Duty Act (*i.e.*, all necessary outgoings), and also a deduction for expenses of management not exceeding five per cent. of the annual value so assessed.

Note.—In the case of any person dying on or after 30th April 1909 this proviso applies only (1) to property consisting of a tenancy from year to year, and (2) for the purpose of determining the total value of "small estates." (See *infra.*)

The Commissioners may authorise any person to make a valuation of property for the purpose of estate duty, but the Commissioners must defray the expense of such valuation.

In estimating the principal value of any property in the case of any person dying on or after the thirtieth day of April nineteen hundred and nine the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time:

Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

Every estate shall include all income accrued upon the property included therein down to, and outstanding at, the date of the death of the deceased.

With regard to stocks and shares, published quotations, or broker's certificates or letters from the secretaries of the companies showing the market price at the date of death, should be submitted. Where there is a published quotation, a price, one-quarter of the difference between the official closing prices added on to the lower, should be adopted as an estimated price. For example:—Where the closing prices are 98-100, the market price is to be taken at 98½. Where the death occurs on a Sunday or other day for which no prices are available, the price for the day before should be taken.

Dividends and interest declared and accrued due to date of death must be included, but it should be noted that if the market price is "cum dividend," this price includes the accrued dividend or interest, and no further sum need be included in the Estate Duty Account in respect thereof.

Deductions:—

(1) Reasonable funeral expenses.

Note.—The costs of mourning, tombstone, and/or transfer of the body of the deceased to any distant place of interment are not allowed to be deducted under this head.

(2) Debts and incumbrances (including mortgages) incurred or created by the deceased *bonâ fide* for full consideration in money, or money's worth, wholly for his own use or benefit, and taking effect out of his interest in the principal value of the estate. No deduction is allowed in respect of any debt whereof there is a right of reimburse-

ment from any other estate or person, unless such reimbursement cannot be obtained. An allowance will not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom (unless contracted to be paid in the United Kingdom or charged on property situate within the United Kingdom) except only from the value of any personal property of the deceased situate out of the United Kingdom in respect of which estate duty is paid; and there shall be no repayment of estate duty in respect of any such debts except to the extent to which it is shown that the personal property of the deceased, situate in the foreign country or British possession in which the person *to whom such debts are due* resides, is insufficient for their payment.

(3) Where any property liable to duty is situate out of the United Kingdom, and its administration or realisation will necessitate increased expense, an allowance not exceeding 5 per cent. of the value of the property may be made out of the principal value of such property.

(4) Where any " death duty " is payable in a foreign country upon property situate therein, the amount of such duty may be deducted from the *principal value* of the property.

(5) Where any " death duty " is payable in a British possession (to which the Finance Act has been applied by an order in Council) in respect of property situate therein, a sum equal to such duty may be deducted from the *estate duty*, which would otherwise be payable. This provision has been applied by successive Orders in Council to practically the whole of the British possessions.

(6) Where on the death of a person dying on or after 1st July 1896, estate duty becomes payable on property passing under a settlement which took effect before 2nd August 1894, and " death duties " have been paid thereon, there may be deducted from the *estate duty* which would otherwise be payable:—

(*a*) A sum equal to the " death duty " paid; *or* at the option of the person by whom the duty is payable,

(*b*) The amount which would have been payable if the duty were calculated on the value of the property on which estate duty is payable. (Finance Act 1896, section 21; Finance Act 1907, section 15.)

(7) Any increment value duty payable on the death of any person in respect of the fee simple of any land or any interest in land comprised in the property passing on the death of that person. (Finance (1909-10) Act 1910, section 62.)

A debt created in consideration for the acquisition of any interest in expectancy will not usually be allowed as a deduction from the estate of a person dying after 29th April 1910 where the person originally entitled to the interest in expectancy becomes again entitled to it under the will or intestacy of the deceased. (Finance (1909-10) Act 1910, section 57.)

Aggregation:—

For determining the rate of estate duty payable on any property passing on the death of the deceased, all property so passing in respect of which estate duty is leviable must be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof with the following exceptions:—

(1) Property in which the deceased never had an interest.

(2) Where the *net* value of the property, real and personal, in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1,000.

(3) Settled property passing on the death of a person dying after 9th April 1900, under a disposition made by a person dying before 2nd August 1894.

Estates coming within the above exceptions are not to be aggregated with any other property, but are to be treated as separate taxable estates, and estate duty levied thereon at the proper graduated rate accordingly.

There are special provisions in the Finance (1909-10) Act 1910 with reference to timber lands.

Graduated Rates of Estate Duty Payable in accordance with the Finance Act 1894:—

Where the principal value of the estate when aggregated				Rate %
does not exceed		£100	..	*nil*
Do.	exceeds	£100	but does not exceed £500 ..	1
Do.	"	500	" 1,000 ..	2
Do.	"	1,000	" 10,000 ..	3
Do.	"	10,000	" 25,000 ..	4
Do.	"	25,000	" 50,000 ..	4½
Do.	"	50,000	" 75,000 ..	5
Do.	"	75,000	" 100,000 ..	5½
Do.	"	100,000	" 150,000 ..	6
Do.	"	150,000	" 250,000 ..	*6⅔
Do.	"	250,000	" 500,000 ..	*7
Do.	"	500,000	" 1,000,000 ..	*7½
Do.	"	1,000,000		*8

*Under the Finance Act 1907, section 12, the rates upon estates not exceeding £150,000 are unaltered, but the following scale obtains in the case of persons dying on or after the 19th day of April 1907:—

Where the principal value of the estate when aggregated exceeds:—

£150,000	but does not exceed	£250,000 ..	Rate % 7			
250,000	"	500,000 ..	8			
500,000	"	750,000 ..	9			on
750,000	"	1,000,000 ..	10			remainder
1,000,000	"	1,500,000 ..	10	on £1,000,000	and	11%
1,500,000	"	2,000,000 ..	10	"	"	12
2,000,000	"	2,500,000 ..	10	"	"	13
2,500,000	"	3,000,000 ..	10	"	"	14
3,000,000 ..	.. ..		10	"	"	15

In the case of persons dying on or after 30th April 1909 the following is the estate duty payable:—

Where the principal value of the estate when aggregated exceeds:—

£100	but does not exceed	£500	1%
500	"	1,000	2
1,000	"	5,000	3
5,000	"	10,000	4
10,000	"	20,000	5
20,000	"	40,000	6
40,000	"	70,000	7
70,000	"	100,000	8
100,000	"	150,000	9
150,000	"	200,000	10
200,000	"	400,000	11
400,000	"	600,000	12
600,000	"	800,000	13
800,000	"	1,000,000	14
1,000,000 ..	.. ..		15

(Finance (1909-10) Act, 1910.)

Provided that where an interest in expectancy (within the meaning of the Finance Act 1894) has before 19th April 1907, or 30th April 1909 (as the case may be) been *bonâ fide* sold or mortgaged for full consideration, then no higher duty is to be payable *by the purchaser or mortgagee* when the interest falls into possession than if section 12 of the 1907 Act, or Part III of the Finance (1909-10) Act 1910 (as the case may be), had not been passed, and any higher duty payable by the *mortgagor* shall rank as a charge subsequent to that of the mortgagee.

By the Finance Act 1900 it is provided that estate duty is to be computed upon the *exact net value* of the estate.

The executor or administrator of a deceased person *shall* pay the estate duty in respect of all personal property, and *may* pay the estate duty upon any other property which is under his control, or where not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

Estate duty is due upon the delivery of the Inland Revenue Account by the representatives or upon the expiration of six months from the death, whichever first happens, interest at 3 per cent. per annum without deduction of income-tax being payable upon the duty from the date of the death until payment, or until the expiration of six months from the death, whichever first happens. Should payment of estate duty be in arrear the rate of interest is raised to 4 per cent. per annum. Provided:—

(1) That the duty due upon an account of real property may, at the option of the persons delivering the account, be paid by eight equal yearly instalments, or 16 half-yearly instalments, with interest at the rate of 3 per cent. per annum, without deduction of income-tax, from the expiration of 12 months from the death, and the interest on the unpaid portion of the duty is to be added to each instalment and paid accordingly; but the duty for the time being unpaid with interest to date of payment may be paid at any time. Where such property is sold, the portion of duty unpaid, if any, must be paid upon completion of the sale, otherwise the unpaid duty will be

treated as duty in arrear, and interest will be payable thereon at 4 per cent. per annum.

(2) That the duty due in respect of an annuity or other definite annual sum, whether terminable or perpetual, may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of 12 months from the date of the death, and after the end of those 12 months interest at the rate of 3 per cent. per annum, without deduction of income-tax, upon the unpaid portion of the duty is to be added to each instalment, and paid accordingly; but the duty for the time being unpaid with interest to date of payment may be paid at any time.

(3) That the Commissioners may if they think fit, on the application of any person liable to pay estate duty in respect of any real (including leasehold) property, accept in satisfaction of the duty, in whole or part, such part of the property as may be agreed upon between the Commissioners and that person. No stamp duty is payable on any conveyance or transfer of such property to the Crown.

In *Re Fish; Lea v. Fish* (1897) it was held that the interest on estate duty from the date of the death must be paid out of the capital of the residuary estate, presumably because section 6 (6) of the Finance Act 1894 provides that such interest "shall form part of the estate duty." This decision, however, only applies to cases of deaths occurring before the amending Act of 1896, which repeals the words "and shall form part of the estate duty" in the enactment as to interest, and substitutes the words "shall be *recoverable* as if it were part of the duty."

It is provided that interest at the rate of 3 per cent. per annum shall be payable on estate duty from the date of the death, but that where the duty is payable by instalments it shall run from the expiration of 12 months from the death (see above). In any case it is to be *recoverable* in the same manner as if it were part of the duty.

In *Re Earl Howe's Settled Estates; Earl Howe v. Kingscote* (1903) Buckley, J., said that *primâ facie* a tenant-for-life whose income was increased by the postponement of the payment of duty ought to bear the interest thereon as the price of the postponement.

The duty in this case was, however, in respect of real estate, and was being paid in eight annual instalments. The point is not altogether clear, but it is submitted that interest on estate duty should, in the absence of special provision to the contrary, be treated as a charge against income.

Small Estates:—

Estates under £100 gross value are not liable to estate duty, and where the gross value of an estate (less any charge created for the purpose of purchasing any property included in the estate) exceeds £100, but does not exceed £300, a fixed duty of *thirty shillings* is payable, and where the gross value of the estate (less any charge created for the purpose of purchasing any interest in the estate) exceeds £300 but does not exceed £500 a fixed duty of *fifty shillings* is payable. Where, however, the *net* value of the estate as compared with the gross value is such that it would be more advantageous to the estate to pay "by scale," the latter method may be resorted to. A further benefit is conferred upon small estates, for probate may be obtained by payment (in addition to the fixed duty of thirty shillings or fifty shillings) of fifteen shillings for Court fees and expenses, and two shillings and sixpence for sealing the probate. Where the fixed duties of thirty shillings or fifty shillings are paid within twelve months of the death, no interest is payable.

Where the *net* value of the property, real and personal, in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1,000, such property for the purpose of estate duty is not to be aggregated with any other property, but is to form an estate by itself (as already mentioned), and where estate duty has been paid upon the principal value

of such estate, settlement estate duty, legacy duty, or succession duty shall not be payable in respect thereof.

Estate duty is payable out of the general residue of the estate of the deceased so far as such duty relates to property of which the deceased at his death was competent to dispose.

(*See titles* Increment Value Duty, Legacy Duty, Settlement Estate Duty, Succession Duty.)

Estoppel.—" Where one by his words or conduct " causes another to believe the existence of a " certain state of things, and induces him to act " on that belief so as to alter his own previous " position," the former is estopped from denying the existence of such state of things.

Estoppel is one of the characteristics of a deed, or contract under seal, for " where a man has " entered into a solemn engagement by and " under his hand and seal as to certain facts he " shall not be permitted to deny any matter he " has so asserted." (*See* Certificate, Holding Out.)

Examination.—*See* Public Examination.

Excepted Articles.—

Bankruptcy.—In addition to " property held by the bankrupt on trust for any other person," the following articles are not divisible amongst his creditors:—

" The tools (if any) of his trade and the neces- " sary wearing apparel and bedding of himself, " his wife and children, to a value, inclusive of " tools and apparel and bedding, not exceeding " twenty pounds in the whole." (1883 Act, section 44.)

Administration Order.—Where an administration order has been made against a debtor and it appears to the Registrar of the County Court that the property of the debtor exceeds in value ten pounds, he shall at the request of any creditor and without fee issue execution against the debtor's goods, but the household goods, wearing apparel, and bedding of the debtor and his family, and the tools and implements of his trade, to the value in the aggregate of twenty pounds, shall to that extent be protected from seizure. (1883 Act, section 122.)

Note.—The exception in section 44 extends only to necessary wearing apparel, bedding, and tools, but under section 122 household goods are protected from seizure.

Distress for Rent.—The wearing apparel and bedding of a tenant and his family, and the tools and implements of his trade, to the value of five pounds, are protected from distress for rent, *unless* the tenant's interest has expired and distress has not been made until seven days after a demand has been made for possession.

Exchange.—*See* Par of Exchange, Rate of Exchange.

Exchequer Bills.—Bills issued by the Treasury to raise money for the temporary purposes of the Exchequer. They are issued in multiples of £100 with interest coupons for five years payable to bearer, and may be renewed after that time. The interest is only fixed for a year, therefore the *amount* of interest is not stated on the coupons. The holder may, however, demand repayment of the principal at the end of any one year from the date of issue.

(*See* Treasury Bills.)

Exchequer Bonds.—Although issued by the same Commissioners and for the same purpose as Exchequer Bills, the bonds differ as follows:—

(1) They are issued for a definite period not exceeding six years, interest ceasing upon maturity of the bond.

(2) The rate of interest payable is fixed at the time of issue for the whole period, and the *amount* of interest is printed on each coupon.

(3) The bonds *may* be inscribed in the books of the Bank of England and certificates of registration given in lieu of bonds. In this event no coupons are issued, the interest being paid as in the case of Consols.

(*See* Treasury Bills.)

Excise Duties.—Those laid on certain articles produced and *consumed* at home. (*See* Drawback.)

x dividend.—*See* Cum dividend.

xecution Creditor.—A writ of *fieri facias*, or other writ of execution against goods, shall bind the property in the goods of the execution debtor, as from the time when the writ is delivered to the sheriff to be executed: and for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ, to indorse upon the back thereof the hour, day, month, and year when he received the same. Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had, at the time when he acquired his title, *notice that such writ*, or any other writ by virtue of which the goods of the execution debtor might be seized or attached, had been delivered to, and remained unexecuted in the hands of, the sheriff. (Sale of Goods Act 1893, section 26 (1).)

Note.—The term "sheriff" includes any officer charged with the enforcement of a writ of execution. The above section is a re-enactment of section 16 of the Statute of Frauds, and section 1 of the Mercantile Law Amendment Act 1856.

A warrant issued in one County Court and forwarded to another County Court for execution does not bind the goods until it is delivered to the second Court. (*Birstall Candle Co. v. Daniels* (*Saunders claimant*), 24 T.L.R. 572.)

With regard to notice of the writ, Bramwell, B., in *Gladstone v. Padwick* (1871), stated that notice of the *probable delivery* to the sheriff of a writ of *fi. fa.* did not amount to a notice sufficient to take the case out of the operation of the section. "A notice of something certain and "inevitable—as of the rising of the tide—though "given beforehand, might perhaps, after the "event, be treated as notice of the fact, but this "cannot be said with respect to what is merely "probable."

Bankruptcy.

The rights of *judgment* creditors who have issued execution against the property of *a bankrupt* debtor are restricted by the Bankruptcy Acts 1883 and 1890.

Section 45 of the Act of 1883 provides:—

(1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has *completed* the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

Section 11 of the Act of 1890 provides:—

(1) Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the *full amount* of the levy, notice is served on the sheriff that a *receiving order* has been made against the debtor, the sheriff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the Official Receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the Official Receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where, under an execution in respect of a judgment for a sum *exceeding twenty pounds*, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for 14 days, and if within that time notice is served on him of a *bankruptcy petition* having been presented against or by the debtor, and a receiving order is made against the debtor

thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the Official Receiver or, as the case may be, to the trustee, who shall be entitled to retain the same as against the execution creditor.

Note.—The 14 days run from the date of the completion of the sale, and not from the time the purchase money is paid. (*Re Cripps & Co.*, 1888.)

These sections (45 and 11) are not applicable to the administration of the estate of a deceased insolvent under section 125 of the Act of 1883. (*Hasluck v. Clark*, 1899.)

Section 46 of the 1883 Act provides that:—

An execution levied by seizure and sale on the goods of a debtor is not invalid by reason of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall in all cases acquire a good title to them against the trustee in bankruptcy.

In order that a landlord's right of distress may not be defeated by collusion between tenants and their respective judgment creditors, the statute 8 Anne, chap. 14, provides that no goods or chattels shall be liable to be taken by virtue of any execution, unless the *judgment creditor* shall, before the removal of the goods from the premises by virtue of such execution, pay to the landlord all sums due for rent not exceeding one year's rent, and the sheriff shall levy and *pay the execution creditor* as well the money so paid for rent, as the execution money.

In commenting upon the above attention was drawn to an interesting point in an article in the *Law Times* of 17th December 1898 as to the effect of section 11 of the 1890 Act upon an execution levied in disregard of the precise provisions of the statute of Anne:—

"There is no doubt that it is almost the "universal practice of sheriffs by their officers to "disregard the plain provisions of the statute of "Anne, and notwithstanding notice of rent due to "the landlord, to sell, without *requiring the* "*execution creditor* to satisfy the landlord's claim "as a condition *precedent* to the sale. The "sheriff satisfies the claims of the landlord and "of the execution creditor out of the proceeds of "the sale and no one complains . . . Thus, "if a sheriff follows the ordinary practice, and "with notice of rent due proceeds to sell (without "causing the execution creditor to pay the rent), "after sale he (the sheriff) is personally liable "to pay the rent to the landlord, and he *may* be "liable (under section 11 of 1890), if he has "notice of a receiving order made against the "debtor within the 14 days, to hand over the "whole of the proceeds of sale (less the costs of "the execution) to the trustee in the bankruptcy."

But shortly after the above article appeared it was decided by the Court of Appeal in *Re Neil Mackenzie* (August 1899), that notwithstanding section 11 of the Act of 1890 the sheriff was justified in paying the landlord three months' rent then due, and handing the Official Receiver the balance only of the proceeds of the levy.

Where the sheriff sells the goods of a debtor under an execution for a sum exceeding twenty pounds (including legal incidental expenses), the sale shall, unless the Court from which the process issued otherwise orders, be made by public auction and not by bill of sale or private contract, and shall be publicly advertised by the sheriff on and during three days next preceding the day of sale. (1883 Act, section 145.)

Deed of Assignment.

If a deed of assignment has become irrevocable, a creditor of the assignor has no remedy against the property assigned except by way of bankruptcy procedure. In order to render a deed of assignment irrevocable and a protection against an execution creditor at least one other creditor should have already assented (either verbally or in writing) to the deed (*Harland v. Binks*, 1850, 15 Q.B. 713), and where the trustee under the deed seeks to set up the assignment as against an execution creditor, the onus of proof is on the trustee. (*Adnitt v. Hands*, 57 L.T. 370.) It must be shown moreover that the deed was irrevocable before the writ of execution was issued to the sheriff.

Company Liquidation.

A judgment creditor of a company in course of liquidation or about to be wound up is in a somewhat different position from a judgment creditor in bankruptcy (*supra*).

The Bankruptcy Acts do not apply to executions against a company, and the sheriff is not required to hold the proceeds of an execution as in the case of a prospective bankruptcy.

The Court *may*, at any time after the presentation of a *petition* and before the making of a winding-up order, upon the application of the company, or of any creditor, or contributory, stay or restrain further proceedings in any action, suit, or *proceeding* against the company. (Companies (Consolidation) Act 1908, section 140.) Upon a winding-up order being made, no action or proceedings shall be proceeded with, or commenced, against the company *except with the leave* of the Court and subject to such terms as the Court may impose. (Section 142.) Subject to the foregoing, where any company is being wound up (1) by the Court, or (2) subject to the supervision of the Court, any 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. (Section 211.)

It is in the discretion of the Court whether a creditor is allowed to proceed or not, and where a creditor, having obtained judgment, issues execution, acting *bonâ fide*, and the sheriff is in possession at the date of the presentation of the petition, the creditor will not, in the absence of special circumstances, be prevented from realising his judgment.

If proceedings are threatened against the property of a company in *voluntary liquidation* the liquidator should apply to the Court for the protection of the assets under section 193 of the Act of 1908. Should there be several actions brought or threatened, application to stay the proceedings of each action would be necessary, and in such a case the Court might make a compulsory order or a supervision order.

With regard to property constituting a floating security for debentures, the rights of the debenture-holders will not be postponed to those of an execution creditor if the former have lawfully enforced their security by the appointment of a receiver, or otherwise, before the property has been sold (*In re Opera, Lim.*, 1891, 3 Ch. 260), or *semble* after sale, but before the sheriff has parted with the proceeds. (*Taunton v. Sheriff of Warwickshire*, 1895, 2 Ch. 319.) Although property which is subject to a floating charge may be validly dealt with by the company in the ordinary course of business as if the charge had not been given, a seizure under an execution on a judgment against the company is not a dealing within the ordinary course of business. It is not a dealing by the company at all—it is a compulsory legal process directed *against* the company, not a dealing by them (*Davey & Co. v. Williamson & Sons*, 1898, 2 Q.B. 194), and the priority of the debenture-holders over an execution creditor was in this case affirmed notwithstanding that prior to the levying of execution the debenture-holders had done nothing to enforce their security. (See also *Evans v. Rival Granite Quarries, Lim.*, 1910.) (*See title* Floating Charge.)

Partnership.

Prior to the Partnership Act 1890, the partnership property was liable to be taken in execution for a *separate* debt of *any* partner, the sheriff selling the *debtor's interest* in the goods seized, although, in the absence of accounts, it was obviously difficult to ascertain what such interest was.

But section 23 of the Partnership Act provides that a writ of execution shall not henceforth issue against any partnership property, except on a judgment against the firm. The Court may, upon the application of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may, by the same or a subsequent order, appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the execution

creditor by the partner, or which the circumstances of the case may require. The other partner or partners may at any time redeem the partner's interest so charged, or, in case a sale is directed, may purchase same.

As in the case of an assignee under an *assignment* by a partner of his share in the partnership property, a receiver is bound to accept the account of profits agreed to by the partners, but upon a dissolution the receiver is entitled to an account as from the date of the dissolution showing the realisation of the assets. (*Brown Janson v. Hutchinson*, 1895, 1 Q.B. 737.)

Section 6, subsection 5, of the Limited Partnerships Act 1907, provides that, subject to any agreement between the partners a "*limited*" partner may, with the consent of the "general" partners, assign his share in a limited partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor. Section 10 provides that notice of the assignment must be forthwith advertised in the *Gazette*, and that until it is so advertised the assignment shall, for the purposes of the Act, be deemed to be of no effect.

Where any partner suffers his share of the partnership property to be charged for and in respect of his separate debt, the partnership may be dissolved at the option of the other partners (Partnership Act, 1890, section 33 (2)), but subject to any agreement expressed or implied between the partners, the other partners shall not be entitled to dissolve a limited partnership by reason of any "*limited*" partner suffering his share to be charged for his separate debt. (Limited Partnerships Act 1907, section 6, subsection 5.)

Executor.—"One to whom the execution and performance of another man's will after his death is commended or committed. Where there is no will there can be no executor."

Executors may be appointed by nomination or by implication, the latter being termed executors according to the tenor. Executors may also be absolute or qualified.

The testator need not himself appoint the executors, but may delegate such appointment to another, and the delegate may appoint himself.

Idiots and lunatics are incapable of being appointed executors because of their disability and want of understanding, but where a person is nominated executor mere weakness of mind will not be sufficient ground for excluding him from grant of probate. Infants are capable of being executors, but probate will not be granted during minority, and where the *sole* executor is an infant, administration with the will annexed is granted to another during minority.

A married woman may be appointed executrix, and, since 1882, may act independently of her husband.

An alien, a corporation aggregate, a corporation sole, and a partnership firm, are all eligible as executors. In the case of a corporation aggregate being appointed, the Court will grant letters of administration with the will annexed to a representative of the corporation; whilst in the case of a firm, probate would be granted to the partners individually.

The public trustee may be appointed executor either alone, or jointly with any other person or persons.

A person who is nominated as an executor is not bound to accept the office. He may renounce, but, having renounced, the Court has power to permit him to retract his renunciation, if considered desirable in the interests of the estate. (*Re Stiles*, 14 T.L.R. 61.) Renunciation must be made before any executorial act has been performed, or before the person has otherwise shown that he has elected to act. An executor cannot accept in part and refuse in part—he must either accept the office or wholly renounce. If an executor delays in making up his mind whether he will act or not he may be "cited" to accept or refuse. The time allowed to an executor for consideration depends upon the nature of the estate to be administered. But in this connection, for better securing the duties payable upon probates of wills, section 37 of 55 Geo. III, c. 184, provides that if any party named executor takes possession of or in any manner administers the estate and effects of a deceased person without obtaining probate within six months after the death of the deceased, he is liable to a penalty.

Although one who has been named as executor and has intermeddled can be compelled to take probate, one who has *not* been so named and has intermeddled (*i.e.*, executor *de son tort*) cannot be compelled to take a grant of administration.

Powers:—

Where there are two or more executors of the same testator they are considered as one person, and upon the death of one of them the office survives, for in general their power is joint and several.

Before probate has been taken, an executor may do most of the acts that he could do afterwards—he may release debts, realise the testator's estate, assent to a legacy, and otherwise administer, for he receives his authority as executor from the will and not from the probate. "Probate is a mere ceremony" evidence of the executor's right, the property of the deceased vesting in the executor at the date of the death. An executor may even commence an action before taking probate, but he cannot proceed beyond the stage at which he will be required to prove his title, which can only be done by producing the probate.

Executors have power to sell, mortgage, assign, and pledge the assets of the testator, and grant a lease for a term of years, subject to any special restrictions imposed by the will. Executors may also compromise debts, or submit claims to arbitration; they may endorse bills of exchange and promissory notes, give or refuse assent to a legacy, and pay statute-barred debts. But they cannot pay debts which are statute-barred if the Court has actually declared them irrecoverable on that account, nor can they pay a debt if it could not be enforced by reason of the provisions (as to evidence of contract) of the Statute of Frauds, Sale of Goods Act, and other statutes; to pay such debts would amount to a *devastavit*.

Executors have a right of preference and retainer. (*See* Hinde Palmer's Act, Preference, Retainer.)

Duties:—

The duties of an executor may be stated briefly as follow:—

(1) To bury the deceased, incurring only such funeral expenses as are necessary and reasonable, due regard being had to the estate and condition of the deceased. (*See* Funeral Expenses.)

(2) To prepare an inventory of the deceased's goods and chattels.

(3) To obtain probate of the will, and pay the necessary duties.

(4) To realise, collect, or otherwise get in the estate.

(5) To pay the debts of the deceased.

(6) To pay the legacies.

(7) To make any necessary investments during the course of the administration.

(8) To distribute the residue.

(9) To keep proper accounts, showing the manner in which the estate has been administered.

In order to secure an indemnity to executors, and also to afford the creditors of a deceased person an opportunity of making their claims against their deceased debtor's estate, Lord St. Leonard's Act provides that notice may be given to creditors by advertisement in the *London Gazette* or another London paper (and a local paper where necessary), to the effect that such creditors and others must send in their claims against the estate before the expiration of a time stated in the notice; and such notice may further declare that on the expiration of the stated time the assets will be distributed, having regard to the claims of which the executors shall then have notice, and that the executors will not be liable to any person of whose claim they shall not have had notice at the time of the distribution of the assets so distributed; but without prejudice to the right of a creditor to follow the assets into the hands of any person receiving the same.

An executor who has distributed the assets after taking the precaution directed by the Act, has the same protection as if he had administered the estate under a decree of the Court.

Registration of Shares:—

Some companies decline to register probate without at the same time registering a transfer of the shares into the executor's name; but, whatever the company's articles of association may prescribe, it is not competent for the company to compel an executor (who is no party to the provisions of the articles) to undertake any personal liability, and the attempt should therefore be resisted. An executor is empowered to deal with shares standing in the name of the deceased by virtue of his office as executor, and cannot be compelled to have them registered in his own name before disposal of them to a third party.

Testator's Business:—

When an executor carries on the business of the testator, even though so directed in the will, he renders himself personally liable to the creditors of that business, without reference to the extent of the testator's assets. The amount of loss *actually sustained* by the executor will, however, depend upon the extent to which he is entitled to and can obtain indemnity from such assets.

A direction in the will that the executors shall carry on the testator's business does not, *per se*, authorise the employment in such business of more of the testator's assets than were so employed at the date of the death, and directions as to the carrying on of the business must at all times be most distinct and positive, for the Court will not act upon "a bare conjecture that the "testator contemplated the business being carried "on." Where executors are authorised to carry on the testator's business, but are confined to the assets engaged in it at the date of the death, and find it impossible to carry on the trade within such limits, they should apply to the Court for directions.

Where a partner in a firm by his will authorises his executors to allow his share of the capital to remain as a loan to the firm, his executors are bound, on a change in the *personnel* of the firm, to call in the loan, subject, of course, to any special provision in the will as to the effect of such change.

A distinction must be drawn between executors actively carrying on business and executors merely sharing in the profits of a trading partnership in pursuance of the articles of partnership to which the testator was originally a party. (*See also title* Limited Partner.)

Ordinarily, executors of a deceased partner are not liable for the debts contracted by the partnership *subsequently* to the testator's death; but subject to the prior payment of the separate debts, the estate of the deceased partner is liable severally for the debts and obligations of the firm incurred whilst he was a partner.

The Partnership Act (section 36) provides that, irrespective of notice, as required in the case of retirement, the death of a partner, *ipso facto*, terminates the liability of a partner's estate for any debts which may subsequently be contracted by the partnership; and by section 14 of that Act, where after a partner's death the partnership business is continued in the old firm's name, the continued use of that name, or of the deceased partner's name as part thereof, does not *of itself* make such deceased partner's estate or effects liable for any partnership debts contracted after his death. The doctrine of "holding out" does not extend to bind the estate of a deceased partner, whether the creditors of the firm are aware or not of the death of the partner whose name remains as part of the firm's name.

Executors of a deceased partner are therefore not entitled to an injunction restraining the surviving partners from *continuing* to use the deceased partner's name in the firm name.

Remuneration:—

An executor is not entitled to any remuneration for his trouble and services as executor, unless it be expressly stated in the will that he may be so compensated (*but see* Public Trustee). The remuneration may take the form of a salary, a commission, or, in the case of a professional man, his ordinary professional charges. Generally, however, the testator bequeaths a legacy to the executor expressly for his pains as such. The Court of Appeal in *Re White* (*Accountant* Law Reports, 1898, p. 105) upheld a decision to the effect that a solicitor who was executor and

trustee, although empowered by the will to charge for his services, was not entitled to do so should the estate prove to be insolvent. The power to charge "profit costs" is in the nature of a legacy, and Chitty, L.J., said, "No one can claim "the bounty of a testator until his creditors have "been paid. This rule applies not only to a "solicitor-trustee, but equally to a trustee who "is an accountant, a surveyor, or an architect." The Revenue authorities at one time claimed legacy duty upon the *profits* arising from the office of executorship, whether by way of professional charges or otherwise, but now the authorities do not press the claim in respect of profit costs, although they still enforce the payment of the duty on *ordinary* pecuniary legacies to professional executors, and on *fixed annual payments* for the services of executors.

Release:—

An executor cannot demand a formal release from a pecuniary legatee, for in respect of a single transaction, such as the payment of the legacy, the executor must be satisfied with a simple receipt. But where an executorship involves a series of complicated transactions—receiving and paying, making investments and changing same—the executor has a right to demand a release under seal from the residuary legatee. "He has "a right to be clearly discharged, and not to be "left in a position in which he may be exposed "to further litigation, because he fairly says, "'unless you give me a discharge on the face "'of it protecting me, I cannot safely hand over "'the fund.'"

Where the executor is doubtful as to the title of the parties to the funds in his hands, he may pay them into Court, but he may thereby subject himself to the costs of obtaining the funds out of Court by the parties rightly entitled thereto, if his actions in this respect are afterwards held to have been improper.

If the estate is administered and the accounts have been taken by the Court, the executor will not have need to demand a release when paying over the residue under an order of the Court, for, having stated all the facts fully, he will in such a case be protected from any further demands.

Executor-Trustee:—

An executor is in a sense a trustee, but when he has fully performed the duties of his executorship (*i.e.*, when he has paid the funeral and testamentary expenses, debts, and legacies), and stands possessed of the surplus, he ceases to be an executor and becomes a trustee in a proper sense.

"The executorial duties consist in ascertain- "ing the proper net amount of the various parts "of the testator's property after payment of debts "and expenses, and distributing them amongst "the persons entitled; these persons may be "trustees who hold . . . in trust for others, "or the *executors themselves* may be, and "frequently are, the trustees, who receive or "retain as trustees the *fund ascertained by them- "selves as executors*."

Although, generally an executor cannot be treated as a trustee of a specified fund until the residue has been ascertained, yet if he expressly sever some portion of the estate and appropriate it to a particular purpose as directed by the will, he will be deemed to be acting as a trustee.

(*See* Acknowledgment of Debt, *Actio personalis*, &c., Administration (Letters of), Administration of Assets, Apportionment, Breach of Trust, Citation, Contributory, Deceased Insolvent, Devastavit, Estate Duty, Executor *de son tort*, Executorship Accounts, Land Transfer Act 1897, Legacy, Legacy Duty, Preference, Public Trustee, Retainer, &c. &c.)

Executor according to the tenor.—A person is constituted executor according to the tenor when, although the will does not expressly name him executor, it appears from a reasonable construction thereof that it was the testator's intention that such person should act as executor.

Executor de son tort.—One *not named executor* who takes upon himself to act as such by intermeddling with a deceased person's goods, or otherwise purporting to administer the estate, is termed an executor *de son tort* (of his own wrong), and is liable as an executor; but he is not entitled to any of the privileges of the office. He cannot retain his own debt (if any) out of the

assets. He cannot sue on behalf of the estate of the deceased, but he is liable to be sued by a creditor or legatee.

Although one named executor having "intermeddled," can be compelled to take probate, one not so named cannot, because he has intermeddled, be compelled to take a grant of administration.

An executor *de son tort* may relieve himself from liability by accounting to the rightful representative *before* any action is brought against him.

Mere acts of humanity or necessity, such as feeding the deceased's cattle, burying the deceased, or placing his goods in a place of safety, will not amount to such an intermeddling as will render a person liable as executor *de son tort*.

Executor of an Executor.—The executor of a sole or last surviving executor becomes the executor of the original deceased, if he takes probate of his own testator.

The first executor must, however, have taken probate of the original deceased, for if he died before taking probate the "chain of representation" would be broken.

This devolution of office does not apply to administrators—for instance, if an executor die intestate, his administrator will not represent the original deceased; and so, also, if an administrator die, a fresh grant of administration must be made.

Executorship Accounts.—An executor is an "accounting party," and, as a consequence, he must be always ready with his accounts and vouchers, so that he may give a satisfactory explanation of his administration of the estate.

The precise manner in which an executor's accounts should be framed has long been the subject of discussion, two distinct systems being in use, both of which are strongly supported by their respective adherents.

The first system is based upon the doctrine that executors are responsible for the *property* left by the deceased, but not for its *value* until it is actually realised, and that, as a consequence, an executor's accounts must be based solely upon the actual receipts and payments of the executor, the unrealised assets whilst unrealised being recorded in "inventory form."

The advocates of the second system are of opinion that no difference in principle should exist between the accounts showing the administration of a deceased person's estate, and those accounts which in the ordinary course would have recorded, or have continued to record, his transactions had he lived. They, therefore, deem it essential that the particulars of the estate (as shown by the affidavit for probate) be immediately passed into the executor's accounts by means of a Journal entry.

Much can be said in favour of both systems; and as the vital principles involved may, in both cases, be considered sound, it will be difficult to convince the supporters of either side of their "error." The difference between the two systems has, in fact, been termed by one authority as "little more than an office detail." It is undeniable that the "cash basis" is the older form of account, and the following extracts from *Cory on Accounts*, published in 1839, will not be without interest:—

> "A person intrusted with an estate, like an "executor, is put in possession of all the "estate, and, consequently, he is *accountable* "for it all; but he is not *answerable* for it all. "It may be impossible for him to recover some "portions such as bad debts."

And again:—

> "Though he is thus accountable for all, he "will only be answerable, *or chargeable*, with "what he has actually recovered, or with what, "but for his own wilful default, he might have "recovered."

Cory then proceeds to explain the method of keeping the ordinary Cash Account, and further suggests (as being "the scientific method of constructing an executor's accounts"), the journalising of the Probate Account, but only as regards the items, "*as their value in money would not yet be inserted.*"

" As an executor, in starting, deals only in " estimates, he need not insert the *values* of " the items; but as many of the real accounts " may not be disposed of when his time to " account comes, he should use a *double-* " *columned Ledger*, one column to contain the " sums actually received, and the other to con- " tain the (probate) value of the items still " outstanding." (*Cory.*)

With regard to the system of adopting the probate values *en bloc* in the accounts, Mr. O. Holt Caldicott, F.C.A., has said:—

" To my mind it has one great defect, in that " it is founded upon unreal figures, the result " of valuations, some of which are a mere " matter of opinion, and some of which are only " temporary in their relation to the property. I " consider that an account is a record of trans- " actions and not a schedule of valuations, and " my opinion is that the executor should refer " to the affidavit for probate for particulars of " the estate at the death, and that he should " produce his accounts to show how far he has " administered the estate, and what estate is " outstanding."

The following reply to Mr. Caldicott appeared in *The Accountant* newspaper:—

" We appreciate thoroughly the intention of " Mr. Caldicott's form of accounts, but we " suggest that a bare record of transactions " which have been made is not absolutely all " that an executor is required to keep, with a " view to giving an account of his stewardship. " It seems to us that he is required to keep " such accounts as will show not only what he " has done, but also what he ought to have, " and, perhaps, has not, done. Moreover, there " are circumstances which, perhaps, come " under neither category, but which have a " material bearing upon the position of the " estate, and these also should be recorded in " Executorship Accounts—unless, indeed, it is to " be conceded that Executorship Accounts need " not be complete. The form of accounts which " we are advocating has, according to Mr. " Caldicott, the one great defect that it is " founded upon ' unreal figures,' the result of " valuations, some of which are a mere matter " of opinion, and some of which are only tem- " porary in their relation to property. This is " an objection which must, under all normal " circumstances, apply to *every* set of books " of account. We venture to think that no " Balance Sheet which can be said to be " entitled to the name at all has ever been pre- " pared, which was not—at all events, to a " certain extent—based upon figures which " would be the ' result of valuations,' which " valuations in all cases are naturally a ' mere " matter of opinion,' while in most cases they " have only a ' temporary relation ' to the pro- " perties to which they refer. If this be a " defect at all, it is an indictment against book- " keeping as a whole, and not against Executor- " ship Accounts in particular, unless any " special reason can be advanced in the case of " Executorship Accounts, which makes it more " desirable that such valuations should not be " introduced therein. . . Any account which " (whether annual or otherwise) is in the " nature of an intermediate account, showing " the progress of a venture, during a certain " period, and its position at a certain date, " must, in the nature of things, be of a ten- " tative type. This applies, like every other " principle in bookkeeping, whether the person " whose property is being dealt with is alive or " dead at the time; and this circumstance, in " itself, so far as we can see, need have no " bearing whatever upon the fundamental prin- " ciples upon which the system of bookkeep- " ing is to be founded. If there is any funda- " mental distinction, as we have already stated, " we think it a pity that Mr. Caldicott does not " emphasise it. At the moment we are " unaware of any such, and, therefore, it seems " to us Executorship Accounts should be kept " on the same lines as any other accounts " dealing with transactions of a similar " description."

Quoting again from *The Accountant*:—

" The executors have to give an account of " the property which passes through their " hands, and this can be best shown if only the " ascertained facts are recorded in the books,

" Indeed, it is difficult to suggest any reason " for either failing to record the full details " which we have suggested . . . or for " recording additional details which do not " directly bear upon the matter at issue; unless, " indeed, the idea be to so complicate the " accounts as to render any detection of " *devastavit* upon the part of executors more " than usually difficult."

Having stated the salient features of the two systems, the main points in connection with the preparation of Executors' Accounts may now be summarised thus:—

Books.—A Cash Book and Ledger must be kept, but it is optional whether a Journal be utilised, and where the " cash basis " is adopted, a Journal may readily be dispensed with.

Cash Book.—The Cash Account will commence with the amount of " cash in the house " and the bank balance as at the death. As to whether the Cash Book will be columnar or not must depend upon circumstances. Some suggest that the bank items be separated from the cash, whilst others advocate separate columns for Capital and Revenue. The former is, however, inadvisable to the extent that no cash transactions should be encouraged. All receipts should be specifically lodged in the bank, and all payments made by cheque.

The receipts and payments should be entered in order of date, the letters accompanying the dividend warrants and the vouchers for payments being numbered consecutively in the order in which the entries appear in the Cash Book and filed on separate files.

Moneys received or paid by the executors, in the " nature of income," but in respect of a period wholly prior to the date of the death of the testator must be treated as on account of capital of the estate, but receipts and payments of such a character which are in respect of a period extending over the date of the death must be carefully apportioned as between the capital and income of the estate. Rents, annuities, dividends, and other periodical payments in the nature of income are, in the absence of an express stipulation to the contrary, to be considered as accruing from day to day, and apportionable in respect of time accordingly, so that the portion of " income " accruing due to the date of the death must be treated as capital of the estate, and the portion accruing subsequently to the death as income thereof. The principles involved in the apportionment of capital and income are dealt with under the title " Apportionment." Should any difficulty arise in connection with the apportionment of an item as between capital and income, legal advice should be taken by the executors, but, failing their willingness to do this, the " golden rule " is to place the doubtful amount to capital, being obviously the less of two evils. Having the fund in hand, an executor can more readily satisfy a tenant-for-life, in the event of such fund being declared income, than he could recover the amount should it be declared capital, after it has been distributed as income.

Subject to modification by the Court, in special cases where the circumstances are peculiar, the rights of a life-tenant and remainderman respectively, and the consequent adjustments as between capital and income in the accounts of an executor or executor-trustee, are governed by the following rules:—

A life-tenant of specific property under a will *without any trust for conversion* is entitled to the income actually produced during the life-tenancy, whether the property be permanent, such as real estate, or of a wasting character, such as a leasehold. But where the property is of a wasting nature *and there is a trust for sale*, without any express provision as to the income derived therefrom pending sale, the life-tenant is not entitled to the whole of the income actually produced, but only to so much of it as would equal the dividends from such an amount of Consols as might have been purchased with the proceeds of sale had the settled property been converted at the end of a year from the testator's death, the income actually received in excess of such computed amount of dividend being treated as capital.

Generally, a devise of residuary real estate will carry with it the actual rents therefrom. On the other hand a life-tenant of residuary

personalty is not generally entitled to all the income produced by unauthorised investments, the rule (generally referred to as the rule in *Howe v. Lord Dartmouth*) being that such investments must be converted into Consols or other authorised securities of a permanent nature for the benefit of all parties interested. This rule is not based upon any presumed intention of the testator that the property should be so converted, but rather upon the presumption that he intended the property to be enjoyed in succession, an intention which can only be carried out by conversion and investment in permanent securities. The rule obviously applies to property of a wasting or perishable nature, such as terminable annuities and leaseholds; and if property to which this rule applies be not converted, an apportionment as between capital and income will be necessary either on a 3 per cent. basis or upon the basis of what income would have been derived from a proper investment of the proceeds of conversion. The rule in *Howe v. Lord Dartmouth* may be excluded if it appears from the will, either by express declaration or by necessary implication, that the testator intended that the property should be enjoyed in its existing state or the equivalent.

With regard to (*a*) dividends and bonuses in respect of shares in companies; (*b*) profits of a firm; (*c*) the apportionment of the proceeds of sale of non-income producing assets, where, for the benefit of the estate, such sale has been postponed; (*d*) the apportionment as between capital and income of the purchase money or proceeds of sale on a change of investment when the payment or receipt, as the case may be, includes accruing dividend; and (*e*) the apportionment of a loss of principal and interest on realisation of a mortgage security, *see title* Apportionment.

Unless expressly forbidden by the will a trustee may insure against loss or damage by fire any building or other insurable property to any amount not exceeding three-fourths of the full value thereof, and pay the premiums out of the income of the property or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled to the income. (Trustee Act 1893, section 18.)

A life-tenant is not liable to bear the cost of repairs unless made liable by some provision in the will or by statute in special cases; but, on the other hand, a life-tenant is not entitled to have repairs done out of capital. In certain special cases substantial repairs, which have been ordered to be done by the Court so that a property might be rendered tenantable, have, however, been allowed out of capital.

As between the life-tenant and the remainderman, the life-tenant is not liable to repair even in respect of leaseholds, although the lease may contain a covenant to keep in repair; but this also may be affected by the will, and in some cases is affected by statute.

Each case must depend upon its own circumstances, but the general practice is to charge ordinary current repairs against current income and to capitalise expenditure of an exceptional nature, or spread same over a period of years.

With regard to death duties, estate duty is payable out of capital, but if it is borrowed on the security of the capital the life-tenant must pay the interest on the loan. Legacy duty is payable out of capital when so directed by the will, but it is payable out of the respective legacies when not bequeathed free of duty. So, succession duty is a charge against the particular interest liable therefor, but where legacy duty or succession duty payable on personalty (*e.g.*, leaseholds) is payable in respect of a life interest, the duty is payable out of capital only if the rate of duty payable by the life-tenant and remaindermen would be the same. If the rate of either legacy or succession duty chargeable on the life interest is different from that chargeable to the remaindermen, then the duty on the life interest is payable by the life-tenant and the duty on the remainder is payable by the remaindermen.

Settlement estate duty payable in respect of a legacy or other personal property settled by

will (unless the will contains an express provision to the contrary) is payable out of such settled legacy or property in exoneration of the rest of the deceased person's estate.

With regard to interest payable to the Revenue authorities upon estate duty, the matter is not free from doubt, but it is submitted that it is a charge upon income, for, in the words of Buckley, J., in the case of *Earl Howe v. Kingscote* (1903), a tenant-for-life whose income is, *primâ facie*, increased by the postponement of the payment of duty, ought to bear the interest thereon as the price of the postponement. In this case, however, the duty was payable in respect of real estate, and was being paid in eight annual instalments.

(*See title* Estate Duty.)

Where the settled property is subject to incumbrance, the life-tenant is responsible only for the interest thereon out of the rents and profits of the estate, and is not, in the absence of a provision to the contrary in the settlement, liable to discharge any part of the principal sum owing. If the rents and profits are insufficient to pay such interest, the life-tenant is entitled to have part of the property sold to reduce the incumbrance, but where the income is only temporarily insufficient to pay the interest on the incumbrance, the arrears may be recouped out of subsequent income accruing during the *same* life-tenancy; but apparently any arrears of interest on the death of one life-tenant are not recoverable out of the income of the subsequent life-tenant.

Losses properly incurred in carrying on a business as authorised by a settlement are as a rule liable to be made good out of subsequent profits and not out of capital, but losses incurred in carrying on a business under an order of the Court where postponement of sale has been authorised because the business could not previously be profitably sold, are apportionable as between capital and income on the basis of such loss representing the accumulation of a sum at 4 per cent. compound interest (probably it would now be 3 per cent.) from the time when the business ought to have been sold, the amount representing such interest being charged against income, and the balance of the loss being charged against capital. (*See* the method of computation as applied to the apportionment of non-income producing property under *title* Apportionment.)

Annuities bequeathed by a will are payable out of the income of the residue, and a life-tenant is not entitled to call upon the trustees to purchase an annuity out of the capital to satisfy the bequest, but is, *per contra*, entitled to the additional income which would be the result of the death of the annuitant. (*See title* Annuity.)

With regard to costs and expenses, those incurred in the preparation of an account for the purposes of estate duty are considered payable out of capital, as is the estate duty itself. Accountancy charges for an annual audit of the books of a business carried on by the executors (such audit having been expressly stipulated for by the testator) have been held to be payable out of capital. The costs of preparing accounts in respect of the life-tenant's interest are payable out of income, and so the costs of proceedings taken by a life-tenant in respect of his life interest under a settlement are not chargeable against capital as a rule, particularly if the proceedings have been taken for his sole benefit. But where a life-tenant's proceedings are the means of determining the rights of the remainderman also, the costs and expenses are generally a capital charge.

The costs of appointing a new trustee and (generally) the costs of appointing an additional trustee are payable out of capital.

The costs of changing investments in accordance with directions in the settlement are a capital charge, as are also the expenses of a proper application to the Court by the trustees for directions.

The foregoing are, of course, subject to the terms of the settlement and to the orders of the Court made in each case, for sometimes, owing to the wrongful acts of a particular party, the Court may order that party to pay the costs he has occasioned.

As a general rule, an executor or executor-trustee will be entitled to employ and remunerate an accountant to keep the books and accounts in connection with the testator's estate, particularly so where the work is of such a character that he could not reasonably be expected to do it himself. This may be emphasised or qualified, as the case may be, by the terms of the will.

The will may also direct in what manner such expense is to be borne, and if the estate becomes the subject of litigation, orders of the Court may decide what proportions are payable out of capital and income respectively. In the absence of any special circumstances, it is usual to charge the whole or the greater part of the expense in connection with the preparation of the first year's accounts to capital, and in subsequent years to charge the whole or the greater part of the accountant's charges to income.

This apportionment will depend to some extent upon the nature of the estate. It may be that a considerable amount has been charged in respect of income matters even during the first year, and it may be that owing to various causes a substantial sum may be attributable to Capital Account in later years, so that to some extent the apportionment of accountants' charges will be a matter of circumstances.

But apart from any direction contained in the will or any special order of the Court, the general practice is, as already stated, to charge capital with practically all the first year's accountancy charges, and income with all subsequent charges, leaving the extent to which this general rule should be departed from to be decided by the circumstances affecting each estate.

Journal.—Where the probate values are incorporated in the accounts, a Journal may be used for opening the books and " adjusting " the items from time to time. The Journal is also useful for transferring the Ledger balances or other items from one account to another.

Ledger.—Where the probate values are not incorporated in the accounts, it is usual to set out in detail, at the commencement of the Ledger, the schedule of the estate as prepared for probate, so that the assets may be " marked off " as and when realised, with particulars of the realisation recorded against each; but under either system (probate values or cash) a copy of the will and codicils (if any), with an epitome of same, is generally placed on the front pages of the Ledger—a few plainly ruled pages being provided for this purpose.

Note.—A copy of the will, with codicils (if any), and a copy of the schedule of the estate as prepared for probate, are indispensable to one who is responsible for the preparation of the accounts in connection with the administration of a deceased person's estate.

Where the probate values are incorporated in the accounts, the Ledger should be ruled with three cash columns for (1) the nominal value of investments; (2) the assessed value of same; and (3) income items. Where the probate values are treated in the Ledger Accounts in memo. form only, or where all unrealised values are ignored, the cash columns must be modified accordingly. A separate Ledger Account should be kept for each asset, but where several investments are made in the same class of stock or shares, they should be recorded in the same account.

The Ledger Accounts usually opened are:—

(1) *Capital (or Estate) Account.*

All capital receipts and payments are respectively credited and debited to this account either direct (from the Cash Book or Journal, as the case may be, and according to the system adopted) or by transfer from some special account as explained below.

(2) *Income Account.*

All receipts and payments on account of income are respectively credited and debited to this account. Sometimes a specified sum has been set apart so that the income thereof may be enjoyed by certain beneficiaries, in which case such income must be recorded distinct from the general income of the estate.

(3) *Interest and Dividends accrued to date of Death.*

This account records the apportioned parts of any receipts in the " nature of income " (in respect of a period covering the date of the

death) which are deemed capital of the estate, and also all interest and dividends due or declared or wholly earned prior to the date of the death, but not actually received until after the death. (See also the rule in *Allhusen v. Whittell*, 1867, 4 Eq. 295, referred to under *title* Apportionment.) When all such items are included, the total of same is carried to the credit of Estate Account.

(4) *Debts due to the Testator.*

This account records all receipts in respect of moneys due (or where probate values are adopted, the whole of the moneys due) to the testator at the date of the death, the total of same when ascertained being carried to the credit of the Estate Account.

(5) *Debts due by the Testator.*

This account records all payments in respect of the debts of the testator, the total of same when ascertained being carried to the debit of the Estate Account.

(6) *Funeral and Testamentary Expenses.*

These expenses may be kept together or in separate accounts; when the total of same has been ascertained, it is carried to the debit of Estate Account, being a charge against capital. (*See* Funeral Expenses, Testamentary Expenses.) With regard to an account for legacy duty, see below.

(7) *Executorship Expenses.*

An executor may charge against the estate all proper expenses incurred by him in carrying out the provisions of the will, but he will not be allowed any remuneration for his own time and trouble unless authorised by the will, nor will he be allowed to remunerate out of the testator's property any agent (solicitor, accountant, &c.), unless the services rendered were (1) really necessary, and (2) of such a character that he could not reasonably have been expected to perform them himself. But this general rule of law as to remuneration and reimbursement is, of course, subject to any contrary direction in the will. (*See title* Executor (Remuneration).)

(8) *Legacies.*

A separate account should be kept showing the payment of all legacies, and it is also advisable where some legacies are bequeathed free of duty, and others not so, to keep a separate account for legacy duty paid, so that the books may show that the precise provisions of the will in this connection have been carried out. (*See* Legacy Duty.)

In addition to the foregoing, separate accounts should be opened for (*a*) each investment (or asset where probate values are adopted); (*b*) each annuitant, tenant-for-life and/or residuary legatee according to circumstances. Where the testator was the proprietor, or part proprietor, of a trading concern, and the executor carries on or assists in carrying on the business, the assets and liabilities thereof should be kept distinct in the books of such business and not incorporated in the executor's accounts. All that is required to be done in this connection is to pass through the estate books such moneys, whether on account of capital or income, as may from time to time be received from the business, meanwhile keeping a record of its financial position as shown by the Balance Sheets prepared from time to time. Where the probate values are adopted, the value of the deceased partner's (or proprietor's) interest in the trading concern will, of course, be passed into the Ledger as a single item to the credit of the Estate Account, and treated as an asset in the accounts. Quite apart from the question of the " probate value " or " cash basis " systems, it is essential that the detailed accounts of a " trading executor " be not incorporated with the ordinary accounts of the administration, particularly where the executor's powers as to trading are limited to the amount of capital invested in the business at the death, or are otherwise restricted.

The accounts of the estate should be periodically balanced, and this is generally done annually, either upon the anniversary of the death of the testator, or upon some other convenient date. In particular, the accounts should be carefully balanced before making any specific appropriation of either capital or income to particular beneficiaries, so that where income is distributed half-

early or otherwise, the accounts should be prepared and balanced accordingly. For this purpose, however, no apportionment of income should be made in *favour* of the Income Account on the assumption that as dividends, interest, &c., are accruing due they will ultimately be received by the executor.

The position of the estate at any date will be exhibited as follows:—

(1) When the accounts are kept upon a cash basis, by a Balance Sheet recording the result of the executor's transactions, supplemented by (*a*) a schedule of the outstanding liabilities, if any (*e.g.*, unpaid legacies), and (*b*) an inventory of the assets as yet unrealised.

(2) Where the probate values are adopted, by a Balance Sheet showing upon the asset side (*a*) the unrealised assets at the probate values, (*b*) the investments of the executor at cost, and (*c*) any cash in his hands; whilst the liability side will show (*a*) the liabilities of the estate, (*b*) any specific appropriation of capital or income, and (*c*) the balance or balances representing Estate Account and unappropriated income (if any). (*See* Executor, Public Trustee.)

Executrix.—A woman appointed by a testator to administer his estate.

A married woman appointed executrix may sue and be sued, and may transfer stocks and shares independently of her husband as if she were a *feme sole*.

Exemption.—*See* Income Tax.

Exhibit.—Something shown to a witness when giving evidence; a document referred to in an affidavit and exhibited to the witness at the time the affidavit is sworn. The commissioner, or other person before whom such an affidavit is sworn, certifies the exhibit for the purpose of identification.

Expectation of Life.—The average "after-lifetime" of persons of a given age, ascertained by taking the excess from those who live long, and distributing it amongst those who die early, so as to place all upon an equality. The term can only be applied to the average expected after-lifetime of a large number of persons, for the expectation of life has no relation whatever to the probable after-lifetime of any given individual at any given age.

The expectation of life is chiefly used by actuaries for the purpose of *comparing* the vitality exhibited by various classes or communities, but it is *not* one of the functions involved in the calculation of the values of life annuities and the amounts of life assurance premiums, although an impression to the contrary is widespread.

"Life assurance is based upon the fact that "although the duration of life of a *particular* "*individual* is proverbially *uncertain* yet out of a "large number of persons the *number of deaths* "that may occur at each age is capable of very "accurate determination."

"The actual basis of all life assurance mone-"tary calculations is the Mortality Table, which "consists simply of three columns:—(1) The "age; (2) the number of persons surviving at "each age out of a given number living at the "initial age of the table (say age 10); and (3) "the number of persons dying between each age "and the next."

The *probabilities* of living and dying are thus ascertained, and when taken in conjunction with compound interest they are used in the calculation of the values of life annuities and the amounts of life assurance premiums; but these *probabilities* are quite distinct from the function called "expectation of life," the latter being obtained by dividing the total future lifetime of *all* the persons of a given age by the number of those persons.

The *complete* expectation of life allows for the portion of a year lived by each person in his year of age at death by adding half a year. When this is not taken into account it is called the *curtate* expectation of life.

Mr. Manley, President of the Institute of Actuaries (1899) said that if a person asked him

what *his* expectation of life was, he would reply:—

"I do not know how long you are going to "live, but if there were a thousand of you I "could tell very nearly how long on the *average* "you would *all* live. That average after-lifetime, "however, has nothing whatever to do with the "calculation of the premiums. When we insure "your life we cease to look upon you as a *unit*, "and you become to us one of a large class of "persons like yourself. Now we know within "reasonable limits how many claims out of that "class we shall have to pay the first year, and "how many the second year, and so on, until all "are dead; and we have to find the *average* "*contribution* (after allowing for accumulations "of interest) which you will all have to make to "enable us to pay these claims *as they arise*. "That contribution is the premium which you "have to pay." (*See* Life Annuity.)

Express Contract.—An agreement expressed either in writing or verbally.

Extension of Protest.—To *note* a bill and return it is sufficient *protest* with regard to bills returned to parties in the same city or town, but where the *protest* is required to be sent abroad, as in the case of foreign bills, the notary issues the recognised formal document, which proceeding is technically called the *Extension of Protest*.

Extraordinary General Meeting.—*See* General Meetings.

Extraordinary Resolution.—*See* Resolution.

F

Face Value.—The nominal value of a security, such as a bond, debenture, or share certificate, as distinct from the market value. (*See* Book Value.)

Factor.—Mercantile agents may be divided into two classes—factors and brokers. A broker ordinarily has not the possession of the goods in which he deals—he is a "mere negotiator"; but a factor is either entrusted with such possession, or the goods are held subject to his control. The general principles of the law of agency are, of course, applicable, whilst the Factors Act 1889 has extended the powers of, and afforded protection to, persons having *bonâ fide* dealings with mercantile agents as therein defined.

An outline of the Act of 1889 is given below, but the particular rights, duties, and authority of a factor are as follow:—

Rights:—

(*a*) The factor has a possessory lien upon the goods he holds *quâ* factor for any moneys due to him in the same capacity, unless there is an agreement to the contrary.

(*b*) The factor has a right to sue in his own name in respect of contracts made on behalf of his principal, subject to the latter's right to intervene under certain circumstances.

Duties:—

(*a*) The factor must render to his principal correct accounts of the agency transactions, and pay over on demand all moneys properly due from him.

(*b*) The factor must take reasonable care of the goods in his charge, and if it be in the usual course of dealing he must insure the goods.

Authority:—

(*a*) In the absence of instructions to the contrary, a factor may sell the goods entrusted to him in his own name. He may sell upon credit and upon such other terms as he may think advisable.

(*b*) Having sold goods in his own name, a factor may afterwards collect the proceeds.

(*c*) Being an apparent owner, it is the ostensible, rather than the actual, authority of the factor which will bind the principal as regards third parties acting *bonâ fide* and without notice of any special restrictions.

This is a general principle of agency, and has been extended by the Factors Act.

Many difficult matters pertaining to the transctions of factors have been decided by the Courts pon the question as to whether the factor was, reference to the particular transaction, acting the ordinary course of business.

The main provisions of the Factors Act 1889 ay be summarised as under:—

A factor may make a valid disposition of goods by way of sale, pledge, or otherwise, as if he had been expressly authorised to make the same, provided that *the factor*

(1) is, with the consent of the owner, in possession of—

(*a*) the goods, or

(*b*) the documents of title thereto, and

(2) is acting in the ordinary course of business,

and that the person taking under the disposition

(1) acts in good faith and gives consideration, and

(2) is unaware at the *time* of the disposition of any want of authority on the part of the factor.

Consent of the owner is presumed in the absence of evidence to the contrary, and a pledge of the documents of title to goods is deemed to be a pledge of the goods.

A pledge of goods by a factor as security for an *already existing debt* due from him gives the pledgee no further right to the goods than could have been enforced by the factor at the date of the pledge (*e.g.*, the factor's lien upon the goods for moneys due).

The consideration necessary for a valid sale, ledge, or other disposition of goods, is:

(1) Cash, or

(2) Other goods, or

(3) Documents of title to other goods, or

(4) A negotiable security, or

(5) Any other valuable consideration.

Provided that where the disposition is by way f *pledge* and the consideration given is *other han cash*, the pledgee only acquires a right in he goods to the *value* of the consideration given.

A factor may act through sub-agents if in the ordinary course of business.

Where a seller of goods retains, or a buyer obtains, possession of the goods or the documents of title thereto, such seller or buyer, as the case may be, may make a valid disposition thereof to any person receiving same in good faith and without notice of the rights of prior parties.

The lawful transfer of a document of title to goods to a person taking in good faith and for valuable consideration will defeat the vendor's lien and right of stoppage *in transitu*.

The Act does not authorise an agent to exceed or depart from his authority as between himself and his principal, nor does it exempt him from any civil or criminal liability for so doing.

The rights of the true owner are:—

(1) Before sale or pledge by the factor—the owner may recover the goods from the factor or *his trustee in bankruptcy*.

(2) After sale by the factor—the owner may recover from the buyer the price agreed to be paid for the goods, subject to any right of set-off the buyer might have against the factor.

(3) After pledge by the factor, but before subsequent sale by the pledgee—the owner may redeem the goods upon satisfying the claim of the pledgee, and paying the factor any money in respect of which he might have been entitled to a lien upon the goods.

(4) After pledge by the factor and subsequent sale by the pledgee—the owner may recover from the pledgee such portion of the proceeds of the sale as may be in excess of the pledgee's claim. (*See* Document of Title, Mercantile Agent.)

Factorage.—The commission allowed to a factor by his principal.

Falsification of Accounts.—If any clerk, officer, or servant shall wilfully and with intent to defraud, destroy, alter, or falsify any book, writings, or accounts of his employer, he shall be guilty of a misdemeanour, and be liable to imprisonment. (Falsification of Accounts Act 1875.)

Similar provisions with regard to bankrupts are contained in the Debtors Act 1869; with regard to "any person," in the Public Trustee Act 1906; with regard to directors, officers, or contributories of companies and others, in the Companies (Consolidation) Act 1908; and with regard to "any person," in the Assurance Companies Act 1909.

Fee Simple.—A freehold estate of inheritance, absolute and unqualified. This is the highest and most ample estate possible in lands within England. Although in theory there is no such thing as ownership of land by a subject, an owner in fee has absolute power of disposition.

Feme Sole.—*See title* Married Woman.

Fictitious Person.—"Whenever a name inserted "in a bill of exchange as that of payee is so "inserted by way of pretence merely, without any "intention that payment shall be made in con- "formity therewith, the payee is a fictitious "person within the meaning of the statute (Bills "of Exchange Act 1882), whether the name be "that of an existing person or of one who has "no existence, and the bill may in each case be "treated by a lawful holder as payable to "bearer." (Lord Herschell, *Re Vagliano.*)

Fiduciary Relationship.—The relationship of trustees to their *cestui que trust*, extending to constructive trustees, such as guardians, attorneys, partners, directors and promoters of public companies.

If a person stands in this relation and takes any gift or makes any bargain with his *cestui que trust*, ward, or client, he must be able to show that he dealt with the other party as a stranger would have done, taking no advantage of his influence or knowledge, and that he informed such other party of everything in connection with the transaction which he himself knew.

A person in this relation cannot ordinarily make a profit out of his position or office, and in particular he cannot make a secret profit, but under certain circumstances a bargain or tra action between the persons in such a position w be supported. There must, however, be t utmost good faith and a full disclosure of facts i all dealings, for where "influence is acqu're "and abused, or confidence is reposed an "betrayed," the transaction may be set asid (*See* Promoter.)

Fieri Facias.—Usually abbreviated *fi. fa.* A wri whereby one who has recovered judgment for an debt or damages may obtain execution of the pe sonal property of the judgment debtor, exceptin only his wearing apparel, &c., to the extent of £ (*See* Execution Creditor.)

Final Judgment.—*See* Bankruptcy Notice.

Final Meeting.—(Voluntary winding-up.) (S *title* Liquidator's Accounts.)

Finance.—The science of regulating mone matters; the adjustment of income to propose expenditure, and expenditure to availabl resources; the raising of money by subscriptio or otherwise to carry out, or assist in carryin out, a public or commercial undertaking.

Financial Books.—The books of a concern whic record its financial transactions; they are th Ledger, Journal, Cash Book, Purchase and Sale Books, &c. These books are more often referre to as the "Books of Account." (*See* Statistica Books.)

Fire Insurance.—A contract whereby the insurer i consideration of a sum paid to him, called premium, undertakes to indemnify the insure from any loss he may sustain (not exceeding th amount insured) in regard to the subject-matte of insurance by damage from fire.

Where, however, as is now usual, the polic contains an average clause, the insurer is onl liable to pay such proportion of the loss as th sum insured bears to the whole amount at risk i respect of the property included in the policy (*See* Assurance Companies Act, Insurable Interest.)

Firm.—The collective name given to persons who have entered into partnership with one another. The name under which they carry on business is called the firm-name.

The number of persons who may constitute a limited or general partnership is restricted to ten, when the object is to conduct a banking business, and to 20 persons for any other business. Any greater number necessitates registration under the Companies (Consolidation) Act 1908, or control by some other Act of Parliament. Although in Scotland a firm is a legal person distinct from the partners of whom it is composed, the law of England does not recognise such a distinction, the use of the firm-name being only a convenient form of referring to the *existing partners* of the firm.

An Act sanctioning the principle of limited partnership was passed in 1907, and provides *inter alia* for the registration of such partnerships. (*See title* Limited Partnership.)

Actions.—The firm-name may be used in legal instruments, and actions may now be brought by or against partners in their firm-name. Where a person trades alone in a name or style other than his own name, he may be sued in his own or the firm-name, but he must sue in his own name.

Bankruptcy.—For the purposes of the Bankruptcy Acts a firm may act by any of its members, and may take proceedings or be proceeded against in the name of the firm. But a declaration by a firm of inability to pay its debts or a bankruptcy petition of a firm must be made in the names of all the partners, or if in the firm's name must be accompanied by an affidavit of the partner who signs the firm's name showing that all the partners concur. (Bankruptcy Rule 261.) A receiving order made against a firm operates as if it were made against each of the existing partners, and the debtors must submit a statement of their partnership affairs, and each debtor must submit a statement of his separate affairs. 1883 Act, sections 115, 148. Rules 262, 263.)

An order of adjudication is not made against a firm in the firm-name, but against each partner individually. (Rule 264.) (For the administration of the assets *see* Joint and Separate Estates.)

Companies.—The name of a firm cannot be entered on the register of members of a joint-stock company. (*In re Vagliano Collieries*, 1910.)

Executorship.—A firm may be appointed executors, but in such an event probate would be granted to the individual members of the firm. (*See* Partnership.)

(As to infant members of a firm *see* Infant.)

First Entry (Books of).—Those books in which entries of transactions are first recorded in a system of bookkeeping, *e.g.*, Cash Book, Journal.

(*See title* Journal.)

First Meetings.—

COMPULSORY LIQUIDATION.

When the Court has made an order for winding up a company the Official Receiver must summon separate (first) meetings of the creditors and contributories for the purpose of determining whether or not application is to be made to the Court:—

(1) For the appointment of a liquidator in the place of the Official Receiver.

(2) For the appointment of a committee of inspection to act with the liquidator, and also for the purpose of selecting the members of the committee of inspection should one be appointed. (Companies (Consolidation) Act 1908, section 152.)

These separate meetings should be held within 21 days from the date of the winding-up order, unless a special manager has been appointed, in which case the meetings should be held within one month from the date of the order. The Court may, however, extend these periods. (Winding-up Rules 1909, Rule 115.)

VOLUNTARY LIQUIDATION.

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 will be held on a date not less than fourteen days nor more than twenty-one days after his appointment, and shall also advertise notice of the meeting once in the *Gazette* and once at least in two local news-

papers circulating in the district where the registered office or principal place of business of the company was situate.

At the meeting 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. (Companies (Consolidation) Act 1908, section 188.) (*See* Voluntary Liquidation.)

BANKRUPTCY.

The first meeting of creditors should be summoned for a day not later than 14 days after the date of the receiving order, unless the Court for some special reason extends the time.

———

(For first meeting of a company *see title* Statutory Meeting.)

First Mortgage.—A charge upon property having priority to all others. If it is a *legal* mortgage the legal ownership of the property is vested in the mortgagee, the equitable ownership remaining with the mortgagor, who has a right to redeem his property. (*See title* Equity of Redemption.)

First of Exchange.—*See* Bill in a Set.

Fixed Capital.—Capital employed in the purchase of lands, in executing works, erecting buildings and machinery, not for the purpose of selling same at a profit, but for the purpose of making a profit, or a series of profits, from their *use and employment* during a period of time. Such capital, however, is not, strictly speaking, *fixed*, it is only fixed for a time (varying according to circumstances), as the assets representing the outlay are subject to wear and tear and other depreciating factors. In ascertaining the profits derived from the outlay, the necessary "replacement" should therefore be allowed for. Legal decisions have in certain instances been given, relieving joint-stock companies of the necessity of providing for the shrinkage of "fixed" assets, such as quarries, mines, patents, permanent investments, &c., but this does not affect the fact that such a policy is unsound financially, for there is obviously no necessary relationship between that which *should* be done as dictated by accountancy principles, and that which *need not* be done, merely because no legal obligation exists. (*See titles* Annual List and Summary, Balance Sheet, Capital, and Depreciation.)

Fixed Charges.—Expenditure more or less inevitable, occurring periodically in determined amounts. Ordinarily, such expenditure does not vary with the volume of trade done in the particular period, but remains fixed, rent, rates, and debenture interest being familiar instances of it.

Fixed Plant.—Machinery and its accessories employed in manufacture or in carrying on a business; so called from the fact that it is permanently located upon the business premises or lands—*e.g.*, engines, boilers and shaftings. (*See* Depreciation, Loose Plant and Tools.)

Fixtures.—Things annexed to houses, buildings, or lands, which on annexation become part of the land.

As between *landlord and tenant* where chattels are not let into the land they may be removed by the latter, not being deemed fixtures; but where they are affixed to the land or the premises thereon, they cannot again be severed without the landlord's assent. Machinery and the like may, however, be erected in such a manner that they will not be deemed fixtures, and may then be removed. In any case *trade utensils* and accessories may be removed by the tenant, provided the removal does not injure the landlord's property and it is upon this principle that market gardeners, nurserymen, &c., are allowed to remove their fruit trees and shrubs, as forming part of their stock-in-trade.

Bankruptcy.—Fixtures are not included in the term "goods" within the meaning of the "order and disposition" clause, but if they are removable by the tenant they form part of the property divisible amongst his creditors in the event of bankruptcy. As the disclaimer of an onerous lease is not now retrospective but operates from the date of disclaimer (if duly filed in Court), a trustee in bankruptcy may before disclaiming remove the tenant's fixtures, or call upon the landlord to take them over at a valuation

Should the landlord decline to pay for the fixtures, he must give the trustee reasonable time and opportunity to remove them.

Mortgage.—In the absence of a contrary intention, fixtures annexed to the land will pass to the mortgagee under a mortgage of the land, and form part of the security, whether mentioned or not, and whether affixed before, at, or after the execution of the mortgage deed. Fixtures are within the scope of the Bills of Sale Acts when separately assigned or charged, but fixtures (which here *exclude* trade machinery) are not within the Acts when assigned together with the freehold or leasehold interest in the land to which they are annexed. Trade machinery is therefore deemed to be "personal chattels" for the purposes of the Acts, and is there defined as "machinery used in or attached to any factory or workshop," exclusive of fixed motive powers, boilers, shafting, steampipes, &c. Thus, if a mortgagee acquires an interest in the trade machinery above defined distinct from the land, with powers of selling such machinery *separately*, the Acts will apply and he must take a bill of sale. But if they are *not* separately assigned by virtue of a bill of sale they still pass to the mortgagee along with the freehold, and form part of it. He can thus acquire a title to and sell the whole of the motive powers, boilers, &c., and fixed "trade machinery," including belting, &c. &c., along with the freehold, but he cannot *sever* one from the other. (*Batcheldor v. Yates*, C.A. 1888; and *Brooke v. Brooke*, 1894.)

Sale.—The expression "goods" in the Sale of Goods Act 1893 includes "all things attached to "or forming part of the lands which are *agreed "to be severed* before sale or under the contract "of sale." To bring a sale of fixtures within the Act there must therefore be an agreement as to severance, and it appears that an implied agreement to that effect is insufficient.

Treatment in Accounts.—Although the fixtures of a trader may not be removable by him, he has a beneficial interest in them during the period of his tenancy, and as a consequence he may rightly consider the fixtures as an asset, at a value dependent upon circumstances. The probable fixity of tenure must be considered in dealing with the asset, and where a lease exists the matter is simplified. Assuming a trader has a lease of his premises, the cost of the fixtures would form the "foundation value." The fixtures, with their respective costs, then require to be divided into "removable" and "immovable." The "removable" class must then be depreciated at such a rate as will reduce the book value to the residual or "break up" value at the date of sale or expiration of lease, whichever happens first. The rate of depreciation of the "immovable" class must be such as will entirely exhaust the book value at the expiration of the lease, but some reduction may be made in such rate in special cases where there is reasonable cause to expect a renewal of the lease. On the other hand, in assessing the rate of depreciation consideration must be given in some cases to the possibility of being compelled to replace some of the fixtures at a *late period* in the lease with little opportunity subsequently of writing same off out of profits. Of course, in common with other assets which are subject to wear and tear and depreciation, the fixtures should be classified in order to arrive at the respective rates for the different groups, but where the "life" of a wasting asset is longer than that of the lease of the premises wherein it is fixed, and the asset is immovable on the expiration of the lease, the length of the lease is the material factor in assessing the rate of the depreciation. (*See* Depreciation.)

Floating Capital.—The assets of a trader which are being continually transformed; such assets as he parts with and replaces (in some cases at a profit) in a single operation. Cash, debts, and stock-in-trade, are instances of floating capital. (*See titles* Capital, Fixed Capital.)

Floating Charge.—"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 conditions in "which it happens to be from time to time. It "is the essence of such a charge that it remains "dormant until 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." (Lord Macnaghten, *Manila Railway* case, 1897, A.C. 81.)

Note.—In *Illingworth v. Houldsworth* (1904, A.C. 355) Lord Macnaghten explained that his observations in the *Manila* case (*supra*) were not intended as a definition of a floating charge, but only as a description sufficient to enable such a charge to be distinguished from a specific mortgage.

" They (the debentures) constitute a floating " security—that is to say, they allow the com- " pany to deal with its assets in the ordinary " course of business until the company is wound " up, or stops business, or a receiver is appointed " at the instance of the debenture-holders; or, as " it has been said, they constitute a charge, but " give a licence to the company to carry on its " business. So long as the debentures remain a " mere floating security, or, in other words, the " licence to the company to carry on its business " has not been terminated, the property of the " company may be dealt with in the ordinary " course of business, as if the debentures had not " been given, and any such dealing with a par- " ticular property will be binding on the deben- " ture-holders, provided that the dealing be com- " pleted before the debentures ceased to be merely " a floating security." (Romer, J., *Robson v. Smith*, 1895, 2 Ch. 118.)

A seizure under an execution on a judgment against the company is not a dealing by the company in the ordinary course of business. The transaction cannot be called a dealing by the company at all—it is rather a compulsory legal process directed against the company. (*Davey & Co. v. Williamson & Sons*, 1898, 2 Q.B. 194.)

But see *Evans v. Rival Granite Quarries, Lim.*

Every mortgage or charge created after the 1st July 1908 by a company registered under the Companies Acts (now the Consolidation Act of 1908), and being a floating charge on the undertaking or property of the company, must be registered with the Registrar of Joint Stock Companies. (Companies (Consolidation) Ac 1908, section 93.)

(*See title* Register and Registration o Mortgages.)

A floating charge created within three month of the commencement of a winding-up shall unless it is proved that the company immediately after the creation of the charge was *solvent*, b invalid except to the amount of any cash paid t the company at the time of or subsequently to the creation of, and in consideration for the charge together with interest thereon at 5 per cent. pe annum. (Companies (Consolidation) Act 1908 section 212.)

The definition of the word " solvent " in this connection may give rise to some difficulty, particularly in view of section 130 (iv) of the same Act. The Courts have held that insolvency means inability to pay debts actually due—*i.e.*, debts which can be demanded to be paid instantly. (*Re European Life Assurance Co.*, 39 L.T. 136; L.R. 9 Eq. 122.) This was a question as to whether an order to wind up the company should be made under sections 79 and 80 of the Companies Act 1862 (now sections 129 and 130 of the Consolidation Act of 1908), on the ground that the company was unable to pay its debts.

And in *R. v. Sadlers Co.* (32 L.J., Q.B. 337) Willes, J., said, " in insolvent circumstances " has always been held to mean not merely being behind the world *if an account were taken*, but insolvency to the extent of being unable to pay just debts in the ordinary course of business.

(The Sale of Goods Act 1893 adopts this definition.)

But section 130 (iv) of the Companies (Consolidation) Act 1908 provides that in determining whether a company is unable to pay its debts within the meaning of section 129 the Court shall take into account (not merely the present and certain debts as hitherto but also) the contingent and prospective liabilities of the company. Presumably, these must be taken into account in liquidation proceedings when considering the question of solvency if a floating charge has been given within three months of the commencement of the winding-up.

Subsection 2 of section 48 of the Bankruptcy Act 1883, which defines a fraudulent preference in bankruptcy, expressly states that the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt shall not be affected. No such protection is afforded by section 212 of the Companies (Consolidation) Act 1908; therefore a person taking a *transfer* of debentures secured by a floating charge on a company's assets given within three months of the transfer, should satisfy himself that the charge is not liable to be set aside under section 212.

(*See titles* Debenture, Execution Creditor, Receiver, Undertaking.)

Floating Policy.—One issued for a large amount to cover a certain specified class of risk, which amount is subsequently appropriated in smaller amounts by declaration made from time to time by the insured.

Flotsam.—*See* Jettison.

F.O.B.—Free on board. Goods purchased "f.o.b." are not at the risk of the purchaser until on board, but when on board they are at the purchaser's risk and he is liable for the freight. (*See* C.F.I.)

Folio.—A sheet so folded as to make two leaves without further folding; in law writing, a folio sometimes means a single page, and in other cases so many words, varying from 72 to 100; in bookkeeping, a folio, strictly, consists of the two pages presented to view when a book is laid wide open, both of which are indicated by the same "page number"; the term folio, however, is often used to denote all types of page notation, whether "folio" or otherwise.

Footage.—The royalty payable by the lessee of a mine is sometimes calculated at a fixed rate "per foot in thickness" of the area worked during the period. This is termed "footage."

Foreclosure.—The determination of a mortgagor's right to redeem his pledge; the extinguishment of the equity of redemption. (*See that title.*)

Foreign Bill.—*See* Inland Bill, Protest.

Foreign Exchanges.—*See* Par of Exchange, Rate of Exchange.

Foreign (Incorporated) Companies.—The Companies (Consolidation) Act 1908 provides:—

Section 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. (*See title* Balance Sheet.)

(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.

(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.

Note.—The Islands of Man, Jersey, Guernsey, Alderney, and Sark are not within the United Kingdom.

Foreign Systems of Accounting.—

FRANCE.

There is no particular form of accounts prescribed by law, but every trader is required by the Code of Commerce to keep three books—the Journal, Inventory Book, and Letter Book. Before commencing to use a Journal, every folio must be initialled by a Judge of the Commercial Tribunal (or other officer), who also certifies the number of folios in the book. The initials of the Judge placed upon the pages are intended as a preventative against the extraction of leaves from the book, or the manufacture of special books either for presentation to the Court in an action at law, or for presentation to the official in the event of bankruptcy. The trader must enter all his transactions in the Journal day by day—his acceptances, negotiations, and indorsement of bills, and his receipts and payments—and he must set out month by month the sums disbursed on his household expenses. No erasures, blanks, or marginal additions to entries are permitted. To avoid erasures and marginal additions a rough or draft Journal is kept by some concerns.

The pages of the Inventory Book must also be initialled by a Judge of the Commercial Tribunal (or other officer), and must contain a private inventory of the trader's real and personal estate and his debts, prepared annually, and signed by the trader.

The Letter Book must contain a press copy of all letters issued by the trader. This book does not require to be initialled officially.

Of course, traders may, and in many cases they do, keep other books, varying according to the requirements of the particular businesses, and the compulsory Journal is to a great extent a mere repetition of the entries in the Cash Book, Sales Book, Purchase Book, and such like subsidiary books, in weekly, monthly, or other periodical totals.

Non-compliance with the provisions of the code will deprive a trader of the form of evidence required by the Courts where accounts are concerned; therefore, where the compulsory books

are of themselves insufficient to provide suitable records, auxiliary books are resorted to, and the compulsory records are kept in an abbreviated or total form. This obviously nullifies the undoubted benefit which in many cases lies in that chronological record which the orthodox treatment of a Journal affords, and to a great extent weakens the check which the initialling of the books by the Judge is supposed to exercise.

With regard to the interpretation of the Commercial Code opinions vary largely. The code seems to be used principally as a weapon with which to combat any suggestions for alterations or improvements in the existing systems of bookkeeping. If an accountant makes a suggestion to a French bookkeeper as to an alteration in his methods, he is at once confronted with the provisions of the Commercial Code. The interpretation put on the code by one person will be that the Cash Book entries may be summarised and put through the Journal in total, and that the Sales Book entries may be similarly treated, but that it is absolutely imperative that purchases should be shown in the Journal in detail.

Another will contend that, while the purchases might be put through the Journal in total, the sales must undoubtedly be shown in detail, so that if any dispute arises as to the balance owing by a debtor, the Ledger, if produced in Court, can be proved by the Journal.

Yet another bookkeeper will include in the Journal the totals of the Purchase Book and the Sales Book, but will put all cash and bill transactions through in detail.

However, an eminent French counsel, in dealing with the question of books in evidence, has expressed the opinion that, so long as the requirements as to the compulsory books are correctly complied with, however formally, the auxiliary books may be produced in evidence to support in detail what is contained in the compulsory books in total. But the auxiliary books cannot be accepted as evidence to contradict the compulsory books.

Germany.

There is no special form of compulsory bookkeeping, but the code provides that every commercial man shall keep books and enter therein all his transactions so as to show his financial position. The account books must be bound, and the pages numbered; all letters received and copies of all letters despatched are to be retained. No blank spaces are to be left in the books; an original entry, if incorrect, is not to be erased, the alteration must be struck out in such a way that the original entry shall not be illegible, and so that there will be no uncertainty whether the amended entry belonged to the original entry or was made afterwards. The letters and copies are to be retained, and account books kept for a period of ten years. The period as regards books runs from the date of the last entry in same.

An inventory and Balance Sheet are to be drawn up when commencing business, and at the end of every business year within a reasonable time after the balancing date commensurate with the regular conduct of the business. Where stock-in-trade, from its nature or its size, is difficult to take, the inventory of same may be taken every two years, but an annual Balance Sheet must be prepared notwithstanding. The Balance Sheet and inventory must be entered in a book and signed by all the proprietors.

Non-compliance with the legal requirements of the code as regards accounts may seriously affect the merchant's rights in the Court in the event of legal proceedings, and may possibly non-suit him, and in the event of bankruptcy his position will be prejudiced, but there would appear to be no direct penalty for breach of the law with regard to account keeping.

The German law does not prescribe a Journal. But the law of Germany is unique in that it requires the books of a merchant to be *bound* and the pages numbered consecutively. Therefore, although the Card Ledger and Loose-leaf Ledger systems are being advertised on the Continent as they are here, it is considered at least doubtful whether any unbound records will be admissible in a German Court of law. Some contend that if the subsidiary books are kept they will be admissible, although the Ledger is on the Loose-leaf or Card system. At all events, the representatives of the Loose-leaf Ledger system frankly

recognise the difficulty with regard to this particular requirement of the German Code, but it will probably be settled upon the basis of the French practice already referred to.

The Journal is, however, in use in Germany, and the Double-entry system is generally adopted. Moreover, subsidiary books of first entry are now being used instead of passing all entries through one Journal.

In " share-capital " companies in Germany the practice obtains of accepting from a shareholder a bill of exchange or promissory note for some portion of his unpaid capital, the shares then appearing in the books as fully-paid, the bill or note being treated as an asset.

It is interesting to note that the German Code provides that the accounts shall be expressed in the State currency, and the books kept in the words and characters of a *living* language.

United States.

There are two forms of law: Federal, applying to all States in the Union; and State law, applying to particular States.

The Bankruptcy Law 1898 (Federal) provides that a bankrupt's discharge may be refused if (*inter alia*) he has failed to keep books of account or records from which his financial condition might be ascertained. Apart from this, there is no law (whether Federal or State) providing for bookkeeping by traders.

There are no statutory forms of accounting prescribed either for insurance companies or railway companies. But under the various State laws certain annual returns have to be made by insurance companies in the different States. Railway companies also have to make certain annual returns, not only to the capitals of their respective States, but also to Washington, giving full details of the Revenue Accounts and Balance Sheets. The forms of account adopted by the various railway companies in the United States are those prescribed by the Inter-State Commerce Commission, as compiled by the Association of American Railway Accounting Officers. These particular forms are largely adopted and tend to uniformity. They are not compulsory, but they were designed to some extent to meet the special requirements of the returns, which are compulsory.

The accounts of the National Banks, State Banks, and certain of the trust companies are subject to an official audit, but no statutory form of accounts is prescribed for same.

Belgium.

Every merchant must keep a Journal showing day by day his assets and liabilities, his business operations, his negotiations, acceptances, and indorsements of bills, and all his receipts and payments on whatever account, and he must exhibit month by month the sums he has disbursed on his household expenses, and all this must be recorded independently of the other books used in the business, which are not compulsory. He must file and retain all letters and telegrams received, and preserve copies of all such issued. He must prepare a Balance Sheet annually, and enter same in a book kept for this special purpose. The Journal and Balance Book must be initialled by a prescribed officer. All entries must be made in order of date, without erasures or transfers, and there must be no blanks. The books must be kept for ten years from the date of the last entry therein.

Spain.

The Commercial Code of Spain (based upon the Code Napoleon) provides for the keeping of the following books:—Inventory, Journal, Ledger, Letter Book, and Invoice Book, but no special form of accounting is prescribed.

Portugal.

No particular form of accounting is prescribed, but every trader must keep a Balance Book, Journal, Ledger, and Copy Letter Book.

The Journal need not be a chronological record, for auxiliary books may be kept classifying the entries as regards sales, purchases, cash, and so on; but in such cases summary entries in total form must be made in the Journal either weekly or monthly.

Russia.

No particular form of bookkeeping is prescribed, or any special books, but the laws are very strict as regards bookkeeping generally, and the penalties for non-accounting in the event of bankruptcy are severe; and as every business is liable to income-tax, some form of bookkeeping is indirectly rendered compulsory, for the Government officials have the right to examine the books of any concern for the purpose of determining the assessment.

What are called public share companies must supply the Government with a Trading Account, Profit and Loss Account, and Balance Sheet each year, and these accounts are published in a State newspaper.

Holland.

No particular book or form of accounting is prescribed by law, but it is compulsory that a commercial man shall keep books, in which he shall correctly record his (1) commercial transactions, (2) letters received, and (3) copies of letters issued.

He must also prepare a Balance Sheet annually, and, within six months after the expiration of each year, he must enter such Balance Sheet in some book and sign same.

There is no direct penalty for failing to keep proper books as prescribed by law, but, indirectly, the trader will be subjected to considerable disability should he need to enforce any transaction through the medium of the Courts, and he may also suffer at the hands of the income-tax authorities.

There is a type of trading concern constituted somewhat similarly to our own limited liability company, having its capital divided into shares, which must publish its Balance Sheet in the State newspaper—the equivalent to our own London *Gazette*.

Roumania.

The Journal and Inventory Book are compulsory, and a small tax per page is payable. A Ledger also must be kept, but it is not liable to duty.

Forfeiture of Shares.—The articles of association of a company limited by shares invariably confer power upon the directors to forfeit the shares of a member upon default in payment of calls, or other moneys presently payable on the shares, and to sell the same after forfeiture. Table A (Companies (Consolidation) Act 1908) where applicable confers powers of forfeiture and provides the necessary procedure. The formalities required by the articles must be strictly complied with, for any irregularity may invalidate the forfeiture. The forfeiture must be exercised for the benefit of the company and adversely to the shareholder; if the purpose of forfeiture is to enable a member to avoid his liabilities as such, the transaction may be set aside. Where the articles provide that, notwithstanding forfeiture, a member remains liable for calls owing at the date of forfeiture, the sale of forfeited shares may leave both the member whose shares have been forfeited and the purchaser liable for the amount due on forfeiture. The purchaser, however, would be entitled to credit for subsequent payments by the former holder. (*Randt Gold Mining Co.*, 1904, 2 Ch. 468.) On the other hand, should the purchaser pay the whole amount unpaid on the shares, the former holder would be relieved from his liability. The forfeiture of a share merely, would not relieve the *quondam* holder of the liability to be placed upon the list of contributories; nor would a " past " member who transferred his shares within a year from the winding-up escape the liability of a " B list " contributory even though the shares had been subsequently forfeited through the default of his transferee. A valid forfeiture of shares does not amount to a reduction of capital within the meaning of the Companies (Consolidation) Act 1908, and ordinarily the directors may re-allot, or otherwise dispose of, the forfeited shares as they may think fit.

The annual return of capital must state the particulars of any forfeited shares, and it is submitted that shares once issued, together with any moneys received in respect thereof, *remain part of the capital* of the company notwithstanding subsequent forfeiture. But it is necessary in the Balance Sheet of the company to state such

shares and moneys separately from the "dividend bearing" capital; and when the forfeited shares are re-issued, any *surplus* thus obtained may be transferred to a Reserve Account, but as a matter of fact there is no general rule of law against such a surplus being distributed in dividend.

That money received in respect of shares which have subsequently been forfeited may, nevertheless, remain part of the capital of the company is shown by the decision in *Morrison's* case (1898). Here the articles of association of the company provided that forfeited shares should be deemed to be the property of the company, and that the directors might sell, re-allot, or otherwise dispose of the same in such manner as they might think fit. The company having a number of forfeited shares upon which the sum of at least £3 per share had been paid, entered into an agreement for the sale of these shares for 30/- per share on the condition that such shares be *credited* in the books of the company as being paid up to the extent of £2 5s. per share. An action was brought by a shareholder to restrain the company from carrying out the agreement on the ground that the transaction amounted to the issue of the shares at a *discount;* but it was decided that the company could deal with the shares and *credit* them as partly paid up to such extent as might be agreed upon, provided the amount so credited *as having been paid up* did not exceed the sum which had been paid up on each share at the time of forfeiture, and provided, of course, such sum had remained undistributed.

Forged Acceptance.—*See* Acceptance.

Forged Indorsement.—*See* Indorsement.

Forged Transfers of Shares, &c.—The Forged Transfers Acts 1891 and 1892 provide:—

(1) That any local authority or company duly incorporated *may* compensate by a cash payment out of its funds for any loss occasioned through the invalidity of a forged transfer.

(2) That the company or other body *may* charge a fee for each transfer (*i.e.*, an additional fee) to provide a fund for such compensation.

(3) That the company or other body *may* pay compensation to a person who has suffered loss from a forged transfer, whether he has contributed to such fund or not.

A number of the larger companies pay compensation or have undertaken to do so without any fee, but the Acts do not *impose an obligation* to compensate—they merely give a power which the company may exercise if it thinks fit.

The above provisions refer to the loss incurred by the *transferee* under the forged transfer, for the *real owner* of the stock or shares in question is entitled to be re-registered, whether the "transferee" be compensated or not, and any dividends paid whilst his name has been off the register must be repaid to him by the company. (*See title* Certificate.)

It is the practice of many companies, in order to ensure greater security, to send a letter to the transferor, or to each of the transferors named on a transfer deed, stating that certain stock or shares is or are about to be transferred from him to another, and that such transfer will be registered unless due cause to the contrary be shown within a stated number of days.

This must necessarily have beneficial results, for knowledge on the part of a fraudulently inclined person that such a practice is carried out by a company will act as a preventative, quite apart from the opportunity thus afforded to holders of stock to prevent a forged transfer being registered, but

(1) The company is under *no obligation* to give this notice; and

(2) The notice having been given, the alleged transferor is not estopped from subsequently impeaching a forged transfer by reason only of his neglect to reply to such notice.

In *Sheffield Corporation v. Barclay & Co.* (1905, A.C. 392) it was held that Messrs. Barclay by tendering a transfer for registration, which

ultimately was found to be a forged document, impliedly undertook to indemnify the Corporation in respect of any liabilities which might arise in consequence of registering and acting on the same, and were liable to the Corporation accordingly. (*See title* Certificate.)

rmation Expenses.—The expenses in connection with the formation of a company, syndicate, or other similar body. As regards a company, they are sometimes referred to as the "expenses of promotion," but more generally as the "preliminary expenses." (*See title* Preliminary Expenses.)

rm IV.—A form issued by the Inland Revenue authorities in 1910 to all persons interested in the ownership of land to enable them to return the necessary particulars for the purpose of valuation in pursuance of the provisions of the Finance (1909-10) Act 1910. (*See titles* Increment Value Duty, Land Values, Mineral Rights Duty, Reversion Duty, Undeveloped Land Duty.)

rm of Assent.—When a debtor executes a deed of assignment for the benefit of his creditors, or makes any proposal, and it is inconvenient to send out the original document for execution by each creditor, a circular letter in the form of an assent to the arrangement is issued to each creditor so that he may sign and return same should he think fit. (*See* Deed of Arrangement.)

unders' Shares.—Shares in the nominal capital of a joint-stock company allotted to the founders or to other persons under the following circumstances:—

(1) To the promoters or underwriters of the company by way of remuneration for their services, or in consideration of their undertaking to pay the preliminary expenses of the company or to guarantee the issue of the capital.

(2) A vendor sometimes desires part of his purchase-money in founders' shares, or in a speculative concern he may be required by the company to take payment in that way.

(3) As an inducement to likely subscribers of capital it is sometimes arranged that for, say, every £1,000 of ordinary shares subscribed for by any one person, such subscriber will be entitled to an allotment of, say, one founder's share.

Founders' shares are generally few in number and of small (nominal) amount, and in a successful undertaking may prove of great (intrinsic) value.

The shares, as a rule, carry exceptional rights, such as one-fourth of the surplus profits after paying a stated dividend upon the ordinary shares, and this may easily result in a return of 100 per cent. per annum or more, because of the comparatively small (nominal) value of the shares. There are numerous instances of a £10 founder's share being worth over £1,000.

The value of a founder's share may be considerably affected by a discretionary clause in the company's regulations relative to Reserves, Depreciation Fund, and such like.

Where the founders' shares were entitled to a certain proportion of all the profits available for dividend in excess of 15 per cent., it was held that "profits available for dividend" meant the profits remaining after the directors had made such deductions as they considered proper under the discretionary clause in the articles of association, and they were accordingly entitled to carry part of the profits to a Reserve Fund, although as a consequence the founders' shares were deprived of a dividend. (*Fisher v. Black and White Publishing Co.*, C.A. (1901), 1 Ch. 174.)

The rights attached to the shares may be stated in the articles of association, but it is more general to specify them in the memorandum, and thus render the rights immutable. In addition to a special share in the profits, extra voting powers may be attached, together with a specified proportion of the surplus assets (if any) in the event of the company being wound up.

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, must be stated

in every prospectus. (Companies (Consolidation) Act 1908, section 81.)

No provision is made for the insertion of these particulars in the "Statement in lieu of Prospectus" (*see that title*), which must be filed by certain companies.

F.P.A.—Free from particular average. (*See* Particular Average.)

Fraud.—Fraud is a false representation of fact made with a knowledge of its falsehood, or recklessly without belief in its truth, with the intention that it should be acted upon by the complaining party and actually inducing him to act upon it.—[Anson.]

A contract induced by fraud is voidable—not void—and the person defrauded may either

(1) Adopt the contract, and require (*a*) performance, or (*b*) damages for non-performance, or

(2) Avoid the contract.

But on becoming aware of the fraud notice of intention to avoid must be given, or the party may be held to the contract, subject, of course, to a right of action for deceit. If third parties acquire rights in property *bonâ fide* and for value before the avoidance of a fraudulent contract under which the property was originally obtained, such rights are valid as against the defrauded party, with one exception, viz., where goods are obtained by personation.

Prior to the Sale of Goods Act 1893 a defrauded owner might recover his goods from a *bonâ fide* purchaser for value, on prosecuting the offender to conviction, but section 24 of that Act provides that "where goods have been obtained "by fraud or other wrongful means *not amount-*"*ing to larceny*, the property in such goods shall "not re-vest in the person who was the owner of "the goods, or his personal representative, *by* "*reason only* of the conviction of the offender."

The convicting Court may, however, make a "restitution order." (*See title* Larceny.)

From an accountant's point of view fraud is more particularly of importance in connection with the falsification of books and accounts. Frauds of this nature may be committed from various motives, but the most usual are:—

(1) To conceal a fraudulent abstraction of cash or stores.

(2) To manipulate accounts so as to show a particularly desired trading result, such as a false rate or amount of profit for a particular period.

The mere fact that one in a position to commit fraud will not gain any apparent benefit by it should not be taken as suggestive that fraud will not take place.

Cash frauds will usually take the form of:—

(1) The suppression of the fact that certain cash has been received and failure to account therefor.

(2) A false statement as to cash paid away, or alleged to have been paid away.

It will considerably assist an auditor, in the prevention of fraud of this nature, if a thorough system of bookkeeping is in force and a close internal check is kept by the various members of the staff upon each other; in particular as a matter of individual arrangement, no cashier should be concerned in the writing-up of Ledgers, and no Ledger clerk should be allowed to collect debts or otherwise become accountable for cash.

One of the most common forms of tampering with cash is the falsification of the Bank Pass Book (*see title* Bank Book), either by an alteration of the entries therein, or by the obtaining of a duplicate from the bank under the plea that the old book has been lost, or otherwise. An auditor should, therefore, carefully verify the entries, including the *dates*, in the Bank Pass Book, and also satisfy himself by application to the bank that the Pass Book submitted to him is genuine, or obtain a certificate as to the balance of the account from time to time.

In addition to the internal check by the staff, referred to above, cash received may be verified, where practicable, by Counterfoil Receipt Books, by surprise visits of the auditor to count the cash, and, where possible and expedient, by changing the person in charge of the cash. (*See title* Register of Counterfoil Receipt Books.)

Payments should be carefully vouched, and care taken that all sums of any magnitude are paid by cheque. The petty cash should be kept upon the "imprest" system (*q.v.*). Ledger "transfers" and items written off as "allowances" and "bad debts" should also be examined, and, where possible, independently vouched. Journal entries should receive particular attention, and should be vouched in detail.

Frauds having for their object the manipulation of accounts, apart from the cash transactions, will usually take the form of:—

(1) Understatement of liabilities

(*a*) To trade creditors (*e.g.*, by the suppression of a purchase of goods).

(*b*) To loan creditors; and

(*c*) To subscribers of capital.

(2) Overstatement of assets, such as

(*a*) Inflation of stock-in-trade;

(*b*) Inflation of book debts, *e.g.*, by the retention upon the Ledger of debts which have been collected or which are known to have become worthless; and

(*c*) Overvaluation of plant and other assets.

All these are matters for careful scrutiny by an auditor. (*See title* Investigation.)

Frauds, Statute of (1677).—This statute requires certain transactions to be in writing or otherwise evidenced, to prevent fraud and perjury. The provisions with regard to leases and conveyances have been amended by the Real Property Act 1845, and the combined effect of the two statutes may be summarised thus:—

(1) Leases for three years or less need not be in writing if the reserved rent is at least two-thirds of the improved annual value.

(2) Leases for upwards of three years must be in writing, signed by the party or his agent authorised in writing (Statute of Frauds), also sealed and delivered. (Act of 1845.)

(3) Leases required to be by deed, but reduced to *writing only*, may be enforced as agreements for leases, but agreements for leases not in writing cannot be so enforced, even if for less than three years, because of section 4 of the Statute of Frauds. (See below.)

(4) Assignments, grants, and surrenders of leases must be by deed. This applies to *all* leases, so that although certain leases may validly be by parol (see No. 1 above), they can only be assigned by deed.

The provisions as to leases for three years or less may be re-stated thus:—(*a*) A verbal lease is good; (*b*) a verbal agreement for a lease is not enforceable; and (*c*) the assignment of a verbal lease must be by deed.

The fourth section of the Statute of Frauds provides that no action shall be brought in respect of the following unless the agreement or some memorandum or note thereof upon which such action is brought is in writing signed by the party to be charged or his agent duly authorised, viz.:—

(1) A promise by an executor or administrator to answer damages out of his own estate.

(2) A promise by any person to answer for the debt, default, or miscarriage of another (*i.e.*, a guarantee, but not an indemnity).

(3) An agreement made in consideration of marriage. (*Note.*—Not a promise to marry.)

(4) A contract for the sale of lands, &c., or any interest in or concerning them.

Note.—A deposit of title deeds of lands with a creditor without a written memorandum has been held sufficient to create an equitable charge on such lands notwithstanding the provisions of section 4. This has been referred to as a "judicial repeal" of the Statute of Frauds. Various reasons for this exception to the provisions of the section have been given, the following being the chief of them:—

(*a*) Such a contract is partly executed and is not a contract *to be* performed.

(*b*) The solemnity of the act of deposit is presumptive evidence that an agreement for an equitable mortgage was intended (although in fact no such agreement was made in writing).

(*c*) To regard the deposit as invalid would be incompatible with the recognition of equitable mortgages.

(*d*) Deeds so deposited could not be recovered at law, and if an attempt to recover them were made in equity the depositor would be required to do equity—that is, to pay the money he had borrowed on the security of the deeds.

(*e*) As the Statute of Frauds is intended to prevent fraud, it is a general principle of equity not to permit it to be set up as a means of protecting fraudulent acts.

(5) An agreement which is not to be performed within the space of one year from the making thereof.

Note.—An agreement which the parties *intend* shall not be performed within a year is within the statute, but an agreement not so intended will not be within the statute merely because the performance does, in fact, extend beyond a year. As an instance, a contract for a year's service to commence a month hence would, but an engagement for nine months would *not*, require to be in writing, even if the latter ultimately extended beyond a year.

The fourth section does not require the whole of the contract to be in writing, a note or memorandum thereof will suffice; and no special formalities are necessary, but the memorandum should contain:—

(1) The names of the parties.
(2) The subject-matter of the contract.
(3) The terms of the contract.
(4) The consideration (except in the case of a guarantee).
(5) The signature of the party to be charged or his agent duly authorised.

These particulars or requirements need n necessarily appear on one document—they be evidenced by several (*e.g.*, correspondence provided they are *connected*, and the note o memorandum may be made at any time b f r action is brought. Although for the purpos s the first section of the Act (leases, &c.) an a e must be authorised by writing, the fourth secti requires no such formality; the agent may b appointed verbally, in writing, or by inference; h may act by prior authority, when ratificati n his signature is sufficient: but one party cann act as agent for the other. It has been held tha the signature on a telegram form is sufficie to comply with the statute, and it is conc iv that the use of the sender's telegraphic *sobriquet* in lieu of his own name would suffice. After th " fall of the hammer " an auctioneer is ag n for both buyer and seller, and may sign a m m randum to satisfy the statute. (*See title* Sal Goods Act 1893.)

It must be noted that a contract which i within section 4, but not entered into in c pliance therewith, is neither void nor voidable but merely unenforceable by action for want proof.

The seventh section provides that " all declara " tions or creations of trusts or confidences o " any *lands*, tenements, or hereditaments, sha " be *manifested* and *proved* by some writin " signed by the party who is by law enabled t " declare such trusts, or by his last will i " writing, or else they shall be utterly void an " of none effect."

The above provision does not require the trus to be declared in writing, but only *manifested an proved* in such manner, so that no form is neces sary either as to the language or the nature o the instrument by which it is sought to establis the trust, so far as regards satisfying the pr visions of the statute.

The statute does not apply to chattels persona so that, provided they are to take effect in the lif time of the creator, such trusts may be create by parol. (*See title* Will.)

The 17th section, as amended by Tenterden Act, is now embodied in the Sale of Goods A 1893 (*q.v.*).

Fraudulent and Voluntary Conveyances and Settlements.—The statute 13 Elizabeth, c. 5, provides that all conveyances and gifts of lands, goods, &c., "to the end, purpose, and with intent to delay, hinder, or defraud creditors and others of their just and lawful actions, debts, &c.," shall be utterly void. The Act does not affect conveyances, &c., for valuable consideration and otherwise *bonâ fide*.

"The principles and rules of the common law, as now universally known and understood, are so strong against fraud in every shape, that the common law would have attained every end proposed by the statute 13 Elizabeth, chap. 5. . . . It cannot receive too liberal construction or be too much extended in suppression of fraud." (Lord Mansfield.)

Any conveyance of property or creation of a charge thereon, which would in the event of bankruptcy be deemed a fraudulent preference, is an act of bankruptcy, and such act may in such event be the commencement of the bankruptcy.

Section 47 of the Bankruptcy Act 1883 provides that any settlement of property (not being (1) a settlement made before and in consideration of marriage, or (2) made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or (3) a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife) shall be void against the trustee in bankruptcy under the following circumstances:—

(1) Where the settlor becomes bankrupt within two years after the date of the settlement;

(2) Where the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, *unless the parties claiming under the settlement* can prove that—

(*a*) The settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and

(*b*) The interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

It should be noted that, although a settlement may not be impeachable under the Bankruptcy Act 1883, it is still subject to the provisions of 13 Eliz., c. 5. On the other hand, whilst a *past debt* will constitute a valuable consideration for the purposes of the Act of Elizabeth, a conveyance under such circumstances may amount to a fraudulent preference under the Act of 1883.

The word "void" in section 47 of the Act of 1883 (*supra*) should be read as "voidable," so that the title of a *bonâ fide* purchaser for value from the donee will not be defeated in the event of the subsequent bankruptcy of the donor.

But where a person in order to defeat his creditors transferred his property to a bogus company, he thereby committed an act of bankruptcy, and upon bankruptcy supervening his trustee was held entitled to the assets of such company, even though it had gone into liquidation. (*Re Hirth*, 1899, 1 Q.B. 612.)

The questions as to whether (1) a purchaser for value could obtain an unimpeachable title under a voluntary settlement before the expiration of the periods mentioned in the Act of 1883, and whether (2) such a title could be forced upon an unwilling purchaser (who has ascertained the facts), have been the subject of conflicting decisions.

The point was decided by the Court of Appeal (*Carter's* case, 1897) to the effect that:—

(1) A voluntary settlement was not void under section 47, except as against the trustee in bankruptcy of the settlor.

(2) A settlement could not be void as against such a trustee until there was one.

(3) A trustee in bankruptcy could only avoid a settlement as against the volunteers, but a *bonâ fide* purchaser for value could make a good title; and

(4) The vendors of property who derived their title as grantees under a voluntary settlement could, therefore, force such a title upon the purchaser.

The trustee of a settlement (which but for the bankruptcy of the settlor would have been valid) is entitled to a lien upon the property for

expenses properly incurred by him *as trustee*, notwithstanding the subsequent avoidance of the settlement under the above section. (*Re Holden*, 20 Q.B.D. 43.)

It was held, prior to 1890, that section 47 did not apply to administration orders in respect of the estates of deceased debtors (*Re Gould*, 1887, 19 Q.B.D. 92), and section 21 of the 1890 Act has apparently not affected this decision. But the provisions of 13 Eliz., cap. 5, are applicable to the administration of the estate of a deceased insolvent. (*Taylor v. Coenen*, 1876, 1 Ch. 636.). (*See title* Deceased Insolvent.)

ANTE-NUPTIAL SETTLEMENTS.

(1) Where a settlement is made before, and in consideration of, marriage, and the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) Where a covenant or contract is made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being property of, or in the right of, his wife);

and the settlor is adjudged bankrupt, or compounds or arranges with his creditors, the Court may refuse or suspend an order of discharge, or grant a conditional discharge, or refuse to approve a composition or arrangement, as the case may be (in like manner as if the debtor had been guilty of fraud) *if it appears* to the Court that

(*a*) Such settlement, covenant, or contract was made in order to defeat or delay creditors, or

(*b*) Was unjustifiable having regard to the state of the settlor's affairs at the time when such settlement was made. (Bankruptcy Act 1883, section 29.)

Marriage being a valuable consideration—"the highest of all considerations"—ante-nuptial settlements are excluded from section 47 of the Act of 1883, and are not *voidable* at the instance of the trustee; but the granting of same under the above circumstances is *punishable* in so far as such an act will affect the bankrupt's discharge.

Where, however, such a covenant or contract is made for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder (not being money or property of, or in right of, his wife), and the settlor becomes bankrupt *before the property or money has been actually transferred or paid* pursuant to the covenant or contract it will be void against the trustee in bankruptcy, notwithstanding that it was made in consideration of marriage. (Section 47 (2).)

An application to set aside or avoid any settlement or conveyance must be heard and determined in open Court. (Rule 6.)

(*See title* Married Woman.)

Fraudulent Debtors.—The Debtors Act 1869 enumerates certain acts the commission of which by a bankrupt with intent to defraud renders him liable to imprisonment. (*See title* Debtors Act 1869.)

Fraudulent Preference.—

BANKRUPTCY.

Every conveyance or transfer of property, charge made thereon, every payment made, obligation incurred, and every judicial proceeding 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 the bankruptcy.

The rights of any person making title in good faith and for valuable consideration *through or under a creditor* of the bankrupt are not affected by the above provisions. (1883 Act, section 48.

Where a receiving order is made against a judgment debtor in lieu of committal under the Debtors Act 1869 . . . the provisions as to the avoidance of fraudulent preferences shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order. (1890 Act, section 20.)

The *intention* of the bankrupt is the main factor in deciding whether any given transaction is a "preference" or not, *i.e.*, the bankrupt must have acted with a *view* of giving a *creditor* preference over the other creditors, and the payment which it is sought to impeach must have been made to that particular creditor, so that a payment made to a creditor in order to relieve a surety cannot be recovered by the trustee as a fraudulent preference.

Where the transaction is the result of *bonâ fide* pressure, the trustee in bankruptcy will have some difficulty in making out a case of fraudulent preference.

So where a trustee has committed a breach of trust, and before his bankruptcy makes good the breach out of his own property, the trustee in the bankruptcy cannot recover the property, for it has been decided that such an act does not amount to a fraudulent preference, but an endeavour by the bankrupt to cover up his wrong and so prevent proceedings being taken against him. (*Sharp v. Jackson*, 1899, A.C. 419.)

Nor does the payment of a debtor's trade bills, in due course and in the ordinary way of business, amount (of itself) to a fraudulent preference, the inference *primâ facie* being that the bills are paid, not to prefer the bill-holders, but to enable the debtor to continue his business. (*Re Clay & Sons*, 1896.)

To make a conveyance or transfer of property, or to create a charge thereon, which would be void as a fraudulent preference if the transferor were adjudged bankrupt, is an act of bankruptcy, and the fact that a bankrupt has within three months preceding the date of the receiving order given an *undue* preference to any of his creditors must be considered by the Court when hearing the application for the bankrupt's discharge. "An undue preference," it must be noted, is a wider term than "a fraudulent preference," for although a transaction may not be of such a nature that it could be set aside as fraudulent, it may, nevertheless, be "undue," and so affect the bankrupt's discharge.

To avoid an alleged fraudulent preference, the trustee must first prove that the debtor was insolvent when the payment, &c., was made; the onus will then lie upon the party supporting the payment, &c., to show that it was not made *with a view* of giving him a preference. (*Re Eaton & Co.*, 1897.)

Company Liquidation.

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.

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.

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.

(Companies (Consolidation) Act 1908, section 210.)

A floating charge created within three months of the commencement of the winding-up of a company 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 5 per cent. per annum. (Companies (Consolidation) Act 1908, section 212.)

The definition of the word *solvent* in this connection may give rise to some difficulty, particularly in view of section 130 (iv) of the same Act.

The Courts have held that insolvency means inability to pay debts actually due, *i.e.*, debts which can be demanded to be paid instantly. (*Re European Life Assurance Co.*, 39 L.T. 136; L.R. 9 Eq. 122.) This was a question as to whether an order to wind up the company should be made under sections 79 and 80 of the Companies Act 1862 (now sections 129 and 130 of the Consolidation Act of 1908) on the ground that the company was unable to pay its debts.

And in *R. v. Saddlers Co.* (32 L.J. Q.B. 337) Willes, J., said, "in insolvent circumstances" has always been held to mean not merely being behind the world *if an account were taken*, but insolvency to the extent of being unable to pay just debts in the *ordinary course of business*. (The Sale of Goods Act adopts this definition.) But section 130 (iv) of the Companies (Consolidation) Act 1908 provides that in determining whether a company is unable to pay its debts within the meaning of section 129 the Court shall take into account (not merely the present and certain debts as hitherto but also) the contingent and prospective liabilities of the company.

Presumably these must also be taken into account in liquidation when considering the question of solvency if a floating charge has been given within three months of the liquidation.

Subsection 2 of section 48 of the Bankruptcy Act 1883, which defines a fraudulent preference in bankruptcy, expressly states that the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankruptcy shall not be affected. No such protection is afforded by section 212 of the Companies (Consolidation) Act 1908, and a person *taking a transfer* of debentures secured by a floating charge on a company's assets given within three months of the transfer should satisfy himself that the charge is not liable to be set aside under section 212.

As regards the time limit, the case of *Russell Hunting Record, Lim.* (1910) is of interest. Certain fraudulent preferences had been committed by a company within three months previous to the date of an extraordinary resolution for voluntary winding up, but on a date more than three months after the commission of the fraudulent preferences an order for compulsory winding up was obtained. It was held that the date of the presentation of the petition must be held to correspond with the act of bankruptcy (see section 210 of the Companies (Consolidation) Act 1908, *supra*), and that as the fraudulent preferences had not taken place within three months of that date they could not be set aside.

Freehold.—In theory there is no such thing as absolute ownership of land, all land being held either directly or indirectly from the Crown, and a person can only hold an estate in land, such estate varying in extent of interest.

A freehold is the most extensive estate which can exist in land, and is virtually equivalent to absolute ownership. It carries with it the right of absolute disposal or settlement by the holder, and if he dies intestate the land descends to his heirs generally. (*See titles* Copyhold, Fee Simple.)

Free of Duty.—

Legacies:—

In the absence of express direction to the contrary in the will, legacy duty is payable by the legatee, even though the legacy is to a creditor in discharge of a debt due from a third person. A direction to pay legacy duty will not include succession duty payable in respect of leaseholds. A *general* direction in the will to pay all legacies free of duty will include legacies given by a codicil, but a direction in the will to pay the duty on all legacies *herein given* will not include legacies given in a codicil.

Legacies given "free from deduction and expense" will be payable free of legacy duty, but a bequest of an annuity "free from deduction," although relieving the annuitant of the legacy duty, will not necessarily extend to income-tax (*See title* Annuity.) A testator may, however expressly direct that the income-tax upon an annuity be payable out of his estate.

A direction that a legacy is to be paid free of duty amounts to an increase of the legacy itself, and a *specific* bequest free of duty amounts to a further *pecuniary* legacy to the extent of the duty, so much so that in the event of a deficiency of assets such pecuniary legacy must abate *pari passu* with the others of that class.

The "extra legacy," however, is not liable to duty, the Act 36 Geo. III, c. 52, section 21, providing that money left to pay legacy duty, if payable out of a fund other than the legacy (*e.g.*, the residue), is not liable to duty. Thus, a bequest to a stranger in blood of £100 free of duty would "cost" the estate £110 altogether. Had the testator, however, bequeathed the whole £110 to the stranger in blood, directing him to pay his own duty, the legatee would receive £1 less, the legacy duty being £1 more. This is the result of the above section, which exempts from duty money left to pay duty, but only when payable out of some fund other than the legacy itself.

It is, therefore, obvious that if a testator desires to bequeath certain sums subject to legacy duty he can first decide upon his bequests, and, after deducting the legacy duties respectively payable, leave the net sums to the various legatees free of duty. By so doing, he gives the pecuniary legatees the amounts desired, and increases the residue by the amount of the *legacy duty upon the legacy duty*, which would otherwise have been payable.

Successions:—

The duty upon successions is chargeable to the successor in the absence of express directions to the contrary, and is a first charge upon the succession. As in the case of legacy duty, property applied to pay succession duty under trust for that purpose is not itself liable to succession duty, but the exemptions in the Legacy Duty Act and the Succession Duty Act apply only to the duties respectively levied by them—that is to say, there is no "cross exemption."

If, therefore, a succession is directed to be free of succession duty, and it is further directed that such duty is to be paid out of the *personalty* of the testator the duties payable would be:—

(1) Succession duty upon the succession, and

(2) Legacy duty upon the succession duty.

Settlements:—

The settlement estate duty leviable in respect of a legacy or other *personal* property settled by the will of a deceased person is, unless the will contains an express provision to the contrary, payable out of the settled legacy or property in exoneration of the rest of the deceased's estate. (*See title* Settlement Estate Duty.)

In the foregoing the term "free of duty" has been dealt with as regards the incidence of duty as between the estate and the beneficiaries. For the circumstances entitling to exemption, *see titles* Estate Duty, Legacy Duty, Settlement Estate Duty, Succession Duty.

Free of Income Tax.—A term denoting that a dividend or other payment in the nature of income is not subject to *specific* deduction in respect of income-tax. In such cases the tax is payable to the Revenue authorities by the payer of the dividend, &c., and not by the payee. Dividends on preference stocks and shares, and interest on bonds, debentures, mortgages or other forms of loan, are not payable free of tax, a deduction at the current rate being made from the respective amounts payable. Ordinary dividends are, however, often paid "free of tax," but it is necessary in the interest of the holders of the ordinary stock or shares that all *prior* and fixed payments be subject to deduction in this respect, as they are not admitted by the Revenue as "outgoings" in assessing the profits of the undertaking in question for income-tax purposes. As a consequence, to pay (say) a 5 per cent. preference dividend *free of tax* would be tantamount to a dividend in excess of 5 per cent. to the extent of the income-tax involved at the current rate. But there is nothing to prevent a preference dividend being paid free of tax if the regulations of the company so provide, and in rare cases this has been done. On the other hand, income-tax must be deducted even from ordinary dividends if the surplus profits after payment of a prescribed dividend to holders

of ordinary shares, are to be allocated to some special purpose, such as the payment of dividend on founders' shares or as remuneration to the directors or otherwise. Although a dividend on ordinary shares may be declared and paid free of tax, it must be noted that the income-tax upon the dividend is really paid by the company, so that the income is only *free of tax* as between the company and the shareholder, and a shareholder who is entitled to exemption or abatement should include in his claim for repayment the dividend and the tax *which has been paid thereon by the company*. The taxpayer should obtain from the company a formal certificate that tax has been or will be paid by the company on the profits of which his debenture interest, preference dividend, or ordinary dividend forms a part, and this certificate will be accepted by the Revenue authorities either (1) as justification for the omission of such income from the return of taxable income, or (2) as evidence of a right to repayment of the tax deducted, or part of it, if the total income from all sources justifies exemption or abatement. When claiming exemption or abatement, as the case may be, the taxpayer must obviously include all income, *whether already taxed or not*, in stating his total income from "all sources whatsoever."

Income-tax should *not* be paid by a joint-stock company on the salary of the secretary or managing director, or upon directors' fees, unless expressly authorised by the shareholders in general meeting or by the company's regulations.

Freight.—The sum payable by merchants or others either for chartering a ship or part of her, or for sending goods in a "general" ship. The amount is generally fixed by the charter-party, or bill of lading, as the case may be, but in the absence of any arrangement a sum would be payable in accordance with custom. In the absence of agreement to the contrary, freight is not payable unless the goods are delivered or are ready for delivery according to the contract. In practice, however, bills of lading provide otherwise, for instance, (*a*) freight payable on shipment of goods, or (*b*) freight payable in exchange for bills of lading, or (*c*) freight payable on departure of vessel, &c. It is almost invariably provided that freight shall be payable "ship lost or not lost." Where freight or a proportion thereof is paid before delivery of the cargo it is called *advance freight*, and if the goods are lost by perils which have been excepted in the bill of lading, the advance freight will not be recoverable from the shipowner; a shipper has therefore an insurable interest in the advance freight, in the form of an additional value upon the goods to be carried.

A shipowner may have a lien on goods carried for the freight, either by common law or by express agreement.

The common law lien (possessory) applies to all goods coming to the same consignee on the same voyage for freight due on all or any of them, but it does not extend to goods on different voyages under different contracts.

The lien may be waived (1) by agreement to that effect, or (2) by delivering the goods without demanding payment, or (3) by taking a bill of exchange for the amount of freight.

The common law lien does not extend to port charges and wharfage dues on the goods, or to dead freight or demurrage.

Liens may be expressly stipulated for, to cover almost all charges, but the clause in a bill of lading giving a lien, otherwise non-existent, should be clearly brought to the notice of the shipper.

Freight pro ratâ itineris.—Freight proportional to the whole, as the actual distance carried is to the distance originally contemplated, when a shipowner delivers goods short of their destination. Such freight is ordinarily not payable, but it may be claimed under certain circumstances, such as (1) where there is an agreement express or implied to that effect, or (2) where there is a voluntary acceptance of the goods in such a way as to show that the carrying of the goods to the port of destination is dispensed with by the consignee.

French Rente.—*See* Rente.

Friendly Societies.—The Friendly Societies Act 1896 provides that every registered society and

branch is required, once at least in every year, to submit its accounts for audit either:—

(1) To one of the public auditors appointed by the Treasury, which authority determines from time to time the rates of remuneration to be paid them, or

(2) To two or more persons appointed, as the rules of the society provide.

In the case of certain societies receiving contributions by collectors, termed "collecting societies," the accounts must be certified by some person carrying on publicly the business of an accountant. The auditors are entitled to access to all the books and accounts of the society or branch, and are

(1) To examine the annual return (hereafter mentioned) and verify the same by comparison with the accounts and vouchers relating thereto, and

(2) To sign the same as correct, duly vouched and in accordance with law, or specially report to the society if otherwise.

The society or branch must once in every year send to the Registrar of Friendly Societies a return (called the annual return) of the receipts and expenditure, funds and effects of the society or branch, as audited, and a copy of any special report of the auditors. A copy of the last Balance Sheet, together with any special report of the auditors, is always to be hung up in a conspicuous place at the registered office, and every member is entitled to a copy thereof, and is also entitled to inspect the books of the society.

The Friendly Societies Act 1896 also contains provisions as to the conversion of registered societies into companies under the Companies Acts, and the Companies (Converted Societies) Act 1910 was passed to remove certain doubts as to the validity of such conversions.

uctus Industriales.—Industrial growing crops; emblements; *e.g.*, corn and potatoes.

uctus Naturales.—Natural productions of land, such as grass and timber.

Fully-paid Shares.—Shares in respect of which there is no further liability by the shareholder to the company, the total cash originally payable thereon being either paid or considered as paid.

Funding.—The process by which a floating debt is converted into stock; the blending together of several debts of different denominations into one great debt clearly defined in amount, upon which interest is to be paid at a stated rate until the debt is redeemed.

Funeral Expenses.—The reasonable expenses of burying a deceased person are always a first charge upon the deceased's estate. Such expenses may be deducted from the value of the estate for the purpose of arriving at the amount of estate duty payable, but the costs of mourning, the tombstone, and/or the transfer of the body of the deceased to a distant place of interment, are not allowed as a deduction.

As between the various beneficiaries of a deceased person's estate, the funeral expenses constitute a capital charge.

In the administration in bankruptcy of the property of a deceased debtor, the claim of the personal representative of the deceased to the payment of the proper funeral expenses incurred by him is deemed a preferential claim, and is to be paid in full out of the debtor's estate in priority to all other debts. This priority of funeral expenses is expressly reserved in section 125 of the Bankruptcy Act 1883, and is not affected by the Preferential Payments Act of 1888.

The question as to what are reasonable and proper funeral expenses depends upon the circumstances of each particular case, special regard being had to the state of life in which the deceased had lived. If a clear case of extravagance be made out against the executor in this connection (particularly if the estate is insolvent) it will amount to a *devastavit* to the extent of the excess over that which would have been right and proper.

Future Book Debts.—A person (or company) may validly assign all or any of the book debts due and owing, or which, during the currency of a

given period, may *become* due and owing to the assignor, provided that in order to give the assignee of a future chose in action a right to the same, it must, upon coming into existence, answer the description in the assignment—that is to say, it must be capable of being identified as that which was *intended* to be assigned. (*Tailby v. Official Receiver*, 13 App. Cas. 523.) (*See titles* Book Debts, Floating Charge.)

Futures.—Future goods may be the subject of a contract of sale, and they are defined by the Sale of Goods Act as "goods to be manufactured or "acquired by the seller after the making of the "contract of sale." (*See title* Differences.)

G

Garnishee.—A person upon whom an order has been served by the Court, upon the application of a judgment creditor of a third party, warning him not to pay a debt he owes to the third party. (*See* Attachment of Debt.)

Gazette Notice.—The *Gazette* is a Government newspaper, and is issued every Tuesday and Friday for the publication of official orders, notices, &c.

All notices for insertion in the *Gazette* must be properly authenticated. Where the notices are not supplied by the Board of Trade the signature of a solicitor as witness is generally sufficient. Where the attestation is not made by a solicitor, a declaration is required. (But *see* Voluntary Winding-up, *infra*.)

The principal matters necessitating a notice in the *Gazette*, so far as regards an accountant's sphere, may be summarised as under:—

BANKRUPTCY.

Receiving order.

First meeting of creditors.

Appointment of trustee.

Public examination.

Adjudication.

Approval of composition or scheme.

Intention to declare a dividend.

Declaration of dividend.

Intention to transfer a surplus from a separate estate to a joint estate on the ground that there are no creditors under such separate estate.

Application for discharge by debtor.

Order on application for discharge.

Release of trustee.

All the above bankruptcy notices must be gazetted through and by the Board of Trade. (Rule 280.) The notices must be in the prescribed form, and a fee of five shillings per notice is payable, which may be charged against the estate.

A copy of the *London Gazette* containing any notice inserted therein in pursuance of the Bankruptcy Acts shall be evidence of the facts stated in the notice.

The production of a copy of the *London Gazette* containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date. (1883 Act, section 132.)

COMPULSORY WINDING-UP.

Winding-up order.

First meetings of creditors and contributories.

Appointment of liquidator.

Public examination of directors and others.

Intention to declare a dividend.

Declaration of dividend.

Release of liquidator.

All the foregoing "winding-up" notices requiring publication in the *Gazette* are to be gazetted by the Board of Trade. (Rule 209. The notices must be in the prescribed form, and a fee of five shillings per notice is payable, which may be charged against the estate.

Notice of the hearing of a petition must be advertised in the *Gazette*, signed by a solicitor.

VOLUNTARY WINDING-UP.

Notice of any special or extraordinary resolution passed for winding-up a company voluntarily

must be given by advertisement in the *Gazette*. (Companies (Consolidation) Act 1908, section 185.) (For requirements as to filing with Registrar *see title* Resolution.)

The notice for the *Gazette* must be signed by the Chairman of the meeting at which the resolution was passed—the confirmatory meeting in the case of a special resolution. The signature is generally attested by a solicitor (not necessarily a commissioner for oaths), which attestation is accepted by the *Gazette* officials as sufficient evidence, and according to the printed regulations the signature of a Chartered Accountant in certain cases will be accepted in place of that of a solicitor; but where the attesting witness is not a solicitor, or other person whose attestation is acceptable, such witness is required to make a declaration to the effect (*inter alia*) (1) that the resolution was duly passed at the meeting or meetings; (2) that the signatory to the resolution was the duly appointed chairman; and (3) that the signature to the copy of the resolution is the chairman's proper handwriting. The declaration requires a 2s. 6d. stamp, and, for the purpose of *Gazette* notices, such declarations are not exempt from stamp duty. (*See* Declaration.)

Every liquidator appointed by a company in voluntary winding-up must—within seven days from his appointment—summon a meeting of creditors to be held not less than fourteen nor more than twenty-one days after his appointment. Notice of such meeting must be given in the *Gazette*. (Companies (Consolidation) Act 1908, section 188.) (*See title* Liquidator.)

The liquidator must give at least one month's previous notice in the *Gazette* of the *final* general meeting of a company at which the accounts of the liquidator are to be presented. (Section 195.)

There is no express provision that advertisements for claims should appear in the *Gazette*, but "proper advertisements" should be published; and in the case of a company being wound up by the Court a notice in the *Gazette* will generally be ordered.

Partnership.

An advertisement in the *Gazette* stating that a partnership has been dissolved is deemed notice of such dissolution to all persons who have not had dealings with the firm before the date of the dissolution so advertised.

The *Gazette* officials require the notice of dissolution to be signed by all the partners named therein or by their legal representatives, and attested by a solicitor. If the notice is not signed by all the partners or their legal representatives, it must be accompanied by a statutory declaration made by a solicitor to the effect that such notice is given in pursuance of the terms of the partnership to which it relates.

Limited Partnership.

In the case of a limited partnership, notice must be given in the *Gazette* forthwith of any arrangement:—

(1) Whereby a "general" partner becomes a "limited" partner.

(2) Under which the share of a "limited" partner is assigned to any person.

Until the notice has been so advertised the arrangement will, for the purposes of the Limited Partnerships Act, be deemed to be of no effect. (Limited Partnerships Act 1907, section 10.)

If the limited partnership is wound up by the Courts, the provisions as to compulsory winding-up (and therefore the prescribed *Gazette* notices) apply, with the substitution of "general" partners for directors. (Companies (Consolidation) Act, section 268.) (*See title* Limited Partner.)

Administration.

The statutory advertisement for claims under Lord St. Leonard's Act should be inserted in the *Gazette*, as the Court must be satisfied, in the event of any action arising subsequently, that the representatives gave proper notice, and the insertion of a notice in the *Gazette* would invariably form part of a "proper notice."

The notice for the *Gazette* must be signed by the solicitor for the legal representatives.

General Acceptance.—*See* Acceptance.

General Agent.—*See* Agent.

General Average Loss is a loss caused by or directly consequential on any extraordinary sacrifice or expenditure, voluntarily and reasonably made or incurred in time of peril, for the purpose of preserving a ship, the cargo, and all the property imperilled in the common adventure. Jettison of cargo, and voluntary stranding to avoid wreck, are ordinary cases of sacrifice resulting in general average losses. The sacrifice or expenditure having been made or incurred on behalf of all, must be replaced by the contribution of all the parties interested. This is a right of contribution which exists independently of marine insurance, but a person having paid such contribution has a right to recover the amount from the underwriter if insured against the peril in connection with the avoidance of which the loss was incurred. (*See* Particular Average Loss.)

General Ledgers.—This term will include all Ledgers other than the Private Ledger, and is often used in contradistinction from the latter. Where, however, special Ledgers are kept, such as Personal, Nominal, Consignment, and the like, they should be referred to by their special names, so that the term General Ledger might be restricted to one which includes the Personal Accounts (debtor and creditor), the Nominal and the Real Accounts—in fact, the accounts of the trader generally, excluding only the private accounts, which are recorded in the Private Ledger.

General Legacy.—*See* Legacy.

General Lien.—*See* Lien.

General Meetings.—

ORDINARY GENERAL MEETING.

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.

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. (Companies (Consolidation) Act 1908, section 64.)

FIRST (STATUTORY) MEETING.

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. (Section 65.)

For further particulars *see title* Statutory Meeting.

EXTRAORDINARY GENERAL MEETING.

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.

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.

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.

If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extra-

ordinary 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 shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors. (Companies (Consolidation) Act 1908, section 66.)

Note.—Although the section refers to holders, a single holder may issue a requisition provided he is otherwise qualified; but in the case of joint holders of shares, all the holders must sign the requisition.

General Provisions.

Any number of meetings may be held in each year, but there must be at least one ordinary general meeting each year. All general meetings other than the ordinary, whether convened under section 66 (*supra*) or otherwise, are called extra-ordinary general meetings.

Procedure.

Members of a company are entitled to written notice of any general meeting in accordance with the regulations of the company. The length of notice provided by the articles is generally seven days, but, of course, it may be shorter or longer.

In default of, and subject to, any regulations in the articles of association of a company which has not adopted Table A.—

(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.:

(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. (Companies (Consolidation) Act 1908, section 67.)

Note.—Not one vote for every share held by him: hence the importance of providing specially in the articles as to voting powers.

If it is provided in the articles that the number of days' notice must be clear days, the day the notice is given and the day of the event must not be counted as part of the required notice, but some articles of association and Table A provide for the inclusion of the day of the event and the exclusion of the day of the notice in reckoning the length of the period.

(*See title* Quorum.)

Representation.

Any 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 had been an individual shareholder of that other company. (Companies (Consolidation) Act 1908, section 68.)

Minutes must be kept of all general meetings. (*See title* Minutes and Minute Book.)

Companies under Special Act.

Companies incorporated by special Act are required to hold general meetings at such times as may be prescribed by such special Act; if no time be prescribed, the Companies' Clauses Consolidation Act 1845 applies, and general meetings must be held half-yearly, either in the months of February and August, or at such other stated periods as may be appointed by an order of a general meeting. (*See title* Ordinary Business.)

General Partner.—*See title* Limited Partnership.

General Ship.—A term applied to a ship which is not chartered wholly to one person, the owner offering to carry the goods of all comers; or where the ship is chartered to one person but the charterer offers her to several sub-freighters. The contract entered into between the shipowner (or charterer, as the case may be) and the shipper of goods under these circumstances is contained in a bill of lading.

Gift inter vivos.—A gift between living persons, *i.e.*, a living donor and a living donee, as distinct from a legacy. Such a gift involves (1) an *intention*, and (2) an act or acts giving *effect* thereto, otherwise the gift is incomplete, and confers no legal rights. (*See titles Donatio mortis causâ* and Legacy.)

On the death of the donor a valid gift *inter vivos* requires no assent on the part of the executor, and is free from liability in respect of either legacy duty or the donor's debts in the event of a deficiency of assets. Gifts *inter vivos* are, however, subject to estate duty under the following circumstances:—

(1) In the case of a person dying after the 1st August 1894 (but prior to the 30th April 1909), those made by the deceased within *one* year of his death, with or without reservation.

(2) In the case of a person dying on or after the 30th April 1909, those made by the deceased within three years of his death.

(3) Those made by the deceased *at any time* whereof a *bonâ fide* possession was not immediately taken and thenceforth retained to the entire exclusion of the deceased, but a benefit, either charged upon the property or not, was reserved or secured to the deceased by contract or otherwise, or a power or authority was reserved to the deceased to restore to himself or reclaim the absolute interest in such property or in some part of it. Provided that if the deceased, subsequently to the "gift," surrenders his benefit, and the property is enjoyed to the entire exclusion of the deceased more than three years prior to the death, then the "gift" will not be subject to estate duty.

The following "gifts," although literally they might be liable under Clause (2) (*above*) are exempt:—

(*a*) Gifts or dispositions made before 30th April 1908.

(*b*) Gifts or dispositions made for public or charitable purposes.

The following "gifts," although literally they might be liable under Clauses (1) and (2) (*above*), are exempt:—

(*a*) Gifts in consideration of marriage.

(*b*) Gifts proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased and to have been reasonable, having regard to the amount of his income, or to the circumstances.

(*c*) Gifts which in the case of any donee do not exceed in the aggregate £100.

(Finance Act 1894, section 2 (1), and Finance (1909-10) Act 1910, section 59.)

Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like stamp duty as if it were a conveyance or transfer on sale with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration for the sale. (Finance (1909-10) Act 1910, section 74.)

Gilt-edged Securities.—A term used to express stocks, shares, bonds, and investments of a like nature, the principal money of which, and the interest or dividend thereon, are as absolutely safe and assured as it is humanly possible for any income-producing investment to be, and which, also, can be readily realised without loss.

"What is really meant by a safe investment "is one regarding which the possibilities of dis- "order, always existent, are, as far as human "foresight can discern, reduced to a minimum. "This being so, it cannot be other than a benefit "that a large capital . . . should be repre- "sented by as widely varied a list of investments "as possible, differing as far in kind as is con- "sistent with excellence of character, so that "fluctuations may correct one another and a "general simultaneous depression become a con- "tingency so unlikely as to be safely negligible."

Going Concern.—A business actually operating and in working order. The term is generally applied to a concern of which a transfer of the ownership can be effected without any interruption of the

business which is being carried on, and may be distinguished from an enterprise which is either (1) to be commenced or (2) to be recommenced after a stoppage for an appreciable length of time. (*See* Undertaking.)

ood Consideration.—*See* Consideration.

ood Faith.—Although these words may not have a technical signification, but merely imply honesty of purpose and belief, the Bills of Exchange Act and the Sale of Goods Act both contain the following definition :—

"A thing is deemed to be done in good faith " within the meaning of this Act, when it is in " fact done honestly, whether it be done " negligently or not."

The question has been raised as to whether the above definition excludes the maxim—Gross negligence is held equivalent to intentional wrong.

oods.—The expression " goods," within the meaning of the Sale of Goods Act 1893, includes all chattels personal, other than things in action and money. The term includes emblements, industrial growing crops, and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale. " Future " goods are also subject to the Act, *i.e.*, goods to be manufactured or acquired by a seller subsequently to the making of a contract for the sale of them.

The Factors Act 1889 provides that for the purposes of the Act the expression " Goods " includes wares and merchandise.

The Bankruptcy Act 1883 provides that the term " goods " includes " all chattels personal "; but fixtures attached to the freehold are not goods within the meaning of the " order or disposition " section.

oods Account.—One to which the commencing stock and subsequent purchases and returned sales are debited, and the sales, returned purchases, and ending stock are credited, the balance showing the gross profit or loss during the intervening period. Or it may contain the above items exclusive of the stock valuations; but the more commendable method is to keep a separate Sales Account and Purchases Account, treating with the respective returns in each case, to allow of the net sales and net purchases being shown by independent accounts. (*See* Gross Profit.)

Should the business be capable of division into departments, or various classes of trading, separate accounts may be necessary for each subdivision, according to the analysis afforded by the Sale and Purchase Books, so as to show the result of each department or class independently.

Goods in Transit.—Goods are sometimes shipped from one country to another through a British port. On the arrival of the goods at the latter port they are declared as *in transit*, and avoid customs (if any) and a certain proportion of the port dues. If it were not known at the time of shipment that the goods were *in transit*, and they had been declared as for home consumption, the declaration may be amended. A bond is required by the Revenue authorities to the effect that the goods (if dutiable) will be exported. (*See* Stoppage *in transitu*.)

Goodwill.—*Definition.*—When considering the term " goodwill " the precise circumstances of the particular case and the class of business in question are of importance. This being so, the varying classes of businesses to which goodwill applies render it difficult, if not impossible, to give one definition which would be complete and satisfactory for all cases. Consequently several of the various definitions (many of which are really " descriptions ") which have been given from time to time are deemed necessary for a thorough comprehension of the subject, for goodwill may be wholly, or in part, a question of locality, or of specific premises, of reputation, of quality of goods, or a matter of name only.

Goodwill is property, and as such may be made the subject of sale, gift, mortgage, or bequest. Agreements for the sale or conveyance thereof are subject to *ad valorem* stamp duty. (*Commissioners v. Angus & Co., Lim.*, 23 Q.B.D. 579.)

Whether goodwill is realty or personalty depends upon the nature of the property to which it is attached and upon other circumstances.

Goodwill was recognised as an asset in the Courts at least as early as 1743, but one of the earliest legal definitions was that in *Cruttwell v. Lye* (1810, 17 Ves. 335), when Lord Eldon said. " Goodwill is nothing more than the *pro-* " *bability* that the old customers will resort to " the old place."

In this case, however, the business was that of a waggoner or carrier, and the value of the goodwill depended almost wholly upon *locality*, but obviously this would not always be the chief consideration, and some years later, in the case of *Churton v. Douglas* (1859, 28 L.J. Ch. 841), Vice-Chancellor Wood said:—" Lord Eldon did not " mean to confine the rights involved in the term " goodwill to the advantage of occupying premises " to which customers were in the habit of going." " Goodwill " (the Vice-Chancellor proceeded to say) " must mean *every advantage* (affirmative " advantage, if I may so express it, as contrasted " with the negative advantage of the vendor not " carrying on the business himself) that has been " acquired by the old firm by carrying on its busi- " ness, everything connected with the premises " and the name of the firm, and everything con- " nected with or carrying with it the benefits of " the business."

Goodwill is the " benefit arising from connection and reputation." [Lindley.]

Goodwill is " the advantage or benefit which " is acquired by an establishment beyond the " mere value of the capital stock, funds, or pro- " perty employed therein in consequence of the " general public patronage and encouragement " which it receives from constant or habitual " customers on account of its local position, or " common celebrity or reputation for skill or " affluence or punctuality or from other acci- " dental circumstances and necessities or even " from partialities or prejudices." [Story.]

In the case of the *Commissioners of Inland Revenue v. Muller* (1901, A.C. 217), the question as to whether the words " property locally situate " used in the Stamp Act 1891 could be applied to goodwill was decided in the affirmative, and the following extract from one of the judgments is important:—

Lord Macnaghten said:—" What is goodwill? " It is a thing very easy to *describe*, very difficult " to *define*. It is the benefit and advantage of " the good name, reputation, and connection of " a business. It is the attractive force which " brings in custom. It is the one thing which " distinguishes an old-established business from a " new business at its first start. The goodwill " of a business must emanate from a particular " centre or source. However widely extended or " diffused its influence may be, goodwill is worth " nothing unless it has power of attraction " sufficient to bring customers home to the source " from which it emanates. Goodwill is com- " posed of a variety of elements. It differs in its " composition in different trades and in different " businesses in the same trade. One element may " preponderate here and another element there. " . . . For my part, I think that if there is " one attribute common to all cases of goodwill " it is the attribute of locality, for goodwill has " no independent existence. It cannot subsist by " itself. It must be attached to a business. " Destroy the business and the goodwill perishes " with it, though elements remain which perhaps " may be gathered up and be revived again. No " douht, where the reputation of a business is " very widely spread, or where it is the article " produced rather than the producer of the article " that has won popular favour, it may be difficult " to localise goodwill."

Mr. T. M. Stevens, D.C.L., summarised the various definitions upon goodwill thus:—"All that " can be gathered from the various definitions is " that where the *locality* of the business premises " makes the trade, goodwill represents the advan- " tage derived from the chance that customers " will frequent the premises in which the busi- " ness has been carried on; that where the busi- " ness is one which depends upon the *reputation* " of a firm, the goodwill consists of the advantage " which the owner derives from being allowed to " represent himself as such; that where the busi- " ness is due to the *individuality* of the owner, " and where its reputation cannot be separated " from his, the goodwill is all but non-existent; " and that where the value of the business " depends upon the business *connection*, the good-

will consists of the right to be properly introduced to those connections."

Mr. L. R. Dicksee, M.Com., F.C.A., in dissing the basis of value of goodwill, says hat:—" When a man pays for goodwill he pays for something which places him in the position of being able to earn more money than he would be able to do by his own unaided efforts."

Mr. E. Guthrie, F.C.A., has said:—" The term goodwill is a very natural one, and, I think, indicates what is meant better than any other word would do. It represents the goodwill with which the person, the place, the name, or the association is regarded. It assures the direction of the footsteps of customers towards the customary place—that involuntary cerebration, as the philosopher puts it, whereby the act of walking is performed without conscious exertion of the will. It is a magnetism generated in and about a person and his entourage; sometimes exerted solely from within, sometimes exerted solely from without, but, most generally, partly from within and partly from without.

"And what is the measure of value in pecuniary terms of this intangible thing? I state it as the difference between the value of the normal results of the working of *any* business or profession which may be established by, and as worked by, *any* person in *any* place, and the results of working any individual business of a similar character. Thus, given a business, the goodwill of which is for disposal, there would be no valuable goodwill if anyone could do just as well by establishing a business *de novo*. To start a business has its risks, which may often be described as very serious risks, but apart from the more perilous risks of *failing* to take proper root, there is the often weary *time*, sometimes a long term of years, during which a sufficient connection is being got together to bring the business up to a standard paying basis which will give it a goodwill value, or bring a goodwill value into sight. To be spared this period of what I may call perilous probation is something worth paying for, even though its maintenance from this point needs the continued energy and industry by which it was built up by the original proprietor. Time, money and anxiety saved is money made. This is what is worth paying for, and, *in this degree*, a goodwill value attaches to an established business."

Partnership.

In the absence of an express agreement to the contrary between the partners the goodwill of the partnership is the common property of the firm, and on a dissolution, whether by the death of a partner or otherwise, each of the partners or his representative has the right to have the goodwill sold or otherwise brought into account for the benefit of all the partners, pending which sale (or other mode of settlement) the partners or surviving partners should not so conduct themselves (by recommencing business individually or otherwise) as to affect in any way the value of their common property. But the surviving or continuing partners cannot be restrained from continuing in business, that is to say, unless the surviving or continuing partners voluntarily agree to withdraw from the business, or such class of business, or from the particular district, the goodwill of the business in question can only be sold, or brought to account upon the basis of and subject to the right of the surviving or continuing partners to compete against the buyer, subject, of course, to the general limitations imposed upon vendors set out under the heading Sale (*infra*). This right, therefore, considerably reduces the value of goodwill under the circumstances, even if it does not destroy it altogether.

The method of dealing with the goodwill of a partnership business in the event of a dissolution arising from the death, bankruptcy, or retirement of a partner is, however, nowadays invariably provided for in the articles of partnership, not only the basis of valuation, but the mode of payment therefor being carefully settled. Sometimes it is expressly stated that upon a dissolution no allowance whatever shall be made for goodwill, while in other instances a fixed sum is stated as being the agreed value for the purpose of adjusting the rights of the partners between

themselves. A more equitable method, however (and one largely adopted), is to agree to take the goodwill as being worth one, two, three, or more years' purchase (dependent upon circumstances) of the annual profits of the business, such profits to be ascertained upon the average annual profits of the two, three, or more years immediately preceding the date upon which the dissolution arises. As to the mode of payment of a deceased or retiring partner's share in the partnership (including goodwill), it is generally agreed that payment can be made in instalments spread over one, two, or three years, with stipulations as to interest upon unpaid portions of the share value. It should be stated here that where a partner retires under an agreement with his co-partner or co-partners, one of the terms of the agreement being that the goodwill of the business shall belong to the continuing partner or partners, he (the retiring partner) is subject to the same general restrictions with regard to competition, solicitations, &c., as a vendor of a goodwill for valuable consideration. (*Trego v. Hunt*, 1896, App. Cas. 7.)

In the articles of partnership in *Hunter v. Dowling* (1895, 2 Ch. 223) it was agreed that if any partner should die during the continuance of the partnership the amount of his share and interest in the partnership should be taken as being the amount appearing as standing to his credit in the last annual Balance Sheet. Here the representatives of a deceased partner were not allowed to claim anything for his share in the goodwill, because no amount representing the value of the goodwill had been included in any of the Balance Sheets. But in the above case the partners had really agreed in their articles upon the question of goodwill, and this decision does not affect the general rule that, apart from an agreement to the contrary between the partners, the goodwill of the partnership (for what it is worth under the circumstances set out above) is the common property of the partners, and the mere fact that the goodwill is not valued and included among the assets in the periodical Balance Sheets of the partnership whilst a going concern, does not *of itself* deprive a retiring partner or the representative of a deceased partner of his due share of the value of the goodwill whatever that value may be.

Sale.

The purchaser of the goodwill of a business acquires the right to represent himself as being the successor to the business, and (ordinarily) he may use the trade name by which the business has become known (*Levy v. Walker*, 1879, 10 Ch.D. 436), but he will not be permitted to use the old name in such a manner as would render the vendor liable for any debts incurred by the purchaser in the old name. (*Thynne v. Shove*, 1890, 45 Ch.D. 577.) *Per contra*, the vendor may be restrained from continuing to trade in his *own name* if it was in that name that he formerly carried on the business, and it can also be shown (1) that he is attempting to deceive the public into the belief that he is still the owner of the old business; or (2) that it would be impossible so to trade without misleading the public. (*Cash, Lim. v. Cash*, 110 L.T. 427.) Nor can the vendor of the goodwill of a business set up another business under *any name* which might lead people to infer that he was still carrying on the *old business*, and in particular the vendor may not personally or by circular solicit the customers of his former business, and so deteriorate the value of the goodwill he has sold. But he may publicly advertise the fact that he has commenced a *new business*, for the restrictions imposed upon the vendor by the general law (as distinguished from any special covenants between the parties) do not extend so far as to prevent the vendor of a business from dealing with his former customers under *any circumstances*, or to grant the purchaser the right to insist upon the virtual retirement from the trade of the late owner of the business. (See *Trego v. Hunt*, 1896, App. Cas. 7, and the various decisions there cited.) In the course of the judgment in *Trego v. Hunt* Lord Macnaghten said:—"And so it has resulted that "a person who sells the goodwill of his business "is under no obligation to retire from the field. "Trade he undoubtedly may, and in the very "same line of business. If he has not bound "himself by special stipulation, and if there is no "evidence of the understanding of the parties

' beyond that which is to be found in all cases, he ' is free to carry on business wherever he chooses. ' But then how far may he go? He may do ' everything that a stranger to the business, in ' ordinary course, would be in a position to do. ' He may set up where he will. He may push ' his wares as much as he pleases. He may thus ' interfere with the custom of his neighbour as a ' stranger and an outsider might do; but he must ' not, I think, avail himself of his special know- ' ledge of the old customers to regain, without ' consideration, that which he has parted with for ' value. He must not make his approaches from ' the vantage ground of his former position, ' moving under cover of a connection which is no ' longer his. He may not sell the custom and ' steal away the customers in that fashion. ' . . . It is quite true that it would be better ' that the purchaser should protect himself by ' taking apt covenants from the person with ' whom he is dealing. But this, I think, is ' rather a counsel of perfection than a reason for ' leaving the purchaser entirely at the mercy of ' the vendor."

Of course, the above considerations affect and control a person who parts with his rights in the goodwill of a business for valuable consideration, but it would appear that the restrictions as to competition and the solicitation of the old customers do not apply where the alienation of the goodwill is involuntary, the Court having refused to restrain a bankrupt from soliciting orders from his old customers after the trustee in the bankruptcy had sold the business. (*Walker v. Mottram*, 1881, 19 Ch.D. 355.)

It has been held, however, that a debtor under a deed of arrangement is not an involuntary party to the sale of his business. Thus, where a trustee under a deed of assignment for the benefit of creditors sold the goodwill of the debtor's business, the estate was held responsible for the damage done to a purchaser as the result of subsequent canvassing by the debtor of the customers of the business which had been sold.

To avoid any possible misunderstanding it is obviously desirable for a purchaser to protect himself by requiring the vendor to enter into an agreement expressly restraining him from competing against or otherwise acting so as to deteriorate the business he is selling. This is more satisfactory for both vendor and purchaser, for the latter, instead of relying upon the *general* protective provisions of the law, may prescribe for himself such protective clauses as, in his opinion, the *particular* business and the peculiar circumstances demand, while the vendor, finding in a concise form what is required of him in regard to his future conduct, may more fairly assess the consideration for the sale of his business, for it naturally follows that the more restrictive the agreement of sale, the more valuable the business will be to the purchaser, and the less valuable the future business prospects of the vendor. But it must be remembered that an agreement purporting to restrain trade must be reasonable, for if it be unreasonable it cannot be enforced, because such restraints are deemed injurious to the public interests of the country.

The elements of reasonableness in this connection are:—(*a*) Valuable consideration for the restraint (even though the agreement be under seal); and (*b*) partial restraint only, *i.e.*, limited as to a particular area or a given number of years. In an exceptional case (*Nordenfeldt v. Maxim Nordenfeldt Guns, &c.*, 1894, App. Cas. 535) an agreement for total restraint was upheld, but that does not appear to affect the general rule that an unreasonable restraint of trade—an agreement going further than is really necessary for the protection of the purchaser—cannot be enforced.

The question as to whether or not the goodwill of a business passes on a sale or under a mortgage of the premises where such business is carried on, depends upon whether the goodwill and the premises are severable or not. If not severable the goodwill will pass with the property, but where the goodwill is dependent upon the personal skill of the mortgagor it will not pass under a mortgage of the business premises. (*Cooper v. Metropolitan Board of Works*, 1883, 25 Ch.D. 472.)

The vendor of the goodwill of a business who sells in consideration of a share in the future profits of the business will be postponed (as

against other creditors) in respect of any claim he might have in respect of same against the purchaser of the business in the event of such purchaser becoming insolvent. (Partnership Act 1890, section 3.)

Where a person pays a premium by way of purchase of an interest as a partner in the goodwill (or profits) of a business, and the partnership is prematurely dissolved through no fault of that person, provision is made in the Partnership Act, 1890, section 40, whereby such person may obtain a return of a proportionate part of the premium so paid unless an agreement of dissolution has actually been entered into between the partners, and such agreement contains no provision for a return of any part of the premium.

Valuation.

Not only the *value* of a goodwill, but also the *method* adopted in arriving at the value must necessarily depend upon circumstances, for the annual profits of a given business ascertained in the *ordinary* way will not, as a rule, be the precise basis for the valuation, while the number of years' purchase also varies considerably, depending so much upon the particular circumstances affecting each business. The annual profits to be taken as the basis of valuation (assuming same to be agreed upon as a factor) require to be carefully examined and adjusted where considered necessary, so as to make proper allowance for—

(1) The skilled supervision or other service necessary for the maintenance of the business, which has been exercised in the past by the proprietors. This, on a sale of the goodwill, would have to be undertaken either by the vendors (at a salary) or by the purchaser himself, or by a manager at a salary, and should be allowed for accordingly.

(2) The interest on the capital which would necessarily be employed in the business (including in the case of purchase the amount about to be paid for the goodwill). The capital employed to purchase and carry on the business would need to be withdrawn from some other income-producing investment, and allowance for the resultant loss of income must therefore be made.

(3) Some accountants contend that in ascertaining the annual profits, income-tax (Schedule D) should not be treated as an expense in carrying on the business, while others are of the contrary opinion.

But it is advisable, when negotiations for the purchase of the goodwill of a business are proceeding upon the basis of so many years' purchase of the average annual profits, to state specifically not only the number of years' purchase, but also the number of years over which the annual average is to be computed, the rate of allowance (if any) to be made for the proprietor's services, and the rate of interest to be allowed on the capital to be employed (including the cost of goodwill), and how special outgoings (*e.g.*, income-tax) are to be treated in ascertaining the amount of the average annual profits.

The number of years' purchase of the annual profits (as adjusted) will vary according to circumstances, and will depend mainly upon the probability of the *continuity* of the business with similar results to those of the past, notwithstanding the change in the proprietorship or management. Bearing upon this question of continuity, the following points may be considered:—

(1) Date the business was established.

(2) Whether proprietors are continuing their services. If not, will they compete with the purchaser or be restrained from so doing? (*See title* Restraint of Trade.)

Nature and extent of services rendered in the past.

If not continuing, can they be replaced without loss to the business? If to be replaced, what is the estimated cost of such replacement?

(3) Nature of the business. Is the subject-matter of trading a necessity, or a luxury, or something affected by the caprice of fashion? Is the business attached to the "person" of the proprietor, or the premises, or the reputation connected with the trade name? Is the volume of business done the result of successful competition, or has the proprietor a monopoly? Are

there any circumstances or conditions likely to affect the future working which were not applicable to the past (*e.g.*, the recent establishment of a rival, or the expiry or supersession of a patent)?

(4) Tenure of premises. If leasehold, whether the future rent under the lease is to be higher than in the past—what is the probability of renewal, and at what rent?

(5) Number of customers, whether changeable or constant? Is there any falling off in best customers? Generally, whether a declining business so far as can be judged from past results? Whether business mainly conducted by sales under large contracts requiring periodical renewal? Whether, assuming renewal, the same prices will be obtainable in the future? Whether any *unfavourable* contracts are to be taken over? Some contracts may have been favourable up to the ending date of the period under review, while subsequent circumstances may have affected them considerably. Whether the results of the period investigated have been inflated by the happening of events, or the obtaining of exceptional contracts, which cannot reasonably be expected to recur?

(6) Whether the purchases for the past have been made upon an ordinary basis, and one upon which it may reasonably be supposed future purchases may be effected, or whether exceptionally large purchases were made by contract or otherwise under conditions which cannot reasonably be expected to recur?

Sometimes a business is offered for sale at a price which contains little or nothing for goodwill (*quâ* goodwill), but as the purchase involves the acquisition of a large amount of machinery (some of which may be old-fashioned), or the taking over of an onerous lease, it should be remembered that the amount which is really being paid for goodwill is larger than the amount nominally fixed for the same.

The number of years' purchase of the goodwill of a trading concern varies from one to four or five, although many high-class businesses have brought even more. The goodwill of a purely personal business (*e.g.*, a solicitor's) is of a doubtful value apart from the continued co-operation of the person who has actually built it up, or of one who has at least been actively connected with the clients for some time. But some advantage in the nature of goodwill can be obtained by purchase, *e.g.*, introductions to the clients, possession of the draft papers, particularly those relating to pending matters, the books of account, and, lastly, but by no means the least, the tenancy of the offices where the business has been carried on.

In the event of a business being acquired by a company where, as Mr. L. R. Dicksee, M.Com., F.C.A., says, "the shareholders are not workers, but investors," the amount charged for goodwill is generally larger than would be obtainable from a single individual. This fact, however, is considerably affected by the circumstance of a vendor, or the vendors, being paid to a great extent in ordinary shares; so much so, that where—to take an extreme case—a vendor takes the whole of the ordinary or deferred ordinary shares in payment or part payment of purchase-money, and the nominal value of such shares equals or exceeds the amount stated as being paid for goodwill, the magnitude of the amount so stated does not seriously affect the holders of the shares carrying prior rights to those allotted to the vendor. The question of how much was "paid" for the goodwill would, however, affect any subsequent purchasers of the vendor's shares.

It should be noted that section 81 of the Companies (Consolidation) Act 1908 provides that:—

Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state (*inter alia*) the amount (if any) paid or payable as purchase-money in cash, shares, or debentures for goodwill.

These particulars are also to be included in the "Statement in lieu of prospectus" (*see that title*), which has to be filed by certain companies.

Compensation.

Where a trader is compelled to vacate his premises by reason of the lands being taken under statutory powers, he is entitled to compensation

for such *disturbance* to the extent of any diminution or extinction of his goodwill in consequence of the removal, quite apart from any compensation he may be entitled to in respect of loss or damage to stock, fixtures, or other assets.

"When lands, however, are taken under "compulsory powers, the goodwill is *not purchased by the promoters* but remains the property of the trader, and the loss suffered by "him is the diminution in its value in consequence of his compulsory ejectment from the "premises he is occupying. So far from the "goodwill being purchased or destroyed by the "promoters, there are many cases in which the "diminution in its value is hardly appreciable, "although the trade premises have compulsorily been taken. If a business is of a "wholesale character, or is one which consists "of orders from a widely extended area, a "compulsory change of trade premises would "be productive of small loss. If, in addition, "convenient premises can be acquired in the "immediate neighbourhood of the premises "taken, the loss incurred through diminution in "the value of goodwill becomes merely "nominal, and the owner's only claim to compensation is in respect of any reasonable "expenses which the taking of equally convenient new premises has rendered necessary. "On the other hand, there are cases in which "the diminution in the value of a goodwill "may almost equal the entire value of a goodwill. This is the case where a business is "retail and local, depending on neighbouring "customers, and no suitable premises can be "found in the locality within which the business connection extends. . . . Where "premises are taken and business is carried on "at a loss, the owner may be entitled to compensation on the ground that, but for compulsory powers, he would have been *entitled "to remain* on the premises and to carry on "his business." [Cripps.]

Treatment of Goodwill in Accounts.

(1) *Partnership.*—Ordinarily the Balance Sheet of a partnership does not include any item for goodwill as an asset, and it has been already stated that the mere fact that no value for goodwill is stated in the accounts does not *of itself* affect the respective partners' rights in regard thereto in the event of a dissolution. Where because of—(1) the purchase of the goodwill of the business; (2) the purchase of an additional business; (3) the sale of a portion of the existing business; (4) the admission of a new partner on terms as to goodwill; (5) the retirement or death of a partner involving a payment in respect of his share in the goodwill, or because of some other special circumstance, an amount for goodwill does "transpire" (whether receivable or payable), it is as a rule either withdrawn entirely from the partnership property, or passed in proper proportions to the credit or debit (as the case may be) of the Capital Accounts of all or such of the partners who, in accordance with the arrangements entered into in each particular case, may be entitled thereto or responsible therefor.

In eliminating the item goodwill from the accounts, it must, in the absence of an agreement to the contrary, be dealt with on the basis upon which profits are divided. For instance, if A. and B. are partners, sharing profits as to A. three-fourths and B. one-fourth, and C. pays £1,000 for one-fifth share in the future profits of the business, and brings a further £1,000 into the business as his capital, the latter £1,000 will be added to the assets of the firm, and credit therefor will be given to C. in his Capital Account with the firm. As regards the £1,000 paid for one-fifth share in the profits, A. and B. are entitled to it in the proportions of three-fourths and one-fourth respectively, for in future their shares of the profits will be less (viz., three-fifths and one-fifth respectively), and the price paid by C. for one-fifth share of the profits is the capital value of the *forbearance* by A. and B. in taking three-fifths and one-fifth in future instead of three-fourths and one-fourth as in the past. Thus A. is entitled to £750, and B. to £250, and this may be dealt with in various ways. The £1,000 need not appear in the Partnership Accounts at all (or may appear merely as a memorandum), and A. and B can take their respective shares of the £1,000 directly from C. On the other hand, it may be considered that, owing to the possible develop-

ments caused by C.'s admission, the £1,000 introduced by him (as capital) is not sufficient additional capital, and A. and B. may arrange to take credit for the £1,000 paid as goodwill in their Capital Accounts in the proper proportions, thus leaving the £2,000 in the business as additional capital. Another method of dealing with the above example is as follows:—A. and B. might put a value (say £5,000) upon the goodwill and include it among the assets, adding £3,750 and £1,250 respectively to their Capital Accounts, and then approach C., offering to allow him to place £2,000 in the business *as his capital* on the basis of the £5,000 for goodwill being *deemed an asset* of the firm as newly constituted. This would amount to the same thing as regards the three partners as under the previous arrangement, for upon the elimination of the item of goodwill from the Balance Sheet at any future time, C. would be charged with one-fifth of the amount, leaving his capital, apart from his share in the goodwill, £1,000 as before. A point to be borne in mind where an amount for goodwill does appear as an asset in the Balance Sheet is this: it may have been " created " when partners divided profits in certain proportions, and it should certainly be eliminated by a proportionate charge against the Capital Accounts before any change takes place in the manner of dividing profits among the partners *inter se*.

(2) *Joint Stock Company*.—The " capital adjustment " of the item of goodwill (permissible in the accounts of a private individual or a partnership) cannot be effected in the case of a joint-stock company, the capital of which can only be increased or reduced by statutory methods, and some difference of opinion exists among accountants as to the proper method of dealing with the item of goodwill after it has once become engrafted in the Balance Sheet, and included as part of the capital of the company.

It is, of course, clear that, if it is decided to eliminate the asset from the Balance Sheet, the amount cannot be deducted from the capital of the company. If, therefore, it is to be written off, in whole or part, it can only be so dealt with by an appropriation of revenue, whether current or accumulated. That such a course is incorrect in principle, so far as regards current profits, can hardly be doubted; and it may be pointed out that, as ordinarily the value of the goodwill of a business depends for its continued existence upon the profitable results of such business, the " writing off " of such an asset out of current profits would be in many cases theoretically improper, in that the possibility of its elimination in this way may afford the best proof of its value.

At the same time, directors and shareholders may wisely agree to forego a portion of the " legally divisible profit " in order to reduce or eliminate the amount at which the goodwill stands in the books, and so improve the financial position of the company, for, notwithstanding the reduction of the book value of the goodwill, the actual value, if any, is unaffected (at all events not reduced) by such a proceeding. Some companies have written off the whole of the original cost of the goodwill by an appropriation of profits, but the Balance Sheets issued from time to time continue to state the original cost of the goodwill upon the assets' side, placing the amount in an inner column; and this practice overcomes to a great extent one of the objections raised by those who favour the retention of the goodwill at the original cost.

The following extract from *The Accountant* newspaper may be taken as an expression of the more generally accepted accountancy view of this matter:—

> " Inasmuch as goodwill is a fixed asset, it is " an item which it is not necessary to value " for Balance Sheet purposes at its *actual* " *realisable* value at the date of the balancing. " The general principle upon which the fixed or " permanent assets of a company are valued for " Balance Sheet purposes is that of a going con- " cern—that is to say, there is no occasion to " take into account temporary fluctuations " which might involve gains or losses, if the " whole undertaking had to be converted into " cash at short notice. Consequently, fluctua- " tions in the value of goodwill arising from an " increase or decrease in the average profits of " the company are an item which, from an

" accountancy point of view at least, ought not " to be taken into account in arriving at its true " position of affairs by means of a Balance " Sheet. The question as to whether or not it is " desirable or necessary that something should " be periodically written off the value of good- " will is quite another matter, however, and " one upon which there is a less unanimous " opinion."

It has been held and stated by no less an authority than Mr. T. A. Welton, F.C.A., that it is *undesirable* to write anything off the value of goodwill as stated in the original accounts, he being of the opinion that it is very much more desirable that anything which it may be considered expedient to put aside out of profits should be accumulated in the form of a reserve fund. There is certainly much to be said in favour of this view; and, notwithstanding the fact that goodwill may either appreciate or depreciate, it is quite wrong, as a matter of principle, that either variation should be considered as affecting, either one way or the other, the actual profits earned by the undertaking. If effect were to be given in the accounts to a temporary depreciation of goodwill by charging the difference against diminished profits, the effect would be that the temporary decrease in the company's prosperity would be enormously exaggerated.

The first object of accounts is to record a true statement, not only of the company's financial position, but also of its trading for the current period; and this latter is naturally obscured if any extraneous profits or losses (which are entirely unrealisable or problematical, as the case may be) are allowed to affect the Profit and Loss Account. Even when it is thought desirable to write off goodwill gradually, the proper method of doing so is undoubtedly not by means of a charge to Profit and Loss Account, but by an *allocation* of a portion of the net profits to that purpose, instead of the whole of such profits being distributed in dividends. That is to say, anything which is credited to Goodwill Account (like anything which may be credited to the reserve fund) must be a sum set aside *out of* profits, and is not a charge *against* profits.

The further views of Mr. T. A. Welton, F.C.A., are as follow:—

"As for depreciation of goodwill where an " amount has been paid for same, I think a " great deal depends on the question whether, " by the light of experience, it appears that too " heavy a price has been paid; if so, then a " depreciation is desirable down to the point at " which the real value is arrived at. I mean " the *value upon which a fair dividend can be* " *earned*. But the very paucity of earnings is " likely to stand in the way of specially pro- " viding for a depreciation, which practically " affects the shareholder in the form of a fall " below par in the market value of the shares. " The poor income attainable needs to be again " decreased for the sake of replacing misspent " capital and bringing the market value to par. " Existing shareholders ordinarily object to do " so much for posterity. . . . One of the " most singular contrasts I know of is that " between a grave person who holds, against all " argument, that goodwill is an unreal asset " and ought to be written off out of profits, and " the same person who buys, say, North- " Western Railway Stock at 160 per cent. " (written in 1887), or bank shares at 2½ times " the sum paid upon them. Such people are " oblivious that in paying such prices they are " recognising goodwill handsomely; nor did I " ever meet with one of them who forbore to " eat up his dividend in such a case until out of " profits he had replaced the premium in his " purse."

Mr. E. Guthrie, F.C.A., has said that as (with few, if any, exceptions) no goodwill may be properly treated as eternal, some provision, however small, ought to be made for its gradual reduction.

However commendable and prudent it may be upon the part of the directors and shareholders of a company, it should be noted that no *legal obligation* rests upon them to provide for the reduction of the *book value* of the goodwill before declaring a dividend; and the attitude of an auditor of a company in this connection is well defined by Mr. L. R. Dicksee, M.Com., F.C.A., in his excellent work on "Auditing":—

" The amount at which goodwill is stated in " a Balance Sheet is never supposed to repre- " sent either its maximum or minimum value; " no one who thought of purchasing a business " would be in the least influenced by the " amount at which the goodwill was stated in " the accounts; in short, the amount is abso- " lutely meaningless, except as an indication " what the goodwill may have *cost* in the first " instance. Inasmuch, therefore, as nobody can " be deceived by its retention, there is no neces- " sity for the amount of Goodwill Account to be " written down. On the other hand, the prac- " tice is not unusual where any profits are being " made. *The question is not, however, one " upon which the auditor is required to express " an opinion;* and so long as the item is " separately stated on the Balance Sheet, it is " not desirable that he should interfere with the " discretion of the management, although there " is, of course, no objection to his offering an " opinion when he is invited to do so."

It should be noted, however, that the above remarks apply to the amount at which the item goodwill stood originally in the accounts of a particular company, and not to expenditure upon advertising or losses and expenses in experimenting, &c., incurred by the company with the object of *creating* a goodwill, for although such expenses or losses may have a value in that they are the inevitable means to a desirable end, yet they should be capitalised most cautiously. In such a case, an auditor should see that the item is separately and plainly stated upon the Balance Sheet, so that shareholders may know that certain expenditure is being made or loss incurred which is not being charged to Revenue Account. Where, from the nature of the business to be carried on by a company, it is anticipated that extraordinary expenditure on advertising, &c., will be necessary at the outset, the articles of association generally provide for the temporary capitalisation of same so that it may be gradually written off against profits. It may be mentioned that the original Table A attached to the Companies Act 1862 contained such a provision, but the new Table A, which came into force on 1st October 1906, is silent upon the point. In such cases an auditor may safely follow the provisions of the articles in this respect, although even under these circumstances he should see that the expenditure capitalised (for the time being) is plainly stated in the Balance Sheet.

As regards the treatment of the item goodwill in the accounts of a limited company, the position may be summarised thus:—

(1) Fluctuations in the " value " of goodwill should not be recorded in the accounts.

(2) In particular, such fluctuations should not be allowed to affect the current profits.

(3) There is no *legal necessity* to reduce the amount representing the original cost of the goodwill.

Note.—In *Wilmer v. McNamara* (1895, 2 Ch. 245) it was held that the goodwill of a trading company was in the nature of fixed capital, and accordingly it was not necessary (in the absence of some special provision in the company's regulations) to make good any depreciation of the goodwill in ascertaining the amount of profit available for dividend.

(4) The auditor therefore cannot object to the amount representing the original cost of goodwill being kept intact, so long as it is plainly stated in the Balance Sheet. But he should, nevertheless, carefully scrutinise capitalised expenditure (such as advertising, &c.) and see (*a*) that it is plainly stated in the Balance Sheet, (*b*) that the provisions (if any) in the articles in this connection are carried out, and (*c*) that no items are included which are clearly chargeable wholly against the *current period's* profits.

(5) If the goodwill be written down it must be understood as an *appropriation* of profits, and not as a *charge against* same.

(6) If a portion of the profits be so appropriated instead of being distributed in dividend, some authorities consider it better to accumulate same separately, leaving intact the original amount representing the book value of the goodwill.

Note.—Against this plan it is urged that in practice there is some difficulty in depriving shareholders of certain companies of the " full dividend " for general reserve purposes only, whereas if the portion of profit the directors desire to retain is " appropriated " to reduce or eliminate the goodwill, the difficulty is to a great extent removed, although the financial effect is the same. It is also contended by some that, if the amount of undistributed profit be not actually utilised in reducing or eliminating the goodwill, but is allowed to accumulate separately, there is a temptation to write such profits back again at some future date and distribute same in dividend should necessity arise.

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Governing Director.—When forming certain " private " limited companies the proprietor or chief partner of the business is appointed a governing director of the company. The terms of his appointment, the extent of his powers, &c., are enumerated in the articles of association, and generally take the following form :—

Appointment.—For life, or until he voluntarily retires or ceases to hold a stated number of shares in the company; in the latter event it is generally provided that he does not retire altogether, but becomes an ordinary director.

Powers.—To control the ordinary directors generally, and in particular it is sometimes provided that all transactions of the ordinary directors involving an amount by way of purchase or loan in excess of a stated sum shall be subject to his veto.

To appoint and remove the ordinary directors.

Gratuitous Agent.—*See* Agent.

Gross Profit.—The difference between the cost of goods which have been sold, and the proceeds of their sale, without any deduction in respect of the expenses of distribution of the goods or the cost of the general management and maintenance of the business. The cost of the goods includes, in the case of a manufacturer, materials, productive labour, rent, rates, &c., in respect of the premises used *for manufacture*, depreciation of such premises and of the machinery employed, and any other expenditure *directly* attributable to the manufactory. The account which shows the gross profit is called the Trading Account, but in the case of a manufacturing business the Trading Account may be divided into two parts, the Manufacturing Account and the Selling Account. (*See title* Manufacturers' Accounts.)

There are differences of opinion among accountants as to whether or not discounts upon purchases and sales are factors in the determination of the gross profit of a concern. Some contend that discounts on sales are expenses of distribution, whilst discounts on purchases are the result of the financial resources and arrangements of the concern, and as a consequence must not be included in the Trading Account. It is submitted that *trade* discounts on sales or purchases (viz., such as would be allowed by or to the concern irrespective of the date of payment) should be deducted from the sales and purchases respectively in preparing the Trading Account, whilst *cash* discounts must be excluded therefrom and treated in the account which determines the net profit.

So with regard to rent and rates of a manufactory, although undoubtedly part of the prime cost of the goods produced, there are differences of opinion as to their treatment in the accounts. Whereas wages and materials vary with the quantity of goods produced, items such as rent of factory do not, and some writers advocate the inclusion in the gross profit account of those classes of expenditure only which rise or fall with the output. Having regard to the fact that even the " stationary " items are admitted part of the prime cost it is more consistent to treat them as such in the accounts, it being fully recognised that a small turnover will proportionately bear a larger percentage of these " stationary " charges than would be the case if the turnover were larger.

Carriage upon goods inward (*i.e.*, purchases) should be treated as part of the purchasing price and as a consequence it constitutes a Trading Account charge, but carriage upon goods outward (*i.e.*, sales) is usually treated as an "expense of distribution," although the principle involved is apparently the same, viz., that the price of goods purchased or sold "carriage paid" presumably includes the cost of carriage, whilst consignments "carriage forward" would (ordinarily) be priced lower in consequence, and there is much to be said in favour of deducting the amount of such outward carriage from the proceeds of "sales." (*See title* Carriage and Cartage.)

The ascertainment of the gross profit of a concern is of great importance, for by a proper system of percentages a trader is enabled to institute comparisons and obtain valuable information as to the results of his past trading. In this manner the weak or strong points of the business may be revealed, a guide for the future selling prices is obtained (where not restricted by competition), and a check upon the stock of materials, and the cost of labour is to some extent afforded. When the costs of distribution, management, maintenance, and every other expense pertaining to the particular period have been charged against the gross profit, the resultant balance is the net profit or loss, as the case may be. (*See title* Percentage.)

Ground Rent.—The terms "Ground Rent" and "Chief Rent" are sometimes used colloquially as though they were interchangeable; they are, however, quite distinct, "chief rents" representing a *charge upon freehold* lands, and "ground rent" being the rent payable for land let on a building lease. The buildings erected by the tenant "fall in" with the land on the termination of the lease, and become the property of the lessor.

Both chief rent and ground rent are subject to the deduction by the person paying same of income-tax at the current rate, but he must, of course, account to the Revenue therefor.

Growing Crops.—These are "goods" within the Sale of Goods Act 1893; they are also "personal chattels" within the Bills of Sale Acts, when assigned separately from the land. *Fructus industriales* (*e.g.*, corn and potatoes) are deemed personal property, and on the death of the owner or other person entitled thereto before he has actually cut or gathered same, they pass to the personal representative, but a crop of *natural* grass growing at the date of the death of a life-tenant would pass to the remainderman.

Industrial growing crops may be taken in execution subject to regulations imposed by statute, and they are also subject to distress for rent.

Guarantee.—An undertaking by one to answer for a liability, or to perform a duty on the default of another who is *primarily* responsible therefor—that is, a guarantee is an engagement collateral to some other engagement.

The person giving the undertaking is called the guarantor or surety; the person to whom it is given, the creditor; the person in respect of whose debt or liability it is given, the principal debtor.

The Statute of Frauds provides that no action shall be brought to charge any person upon any special promise to answer for the debt, default, or miscarriage of another person unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, signed by the party to be charged therewith, or his agent duly authorised.

Originally, in order to satisfy the statute, it was required that the memorandum or note should at least contain:—

(1) The names and descriptions of the parties;

(2) The essential terms of the contract;

(3) The *consideration*; and

(4) The signature of the party to be charged or his agent duly authorised.

But now the Mercantile Law Amendment Act 1856, whilst in no way dispensing with the necessity for consideration for the promise, provides that no promise to answer for the debt or default of another is to be deemed invalid to support an action by reason only that the consideration for

such promise does not *appear* in writing or by necessary inference from a written document.

A guarantee need not necessarily be embodied in one document, but may be evidenced by several.

An offer to guarantee is not binding upon the guarantor until expressly or impliedly accepted by the creditor, nor has the surety upon payment of the debt or compensation a right of recoupment from the debtor unless the latter was a consenting party to the suretyship.

The *main* object of the parties to the guarantee (viz., the guarantor and the creditor) must be to secure the payment of a debt or the fulfilment of a duty by a third party—for this reason an agreement with an agent *del credere* is not within the Statute of Frauds, and need not be in writing, for the guarantee itself is not the object of the agreement with the agent, but merely one of the terms of the agent's appointment.

Moreover, a *del credere* agent does not really guarantee the solvency of his "customers" or promise to answer for their default. He rather promises to *indemnify* his principal against any loss which might result from his inadvertence in entering into contracts on behalf of his principal with persons who either cannot or will not perform them.

Where a third party is never liable to pay the debt or perform the duty in question, or where the promise is made not to the creditor but to the debtor, to indemnify the latter against his *own* liability, the contract is not one of guarantee, but of indemnity. An indemnity is not within the Statute of Frauds, and does not need to be in writing.

> "If two persons come into a shop and one "buys, and the other to gain him credit "promises the seller, '*If he does not pay you* "*I will*,' this is a collateral undertaking, and "requires to be in writing under the Statute of "Frauds. But if he says, '*Let him have the* "*goods, I will see you paid*,' this is an under- "taking as for himself, and he is intended to "be the very buyer, and the other to act as but "his servant."

The following extracts from the judgments delivered in *Guild v. Conrad* (Court of Appeal, 1894) will illustrate the distinction between a guarantee and an indemnity:—

> "A promise to be liable for a debt *con-* "*ditionally* on the principal debtor making "default is a guarantee, and is a promise to "make good the default, within the statute. "On the other hand, a promise to become "liable for a debt whenever the person *to* "*whom the promise is made* should become "liable is not a promise within the Statute of "Frauds, and need not be in writing."
>
> "It has been held that where one person "induces another to enter into an engagement "by a promise to indemnify him against "liability, that is not an agreement within the "Statute of Frauds, and therefore does not "require to be in writing." [Lopes, L.J.]
>
> "There is a plain distinction between (1) a "promise to pay the creditor if the principal "debtor makes default in payment, and (2) a "promise to keep a person who has entered "or is about to enter into a contract of liability, "indemnified against that liability, *inde-* "*pendently* of the question whether a third "party makes default or not." [Davey, L.J.]

Liability of Surety.—To pay the debt or compensation for and on the default of the principal debtor, but strictly within the terms of the contract of guarantee, for the rights of the creditor against the surety are wholly regulated by the instrument of suretyship.

Rights and Remedies of Surety:—

(1) Although the contract of suretyship "would "be invalidated by material though "innocent misrepresentation, or by such "non-disclosure of a fact as would amount "to an implied misrepresentation that such "fact did not exist," it does not require the same fulness of disclosure so essential to contracts *uberrimæ fidei*, such as the sale of land or the allotment of shares in a public company. But when once the contract of suretyship has been entered into, "the surety is entitled to be informed of

" any agreement which alters the relations " of creditor and debtor, or any circum- " stance which might give him a right to " avoid the contract." [Anson.]

(2) Although apparently a surety cannot compel the creditor to proceed against the debtor, he (the surety) may himself institute proceedings against the *debtor* to compel him to pay the creditor so soon as the latter has a right to sue and refuses to do so.

(3) The surety, on paying the debt or compensation for and on default, is entitled to recoupment or reimbursement from the principal debtor for all money properly paid, together with interest and costs.

As to interest where the principal debtor executes a deed of arrangement, *see title* Interest in respect of Proof of Debt.

(4) The Mercantile Law Amendment Act 1856 provides that on the surety paying the debt or performing the duty, he is entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which is held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security is deemed at law to have been satisfied by the payment or performance by the surety or not. The surety is also entitled to stand in the place of the creditor, and to use all remedies, and, if need be, upon a proper indemnity, to use the name of the creditor in any action to recover from the principal debtor or a co-surety indemnification for the advances made, or loss sustained.

The right of a surety (wholly or in proportion to his liability) to the benefit of the securities held by the creditor in respect of the particular debt or duty is unaffected, notwithstanding the fact that

(*a*) He was unaware of the existence of the securities, or

(*b*) The securities were obtained by the creditor after the contract of suretyship was entered into.

(5) One of several co-sureties has a right of contribution against his co-sureties, if he has paid more than his just proportion of the liability. (*See* Co-surety.)

Discharge of Surety:—

The surety will be entitled to be discharged from liability in the following cases:—

(1) Where the surety was induced to enter into the contract of guarantee by fraud on the part of the creditor. (In such a case the guarantee is void *ab initio*.)

(2) Where the creditor has discharged the principal debtor.

(3) Where the creditor has altered the terms of the *original* contract with the principal debtor, or *materially* altered the guarantee itself, or failed to perform a condition therein without the consent of the surety.

(4) Where the creditor has been negligent in his dealings with the principal debtor so that the surety's remedies are thereby affected.

(5) Where the creditor has misused any securities he may have held against the debt.

(6) Where one of several co-sureties jointly liable is released, the other sureties being thereby deprived *pro tanto* of their right of contribution; or where the surety entered into the agreement on the faith that another or others should become sureties, and that other or any one of the others does not join, those who have already executed the agreement may consider their liability at an end.

The discharge in bankruptcy of the principal debtor, or the acceptance of an arrangement under the Bankruptcy Acts, will not *per se* operate to relieve the surety or sureties.

Creditors whose claims are guaranteed by a third party, *i.e.*, a surety, should require a clause in the *deed itself* reserving their rights against the surety, or else obtain the permission of the surety before assenting to a deed of arrangement. To assent to a private arrangement without such permission or reservation of rights would operate as a release of the surety.

In some cases the rights of the surety upon paying the debt may be larger than those of the creditor, for where a creditor had obtained judgment against one of two joint debtors and thus precluded himself from suing the other, the surety was nevertheless not bound by this act, being held entitled to sue both debtors.

Before a creditor can proceed against a surety he must prove his debt against him, for a previous admission by, or judgment against, the principal debtor is not available against the surety. This, however, may be affected by a special arrangement between the creditor and the surety—in fact, the general rights and remedies of the parties *inter se* may be varied by express agreement, provided the law as to contracts generally is complied with.

Sureties are entitled to the benefit of the Statutes of Limitation, the periods being 20 years when the guarantee is by deed and six years in other cases. The " statute " begins to run from the time the creditor can enforce his claim against the surety.

An instrument of guarantee or indemnity (if the latter be in writing), in common with other agreements, if made under hand only, is liable to a stamp duty of 6d. unless (1) the subject-matter is not of the value of £5, or (2) it is made for or relating to the sale of any goods, wares or merchandise—in which two cases no stamp duty is payable. The duty may be denoted by an adhesive stamp. (*See titles* Continuing Guarantee, Co-Surety, Representation of Credit, Secured Creditor.)

Guaranteed Stocks.—Stocks of an undertaking, the interest upon which is guaranteed by some *other undertaking*, or by a Government. The term is, however, applied in different senses, sometimes to stocks equivalent to preference or preferred stocks, and at other times to those entitling the holders to a charge upon *surplus* lands, &c. &c.

Guard Book.—A book wherein are collected (1) the original invoices for goods purchased; (2) the receipts for payments made, or (3) any other class of documents, a separate Guard Book being kept for each class. The documents are affixed in the order in which the entries referring to them respectively appear in the Purchase Book, Cash Book, or otherwise.

Sometimes a Guard Book is utilised as the Purchase Book by means of cash columns, into which the amount of each invoice is extended.

If it is desired to classify the transactions additional cash columns may be added or the totals may be analysed periodically by dissection.

The advantage of the Guard Book to an auditor is that he may inspect an occasional invoice at haphazard without much trouble, and exercise a greater control over the Purchase Book entries than he might otherwise do. In particular this system is advantageous at stock-taking time, for an auditor may examine all *purchase* invoices in the Guard Book which have been treated as being subsequent to stock-taking, and thus satisfy himself to some extent that invoices have not been omitted from the period under review.

All the advantages of the Guard Book may, however, be obtained by means of an analysed Purchase Book used in conjunction with suitable files on which the invoices are numbered consecutively and arranged in the same order as in the Purchase Book. Thus the chief *disadvantages* of the Guard Book (viz., its cumbrousness, and the necessary " folding-up " of invoices) may be avoided.

H

Habendum of a Deed.—That part of a conveyance, &c., which determines the quantity of interest conveyed.

Hammered. —*See* Defaulter.

Hat Money.—*See* Primage.

Head Office Charges.—Expenditure at the head office of a concern having several establishments. The expenditure is in respect of the concern's requirements as a whole, and cannot be specifically appropriated to the working accounts of the various establishments. The item may be either (1) apportioned according to circumstances, or (2) treated in one item as a set-off against the total of the profits carried from the various working accounts.

Interest on loans, general manager's salary, and audit fees are instances of this class of expenditure. (*See title* Branch Establishments, Accounts of.)

Hereditaments.—Every class of property which may be inherited. Hereditaments may be *corporeal*, *i.e.*, land, or *incorporeal*, *i.e.*, the rights and profits issuing out of land.

Hidden Reserves.—*See title* Reserves and Reserve Funds.

Hide Palmer's Act (32 & 33 Vict. c. 46).—This Act abolished the priority of specialty over simple contract debts in the administration of the estates of deceased persons after 1st January 1870.

Arising out of the construction of this Act several fine points have arisen as to the distinction between an executor's rights of preference and retainer. The latest cases are *Re Samson; Hobbins v. Alexander* (1906), and *Re Jennes; Metzes v. Jennes* (1909).

Hire and Purchase Agreements.—Contracts whereby one party (the dealer or manufacturer) agrees with another (called the hirer)

(1) That the hirer may have the immediate use of a certain commodity or a number of commodities, belonging to the dealer or manufacturer, in consideration of the payment of a fixed number of instalments in the nature of hire, extending over an agreed period.

(2) That upon the due payment of the whole of the stipulated amounts of hire and (generally) a further nominal sum, at the expiration of the agreed period, the *property* in the subject-matter of the agreement will thereupon pass absolutely to the hirer.

Note.—Some agreements are worded to the effect that the hirer may at the end of a stated period elect to purchase the subject-matter of hire at a stated price (the total amount of the agreed instalments), and that should he so elect, the manufacturer or dealer shall credit the hirer as against such purchase price with the total amount of the hire payments which have been paid.

(3) That on the default of the hirer, in respect of any of the payments of hire, the dealer or manufacturer may resume possession of the subject-matter and terminate the hiring agreement.

(4) That the hirer may at any time, should he think fit, return the subject-matter of hire, upon payment of the amount of hire proportionate to the period he has been in possession.

Under a hiring agreement (simply) no property in the goods so hired passes to the hirer, but under a "hire and purchase" agreement a distinction must be drawn between those which involve an agreement to buy, and those which do not. There is an agreement to buy, if the *hirer is bound to pay the whole* of the agreed sums for hire, whether he returns the subject-matter before the expiration of the agreed period or not.

Thus, where upon entering into the hiring agreement:—

(1) The hirer is under an absolute obligation to pay *all* the agreed instalments, such instalments being capable of enforcement by action, and

(2) The hirer cannot insist upon returning the subject-matter at any time and so free himself from obligation to make further payments;

then the hiring agreement amounts to an agreement to buy, for unless there is a breach in the agreement by the *hirer* himself the transaction must necessarily result in a sale.

On the other hand, where the agreement provides *inter alia* that:—

(1) The dealer or manufacturer may at any time terminate the hiring on default of the hirer in making the agreed payments or on the breach of any other agreed condition, and

(2) The *hirer* may at any time terminate the hiring by merely surrendering the subject-matter of hire without any liability other than the payment of the amount of hire proportionate to the period he has been in possession;

then the agreement does not legally involve an agreement to buy.

(See *Lee v. Butler*, 1893, 2 Q.B. 318, and *Helby v. Matthews*, 1895, App. Cas. 471.)

The distinction is important, for where there is an agreement to buy, a purchaser or pledgee of goods buying or taking delivery in good faith from a person in possession under such an agreement may acquire a good title as against the true owner, but if no agreement to buy is involved the hirer cannot give such a title.

Goods under a hire-purchase agreement "made by the tenant" are liable to distress (Law of Distress Amendment Act 1908, section 4), but goods under a hire-purchase agreement made by any under-tenant, lodger, or other person are exempt, provided such under-tenant, lodger, or other person complies with the requirements of the Law of Distress Amendment Act 1908.

Goods in the way of a person's trade or business and in his possession under a hiring agreement, under such circumstances that he is the reputed owner thereof, will pass to the hirer's trustee in the event of his bankruptcy, *unless there is a notorious custom* as to such hiring which may be held sufficient to rebut the presumption of ownership.

Stamp Duty.—Prior to 1907 a distinction was drawn by the Inland Revenue authorities between hire and purchase agreements which were unqualified agreements relating to the sale of goods (and therefore exempt from stamp duty) and those which contained "defeasance" clauses, and as a consequence were liable to duty by scale according to the amount "secured" by the agreement.

But the Finance Act 1907, section 7, provides that any agreement for or relating to the supply of goods on hire whereby the goods in consideration of periodical payments will or may become the property of the person to whom they are supplied shall be charged with stamp duty as an agreement (6d.) or if under seal . . . as a deed (10s.) as the case requires, and the exemption . . . . which extends to agreements for the sale of goods shall not apply in the case of any such agreement of hire purchase.

Accounts of the Dealer or Manufacturer.—There are different methods of treating the hire-purchase transactions in the Dealer's or Manufacturer's Accounts, three of which will be described:—

I.—*Loan System*:—

(*a*) Open a Personal Account for the hirer, heading the same with an epitome of the hiring agreement.

(*b*) Ascertain the "cash down" price of the goods about to be "hired."

Note.—The hire payments may be based upon the cash price and a certain rate of interest, or be fixed arbitrarily, but whether based upon a given rate or not, the dealer or manufacturer should know (1) the "cash down" price, and (2) what rate per cent. per annum will increase that price to the aggregate payments for hire, having regard to the stipulated periods.

(*c*) Treat the transaction as a *sale* to the amount of the "cash down" price, debiting the hirer with that amount.

(*d*) Charge the hirer periodically with interest upon the unpaid balance at the fixed or "ascertained" rate (as the case may be) and credit him with the instalments of hire paid from time to time.

(*e*) There should be no balance in the Personal Account of the hirer at the expiration of the agreed period of hire, if all the instalments have been duly paid.

The objections to the above system are:—

(1) The hiring agreement is treated as a sale, which is (legally) incorrect.

(2) The dealer's or manufacturer's "interest" under the agreement during the period of hire is treated in his accounts as a debt due from the hirer, whereas such interest is really in the *subject-matter* of hire itself. The dealer or manufacturer could not sue for the unpaid balance; on the other hand the "property" has not passed to the hirer.

(3) Obviously, the hire payments cannot be treated as profits during the period of hire and the goods hired as a *gift* from the dealer or manufacturer at the end of the

term; nor, on the other hand, is it correct that the particular period in which the hiring agreement is *commenced* should be credited with the whole of the profit on the "artificial sale." The interest charged to the hirer's account, during the period of hire, is merely compensation for deferred payment, but the profit which would be derived if the transaction were an ordinary sale is, under this system, wholly absorbed by the commencing period; furthermore, it must be noted that, as the hirer is not compelled to pay for future hire, but may return the goods, there is an abnormal risk of the "artificial debt" not being fully realised. It has been suggested that as some interest in the agreement is soon acquired by the hirer, he rarely returns the goods, and, even where he cannot continue his payments, he may succeed in transferring his rights to another person. It must be admitted, however, that where goods *are returned* they will be those under agreements which the hirer finds *most profitable* to him and most unprofitable to the dealer or manufacturer to return; so that it can hardly be expected that profitable returns will counterbalance those upon which the dealer or manufacturer would incur a loss, only such of the latter class taking place; the "profitable" being either continued to the end or assigned.

.—"*Sale*" *System*:—

(*a*) Open a Personal Account with the hirer, debiting him at the date of the agreement with the aggregate amount of the instalments—thus treating the transaction as an out-and-out sale.

(*b*) Credit the periodical totals of these hire-purchase sales to a Nominal Account headed "Sales on Hire-Purchase."

(*c*) At each stocktaking apportion these total sales for the period between the "cash down" price and the balance representing interest, the former being credited to Trading Account and the latter to an account headed "Hire-Purchase Interest Suspense Account."

(*d*) Apportion this interest to the credit of Revenue over the term of the agreement—*e.g.*, assuming a three years' agreement, credit the first year with (say) three-sixths, the second year two-sixths, and the third year with one-sixth of the interest, or other proportions, according to circumstances.

Briefly, it may be said that this system has all the objections attaching to the Loan System.

III.—*Stock System*:—

Under this system the goods hired are treated as *stock out on hire*, the dealer's or manufacturer's interest in same decreasing (theoretically though not legally) to the same extent as the hirer's interest is acquired. Thus:—

(*a*) An account is opened for the hirer in a Memorandum Ledger (*i.e.*, distinct from the books of account), all the particulars of the hiring agreement being placed at the head of the account. The whole of the due dates of the instalments and the amounts thereof are tabulated on the debit side of the account. The *cost* price of the goods hired is also stated (in cypher where necessary) at the head of the account.

(*b*) All receipts in respect of hire are recorded in a separate column in the Cash Book. The items are posted in detail to the credit of the various hirers' (memorandum) accounts, and the total of the hire receipts is posted periodically to "Hire and Purchase" Account.

(*c*) The cost prices of all goods sent out on "hire" are recorded in a Hire and Purchase Day Book. The total of these is posted to the credit of Stock Account and to the debit of Hire and Purchase Account, *being a transfer of stock at cost price from one department to another.*

(*d*) All stock out on hire is valued periodically by extracting the *unpaid proportion of the cost* from the various hirers' Personal Accounts. For instance, if the cost price of

a wagon is £48, and it has been hired for four years at £15 per annum, the stock value of the wagon after three years' payments had been made would be £12. The last year's hire payment of £15 would show the same percentage of profit as those of the other years (viz., 25 per cent. upon cost).

(c) All hire payments (if any) in *arrear* at the date of stocktaking are treated as *debts*, and the valuation of the goods on hire apportioned as if the hire had been duly paid to date.

The profit in respect of hiring for a particular period will then be shown in the "Hire and Purchase" Account in the following form:—

Dr. *Cr.*

	£		£
Stock out on hire at commencement of period (valued on the basis of the unpaid proportions of the various cost prices)	—	Hire Receipts (gross) ..	—
Stock sent out on hire during the period, at cost, per paragraph (c) above	—	Stock out on hire at end of period (valued on the basis of the unpaid proportions of the various cost prices) ..	—
Gross Profit for the period	—		
	£		£

This system more correctly records the "interest" of the dealer or manufacturer, viz., that of stock-in-trade, and although legally such "interest" does not pass to the hirer until the whole of the hiring conditions are fulfilled, for accountancy purposes it is *deemed to pass proportionately* to the fulfilment of such conditions. Perhaps it is more correct to say that, pending the fulfilment of the conditions of the hiring agreement, the hire receipts are (considered in their strictest sense) revenue items, but as there is a probability that the hirer may comply with the whole of the conditions and so acquire the subject-mattter absolutely, in order to carry out the *spirit*, though technically not the *letter*, of the agreement, and further, as a matter of prudence, an apportionment is considered necessary so as to provide for the *loss of the subject-matter of hire* when the property therein passes to the hirer. The stock system is well adapted to businesses such as those of piano manufacturers, where there are a considerable number of hirers, for no apportionment (as between capital and income) of the numerous payments in respect of hire is necessary—all being carried to one account, whilst the Memorandum Ledger serves the dual purpose of a Hire Stock Register and a record of the Personal Accounts of the hirers. The profit under the various agreements is apportioned *rateably over the whole period of hire*, whilst the interest, which ordinarily is involved in a deferred purchase-price, is similarly dealt with. The equalisation of the interest is, perhaps, not strictly correct, and it may be further suggested that the commencing period (*i.e.*, that wherein the transaction is effected) is at least entitled to a larger proportion of profit than the later periods, but the system has at least three good features:—

(1) It records the manufacturer's asset as *stock*.

(2) It obviates the necessity of apportioning the "hire payments," and at the same time supplies a Stock Register.

(3) It errs, if at all, on the side of prudence in taking credit for the profit on each transaction proportionately over the whole period of hire.

It is worthy of note that, upon the sale of a manufacturer's business, or the assets of same, where the hire system is carried on, the *outstanding asset*, in respect of hired stock, should be treated as stock-in-trade (the property in same not having passed to the hirer), so that *ad valorem* duty will be payable upon a "conveyance" thereof, for stock-in-trade will pass by delivery, while an assignment of *book debts* would be subject to such duty. The value of the benefit of the hiring agreement will be already included in the general item "Goodwill."

Accounts of the Hirer:—

1.—"It has been suggested that a simple and "safe method of dealing with the bookkeeping "pertaining to this system is to ascertain what "the *ultimate value* of the object will be when "the various instalments have been paid, and to

" divide this *ultimate* value by the number of the " instalments and debit the quotient to capital " each time an instalment is paid, the remainder " of the instalments being debited to Profit and " Loss Account. For example, it is suggested " that in the case of a wagon purchased for £60, " payable in twenty instalments, the ultimate " value being £40, that as each instalment is " paid, £2 should be charged to Capital Account, " and £1 to Profit and Loss Account."

The points which suggest themselves with regard to this system are:—

(*a*) That it is undoubtedly simple, and assuming the accurate assessment of the *ultimate* value, the result at the end of the period of hire is the same as under the annuity system with interest and depreciation involved.

(*b*) That as interest is included in the deferred purchase-price it must be considered in arriving at the present value, and as depreciation affects the ultimate value it must be taken into account in assessing such ultimate value.

(*c*) Thus, in order to avoid the consideration of interest and depreciation in the apportionment to capital, it is suggested that an *ultimate value be ascertained*. But ordinarily such ultimate value can only be *ascertained* by carefully considering the incidence of the interest involved in the price, and the depreciation of the subject-matter itself. The ultimate value may certainly be *assumed*, and a review of the essential factors of such value be thereby avoided, but although in such a case the system here suggested might retain its simplicity, it must necessarily cease to be either scientific or safe.

(*d*) That, under any circumstances, interest and depreciation are sufficiently important and their functions so dissimilar that they are entitled to be separately recorded.

II.—"An article having been acquired on the purchase-hire system should be debited to " Plant or other appropriate Account at *its value* " *as if purchased for prompt cash*, and the differ- " ence between that value and the aggregate " amount payable under the purchase-hire agree- " ment should be taken to an 'Interest on " Deferred Payment Account,' the *whole of the* " *liability* being carried to the credit of a Per- " sonal Account with the vendor of the article."

The obvious objection to this plan is that it adopts the transaction as an out-and-out purchase, thereby creating a fictitious asset and a corresponding fictitious liability—for the asset is only being conditionally acquired during the agreed period of hire—in fact, it cannot strictly be said that the asset is even gradually acquired, for it is only *deemed* to be so for accountancy purposes, as already stated, in the Stock system of Manufacturers' Accounts (*supra*). This distinction is important. For example:—Suppose a limited company has general assets £10,000, and liabilities £20,000, also £5,000 worth of wagons held under a hiring agreement, with only the first instalment, £1,000, paid. In this case the adoption of the whole asset and corresponding liability would affect the " paper position " of the company, showing assets £15,000, liabilities £24,000, or 12s. 6d. in the £, instead of 10s. in the £—the true position. For on a winding-up order being made the manufacturer, unhampered by any reputed ownership clause as in bankruptcy, would take possession of the wagons in satisfaction of the alleged liability to him of £4,000.

An article in *The Accountant* newspaper refers to this system thus:—

" The usual method of dealing with this class " of transaction is in the first place to ascertain " the cash value of the wagons, to credit that " amount to the account of the manufacturer, " and to debit it to the account of the wagons. " The instalments paid are then debited to the " Manufacturer's Account, and the annual " amount of interest credited thereto and debited " to Interest Account; while the annual charge " in respect of depreciation is credited to the " Wagons Account and debited to Depreciation " Account. It will be seen that in effect this

" method of recording the transaction is per-
" fectly straightforward if it be assumed that the
" wagons are purchased out-and-out and that the
" payment therefor is spread over a term against
" which interest is charged. This, however, is by
" no means the nature of the transaction which
" has been embarked upon, therefore we have
" no hesitation in saying that this method of
" recording the facts is *absolutely wrong*, and we
" say this in spite of the fact that this is by far
" the most usual method of dealing with the
" matter in books of account. It is obviously
" wrong to debit in the accounts of the tenant
" (hirer) an item as an asset *which does not*
" *belong* to the tenant; and it is equally wrong
" to credit in his books a liability which *he can*
" *never be called upon to pay.*"

III.—(*A*) Where the agreed instalments (hire) are equal in the aggregate to what a cash price would have been, interest in addition being charged at an agreed rate per cent. per annum upon the unpaid portions of the total instalments (such interest accruing due with each payment of hire), each instalment may be treated as " capital," and the interest specifically payable must be carried to Profit and Loss Account.

(*B*) Where the agreed instalments are based upon a deferred purchase price, interest at a certain rate, or a lump sum by way of interest, having been included in consideration of the deferred payments, the cash price should be ascertained by finding the present value of the total instalments under the various conditions as to interest and dates of payment. The successive instalments should be apportioned thus:—Interest (at the rate utilised in obtaining the present value) should be made up to the date of each instalment upon the unpaid portion for the time being of the ascertained cash price, and such interest should be charged to Profit and Loss Account, and the balance of the instalment treated as capital.

The amounts capitalised as representing the hirer's " acquisition " in the property hired form a *contingent asset*, being subject to the due fulfilment of the terms of the hiring agreement. Of course, in addition to the interest referred to above, the Profit and Loss Account must be charged with the proper amount of depreciation, for although the subject-matter does not belong to the hirer he must provide for its depreciation, as the property when vesting absolutely on the fulfilment of all the agreed conditions will, nevertheless, pass to the hirer in its *depreciated* state. Under this system there is no anticipation of liability, whilst the asset is " appropriated " gradually, but as, strictly speaking, even gradual appropriation cannot be claimed, the contingency attached to the accumulating asset should be made apparent. For instance, a public company issuing a Balance Sheet during the currency of a hiring agreement might state the item thus:—

Wagon Purchase Account.

300 wagons under hire-purchase agreement; period of hire 6 years; 3 years' hire paid.

Capitalised hire payments	...	£ —
Less Depreciation ...	...	—

This mode of stating the " asset " would show upon the face of the Balance Sheet that the item could only be deemed an asset on the assumption that the hire payments for the three succeeding years would be duly paid.

Holder in Due Course.—One who takes a bill (*a*) complete and regular on the face of it, (*b*) before it is overdue, (*c*) in good faith and for value, and (*d*) without notice of previous dishonour (if so) of the bill or of any defect in title of the person who negotiated it.

A holder of a bill, whether for value or not (provided he has not been a party to any fraud or illegality affecting it), who derives title through a holder in due course, has all the rights of the latter against the acceptor, and all parties prior to that holder. (Bills of Exchange Act 1882, section 29.)

Every holder of a bill is *primâ facie* deemed to be a holder in due course, but if, in an action upon a bill, fraud or illegality in connection with

he bill is admitted or proved, the burden of proof s shifted unless and until the holder proves that, ubsequent to the alleged fraud or illegality, value as in good faith been given for the bill. (Section o.) But see *Talbot v. Alex. von Boris and Vife* (C.A. 1911).

Apart from the general right of the holder of a ill to sue upon it in his own name, where he is older in due course, he holds the bill free from ny defect of title of prior parties, as well as from iere personal defences available to prior parties mong themselves, and he may enforce payment gainst all parties liable on the bill. (Section 8.)

lding Out.—Everyone who by words spoken or ritten or by conduct represents himself, or nowingly suffers himself to be represented, as a artner in a particular firm, is liable as a partner o anyone who has on the faith of any such repre- entation given credit to the firm, whether the epresentation has or has not been made or com- nunicated to the person so giving credit by or ith the knowledge of the apparent partner aking the representation or suffering it to be ade.

Such a person is held liable as a partner by stoppel, and the rule as to "holding out" xtends to bankruptcy administration.

The continued use of the old partnership name, r of a deceased partner's name as part thereof, oes not of *itself* make the executors or adminis- rators of a deceased partner liable for debts con- racted after his death.

A partner who has *retired* from a firm may be able for debts contracted after his retirement if e has omitted to give proper notice and "hold- g out" can be established against him by the rticular creditors.

(*See* Limited Partnership.)

H ding over.—Keeping possession of land by lessee fter the expiration of the term.

H noured Bill (of Exchange).—A bill which has en paid in accordance with the tenor. (*See tle* Retired Bill.)

H ses.—The sale of horses is regulated by statutes 2 & 3 Phil. and Mary, and 31 Elizabeth, which require a record of all sales at market, the intention being (1) to prevent the sale of stolen horses, and (2) to give the true owner a right of recovery under certain conditions. An attempt was made to remodel the provisions of these statutes and embody same in the Sale of Goods Act 1893, but the sections as drafted were rejected and the Act merely confirms the older statutes.

Hotchpot.—A blending of property; the bringing in to a common fund of shares or amounts already received in order to become entitled to a share in the general distribution.

The Statute of Distribution requires the children of a person dying intestate to bring into account such portions or advancements of personalty as they may have received, so that, taking into consideration all such advances, each child may take in equal shares. The Act takes nothing away from a child out of that which may have already been received, although it may be in excess of a full share, nor is a child having been advanced a portion compelled to bring it into account; but if such be not done, the child so refusing is excluded from participation in *the distribution* of the estate.

A clause requiring advances to be brought into hotchpot is also usual in wills and marriage settlements.

A legatee who has to bring into hotchpot an advance by the testator, which comes within the definition of a gift *inter vivos* chargeable with estate duty, is entitled to deduct the duty from the amount to be brought into hotchpot if such duty is paid by the legatee.

Household Effects.—Goods and furniture reserved for domestic purposes and personal use. A gift or bequest of household goods or household furniture, where a testator had a furnished private house, and also furniture at his place of business, was held not to apply to the latter.

As to household effects in bankruptcy and under distress for rent, &c., *see title* Excepted Articles.

Hypothecation.—The pledging of something as security for a debt or demand, but differing from a pawn, in that the possession of the subject-matter of the pledge is retained by the pledgor.

Hypothecation is not recognised by English law. All that a letter of hypothecation can do is to create a trust over the goods in favour of the lender, whose only remedy in case of a breach is to claim for damages. No property in goods can pass by a letter of hypothecation.

The Bills of Sale Act 1890 provides that an instrument charging or creating any security on or declaring trusts of imported goods given or executed at any time prior to their deposit in a warehouse, factory, or store, or prior to their being re-shipped for export or delivered to a purchaser, not being the person giving or executing such instrument, shall *not be deemed a bill of sale* within the meaning of the Bills of Sale Act 1882.

This exemption from the provisions of this Act does not, however, operate in bankruptcy proceedings so as to take the goods comprised in such letters of "hypothecation" out of the "reputed ownership" clause, if apart from such hypothecation the goods would be liable thereto. (*See title* Reputed Ownership.)

I

Illegal Consideration.—*See* Consideration.

Illegal Contracts.—Agreements to perform acts forbidden by law, or to omit to do acts required by law. They may be divided into:—

A.—Breach of the common law:—

(1) Contracts void or voidable on account of fraud, through either misrepresentation or concealment.

(2) Contracts void as being contrary to good morals.

(3) Contracts in violation of public policy:—

(*a*) Restraint of trade.

(*b*) Restraint of marriage.

(*c*) Marriage brokerages.

(*d*) Trading with an alien enemy.

(*e*) Champerty, &c.

B.—Breach of statute.

Immediate Parties.—Parties to a bill of exchange, who are in direct relation to each other. For instance, the drawer and acceptor, the drawer and the payee, the indorser and his indorsee, are *primâ facie* immediate parties. (*See title* Remote Parties.)

Immovable Property.—Property which is "not to be forced from its place, the characteristic of "things real." Lands and leaseholds are immovable, although leaseholds are personalty.

Immovable property situate *out* of the United Kingdom is not chargeable with estate duty or succession duty.

Impersonal Accounts.—*See* Nominal Accounts.

Impersonal Ledger.—*See* Nominal Ledger.

Implied Contract.—An agreement which is not expressed either in writing or verbally, but which is inferred or deduced from conduct or a course of dealing. (*See* Contract.)

Implied Trust.—A trust not expressed, but arising from the construction placed upon the conduct of the parties and the circumstances of the case. Implied trusts may be divided into (1) those implied from the intent of the parties, and (2) those arising from operation of law.

Impossibility.—If a man contracts to do a thing which is absolutely and physically impossible such contract will not bind him; but where the contract is to do a thing which is possible at the time the contract is entered into, but *subsequently* becomes impossible, he will be liable for the breach.

Impossible Consideration.—*See* Consideration.

Impressed Stamp.—One impressed upon a document by the Revenue authorities as distinct from an adhesive stamp placed upon the document by the parties. The impressed stamp bears the date upon which the document is stamped. Certain documents must bear an impressed stamp, such as:—

*Bills of exchange (inland and not payable on demand).

*Promissory Notes.

*Allotment letters (shares).

*Bills of lading.

Mortgage bonds.

Deeds.

Assignments.

Conveyances and Transfers.

*Share Warrants.

*These must be stamped before execution or issue, as the case may be.

prest System.—A system of disbursing by means f advances. It is carried out in some of the overnment departments, and is adopted in commercial concerns as being the best method of dealng with petty cash in the accounts.

The plan is to advance the petty cashier a round sum," out of which he makes his petty isbursements, and at the end of a week or nonth, as the case may be, he renders an ccount of his expenditure, usually analysed nder appropriate heads.

The total amount of such expenditure is then aid over to him, and the particulars thereof are pecifically entered in the General Cash Book. he original sum is thus restored to the petty ashier, and it appears as a standing asset in the ooks of the concern.

An auditor should always require the " round um " to be produced at the date of balancing, nd where the audit includes the periodical count. ng of the cash of the concern, the balances of he General Cash Book and the Petty Cash Book hould be produced at the *same time*. As an nternal check, the general cashier should require he production of the unspent portion of the imprest," in addition to an account of the xpenditure, before issuing a cheque or cash for he amount of the latter.

Inchoate Instrument.—One begun but not ompleted.

A simple signature on a blank stamped paper, elivered by the signer in order that it may be *onverted* into a bill, operates as *primâ facie* uthority to fill it up as a complete bill for any mount the stamp will cover, using the signature or that of the drawer, or the acceptor, or an ndorser. When a bill is wanting in any *material* rticular, the person in possession of it has a *rimâ facie* authority to fill up the omission in ny way he thinks fit. In order that any such nstrument, when completed, may be enforceable gainst any person who became a party thereto *rior* to its completion, it must be filled up within reasonable time and strictly in accordance with he authority given. Reasonable time for this urpose is a question of fact. Provided that any instrument negotiated after completion to a holder in due course is valid and effectual for all purposes in his hands. (1882 Act, section 20.) In one case, a person signed a bill for £500 as acceptor; the instrument was stamped sufficiently to cover £4,000, and had been drawn in such a manner as to enable the drawer to *alter the bill* after acceptance. The blanks in the bill were subsequently filled up by the drawer, and the instrument was negotiated for value as a bill for £3,500. The House of Lords held that the acceptor was, nevertheless, only liable to the holder for £500, the sum for which he *really accepted* the bill.

Income.—Profits or gains by way of (1) rents from property, (2) interest or dividend on invested capital, (3) profits from trading, (4) remuneration for skill or labour, &c. Income from property or a capital fund may be defined generally as such receipts (periodical or otherwise) as are attributable to the employment of a property or fund—provided the property or fund remains intact.

The question as to whether a particular item is capital or income is an important one in the administration of the estate of a deceased person. Much will depend upon the terms of the will or settlement. The question applies equally in the case of a joint-stock company in deciding what are profits available for dividend.

(*See titles* Apportionment, Capital, Executorship Accounts, Income and Expenditure, Profits available for Dividend.)

Income and Expenditure.—A statement of income and expenditure includes the entire income for the period under review whether actually received or not, and the whole of the outgoings properly chargeable against such income, whether actually paid or not; that is to say, it is practically equivalent to a Profit and Loss Account, adjusting the outstanding assets and liabilities at the commencement and end of each period.

In the preparation of an Income and Expenditure Account many items have to be apportioned and others estimated. The Committee which considered the questions affecting the accounts of

Local Authorities recommended a system of income and expenditure for the accounts of all trading undertakings; but with regard to Rate Fund Accounts, a system is recommended which, though not a complete statement of income and expenditure, is more than an ordinary account of receipts and payments, viz., an account which includes all items, whether received or not or paid or not, which have actually become *due for receipt or payment* within a given period, but does not take into consideration accruing portions of income and expenditure not actually due, but capable of computation by apportionment to the end of the particular period.

Thus there are three forms of account in this connection :—

(1) A full account of income and expenditure, including all items whether received or not or paid or not, and whether due or not, including apportioned and estimated items if pertaining to the period under review.

(2) An account of income and expenditure incomplete to the extent that it excludes all items not actually due for receipt or payment at the end of the financial period.

(3) An account of actual receipts and payments only.

In an Income and Expenditure Account the income is shown upon the credit side, and the expenditure upon the debit side, of the account, thus reversing the method adopted in the case of an account of receipts and payments.

The headings " Receipts " and " Expenditure " are often used together, particularly in official forms of account, but such a combination of terms is not strictly correct.

(*See title* Receipts and Payments.)

Income Tax.—

INTRODUCTORY.

There are numerous Acts of Parliament relating to income-tax, but the most important are :—

Income Tax Act 1842.

Income Tax Act 1853.

Taxes Management Act 1880.

Customs and Inland Revenue Act 1890 (section 23).

Finance Act 1894.

Finance Act 1907.

Finance (1909-10) Act 1910.

Although the " permanent " Acts jointly provide the " code of direction " for assessing and levying the income-tax when granted, the grant itself is made annually, when (*a*) the rate is fixed at which the tax is to be levied for the current financial year (from 6 April to 5 April following), and (*b*) any necessary modifications or amendments in the incidence of the tax are made.

The tax is in the form of a " poundage " levied upon all taxable income from property, professions, trades, offices, &c. The rate in force from 6 April 1909 to 5 April 1911 was one shilling and twopence, and the rates in recent years have been as follow :—

	s	d
6 April 1904 to 5 April 1909	1	0
" " 1903 " " 1904	0	11
" " 1902 " " 1903	1	3
" " 1901 " " 1902	1	2
" " 1900 " " 1901	1	0
for several years previously	0	8

It is not a graduated rate of tax, although the provisions as to abatement have the effect of a graduated rate in respect of incomes not exceeding £700 per annum, while the provisions of section 19 of the Finance Act 1907 and section 67 of the Finance (1909-10) Act 1910, levying tax at specially reduced rates on " earned incomes " have the effect of a further graduation. (*See infra.*)

There are also allowances in respect of life assurance premiums and relief in respect of children, and these points are dealt with in their appropriate places (*infra*).

On the other hand, the provisions of the inance (1909-10) Act 1910 relative to "super-x" (see *infra*) have imposed an additional tax n all incomes in excess of five thousand pounds.

General Provisions.

The aim of the Income Tax Acts is to enforce he collection of tax upon income at the source f such income (*i.e.*, upon payment) so far as ossible, and with this end in view the duty of ollecting income-tax (on behalf of the Revenue uthorities) is to a great extent imposed upon ersons paying rents, annual interests, and the ke. If the person on whom the duty of collect-g the tax is imposed neglects to deduct it on ayment of interest, &c., he is none the less ccountable to the Revenue for same. (*See infra* nder Schedule D.)

The tax is granted for one year only, but in very Finance Act provision is made that all such nactments as were in force with respect to come-tax in the preceding fiscal year shall apply any duties of income-tax granted by the Act. uring the interval which necessarily elapses tween the 6th of April in every year and the assing of the current Finance Act there is, rictly speaking, no income-tax in force, and it s been contended that during this period the uthorities have no right to compel the taxpayer deliver a return, but the point is academic erely, and it is probable that section 22 (1) of e Finance Act 1907 confers such right since at Act became law, even if the right was not reviously possessed by the authorities. The rovisions of the Finance Bill are made known April of each year, and the general practice (in aking returns of profits, allowing and deduct-g income-tax on payment of rents, annual terests, and the like) is to proceed on the sumption that the Bill will eventually become w.

As stated above, every Finance Act con-ins a provision making the "code" retro-ective to the commencement of the financial ar, and in cases where there has been an crease in the rate of tax the Act also ratifies all yments or deductions made prior to the passing the Act at the rate prescribed therein, and stipulates that all payments or deductions which have not been made at such prescribed rate shall be amended accordingly. Where a person could have made a legal deduction but for the delay in passing the Act, he is authorised to make it out of his next payment to his creditor, and failing such "next payment" he is entitled to recover it as a debt due from the person as against whom the deduction could have been made originally. Where a taxpayer has received dividends or other income from which tax has been deducted at a lower rate than that which is eventually imposed, and there is no other method (*e.g.*, by deduction) of obtaining from him the difference, power is taken to make a special assessment in respect thereof. Recent examples of legislation of this character are contained in the Finance Act 1907, section 18 (2), and the Finance (1909-10) Act 1910, sections 65 and 95. In the Finance (No. 2) Bill 1910, power was sought to add similar provisions to the foregoing to the permanent code, but they have not yet (February 1911) become law.

When the rate of tax is altered (either by way of increase or decrease) another difficulty often arises, owing to the Government fiscal year failing to coincide with the particular financial year of the company, or rent period of the property, or other period in respect of which income is derived. Thus the income may be partly subject to the old rate of tax and partly subject to the new, and in such circumstances the following statement made by the Chancellor of the Exchequer in the House of Commons on 17th July 1900 gives the rule for the ascertainment of the rate:—

> "Dividends and interest from the public "funds, from foreign or colonial loans or "foreign or colonial companies, and interest "paid by local authorities to creditors on rates "are by law chargeable with income-tax at "the *rate in force* when they *become payable* "in this country without regard to the period "during which they have accrued. . . . In "other cases—such as mortgage interest and "ground rents, and the profits of public com-"panies in the United Kingdom—income-tax "is deducted at an *average rate* based on the

" rates in force during the period in which the " income-tax has been accruing."

Summary of Taxable Income.

The following income is subject to taxation:—

(1) Income derived in the United Kingdom from whatever source, whether by residents therein or not, and whether by subjects or aliens.

(2) Income derived from sources outside the United Kingdom, but received in the United Kingdom, whether by subjects or aliens.

The taxable income is classified thus:—

Schedule A. Income from the *property* in lands and buildings; that is to say, it is a tax on the *owner's* rent. (*See infra.*)

Schedule B. Income from the *occupation* of lands; that is to say, it is a tax on the *tenant's* profits from cultivation. (*See infra.*)

Schedule C. Income by way of interests, annuities, and dividends payable out of the Public Funds.

In accordance with the principle of collection of tax at the source of income (as stated above) the tax upon this class of income (Schedule C) is retained when the dividends, interests, &c., are paid, so that any person enjoying such income, who is entitled to exemption from or abatement of income-tax must apply for repayment thereof. (*See* Repayment, *infra.*)

Schedule D. Income by way of profits from professions, trades, or other callings. (*See infra.*)

Schedule E. Income by way of annuities, salaries, &c., payable out of the revenue or the funds of public companies, and assessable on the actual income for the year of assessment, *not* upon any average basis.

It is to be noted that the salaries of directors, secretaries, and other officers of joint-stock companies are assessable under Schedule E, and that the tax thereon should be paid by the officer, unless otherwise sanctioned by the shareholders. If paid by the company without such sanction—as is sometimes incorrectly done—the practice amounts to a payment to the officer of his salary *plus* tax thereon.

Schedule A.

There are certain provisions as to assessment of tithes and other profits issuing out of the property in lands covered by this schedule, but the main object of taxation under it consists of the annual value of lands and tenements. The assessment is upon the gross value or " rack rent," less the following allowances for repairs:—

(1) One-eighth part of the assessment on lands, inclusive of a farm-house.

(2) One-sixth part of the assessment upon any house or building (except a farmhouse included with lands as above), where the landlord has undertaken to bear the cost of repairs.

(3) Such a sum not exceeding one-sixth part of the assessment as is necessary to reduce it to the actual rent payable, where the tenant has undertaken to bear the cost of repairs.

In addition, if an owner shows that the cost to him of maintenance, repairs, insurance, and management according to the average of the preceding five years has exceeded—

(*a*) In the case of land, one-eighth part of the annual value;

(*b*) In the case of houses the annual value of which does not exceed eight pounds, one-sixth part of the annual value,

he is entitled to a further allowance in respect of such excess, not exceeding—

(*a*) In the case of land, one-eighth part of the annual value, and

(*b*) In the case of the houses affected, one-twelfth part of the annual value.

The term "maintenance" here includes the eplacement of farm-houses, farm buildings, ottages, fences, and other works where the eplacement is necessary to maintain the existing ent.

The assessment for Schedule A is made upon he occupier, with the following exceptions:—

(1) Where the annual value of dwelling-houses is less than £10, and

(2) Where the premises are let to a group of occupiers (*e.g.*, a suite of offices),

he landlord may be assessed direct.

In any case the occupier has a statutory right o deduct from his *next rent* payment to his land-ord the actual tax paid, or (in the case of an ssessment in excess of the rent) such a sum as oes not exceed tax at the current rate upon the ctual rent payable for the year.

A contract purporting to transfer the liability o pay the tax from the landlord to the tenant is oid. A landlord is subject to a penalty of £50 for rongfully refusing to allow a deduction in espect of income-tax.

Subject to delay caused by exceptional circum-ances in fixing the rate of tax (already referred o), a tenant who neglects to deduct the tax hen paid from his "next rent" cannot strictly) recover it afterwards.

On the other hand, if a tenant relinquishes the remises leaving *arrears* of tax, and a subse-uent tenant is compelled to pay same, he has right of deduction from the next rent he pays.

Generally speaking, the annual value assess-ents under Schedule A follow the poor law ssessments, and provision is made for appeals, here desired by the taxpayer. In any case, ication of the assessment, either in whole or art, will be readily obtained where the tax-ayer proves that in fact the premises have been oid for all or part of the year.

The annual value arising from stone, slate, nd such like quarries, or from ironworks, gas-orks, waterworks, canals, docks, bridges, rail-ays, ferries, tolls, and other undertakings of a like nature, is computed upon the profit of *the preceding year*.

The annual value arising from coal, tin, lead, copper, iron, and other mines is deemed to be the average of the *five preceding years*. Where, however, the yield of any such mine has from any unavoidable cause been decreasing so that such average will not give a fair estimate of the annual value, the Commissioners may compute the annual value on the basis of the profits of the *preceding year*, and where the mine has wholly failed, any assessment made may be discharged.

Schedule B.

The tax under this schedule is levied on the occupier of lands in respect of his estimated profits arising from the cultivation of same. The measure of charge is one-third of the annual value, subject to the right of the taxpayer, if he occupies the lands for the purpose of *husbandry* only, to have the assessment reduced to his actual profits on proof to the General Commissioners at the end of any year that his actual profits have fallen short of one-third of the annual value.

Schedule D.

(i) *General.*—The tax under this schedule is levied upon:—

(1) Profits from trades, professions, employments, &c.,

(*a*) carried on or exercised in the United Kingdom or elsewhere by persons residing in the United Kingdom, or

(*b*) carried on or exercised in the United Kingdom by any persons whether subjects of His Majesty or not, although not resident in the United Kingdom.

"If a business is wholly carried on "in this country, the whole of the "profits must be assessed to the "income-tax. If the business is "carried on partly in this country and "partly abroad, the whole of the "profits, whether made here or

" abroad, must be assessed to the " income-tax. If the business is " wholly carried on abroad, the profits " received in this country must alone " be assessed to the income-tax." (Smith, L.J.) (*Cf. Attorney-General v. Alexander* (1874) and *Gresham Life Assurance v. Bishop* (1902).) In this connection the case of *Kodak, Lim. v. Clark* (C.A., 1903) is also important.

A company resides in the United Kingdom for the purposes of income-tax if its " head and seat and directing power " are in the United Kingdom (*De Beers Consolidated Mines v. Howe*, A.C. 1906); and the *right* to exercise control as distinguished from the actual exercise of the control is the test to be applied. (*American Thread Co. v. Joyce*, 1911.)

Summarising these decisions, tax is payable on:—

(*a*) Income received in the United Kingdom wherever earned. (But see *infra* under sub-heading *Abatement.*)

(*b*) Income earned in the United Kingdom wherever received.

(2) Profits from interests not already taxed by way of deduction by the payer of such interests.

(3) Profits from colonial and foreign securities and possessions, and any other profits not falling under the above classes or under the other schedules, which have not already borne tax.

With regard to profits from trades, professions, employments, &c., a return must be made annually by each trader, &c., showing the balance of his profits, based:—

(1) Upon the annual average of the three preceding years, either ending on the 5th of April preceding the date of the return, or the date immediately *preceding* such 5th of April to which the annual accounts of the trade, &c., have usually been made up; or

(2) If the trade, &c., has been set up or commenced within three years, upon an annual average from the date of commencing same; or

(3) If the trade, &c., has been commenced within the year of assessment, the profits are to be estimated in accordance with the knowledge and belief of the person making the return, in which case he must state the grounds upon which the amount has been estimated.

Every person who receives a notice requiring him to make a return of profits under Schedule D or Schedule E must make a return in the form required by the notice, whether he is or is not chargeable with duty, and in default is liable to penalties (£20 and treble the duty chargeable if proved before the Commissioners and £50 if on information in a Court of law), provided that the penalty shall not exceed £5 for any one offence, where the person making default proves that he was not chargeable to duties. (Income Tax Act 1842, section 55, and Finance Act 1907, section 22.)

The Commissioners may amend an assessment or make an additional first assessment, or an assessment on the estate of a deceased person, at any time within the year of assessment or within three years after the expiration thereof. (Finance Act 1907, section 23 (2).)

A person who delivers a return which, *although without fraud*, is incorrect through his negligence or carelessness is liable under section 55 of the 1842 Act. (*Attorney-General v. Till*, A.C. 1910.)

In practice, Surveyors of Taxes will usually be found agreeable in the case of a new business to arrange that the Commissioners shall defer making an assessment until towards the close of the Government financial year, in order that accounts of the actual result of the operations may be prepared.

In the event of a change taking place in a partnership, either by death or dissolution, or by admission of a new partner, or in the event of any person succeeding to a trade, profession

&c., the profit is, notwithstanding such change, to be ascertained as if the change had not taken place, *unless it is proved* to the satisfaction of the Commissioners, that the *profits have fallen short*, or will fall short, *from some specific cause* since the change took place, or by reason of it (1842 Act, section 100), when the profit will be ascertained as if the trade or profession, &c., had been set up as from the date of the specific cause. In practice, the most frequent instance of this assessment upon a "succeeding" basis is upon the conversion of a private enterprise into that of a joint-stock company conducted by practically the same management on similar lines.

Apart from ordinary trading fluctuations the question of directors' fees almost invariably raises difficulty in this connection. In arriving at the average profits for assessment under Schedule D allowance will not be made for management salaries during the three years preceding the formation of the company, but directors' fees for the first year of assessment will be assessed under Schedule E at the actual amount payable by the company. It is suggested that this is a *specific cause* for diminution in the profits under Schedule D, and some Surveyors will agree to deduct the amount of the Schedule E assessment (although payable by a different taxpayer) from the Schedule D assessment of the company. If the Surveyor will not take this course, it is suggested that a formal appeal should be lodged under section 100 of the 1842 Act, as above.

(ii) *Mode of Assessment.*—Persons assessable to income-tax under Schedule D may elect to be assessed either by the Commissioners of their district under a number or letter, or by the Special Commissioners of Income Tax. In the absence of election, they will be assessed in the usual course by the Commissioners of their district.

(iii) *Deductions.*—In computing the balance of profits deductions are not allowed:—

(1) For any sum *beyond the sum usually expended* for the repairs of premises occupied for trade purposes, or for the supply or repair of implements, utensils, tools, or articles employed therein, according to the average of the three preceding years.

(2) For any loss not connected with or arising out of the trade, &c.

(3) For investments or withdrawals of any capital sums.

(4) For any sums expended in the improvement of premises, or any sums written off for depreciation of lands, buildings, or leases.

(5) For any sums, by way of interest on capital, or in respect of any *annual* interest, or *any annuity* or other *annual* payment payable out of the profits or gains, *the tax upon which should be deducted from the person to whom the payment is made.*

Note.—This does not extend to interest on bankers' loans for periods less than one year, nor to interest in respect of the discounting of bills, nor to bank "commissions." These charges are allowed as deductions in computing the balance of profits assessable.

Where loans (whether acknowledged in the form of bonds or otherwise) are repayable, under the terms of issue in instalments over a number of years, such instalments comprising part principal and interest at the agreed rate upon the unpaid portion of the loan for the time being, income-tax should be deducted by the payer from that portion only of each instalment which represents interest.

(6) For any disbursements or expenses not wholly or exclusively laid out for the purposes of trade, &c.

(7) For any expenses of maintenance of the person making the return, or the family of such person.

(8) For any sums paid as salaries to partners.

(9) For any sums paid as income-tax, either on the profits of the trade, &c., or on the annual value of premises.

(10) For any sums in respect of bad debts, *beyond the amount proved to be bad*, or for doubtful debts, *beyond the estimated amount of loss.*

(11) For any sum recoverable under any contract of insurance or indemnity.

(12) For any average loss under a contract of insurance, *beyond the actual amount of loss* after adjustment.

The above are general rules as to deductions, and, in particular, the following are not allowed: Mortgage interest, law costs of negotiating a mortgage, debenture interest, chief rent, preference dividends, preliminary expenses of a company, bad debt reserves (arbitrarily based), and certain voluntary subscriptions and charitable gifts.

Note.—A subscription by a manufacturer to an infirmary (where his workpeople may be sent in the event of injury) is looked upon as a trade expense, and allowed as a deduction.

Payments (either by way of penalty or contribution towards costs of administration) to a trade organisation formed for the purpose of maintaining prices is properly allowable as a deduction. (*Guest, Keen & Nettlefolds, Lim. v. Fowler*, 26 T.L.R. 337.)

The taxpayer is also entitled to deduct a proper provision in respect of contingent liabilities, *e.g.*, an insurance company may set aside an apportionment of insurance premium receipts against possible loss on unexpired risks. (*Clark, Surveyor of Taxes v. Sun Insurance Office*, 1910.)

Where a dwelling-house is used also for the purposes of the business, the Income Tax Commissioners may allow a deduction from the profits of a sum *not exceeding* two third parts of the rent or annual value, according to the value of the portion set apart for business purposes. In cases (such as public-houses) where rates, fuel, light, domestic servants' wages, and other expenses are incurred jointly on account of the business and the residential portion of the premises, the authorities also require an apportionment of these items.

A minister of any religious denomination who *pays* rent and uses any part of his dwelling-house mainly and substantially for the purposes of his duty as a minister, will be allowed to deduct a portion of such rent not exceeding one-eighth of the whole. (Finance Act 1907, section 28.)

Few (if any) Surveyors will now challenge a deduction from the profits for loss sustained by embezzlement (not covered by any insurance or suretyship), although at one time objection used to be taken to such a charge.

It appears to be admitted that the occupier of a licensed house (*i.e.*, the tenant where the house is let, and the brewer where the house is "managed") is entitled to deduct from his gross profits as a licensed victualler such part of the compensation levy (*see title* Licence), "as he is not able to throw upon his landlord." The Court of Appeal has decided (Kennedy, L.J., dissenting) that a brewer who owns or leases licensed premises acquired and held *solely for the purpose of his business* is further entitled to deduct from his profits as a brewer that portion of the compensation levy which falls upon him as owner or superior lessee, presumably whether the house is let to a "tied" tenant or whether it is "managed" on behalf of the brewer. (*Smith, Surveyor of Taxes v. Lion Brewery Co.* 1910.) This case was taken to the House of Lords, but that Court being equally divided on the question the Court of Appeal decision stands.

The Commissioners must allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any *machinery or plant* used for the purposes of the concern, and belonging to the person or company by whom the same is carried on. (Customs and Inland Revenue Act 1878, section 12.)

Note.—The claim must represent the diminished value *during the year of assessment*, but see *infra* as to cases where the profits are insufficient to enable the full benefit of the claim to be obtained.

Claims for the deduction must be included in the annual statement of the profits or gains of the concern, for the purpose of which the machinery or plant is used. No deduction will be allowed in any year if the deduction when added to the deductions allowed in previous years to the person by whom the concern is carried on

will make the aggregate amount of the deductions exceed the actual *cost to that person* of the machinery or plant, including in that actual cost any capital expenditure by way of renewal, improvement, or reinstatement.

Where full effect cannot be given to the deduction in any year, owing to insufficiency of profits in that year, so much of the deduction to which effect has not been given shall be added to the amount of the deduction for wear and tear for the following year and so on for succeeding years. (Finance Act 1907, section 26.)

It will be observed that the allowance is limited to plant and machinery.

In addition to this statutory allowance for wear and tear the Inland Revenue authorities will concede a special allowance in cases of "obsolescence." (*See title* Wear and Tear.)

(iv) *Accounts.*—An account of profits prepared for income-tax purposes may either take the form of the ordinary Profit and Loss Account of the business, with the necessary adjustments in respect of items not allowed shown upon the face of the account, or the account may be specially prepared for the purpose, showing nothing but that which is essential to a proper account. Surveyors of Taxes are certainly in favour of the former method, as it affords them information as to what has really been included and *excluded* in arriving at the profits, and in the case of joint-stock companies the Surveyors have less difficulty in reconciling the Profit and Loss figures with the Balance Sheet. The practical result is a saving to both the taxpayer and the department of correspondence and inquiries, &c. The account showing the profits of a trader must, in any case, disclose the sales, purchases, and working expenses and be based upon valuations of the stock-in-trade at the commencement and end of each period respectively.

Where the person, firm, or company *owns* the premises occupied for trading purposes, the assessment on which tax is actually paid under Schedule A may be deducted (as rent) from the balance of profits for assessment under Schedule D. The amount so deducted must, however, be the *net assessment* (*i.e.*, five-sixths of the gross assessment). The practice used to be to ascertain the "average" profits under Schedule D over the prescribed period, and to deduct from such average when ascertained the actual Schedule A assessment for the year of assessment. The practice is now (more correctly) to charge against each of the years' profits comprised in the average the actual Schedule A assessment on which tax has been paid in each of those years, thus arriving at a *net* average for Schedule D.

Although the Schedule A assessment may be deducted (in the case of ownership) in order to arrive at the amount (if any) assessable under Schedule D, obviously where a person or firm under such circumstances claims abatement or exemption, the amount of assessment under Schedule A for the year must be included in arriving at the *total* income from "all sources whatsoever."

Whilst the taxpayer must (as stated) adjust what may be termed his "economic profit" (as shown by his books to be the result of his trading) by *adding* thereto any expenses incurred which are not allowable as deductions, he is entitled to *deduct* therefrom all sums included as income which have already been subjected to income-tax in some other form. For example, dividends received on investments, interest received on moneys out on loan at annual interest, rents of cottages or other properties, will all have paid income-tax by way of deduction or otherwise before receipt, and if they have been credited to the business Profit and Loss Account the profits assessable under Schedule D may properly be reduced accordingly.

The whole object of the adjusted Profit and Loss Account is to ascertain the amount of profits assessable under Schedule D. When this has been ascertained the taxpayer who desires to claim abatement or exemption, or assessment at the earned rate of tax, must include in such claim the following income:—

(1) The profits from his business.

(2) The annual values of all property held by him, including the annual value of his business premises, although (or rather because) the Schedule D profits have been reduced by charging this annual value as rent.

(3) Dividends on investments and interest on loans, &c., all items of this nature which are received through the business having been deducted from the business profits.

(4) Any other income of himself or his wife.

On the other hand, he is entitled to deduct as charges upon his income (in order to show his actual net income from all sources whatsoever) charges such as interest paid on mortgages or loans, ground rents, or similar payments.

If the result of the trading is a loss, under ordinary circumstances no tax is payable, but should the average result be a loss or a profit less than the amount of interest on mortgage, chief rent, or similar payments from which tax has been deducted (simply as a collector for the revenue) by the person making the return, then he must return the gross amount of such payments as the sum upon which he is prepared to pay tax. The taxpayer may, however, deduct from such gross amount for the purposes of the return any assessment on which he may have paid or may have to pay in other ways, *e.g.*, an assessment under Schedule A on the value of his business premises or private residence (if either is his own), or on private income of himself or wife, tax on which has been deducted upon payment.

Ordinarily the taxpayer prepares an account of his profits, merely to ascertain the amount he should include in the return. It is only when the Surveyor is dissatisfied with such return, or where the taxpayer desires to appeal, that it is necessary to supply a copy of the account to the Commissioners, but in order to substantiate the return already made or to support the appeal (as the case may be) the account showing how the amount of profit has been arrived at should be prepared, with due regard to the rules briefly set out above.

It is now the invariable rule for Surveyors of Taxes to ask (as a matter of courtesy) to be supplied with copies of the Profit and Loss Account and the Balance Sheet of joint-stock companies and of private firms whose business is of any magnitude.

There does not appear to be any specific authority empowering Surveyors of Taxes to compel the production of any accounts, and it would seem that this view is shared by the authorities (at any rate so far as the Balance Sheet is concerned), as will be seen from the following letter from the Chancellor of the Exchequer to a correspondent, which appeared in *The Accountant*, 31st October 1908:—

" Treasury Chambers,

" Whitehall, London, S.W.,

" 23rd April 1908.

" I am desired by the Chancellor of the " Exchequer to inform you in reply to your " letter of the 13th ulto., that a Surveyor of " Taxes has no power to enforce the produc- " tion of Balance Sheets for his inspection.

" The object, however, for which the Balance " Sheet is asked is to enable the Surveyor to " certify that he is satisfied with a return, and " it may obviously be in the interest of " the taxpayer to comply with the request " in order to obviate the necessity which " might arise of a personal appeal to the " District Commissioners."

If, however, the taxpayer refuses to produce proper accounts to the Surveyor's satisfaction, it is always open to the Commissioners to make " such an assessment as according to the best of " their judgment ought to be charged on the " taxpayer by virtue of the Acts." (Income Tax Act 1842, section 113.) The taxpayer may appeal against such an assessment in accordance with the provisions laid down under section 118 *et seq.* of the Income Tax Act 1842, whereupon the Commissioners have power under section 120 to call upon the appellant to return to them " a " schedule containing such particulars as the said " Commissioners shall demand . . . respect- " ing the *property* of such person, or the trade, " manufacture, adventure, or concern in the " nature of trade, or the profession, employment, " or vocation respectively carried on or exercised " by such person . . . and so from time to " time until a complete schedule to the satisfac- " tion of the said Commissioners of *all* the par- " ticulars required by them shall be delivered."

Some taxpayers, while agreeing to submit a Profit and Loss Account, object to furnishing a Balance Sheet, and in some cases (chiefly private firms) the Surveyors will be satisfied without the Balance Sheet. They will, however, almost always insist upon it in the case of a joint-stock company, particularly where any claim is made for allowance in respect of wear and tear. Experience seems to prove that the interests of the taxpayer are best served by supplying such reasonable information and accounts as the Surveyors may demand.

The authorities require that all accounts shall be "certified" either by the taxpayer or his accountant.

The question as to whether income-tax is payable upon the sale of goodwill is debatable. The Authorities often put forward claims to income-tax upon same, but it is submitted that under ordinary circumstances the sale of goodwill is *not* a profit, but the realisation of an asset previously held. Even if a profit is made—that is to say, if the goodwill is sold for a larger sum than its estimated former value—yet such profit is not in the nature of income, but a capital or casual profit of such a nature that if the taxpayer made a loss instead of a profit, the authorities would not allow him to deduct such loss from any portion of his other income. Assuming, however, that there is a profit, and that it is a profit which is assessable to income-tax, then, if the consideration is in the nature of shares which are not readily realisable, the taxpayer is justified in refusing to pay tax until the shares are in fact realised.

Employees.

Every employer is now required to make a return of (1) the names and places of residence of and (2) the *payments made* to any persons employed by him, except persons who are not employed in any other employment, and whose remuneration in the employment for the year does not exceed the sum for the time being fixed as the limit for total exemption. (Finance Act 1907, section 21.)

Partners.

Where a profession, trade, or vocation is carried on by two or more persons in partnership the assessment is made upon them jointly in respect of the profits of such profession, trade, &c., quite distinct from any tax chargeable on them or any of them in respect of income arising otherwise than by such trade, &c., but a partner may claim that his share of the partnership profits shall be separately treated, but *not* separately assessed for the purpose (1) of claiming exemption, relief, or abatement (either as regards amount, *i.e.*, less than £700, or rate, *i.e.*, "earned income"), or (2) of accounting for separate concerns in which he is interested as a partner or sole proprietor, for the purpose of setting off a loss sustained in one concern against the profits acquired in any other of such concerns. If a partner's share of the partnership profits is separately treated for these purposes, it shall be deemed to be the share to which he is entitled during the year *to which the claim relates*. (Finance Act 1907, section 20.) Prior to the passing of the Finance Act 1907, the partner entitled to an allowance such as the foregoing could claim a separate assessment, but the third schedule to that Act expressly repealed this right.

Exemption.

Exemption from income-tax may be claimed when the income from *all sources* does not exceed £160 per annum. In order to obtain exemption the claimant must state the full particulars of *all* income from every source whatsoever, whether already taxed or not, and, if taxed, whether by deduction or otherwise. (*See* headings Life Assurance Premiums and Married Woman, below.)

The Crown is not within the Income Tax Acts, so that the King pays no income-tax, nor are the public revenues or landed properties in the occupation of the Crown subject thereto.

The receipts of a company incorporated by Royal Charter from the sale of its lands are *not* chargeable with income-tax (presumably on the ground that any such "profit" is a *capital* profit). (*Stevens v. Hudson's Bay Company*, C.A. 1900.)

The income received from property held on trust for charitable purposes is exempt from tax *so far as it is applied to such purposes*, and where such income has on receipt been already subjected to deduction in respect of tax, the amount so deducted may be recovered. The expression "charitable purposes" includes *inter alia*, "schools of learning." (*See* heading Repayment, below.

Buildings owned by a literary or scientific institution, and used *solely* for the purposes of the institution, are exempt from tax under Schedule A.

Registered friendly societies and registered trade unions, subject to certain limitations, are exempt from tax under Schedules A, C, and D. (Income Tax Act 1842, sections 61 and 88; Income Tax Act 1853, section 49; Trade Union (Provident Funds) Act 1893; and Finance (1909-10) Act 1910, section 70.)

Claims for repayment of tax on the ground of exemption (where tax has, nevertheless, been paid by deduction or otherwise) can only be made in respect of the three years preceding the previous 5th April—in other words, a claim may be made at any time, provided that it must be made within three years next after the end of the year of assessment to which the claim relates.

ABATEMENT.

Where a person's income from all sources whatsoever is within the undermentioned limits, an abatement may be obtained as follows:—

Where the income exceeds £160 but does not exceed £400, an abatement of £160.

Where the income exceeds £400 but does not exceed £500, an abatement of £150.

Where the income exceeds £500 but does not exceed £600, an abatement of £120.

Where the income exceeds £600 but does not exceed £700, an abatement of £70.

In the case of "mixed" income (*i.e.*, partly earned and partly unearned) these abatements will be deducted from the "earned" portion thereof, provided that if the earned portion be insufficient to afford the full allowance the balance will be deducted from the unearned portion.

In order to obtain such abatement the claimant must state the full particulars of *all* income from every source whatsoever, whether already taxed or not, and, if taxed, whether by deduction or otherwise. For the purpose of any claim for exemption or abatement the income derived from the occupation of lands (chargeable under Schedule B) is to be taken at one-third the annual value thereof under that schedule, provided that where the lands are occupied for the purpose of husbandry only the actual amount of profits is to be taken if the Commissioners are satisfied thereon.

No exemption, abatement, or relief which depends wholly or partially on the total income of an individual from all sources shall be given to any person not resident in the United Kingdom, *except* in the case of a person:—

(*a*) Who is or has been employed in the service of the Crown; or

(*b*) Who is employed in missionary service; or

(*c*) Who is resident in the Isle of Man or Channel Islands; or

(*d*) Who satisfies the Commissioners that he is resident abroad for the sake of health;

Provided that in each of the cases (*a*), (*b*), (*c*), and (*d*) his total income must be calculated as including all income, whether chargeable to British income-tax or not. (Finance (1909-10) Act 1910, section 71, subsection (1).)

Income-tax shall not be payable in respect of the interest or dividends on any securities of a foreign State or a British possession which are payable in the United Kingdom, where it is proved to the satisfaction of the Commissioners that the person owning the securities and entitled to the interest or dividends is *not resident* in the United Kingdom; but, save as provided by this or any other Act, no allowance shall be given or repayment made in respect of the income-tax on the interest or dividends on the securities of any foreign State or any British possession which are payable in the United Kingdom.

Relief from income-tax under this subsection may be given by the Commissioners either by way of allowance or repayment on a claim being made to them for the purpose within six months of the end of the year for which the income-tax is charged. (Finance (1909-10) Act 1910, section 71, subsection (2).)

Claims for repayment of tax on the ground of abatement as regards *amount* can only be made in respect of the three years preceding the previous 5th April—in other words, a claim may be made at any time, provided that it must be made within three years next after the end of the year of assessment to which the claim relates.

A limited company cannot claim the benefits of exemption or abatement from its profits for the purpose of income-tax assessment. This was clearly explained by the Revenue authorities in a reply to a claim by a company. The reply (dated 1898) was as follows:—

"I am to explain that under the income-tax "law the unit of taxation is not the company, "but each individual shareholder. It is true "that the profits of the company are assessed "in one sum before division. Each share-"holder consequently suffers deduction in respect "of his share of the dividend; but whether "such deduction is permanent depends in each "case on the total yearly income from all "sources of the individual shareholder. If that "total income comes within the limit of exemp-"tion, or if he is entitled to an abatement "which has not already been allowed, he can "claim repayment of the tax. It makes no "difference from what source his income is "derived.

"Your claim, therefore, in the form in which "you submit it—namely, that abatement "should be granted on the profits of your com-"pany as such—cannot be allowed, but, as has "been explained above, the assessment in full "of the profits of the company before division "does not impose on any of the shareholders "a tax in excess of his proper liability."

(*See* headings Allowance in respect of Children, Earned Incomes, Life Assurance Premiums, Married Woman, and Minor, *infra*.)

Earned Incomes.

In addition to the above abatements as regards *amount*, section 19 of the Finance Act 1907 allows an abatement of five pence in the *rate* of tax payable (as at February 1911) upon the *earned* portion of incomes not exceeding £2,000 per annum from all sources, and section 67 of the Finance (1909-10) Act 1910 extends this relief to persons whose total incomes exceed £2,000 but do not exceed £3,000, the abatement in such cases (as at February 1911) being two pence in the rate of tax. Claim for relief on earned income must be made either at the time the "return" is made, or *before* the 30th September in the year for which the tax is charged.

Note.—This is strictly construed, and some officials contend that the claim must reach them not later than 29th September, so as to comply with the requirement "before the 30th September."

(*See title* Differentiation.)

Life Assurance Premiums.

An allowance from the amount of income to the extent of the annual premium payable may be claimed by any person who shall have made insurance *on his life*, or the *life of his wife*, or who shall have contracted for any deferred annuity on his own life or on the life of his wife, in or with:—

(1) Any insurance company (*a*) existing in 1844, or (*b*) registered under the Companies Acts; or

(2) Any legally established friendly society; or

(3) The National Debt Commissioners.

The above provisions apply only to life insurances or contracts for deferred annuities effected in or with any insurance company legally established in any British possession or lawfully *carrying on business* in Great Britain or Ireland. (Finance Act 1904, section 9; Revenue Act 1906, section 11.)

Where the premiums payable to a friendly society are made for shorter periods than three months, a certificate must be produced to the Surveyor of Taxes for the district, signed by an officer of the society, and specifying the correct amount of premiums paid during the year.

Apparently no allowance can be claimed for the premiums paid on a "joint" policy (*e.g.*, partnership insurance), payable to the survivor or survivors on the death of any one of the assured.

The allowance is not authorised in respect of any annual premium beyond one-sixth part of the claimant's income from every source; nor has the allowance the effect of giving abatement in the event of the total income being thereby reduced below the respective limits which would otherwise give rise to a claim for abatement. In other words, the abatement is first deducted from the *total* income, as thus:—Total income £660, less abatement £70=£590, less insurance premiums £80=net assessment £510, and *not* £660, less insurance premiums £80=£580, less abatement £120=£460.

In the case of "mixed" incomes (*i.e.*, partly earned and partly unearned) not exceeding £3,000 per annum, insurance premiums will be allowed from the "*earned*" portion thereof, provided that if the earned portion be insufficient for the full allowance the balance will be deducted from the unearned portion.

In order to obtain the allowance in respect of such premiums, it is necessary that full particulars should be given in the return, and, where required, the receipts for the premiums must be transmitted to the Surveyor, so that he may inspect and indorse same as having been allowed.

If the allowance in respect of life insurance premiums is not made at the time of assessment a claim therefor to be entertained must be made within three years after the end of the year of assessment.

An individual assessable for super-tax (see *infra*) is entitled to a deduction from his super-tax assessment of insurance premiums not exceeding one-sixth of his total income.

Allowance in Respect of Children.

Any individual whose total income from all sources does not exceed £500 is entitled to further relief from income-tax equal to the amount of tax upon £10 for every child he has living under the age of 16 years at the commencement of the year of assessment. The expression "child" includes a stepchild, but not an illegitimate child, unless his or her parents have married each other after his or her birth.

In the case of "mixed income," the allowance will be made from the earned portion of the assessment, and the unearned portion will only be resorted to in the event of the earned income proving insufficient to afford the taxpayer all the proper allowances to which he may be entitled. If it is necessary to claim repayment, the general provisions as to abatement apply, and the claim may therefore be made at any time within three years after the year to which the claim relates. (Finance (1909-10) Act 1910, section 68.)

Married Woman.

The income of a married woman living with her husband is deemed by the Income Tax Acts to be his income (notwithstanding any settlement, or the provisions contained in the Married Women's Property Act 1882); and any claim for exemption or abatement in respect of such income must be made by the husband. But where the total joint income of the husband and wife *does not exceed £500*, and the Commissioners of Taxes are satisfied that such total joint income includes profits of the wife from any profession, trade, employment, or vocation, or any office or employment of profit, carried on or exercised by *her own personal labour*, and that the balance of the total income or any part thereof arises from profits acquired by means of the *husband's* own personal labour, and is *unconnected* with the business of the wife, a separate claim of exemption or abatement will be admitted in respect of such profits of the wife.

Apparently, where the joint income of husband and wife does not exceed £3,000, they are each entitled to be assessed at the earned rate on the income from their *separate personal labour*.

It is the duty of the husband of a married woman to include the income of his wife as his own income for super-tax purposes, and he is liable to pay the tax thereon. Proposals have been laid before Parliament to impose the duty of making the return and the liability for payment of her share upon the wife in proper cases,

but these proposals have not yet (February 1911) become law.

Minor.

The parents or guardians of an infant are chargeable in respect of profits accruing to him during his minority. With regard to claims for exemption, abatement, or repayment (as the case may be) the claim must be made by the infant's trustee. The rule as to contingent interests is as follows:—

"Where income is allowed to *accumulate* "during the period of minority, in the case of "a minor who has merely a contingent interest "in the property, exemption or abatement is "not allowed; but in such a case the minor, "*on coming into possession*, may claim repay- "ment of the tax extending over the whole "period of minority, provided he or she were "entitled to exemption or abatement for such "time."

Where, however, a portion of the income from a contingent interest is applied towards the maintenance of the infant, repayment of tax where paid (generally by deduction) may be claimed upon *such expenditure*, and repayment of tax upon the *balance* (if any) of the income may be claimed when the minor comes into possession, provided he or she were entitled to exemption or abatement during minority.

Where an infant's interest in property is an *absolute* one, and the amount of income therefrom entitles the infant to exemption or abatement (as the case may be), a claim for repayment (where tax has been overpaid) may be made irrespective of whether any part of such income has been applied towards maintenance or not.

Super-tax.

The Finance (1909-10) Act 1910 made provision for the assessment of an additional income-tax or super-tax in respect of the income of any individual whose total income from all sources exceeds £5,000. The rate of super-tax from 6th April 1909 to 5th April 1910 was fixed at 6d. in the £, and this rate was renewed from 6th April 1910 to 5th April 1911. Although every individual whose total income from all sources exceeds £5,000 is thus assessable for super-tax, the first £3,000 of income is exempt, and it is only upon the excess over £3,000 that the super-tax is payable.

For the purposes of the super-tax the total income of the individual from all sources is to be taken as his total income for the *previous year*, estimated in the same manner as the total income from all sources is estimated for the purposes of exemption or abatement, and allowing all proper deductions from annual values, and life assurance premiums, &c. Income chargeable with income-tax by way of deduction is income of the year in which it is *receivable*, and deductions allowable on account of payments made out of the profits are deductions in respect of the year in which they are *payable*.

The effect of these provisions is that the *statutory* income for ordinary income-tax purposes for 1908-9 is the statutory income for super-tax for 1909-10, and so on from year to year. (*See title* Super-tax.)

Repayment.

(1) Where tax has been paid by deduction or otherwise in respect of income from which a person is entitled to exemption or abatement, repayment of tax may be claimed, the amount repayable and the conditions imposed varying with the circumstances of each case. Claims for repayment, on the ground of either exemption or abatement, can only be made in respect of the *three years* preceding the previous 5th April—in other words, a claim may be made at any time, provided that it must be made within three years next after the end of the year of assessment to which the claim relates.

Where the right to exemption or abatement is of annual occurrence, and the income is received subject to the deduction for tax, it is advisable to make the claim for repayment annually. In such cases the claims are more readily passed, and with each order for repayment of tax a form is forwarded by the authorities to enable the claim to be made the following year. The form when filled up must state the whole of the claimant's income from every source whatsoever, and also specify the tax which has been deducted from

each item thereof. The statement must be supported by certificates of deduction from the payer of the income certifying that he has deducted (and accounted to the Revenue for) the tax which is now claimed.

Where the income of a taxpayer is taxed before receipt, and for accommodation purposes he has a bank overdraft, upon which interest is payable to his bankers, the authorities on receipt of a proper claim will refund tax on the interest payable to the bankers, the reason being that the taxpayer's net income is reduced by reason of such interest. It is doubtful whether the taxpayer has any legal right to this repayment unless his income brings him within the statutory limits of abatement, and then the claim is not one for repayment of tax upon the bank interest, but a claim for the abatement to which he may be entitled. As stated, however, the authorities will generally admit such a claim, but they will not refund tax upon interest paid upon mere temporary loans. (*De Peyer v. The King*, 1908.)

(2) In addition to tax overpaid by way of deduction, tax is often paid on a sum in excess of the actual income received, owing to assessments being fixed in advance (see *supra*) in order to meet the financial requirements of the country. The chief provision in this respect was section 133 of the Act of 1842 (as amended by section 6 of the Act of 1865), but it has ceased to have effect as respects income-tax charged for the year beginning 6th April 1907, or for any subsequent year. (Finance Act 1907, section 24, subsection (1).)

But where a business has been set up or commenced within the three years required for the usual "average" or within the year of assessment, a claim may be made *at the end* of the year of assessment for assessment on the *actual* amount of profits—and readjustment or repayment accordingly. Again, where a business is *discontinued* the assessment is to be on the *actual* profits of the year, and claim may be made—no time limit is mentioned in the section—for repayment of any tax overpaid during the previous three years. (Finance Act 1907, section 24, subsections (2) and (3).)

The authorities contend that the above right of appeal in respect of a business "set up or commenced" within the average period does not apply to what is termed a "succession," and sometimes confusion is caused to the taxpayer in consequence, and he may possibly lose his rightful remedy against over-payment. The following suggestions may be helpful:—

(1) As regards the vendor (or other original owner of the business):—

(*a*) If the business is *discontinued* entirely, he has a right of appeal under section 24 (3) of the Finance Act 1907.

(*b*) If it is merely his own connection with the business which ceases, then he has a right of appeal under section 134 of the Income Tax Act 1842. (See (3) *infra*.)

(2) As regards the purchaser (or "commencer") of the business:—

(*a*) If it is an entirely new business (as distinct from a new ownership), he has a right of appeal under section 24 (2) of the Finance Act 1907.

(*b*) If the business is treated as a "succession" (that is to say, involving merely a change of ownership), he has a right of appeal under section 100 of the Income Tax Act 1842, provided that he proves the profits have fallen short from a *specific cause* (which is not usually a difficult matter). (See (6) *infra*.)

(3) When a person ceases to carry on any trade, or dies, or becomes bankrupt or insolvent, he or his representatives may claim reduction in the assessment, and—if tax has been paid—repayment of such portion thereof as seems just to the Commissioners. (Act of 1842, section 134.) The amount of relief granted varies with circumstances, and is decided according to the period during which trading has been carried on and the result of the trading during such period.

This claim is to be made within *three months* after the end of the year of assessment.

In the case of a bankruptcy or an arrangement with creditors duly registered under the Deeds of Arrangement Act, Surveyors of Taxes will usually accept as conclusive for the purpose of this section a certificate by the trustee (if an accountant) as to the actual profits earned during the year of assessment.

(4) " Where any person shall sustain *a loss* in " any trade, manufacture, adventure, or concern or " profession, employment or vocation, carried on " by him either solely or in partnership, or in the " occupation of lands for the purpose of hus- " bandry only," the Commissioners may adjust his liability by reference to the *loss* and to the *aggregate amount of his income* for that year estimated according to the several rules and directions of the Acts. " The said Commissioners " shall on proof to their satisfaction of the " amount of the loss, and of the payment of " income-tax upon the aggregate amount of " income, give a certificate authorising repayment " of so much of the sum paid for income-tax as " would represent the tax upon income equal to " the *amount of loss*, and such certificate may " extend to give *exemption* or relief by way of " *abatement*." (Customs Act 1890, section 23.)

This claim is to be made within *six months* after the end of the year of assessment, and it must be noted that, where repayment has been made to a taxpayer under this section, he is not allowed a deduction on the assessment for a *subsequent year* by reference to the amount of loss in respect whereof such repayment has been obtained.

Owing to the elimination of the loss when computing succeeding average figures, the *general* effect of a claim under this section is only to obtain forthwith a benefit which would otherwise be spread over the next three years, but the following advantages *may* accrue:—

(*a*) In the event of a *continued* series of losses, the proviso as to elimination of the loss would not be detrimental to the taxpayer, whereas it would be a distinct gain to him to have recovered tax possibly on several different schedules.

(*b*) The same remarks apply to a discontinuing business, and particularly to the winding-up of insolvent estates. (But see also Finance Act 1907, section 24 (3), quoted under paragraph (2) (*supra*).)

(*c*) In a bad year the recovery of tax in " advance " may be specially helpful to the taxpayer, and there is the minor consideration of interest thereon.

(*d*) There may possibly be a future diminution in the *rate* of tax; for instance, tax might now (1911) be recovered under Schedule A at 1s. 2d., and the elimination of Schedule D losses from the computation of succeeding averages might only have the effect of increasing future " earned income " assessable at 9d.

On the other hand (*a*) the rate of tax might increase, and (*b*) special care should be devoted to claims where the loss exceeds the whole of the tax-paid income.

However heavy the loss, the repayment is limited, and properly so, to the tax actually paid. Some Surveyors contend that the result of the particular year upon which the claim under this section has been based should be omitted entirely from the calculation of the average of subsequent years; but it is submitted that this is not in strict compliance with the terms of subsection 4 of section 23, for, if there should have been any excess of loss in that year over and above the sum upon which tax was recovered, that excess may be brought into future averages.

Generally speaking, the provision as to extending the relief so as to give exemption or abatement will not be of importance in a claim of this character. Where applicable, the effect should be separately considered.

(5) There is also provided by the 1842 Act, section 171, and by the Taxes Management Act 1880, section 60, a right of repayment to any person of any " sum erroneously and doubly assessed upon him," whenever he shall by any error or mistake be twice assessed for the same cause, and on the same account and for the same year. There is no specified time limit within which this claim must

be made, but it is assumed that in any case it must be made within *three years* after the end of the year of assessment to which the claim relates.

(6) Finally, as already mentioned, there is a right of readjustment of the assessment (or of repayment if tax has been overpaid) in the case of a "Succession," provided it can be shown that the profits have fallen short from a *specific cause*. (See *supra*.)

Note.—The taxpayer's right of appeal is in the first instance to the General Commissioners, who have a right to refuse the taxpayer the benefit of professional representation before them, but, should they so refuse, the appellant may appeal to the Special Commissioners, who "are required "to hear his barrister, solicitor, or accountant. "The term 'accountant' in this connection "means a person who has been admitted as a "member of an incorporated society of "accountants." (Revenue Act 1903, section 13.)

Bankruptcy and Liquidation.

Income-tax is entitled to priority of payment subject to certain limitations. (*See title* Preferential Payments.)

Incomplete Work.—If certain work under a contract is to cost, say, £8,000, and is chargeable on completion at £10,000, and at the date of preparation of a Balance Sheet £7,000 has been expended thereon, then, if no reasonable grounds exist for doubting the soundness of the original estimate, the following alternative methods of dealing therewith are submitted:—

(1) Contract No.....

Dr.	*Period A.*		*Cr.*
	£		£
Materials, Labour, &c...	7,000	Contract Price	10,000
*Balance carried down, viz.:—			
Cost to complete ..£1,000			
Proportion of Profit thereon 250			
	1,250		
Balance to Profit and Loss Account	1,750		
	£10,000		£10,000

Dr.	*Period B.*		*Cr.*
	£		£
Materials, Labour, &c...	1,000	*Balance brought down	1,250
Balance to Profit and Loss Account	250		
	£1,250		£1,250

(2) Contract No.....

Dr.	*Period A.*		*Cr.*
	£		£
Materials, Labour, &c...	7,000	Contract Price £10,000	
Proportion of Profit thereon carried to Profit and Loss Account	1,750	*Balance carried down	8,750
	£8,750		£8,750

Dr.	*Period B.*		*Cr.*
	£		£
*Balance brought down	8,750	Contract Price	10,000
Materials, Labour, &c...	1,000		
Balance to Profit and Loss Account.. ..	250		
	£10,000		£10,000

Under either system the profit is proportionate to the work done in the respective periods, as the profit on the incomplete portion is reserved in *addition* to the "cost to complete." But there is this difference:—Under Method (1) the position at the balancing date is represented by a book debt of £10,000, less a provision of £1,250 to complete the work, whereas under Method (2) the accounts show an asset representing incomplete work to the amount of £8,750. Where there are doubts as to the reliability of the original estimate, a further percentage (dependent upon the degree of doubt) should also be reserved. But, as already stated, if the estimates are substantially borne out, each period should derive the same percentage of profit upon its proportion of work done, so that indirect expenditure may be systematically provided for.

In many cases the valuation of incomplete work may be complicated by the question of instalments payable as the work proceeds. The usual course is to ascertain the cost to date plus a percentage for dead charges and profit, as already suggested, and to deduct from the sum so obtained the total instalments received to date

of the Balance Sheet. The net amount is then treated as an asset under the heading " Incomplete Work " or " Work-in-progress." Where the contract has made substantial progress, an auditor may often obtain evidence in support of the valuation figures by reversing the process as follows, viz. :—Ascertain the value of the total instalments still to be received and deduct therefrom (1) the estimated cost of finishing the work, and (2) a proper provision for further dead charges and future profit.

As a general rule, it takes from one to two months (sometimes longer) to complete the accounts of a concern which carries out large contracts. In the meantime, many of those contracts which were " nearly finished " at the " time of balancing " may have been completed, so that one of the alternative methods suggested above can be carried out with tolerable accuracy, as a proper system of estimating costing renders the ultimate percentage of profit (or loss) a known quantity.

" When the business is a large one—or, to ' speak more accurately, when the number of ' contracts in which the firm or company is ' engaged at any one time is so large that there ' is a reasonable prospect of the profits and ' losses being averaged—it is less important that ' the estimated losses upon losing contracts ' should be anticipated. As a matter of ' prudence, however, it is never wise that the ' losses should be disregarded, unless it is really ' and honestly believed that they are of so small ' a nature that they will, in any event, be con- ' siderably more than outweighed by the ' accruing profits upon the other contracts ' which are not being taken to credit. To put ' the matter generally, all that can be done in ' this, as in every other case, is to frame accounts ' showing results, which are as accurate as ' under the circumstances of the case it is pos- ' sible for accounts to be, while the concern is ' still in the nature of a ' going concern.' If, ' however, they are to err upon the one side or ' the other, it should be upon the side of caution, ' so that all anticipated losses are included; but ' prospective profits are not included until either ' actually realised, or in such a form that they " are believed to be actually recoverable." (*The Accountant.*)

Mr. Edwin Guthrie, F.C.A., has said that " in " stating an account affected by the valuation of " work in course of construction under contract, " great difficulty is often experienced, and the " difficulty is in proportion as the works in ques- " tion may be of great magnitude, few in " number, and extending over a considerable " period of time. If numerous and covering " comparatively short periods of duration, errors " of valuation may *average themselves*, but if " few in number and covering long periods the " risk in obtaining a true appraisement is great. " This, however, is in the main a matter for the " *technical management*. The question for the " auditor is—What is the principle to be applied " in the taking of the periodical account? In " such a case it appears to me not only right but " obligatory that the value of the work done " should be taken on the basis of the contract " (or selling) price, otherwise the whole result " would take effect in the year or half-year in " which the contract was completed, which would " cause fluctuations in the apparent profits and " in the distribution of the income as between " one period and another."

In many instances an auditor's *precise* difficulty does not arise from clerical discrepancies, but rather from differences of opinion with those " experts engaged in the trade " who are responsible for the outcome of a particular contract or contracts, and having, perhaps, been disappointed in their desire finally to complete a specified contract before " balancing time " naturally endeavour to alleviate their disappointment by claiming the greatest possible advantage for the proportion of work done. Again, as it is by no means an uncommon experience to find that the estimates of the expert differ from the real cost as regards completed contracts, the estimates for incomplete contracts should in any case receive consideration.

Thus an auditor may find himself pitted against the opinions of experts, as regards the principles upon which the valuations have been made, and obviously he requires some recognised principles to support his own views upon the subject.

Incorporation.—The creation of a legal body, endowed with perpetual succession and existence, unless specially restricted by the instrument or act of incorporation. (*See title* Corporation.)

Incorporeal Chattels.—Rights incident to chattels, such as patents, copyrights, goodwill, &c.

Increase of Capital.—*See title* Memorandum of Association.

Increment Value Duty.—The Finance (1909-10) Act 1910 provides *inter alia*:—Subject to the provisions of this Act there shall be charged, levied, and paid on the increment value of any land a duty called increment value duty at the rate of one pound for every complete five pounds of that value accruing after the thirtieth day of April nineteen hundred and nine, and—

(*a*) On the occasion of any transfer on sale of the fee simple of the land or of any interest in the land, in pursuance of any contract made after the commencement of this Act, or the grant, in pursuance of any contract made after the commencement of this Act, of any lease (not being a lease for a term of years not exceeding fourteen years) of the land; and

(*b*) On the occasion of the death of any person dying after the commencement of this Act, where the fee simple of the land or any interest in the land is comprised in the property passing on the death of the deceased within the meaning of sections 1 and 2, subsection (1) (*a*), (*b*), and (*c*), and subsection 3, of the Finance Act 1894, as amended by any subsequent enactment; and

(*c*) Where the fee simple of the land or any interest in the land is held by any body corporate or by any body unincorporate as defined by section 12 of the Customs and Inland Revenue Act 1885, in such a manner or on such permanent trusts that the land or interest is not liable to death duties, on such periodical occasions as are provided in this Act,

the duty, or proportionate part of the duty, so far as it has not been paid on any previous occasion, shall be collected in accordance with the provisions of this Act. (Section 1.)

(1) For the purposes of this Act the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which increment value duty is to be collected as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this Act as to valuation.

(2) The site value of the land on the occasion on which increment value duty is to be collected shall be taken to be—

(*a*) Where the occasion is a transfer on sale of the fee simple of the land, the value of the consideration for the transfer; and

(*b*) Where the occasion is the grant of any lease of the land, or the transfer on sale of any interest in the land, the value of the fee simple of the land, calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest; and

(*c*) Where the occasion is the death of any person, and the fee simple of the land is property passing on that death, the principal value of the land as ascertained for the purposes of Part I of the Finance Act 1894, and where any interest in the land is property passing on that death the value of the fee simple of the land calculated on the basis of the principal value of the interest as so ascertained; and

(*d*) Where the occasion is a periodical occasion on which the duty is to be collected in respect of the fee simple of any land or of any interest in any land held by a body corporate or unincorporate, the total value of the land on that occasion to be estimated in accordance with the general provisions of this Act as to valuation;

subject in each case to the like deductions as are made, under the general provisions of this Act

as to valuation, for the purpose of arriving at the site value of land from the total value.

(3) Where it is proved to the Commissioners on an application made for the purpose within the time fixed by this section that the site value of any land at the time of any transfer on sale of the fee simple of the land or of any interest in the land, which took place at any time within twenty years before the thirtieth day of April nineteen hundred and nine, exceeded the original site value of the land as ascertained under this Act, the site value at that time shall be substituted, for the purposes of increment value duty, for the original site value as so ascertained, and the provisions of this Act shall apply accordingly.

Site value shall be estimated for the purposes of this provision by reference to the consideration given on the transfer in the same manner as it is estimated by reference to the consideration given on a transfer where increment value duty is to be collected on the occasion of such a transfer after the passing of this Act.

This provision shall apply to a mortgage of the fee simple of the land or any interest in land in the same manner as it applies to a transfer, with the substitution of the amount secured by the mortgage for the consideration.

An application for the purpose of this section must be made within three months after the original site value of the land has been finally settled under this Act. (Section 2.)

(*See title* Land Values.)

(1) On each occasion on which increment value duty is collected on the increment value of any land, such an amount of duty shall be deemed to be unsatisfied as the Commissioners determine, after giving credit for the amount of duty paid on previous occasions. The Commissioners shall make such apportionments and re-apportionments of any duty paid on previous occasions as they think necessary for the purpose of giving effect to this provision.

(2) Where increment value duty is collected on the occasion of the transfer or passing on death of the fee simple of any land, or any periodical occasion in the case of land held in fee simple by a body corporate or unincorporate, the whole amount of the duty which is determined to be unsatisfied shall be collected by the Commissioners in accordance with rules made by them for the purpose.

(3) Where increment value duty is collected on the occasion of the grant of a lease, or on the transfer or passing on death of any interest in land, or on any periodical occasion in the case of an interest in land held by a body corporate or unincorporate, such proportionate part of the duty shall be collected as may be determined by the Commissioners to be payable in respect of the interest in land created, transferred, passing on death, or held, in accordance with rules made by them for the purpose.

(4) Where on the occasion of the death of any person the property passing on the death comprises settled land in which the deceased or any other person had an interest ceasing on the death of the deceased, then—

(*a*) If the subject of the settlement at the time of the death is the fee simple of the land, increment value duty shall be collected as if the fee simple of the land passed; and

(*b*) If the subject of the settlement at the time of the death is any other interest in the land, increment value duty shall be collected as if that interest passed;

but that duty shall not be collected on any such occasion if under the provisions of section 5 of the Finance Act 1894, as amended by any subsequent enactment, estate duty is not payable in respect of the settled land.

(5) For the purpose of the collection of duty on the increment value of any land under this section, the increment value shall be deemed to be reduced on the first occasion for the collection of increment value duty by an amount equal to 10 per cent. of the original site value of the land, and on any subsequent occasion by an amount equal to 10 per cent. of the site value on the last preceding occasion for the collection of increment value duty, and the amount of duty to be collected shall be remitted in whole or in part accordingly.

Any duty which by reason of this provision is remitted on any occasion shall not be collected and shall be deemed to have been paid:

Provided that no remission shall be given under this provision on any occasion which will make the amount of the increment value on which duty has been remitted during the preceding period of five years exceed 25 per cent. of the site value of the land on the last occasion for the collection of increment value duty prior to the commencement of that period or of the original site value if there has then been no such occasion.

(6) Increment value duty shall be a stamp duty collected and recovered in accordance with the provisions of this Act. (Section 3.)

(1) On any transfer on sale of the fee simple of any land or any interest in land, or on the grant of any lease of any land for a term exceeding fourteen years, increment value duty shall be assessed by the Commissioners and paid by the transferor or lessor, as the case may be.

(2) It shall be the duty of the transferor or lessor (subject to penalties for default) on the occasion of any transfer on sale of the fee simple of any land, or of any interest in land, or on the grant of any lease of any land for a term exceeding fourteen years, to present to the Commissioners, in accordance with regulations made by them, the instrument by means of which the transfer or the lease is effected or agreed to be effected or reasonable particulars thereof for the purpose of the assessment of duty thereon.

(3) Any such instrument shall not, for the purposes of section 14 of the Stamp Act 1891, and notwithstanding anything in section 12 of that Act, be deemed to be duly stamped unless it is stamped—

(*a*) Either with a stamp denoting that the increment value duty has been assessed by the Commissioners and paid in accordance with the assessment; or

(*b*) With a stamp denoting that all particulars have been delivered to the Commissioners, which, in their opinion are necessary for the purpose of enabling them to assess the duty, and that security has been given for the payment of duty in any case where the Commissioners have required security; or

(*c*) With a stamp denoting that upon the occasion in question no increment value duty was payable;

but where an instrument is so stamped, it shall, notwithstanding any objection relating to the increment value duty, be deemed to be duly stamped so far as respects that duty.

(4) Any duty assessed by the Commissioners under this section shall be a debt due to the Crown from the transferor or lessor, as the case may be, and for the purpose of calculating the amount of increment value duty to be collected on any subsequent occasion shall be deemed to have been paid.

(5) Regulations may be made by the Commissioners with respect to the mode in which any instrument is to be presented to them in order to be dealt with under this section, and for dispensing with the presentation of any instrument, or particulars thereof, in cases where arrangements are made for obtaining those particulars through any registry of lands, deeds, or title, or through a Register of Sasines, and with respect to the mode in which any application for a return of duty under this section is to be made, and for the payment of any increment value duty by instalments in the case of any lease or transfer on sale where the consideration is in form of a periodical payment; and the Commissioners shall deal with any instrument presented to them, and allow payment by instalments in accordance with those regulations. The regulations shall provide that where the duty to be collected on the grant of a lease is payable by instalments, and the lease is determined before all such instalments have fallen due, the instalments which have not fallen due shall be remitted, and that in that case the amount of duty which, under this section, is deemed to have been paid shall be reduced by the amount of the instalments so remitted.

(6) In any case where increment value duty shall have been paid under the provisions of this section, but the transaction in respect of which the duty shall have been paid was subsequently not carried into execution, the duty shall be returned to the transferor or lessor on his making application to the Commissioners within two

years after the payment of the duty in accordance with regulations to be made by them under this section, and in that case the duty returned shall not be deemed to have been paid for the purposes of this section.

(7) Where any agreement for a transfer or agreement for a lease is stamped in accordance with this section, it shall not be necessary to stamp any conveyance, assignment, or lease made subsequently to and in conformity with the agreement, but the Commissioners shall, if an application is made to them for the purpose, denote on the conveyance, assignment, or lease the amount of duty paid. (Section 4.)

The provisions as to the assessment, collection, and recovery of estate duty under the Finance Act 1894 shall apply as if increment value duty to be collected on the occasion of the death of any person were estate duty; but, where any interest in land in respect of which increment value duty is payable is property passing to the personal representative as such, the duty shall be payable out of that interest in land in exoneration of the rest of the deceased's estate, and shall be collected upon an account to be delivered by the personal representative, setting forth the particulars of the increment value in respect of the property:

Provided that in respect of all property of the deceased, other than that assessed to increment value duty, the Crown shall, as a creditor in respect of such increment value duty, rank *pari passu* with the other creditors of the deceased. (Section 5.)

(1) Where the fee simple of any land or any interest in land is held by any body corporate or by any body unincorporate, as defined by section 12 of the Customs and Inland Revenue Act 1885, in such a manner or on such permanent trusts that the land or interest is not liable to death duties, the occasions on which increment value duty is to be collected shall be the fifth day of April in the year nineteen hundred and fourteen and in every subsequent fifteenth year.

(2) The account to be delivered under section 15 of the Customs and Inland Revenue Act 1885 shall, in the case of the account to be delivered in the year nineteen hundred and fourteen and in every subsequent fifteenth year, contain an account of the increment value of the land, as on the preceding fifth day of April, and that section shall, save as in this Act is hereafter provided, apply for the purpose of increment value duty, whether the body corporate or unincorporate are chargeable with duty under Part II of the Customs and Inland Revenue Act 1885 or not.

(3) The provisions of sections 13 to 18, of subsection (1) of section 19, and of section 20, of the Customs and Inland Revenue Act 1885 (with the exception of any provisions relating to appeals) shall have effect for the purpose of the assessment and recovery of increment value duty as they have effect for the purpose of the duty charged under section 11 of that Act:

Provided that increment value duty may, if the body corporate or unincorporate chargeable therewith so desire, be paid by fifteen equal yearly instalments, and the first instalment shall be due immediately after the assessment of the duty.

Any part of any duty so payable by instalments may be paid up at any time.

(4) Any increment value duty assessed by the Commissioners on an account delivered in accordance with this section shall, for the purpose of determining the amount of increment value duty to be collected on any subsequent occasion, be deemed to have been paid.

(5) Nothing in this section shall affect the collection of increment value duty on the occasion of the grant of any lease or the transfer on sale of the fee simple of any land or any interest in land by a body corporate or unincorporate, or oblige an account to be delivered of the increment value of any land on any periodical occasion, if, under the subsequent provisions of this Act, increment value duty in respect thereof is not to be collected on that occasion. (Section 6.)

Increment value duty shall not be charged in respect of agricultural land while that land has no higher value than its market value at the time for agricultural purposes only:

Provided that any value of the land for sporting purposes, or for other purposes dependent upon its use as agricultural land, shall be treated as value for agricultural purposes only, except where the value for any such purpose exceeds the agricultural value of the land. (Section 7.)

(1) Increment value duty shall not be charged on the increment value of any land, being the site of a dwelling-house, where immediately before the occasion on which the duty is to be collected the house was, and had been for twelve months previously, used by the owner thereof as his residence, and the annual value of the house, as adopted for the purpose of income-tax under Schedule A, does not exceed:—

(*a*) In the case of a house situated in the administrative County of London, forty pounds; and

(*b*) In the case of a house situated in a borough or urban district with a population according to the last published census for the time being of fifty thousand or upwards, twenty-six pounds; and

(*c*) In the case of a house situated elsewhere, sixteen pounds.

(2) Increment value duty shall not be charged on the increment value of any agricultural land where, immediately before the occasion on which the duty is to be collected, the land was, and had been for twelve months previously, occupied and cultivated by the owner thereof, and the total amount of that land, together with any other land belonging to the same owner, does not exceed fifty acres, and the average total value of the land does not exceed seventy-five pounds per acre:

Provided that the exemption under this provision shall not apply to any land occupied together with a dwelling-house the annual value of which, as adopted for income-tax under Schedule A, exceeds thirty pounds.

(3) Where a dwelling-house is valued for the purposes of income-tax under Schedule A, together with other land, and it is necessary for the purpose of this section to determine the annual value of the dwelling-house, the total annual value shall be divided between the dwelling-house and the other land in such manner as the Commissioners may determine.

(4) For the purposes of this section—

(*a*) The expression "owner" includes a person who holds land under a lease which was originally granted for a term of fifty years or more; but in such a case nothing in this section shall prevent the collection of increment value duty so far as it is payable in respect of any other interest in the land other than that leasehold interest; and

(*b*) The site of a dwelling-house shall include any offices, courts, and yards, and gardens not exceeding one acre in extent, occupied together with the dwelling-house.

(5) Any increment value duty which would, but for this section, be charged shall, for the purpose of the provisions of this Act as to the collection of the duty, be deemed to have been paid. (Section 8.)

Increment value duty shall not be collected on any periodical occasion in respect of the fee simple of, or any interest in, any land which is held by any body corporate or unincorporate, without any view to the payment of any dividend or profit out of the revenue thereof, *bonâ fide* for the purpose of games or other recreation, if the Commissioners are satisfied that the land is so used under some agreement with the owner which as originally made could not be determined for a period of at least five years, or under other circumstances which render it probable that the land will continue to be so used, without prejudice, however, to the collection of the duty on any other occasion. (Section 9.)

Lands held by or on behalf of the Crown are exempt, but sales and transfers to the Crown are liable to increment value duty. (Section 10.)

Where a building is used for the purpose of separate tenements, flats, or dwellings, the grant of a lease of any such separate tenement, flat, or dwelling, and the transfer on sale or passing on death of any lease of any such separate tenement, flat, or dwelling, shall not be

n occasion on which increment value duty is to e collected under this Act, nor shall duty be ollected on any periodical occasion from a body orporate or unincorporate where the interest eld by the body is only a leasehold interest in ny such separate tenement, flat, or dwelling. Section 11.)

A person shall not be entitled to claim any eduction for the purpose of ascertaining the te value of any land on any occasion on which ncrement value duty becomes payable if the eduction is one which could have been, but was ot, claimed for the purpose of ascertaining the riginal site value of the land. (Section 12.)

(*See also titles* Reversion Duty, Undeveloped and Duty.)

No increment value duty shall be charged on e occasion of the grant of a mining lease or in spect of minerals which are comprised in a ining lease, or are being worked, except as a ty payable annually in manner provided by is Act.

Increment value duty shall not be charged in e case of any minerals which were, on the irtieth day of April nineteen hundred and nine, ther comprised in a mining lease or being orked by the proprietor, so long as the minerals e for the time being either comprised in a ining lease, or being worked by the proprietor:

Provided that the exemption under this section all continue to apply in the case of any inerals, although they cease for a temporary riod to be comprised in a mining lease or to worked, so long as the period does not exceed o years.

Note.—The expression "proprietor" includes person entitled to the possession of land comised in a lease for any long term of years to hich section 65 of the Conveyancing and Law of roperty Act 1881 applies.

Increment value duty in respect of the increent value of minerals which are comprised in a ining lease or are being worked shall, where at duty is chargeable, be charged annually; d the increment value shall, instead of being timated as a capital sum, be taken to be the sum (if any) by which, in each year during which the lease continues or the minerals are being worked, as the case may be, the rental value on which mineral rights duty is charged in respect of the right to work the minerals exceeds the annual equivalent of the original capital value of the minerals, or the capital value of the minerals on the last preceding occasion on which increment value duty has been collected otherwise than as an annual duty, if increment value duty has been so collected before the minerals have become comprised in a mining lease or have commenced to be worked; and the annual equivalent of any such capital value of the minerals shall be taken to be two twenty-fifth parts of that capital value.

If in any case it is shown to the Commissioners that the rental value on which mineral rights duty is charged represents in part a return for money expended within fifteen years by a lessor in boring or otherwise proving the minerals, the rental value shall be reduced for the purposes of the collection of increment value duty by the amount which represents that return.

Increment value duty payable annually under this section shall, instead of being collected as provided by this Act in other cases, be recoverable in the same manner as mineral rights duty, with the same right of deduction.

Any proprietor or lessor of any minerals who pays increment value duty in pursuance of this provision shall be entitled to be relieved in any year from the payment of mineral rights duty, as such proprietor or lessor, up to the amount paid by him in that year in respect of increment value duty.

For the purposes of this provision, a deduction of any amount from the rent payable to a lessor on account of mineral rights duty shall be deemed to be a payment of that duty, and the relief may be given either by allowance or repayment or both of those means, as the occasion may require.

Where minerals cease to be comprised in a mining lease or to be worked within the meaning of this section, the capital value of the minerals at the time shall be specially ascertained in accordance with the provisions of this Act, and

the capital value as so ascertained shall be treated as the original capital value of the minerals.

Nothing in this section shall apply to minerals which are exempt from mineral rights duty under this Act. (Section 22.)

For the purposes of this Act the total value of minerals means the amount which the fee simple of the minerals if sold in the open market by a willing seller in their then condition might be expected to realise, and the capital value of minerals means the total value after allowing such deduction (if any) as the Commissioners may allow for any works executed or expenditure of a capital nature incurred *bonâ fide* by or on behalf of any person interested in the minerals for the purpose of bringing the minerals into working order or where the minerals have been partly worked such deduction as is in the opinion of the Commissioners proportionate to the amount of minerals which have not been worked.

For the purposes of valuation all minerals shall be treated as a separate parcel of land; but, where the minerals are not comprised in a mining lease or being worked, they shall be treated as having no value as minerals unless the proprietor of the minerals in his return furnished to the Commissioners, specifies the nature of the minerals and his estimate of their capital value.

Minerals which are comprised in a mining lease or are being worked shall also be treated as a separate parcel of land for the purpose of assessment of duty.

The foregoing provisions with respect to valuation shall not apply to minerals which were on the 30th day of April 1909 either comprised in a mining lease or being worked by the proprietor, so long as such state continues, nor shall such provisions apply to any minerals which cease for a temporary period to be comprised in a mining lease or to be worked, so long as the period does not exceed two years.

The site value of land shall in cases where the land consists solely of minerals or comprises minerals be construed, so far as respects the minerals, as a reference to the capital value of the minerals. (Section 23.) (*See title* Mineral Rights Duty.)

Rating authorities are exempt from increment value duty. (Section 35.)

Where in pursuance of any public general or local Act any capital sum or any instalment of a capital sum has been paid to any rating authority in respect of the increased or enhanced value of any land due to any improvements made or other action taken by the authority, the amount of that capital sum or instalment shall be deducted from any increment value of the land for the purposes of the collection of increment value duty and shall be deemed to have been paid. (Section 36.)

Increment value duty shall not be collected on any periodical occasion in respect of the fee simple of or any interest in any land held for the purposes of any governing body constituted for charitable purposes (as defined by the Act), without prejudice, however, to the collection of the duty on any other occasion. (Section 37.)

Increment value duty shall not be charged in respect of any land whilst it is held by a statutory company (*i.e.*, any railway or similar company authorised under any special Act of Parliament for the purposes of the undertaking) and cannot be appropriated by the company except to those purposes, but the proviso does not prevent the collection of increment value duty when such land is sold or ceases to be so held. (Section 38.)

Where increment value duty is to be collected on the occasion of the death of any person in respect of any interest in land comprised in the property passing on the death of that person, allowance shall be made in determining the value of the estate for the purposes of estate duty for the amount of increment value duty so to be collected as if it were a debt. (Section 62.)

Indemnity.—*See title* Guarantee.

Indenture.—A deed indented between two or more parties, so called because originally every deed was written upon one skin, and when between parties duplicates were made thereon, and separated by being cut in an irregular form, so that the fitting in of the parts on production was evidence of their relationship. Since 8 & 9 Vict. c. 106, this formality has been no longer necessary, as that Act provides that a deed purporting

o be an indenture shall have the same effect, although it may have a polled or smooth-cut edge. (*See title* Deed Poll.)

Indorsement.—The requisites of a valid indorsement of a bill of exchange, promissory note, or cheque are:—

(1) The signature of the holder or his agent *completed by delivery* of the instrument.

(2) The signature must be either on the bill itself or upon an allonge or upon a copy of a bill issued in a country where copies are recognised. [Although the derivation of the word implies otherwise, it has been held that a signature across the face of a bill is a valid indorsement.]

(3) It must be an indorsement of the entire bill; a partial indorsement, *i.e.*, one which purports to transfer the bill in portions to two or more indorsees does not operate as a *negotiation* of the bill (although it may operate as an authority to *receive payment* in such proportions).

(4) When a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless one has authority to indorse for all. [In the case of dividend warrants made payable to two or more persons, any custom whereby one has been allowed to sign for all is recognised.]

(5) If the person indorsing is wrongly designated in the bill or his name is misspelt, he may indorse the bill as therein described, adding his proper signature should he think fit. (Bills of Exchange Act 1882, sections 21 and 32.)

There are various kinds of indorsement—blank (or general), special, restrictive, conditional, qualified, and facultative.

A blank or general indorsement specifies no indorsee, and a bill so indorsed becomes payable to bearer, but any holder may convert it into a special indorsement by inserting a payee's name above the indorser's signature.

A special indorsement specifies the person to whom or to whose order the bill is to be payable. (Section 34.)

A restrictive indorsement is one which either prohibits the further negotiation of the bill or expresses that it is a mere authority to deal with the bill as thereby directed, and is not a transfer of the ownership thereof. But where a restrictive indorsement authorises further transfer of the bill subsequent indorsees take it with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement. (Section 35.)

A conditional indorsement purports to transfer a bill subject to some condition which is to be fulfilled. The condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not (section 33), but the condition is binding as between the indorser and indorsee themselves, the latter holding the proceeds in trust for the indorser.

A qualified indorsement is one which expressly negatives or limits the liabilities of the indorser to the holder. The indorsement is made in the ordinary way, but with the addition of the words "without recourse to me," or "*sans recours*," or otherwise, according to the limitation intended. (Sections 16 and 31.)

A facultative indorsement is one whereby the indorser waives as regards himself some or all of the holder's duties, such as notice of dishonour, or otherwise. (Section 16.)

In the absence of evidence to the contrary, indorsements are deemed to have been made in the order in which they appear on the bill, and all are *primâ facie* deemed to have been made before the maturity of the bill. (Sections 32 and 36.)

Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor. (Section 31.) Should a transferor improperly refuse to indorse such a

bill, the Court may order him to do so, and on his neglect to comply with the order the Court may *nominate a person* to indorse the bill, and the indorsement so made would, by the provisions of the Judicature Act 1884, section 14, operate and be for all purposes available as though indorsed by the person originally directed to indorse it.

" Holder " is defined by section 2 of the Act as " the payee or indorsee " of a bill or note who is in possession of it, or the bearer thereof, and the question of want of consideration on the part of a person who is required to indorse a bill of exchange is no defence to a refusal so to indorse under section 31.

An accommodation party to a bill inadvertently omitted to indorse it before delivery, and the omission was not discovered until after value had been given for the bill. The accommodation party then refused, when requested, to indorse the bill which, according to its terms, was payable to his order, but the Court held that the holder was entitled to an indorsement of the bill. (*Walters v. Neary*, 1904.)

A forged or unauthorised indorsement of a bill is wholly inoperative, and a banker who pays a bill under such indorsement is liable to the true owner, unless:—

(1) The bill is drawn to order on that banker payable on demand (*i.e.*, a cheque); and is paid in good faith and in the ordinary course of business.

(2) The payee is a fictitious and non-existing person *within the contemplation of the bill*, the bill being under such circumstances payable to bearer; or

(3) The person against whom it is sought to enforce payment of the bill is precluded from setting up the forgery or want of authority.

Where a bill is indorsed by an infant or a corporation having no capacity to incur liability on a bill, a holder may nevertheless enforce payment of the bill against any *other* party thereto. (Section 22.) Ordinarily, there are two distinct contracts involved in the indorsement of a bill, viz.:—(1) The transfer of the instrument, and (2) the assumption of a contingent liability, but the effect of an indorsement by an infant is merely to *transfer* the property in the bill without any assumption of liability on his part, even though he receives value therefor. An infant who has been validly appointed the agent of an adult person may, however, bind his principal by his signature to a bill of exchange, provided the infant acts within the scope of his authority.

In *Keane v. Beard* (1860) the defendant was the holder of a cheque *payable to bearer*, which he indorsed and delivered to another, who, in turn, transferred it by delivery to the plaintiff. The cheque was dishonoured, and the plaintiff sued the defendant as an *indorser*. The defence was that as the cheque was payable to bearer and the indorsement *unnecessary* it must be treated as so much surplusage, but the Court held the defendant liable as an indorser.

Indorser.—The person who transfers a bill of exchange, a bill of lading, &c., by indorsement to another.

No person is liable as an indorser of a bill of exchange unless and until he has signed it as such (Bills of Exchange Act 1882, section 23) and delivered the bill. (Section 21.)

The indorser of a bill of exchange engages that on due presentment the bill shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any subsequent indorser who is compelled to pay it, provided the requisite proceedings on dishonour be duly taken; and he is precluded from denying (1) to a holder in due course the genuineness and regularity of the drawer's signature and all previous indorsements, and (2) to his immediate or a subsequent indorsee that, at the time of his indorsement, the bill was a valid one, and that he had then a good title thereto. (Section 55.) Where a person signs a bill otherwise than as drawer or acceptor he thereby incurs the liabilities of an indorser to a holder in due course. (Section 56.) (*See title* Indorsement.)

Infant.—A person under the age of twenty-one years. Infancy is no protection against a claim grounded upon a tort committed by an infant; but those "under age" are subject to certain disabilities in respect of contracts. They have a qualified power of contracting, but are only bound by such contracts as are for their benefit and advantage.

The Infants' Relief Act 1874 provides:—

(1) That all contracts, whether by specialty or simple contract, entered into by infants for the repayment of money lent, or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with infants shall be *absolutely void*, provided always that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable.

(2) No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall, or shall not, be any new consideration for such promise or ratification after full age.

It must be noted:—

(1) That an infant can contract for necessaries, viz.:—Such food, clothing, medicine, and lodging as are necessary and suitable to the age, rank, and condition in life of the infant. It lies upon the plaintiff to prove that the articles supplied were suitable not only to the condition in life of the infant, but also to his actual requirements at the time of sale and delivery. (*Nash v. Inman*, C.A. 1908.)

The Sale of Goods Act 1893 provides that, where necessaries are sold and delivered to an infant, he must pay a reasonable price therefor. An infant cannot be sued on a bill, even though given in respect of the price of necessaries supplied, but in such a case he could be sued upon the *consideration*.

(2) That although ratification after full age of a promise made during infancy cannot be enforced, such a ratification must be distinguished from a *new contract* entered into after full age in the precise terms of the one made during infancy.

(3) That an infant can make a binding contract for employment (if the contract as a whole is beneficial to him); and with regard to a lease of land, a share in a partnership, or shares in a joint-stock company, if a person has held same during infancy and does not repudiate the agreement within a reasonable time after coming of age, a ratification is implied.

(4) That an infant is not estopped from setting up the Infants' Relief Act, even though he may have obtained credit by misrepresenting that he was of full age. (*Levene v. Brougham*, C.A. 1908.)

The various circumstances affecting an infant's position will, however, be dealt with *seriatim*:—

Administrator.

Where the right of administration of an intestate's estate devolves upon an infant, the Court will grant administration *durante minore ætate* to his guardian, or to such person as the Court thinks fit, for an infant cannot give a bond to administer faithfully, nor can he sue and recover the debts of the deceased. (*See* heading Executor, *infra*.)

Agency.

An infant cannot act as proxy for a creditor or contributory either in bankruptcy or winding-up procedure. Ordinarily, however (although he cannot act as a principal), an infant may be appointed an agent, for as an agent he is not deemed to exercise his own powers, but those which have been transmitted to him by his principal. (*See* heading Bills of Exchange, *infra*.)

Bankruptcy.

The liability of an infant to bankruptcy proceedings is a matter of doubt; whilst some writers suggest the *possibility* of an infant being liable to bankruptcy law in respect of (1) a judgment debt founded on a tort, or (2) a debt incurred for necessaries, it is settled that an infant cannot be made bankrupt in respect of debts incurred in trading, whether alone or in partnership. In the event of the bankruptcy of a firm having an infant partner, the infant will be excluded from the proceedings (*Beauchamp Brothers*, 1894), although the whole of the partnership assets (but not the infant's separate estate) will be available for payment of the partnership debts.

The following extract from the Fourteenth Annual (Bankruptcy) Report of the Board of Trade, under the 1883 Act, will be found appropriate:—

"Infants practically enjoy immunity from "the bankruptcy law. They are incapable of "binding themselves by a contract, except by "a contract for necessaries (when it must be "shown that the goods obtained were neces- "saries suitable to the degree and quality of "the infant who was not otherwise supplied "with necessaries), or by a contract for hiring "and service for wages. It would seldom "occur that an infant would be liable, under "a binding contract of the nature referred to, "for a sum not less than £50, which is the "minimum amount upon which a creditor's "petition can be founded. The only other "case in which an infant would, perhaps, be "made bankrupt *appears* to be where judg- "ment has been recovered against him for not "less than £50 in respect of a tort."

The following extract from Lord Herschell's judgment in *Lovell & Christmas v. Beauchamp Brothers* (1894, A.C. 607) also bears directly upon this question:—

"I think it clear that there is nothing to "prevent an infant trading or becoming "partner with a trader, and that until "his contract of partnership be disaffirmed, "he is a member of the trading firm. But "it is equally clear that he cannot con- "tract debts by such trading; although "goods may be ordered for the firm, *he* "*does not become a debtor* in respect of them. "The adult partner is, however, entitled to "insist that the partnership assets shall be "applied in payment of the liabilities of the "partnership, and that, until these are pro- "vided for, no part of them shall be received "by the infant partner, and if the proper "steps are taken, this right of the adult partner "can be made available for the benefit of the "creditors. It is also clear that, *even if there* "*are* circumstances under which an infant may "be adjudicated bankrupt, or a receiving order "may lawfully be obtained as a step towards "such adjudication, he cannot be made subject "to the bankrupt laws in respect of any debts "contracted by the firm of which he is a "partner."

Goods belonging to an infant, but in the possession of another person by way of his trade or business, are not subject to the "reputed ownership" clause in the event of the latter's bankruptcy, for in such a case the goods require to be in the "order or disposition" of the bankrupt, with the *consent and permission* of the true owner, and an infant is incapable of giving the necessary consent.

Bills of Exchange.

Capacity to incur liability as a party to a bill is co-extensive with capacity to contract. A minor cannot, therefore, incur any liability as drawer, indorser, or acceptor of a bill, and even where a bill is given by an infant for the price of necessaries supplied to him, he is not liable thereon, although he may be liable on the *consideration* therefor.

Where a bill is drawn or indorsed by an infant having no capacity to incur liability thereon, the drawing or indorsing entitles the holder to receive payment of the bill and to enforce it against any *other party* thereto. "The "incapacity of one or more parties to a bill in "no way diminishes the liability of any of the "other parties thereto: thus, the acceptor cannot

set up the incapacity of the drawer, the drawer cannot set up the incapacity of the acceptor, and so on."

The effect of an indorsement by an infant is merely to *transfer* the property in the bill without any assumption of liability on his part, even though he receives value therefor. But an infant who has been validly appointed the agent of an adult person may bind his principal by his signature to a bill of exchange, provided the infant acts within the scope of his authority. So an infant cannot (as principal) draw or sign a cheque, for he cannot give his banker a legal discharge, but if a customer authorises a minor to sign cheques on his behalf, such cheques will be duly honoured by the banker.

Building Society.

An infant may be admitted as a member of a building society under the Building Societies Acts, and may give all necessary acquittances, provided the rules of the society do not prohibit such admission, but during his minority he is not competent to vote or hold any office in the society.

Company.

It is doubtful whether an infant can be a signatory to the memorandum of association. If the Registrar of Joint Stock Companies was aware that one of the signatories was an infant he would, no doubt, decline to register the memorandum, but the certificate of incorporation, on being issued by the Registrar, is deemed conclusive evidence that all the requirements of the Acts have been complied with.

The articles of association of a company sometimes prohibit the admission of an infant as a member, whether by allotment, transfer, or otherwise, but in any case an infant cannot contract effectually to take shares; and if shares should stand in the name of an infant they will be held subject to the *quondam* infant's right to repudiate them on coming of age. As a result of section 2 of the Infants' Relief Act (*supra*) no action can be brought to charge a person on any ratification after full age of a promise made during infancy.

To charge him there must be evidence of a *new promise* after full age, and acting as a member *may possibly* be evidence of such a new promise. If, however, an infant shareholder has been allowed to transfer his shares the company will be bound thereby.

Where the articles of association of a company prohibit the registration of an infant as a member, but shares have been transferred to, and registered in, the name of an infant, the company may, on ascertaining that fact, apply for a rectification of the register, so as to restore the name of the transferor.

Company Liquidation.

If a shareholder be an infant at the date of the winding-up of a company he cannot be placed upon the list of contributories, but if he originally held the shares as an infant, and is of full age at the date of winding-up, it is then a question whether or not he has elected to take the shares by a new promise after coming of age, such as acting as a member or expressly acquiescing in his registration as a member after attaining full age.

Such election may be evidenced, not only by any express act of ownership over the shares by the member, but by failure to repudiate the shares expressly within a reasonable time after coming of age.

If on coming of age (before the date of the winding-up) the member has elected, or is deemed to have elected, to take the shares, he will be liable to be placed upon the list of contributories. Where a director of a company induced his infant children to take shares in the company, the infants were not liable for the calls on the shares in the winding-up, but the father, being cognisant of the infancy of his children, was held liable for the calls (under the misfeasance section) because of the loss occasioned to the company by his breach of duty as a director.

Executor.

The appointment of an infant as executor is not invalid, but there is apparently no instance of the Court having granted administration to a minor, as he cannot take upon himself the

liabilities of the office. Where there are two executors appointed, one of whom is a minor and the other of full age, the latter alone can execute the provisions of the will. Where an infant is appointed *sole* executor, probate of the will cannot be granted to him during his minority, but administration with the will annexed will be granted to his guardian or such person as the Court thinks fit until the infant attains his majority, when probate will be granted to him. (38 Geo. III, c. 87.) Furthermore, the Probate Act 1857 confers power on the Court to exercise its discretion, and appoint such person as it may think fit to be the administrator of the estate of a person dying wholly intestate, or leaving a will, but without having appointed an executor willing and *competent* to take probate.

An infant executor has been held *not competent* within the meaning of the above. (*See* heading Administrator (*supra*).)

Limitation of Action.

By 21 Jac. I, c. 16, an action in respect of a simple contract must be commenced within six years next after the cause of such action, and not after; by 3 & 4 William IV, c. 42, an action in respect of a contract under seal must be commenced within twenty years next after the cause of such action, and not after; but, as regards an infant-plaintiff, the above periods of six years and twenty years respectively do not *commence* to run against him until the removal of his disability, *i.e.*, until he comes of age.

The Real Property Limitation Act 1874 provides that no person shall enter, distrain, or sue to recover *land* or *rent* except within twelve years (twenty years if leased by deed) after the time at which the first right to bring the action accrued to such person; but if he is under the disability of infancy when the right first accrues, action may be brought within six years after the disability ceases, or in the event of his death before coming of age his representatives may take action within six years from the date of the death, provided that a right to sue or make any entry on the land is absolutely barred after thirty years from the date the right first accrued.

(*See titles* Income Tax, Maintenance.)

Married Woman.

Notwithstanding section 19 of the Married Women's Property Act 1882, a settlement or agreement for a settlement made after 1st January 1908 by the husband or intended husband, whether before or after marriage, respecting the property of any woman he may marry or have married, shall not be valid *unless* executed by her if of full age or confirmed by her after she attains full age. But if she dies an infant any covenant or disposition by her husband contained in the settlement or agreement shall bind or pass any interest in any property of hers to which he may become entitled on her death, and which he could have bound or disposed of if this Act had not been passed. (Married Women's Property Act 1907, section 2.)

Partnership.

An infant may engage in trade, either alone or in partnership, but he cannot be sued on his trading debts or on contracts entered into in respect of such trading. In the event of the bankruptcy of a firm having an infant partner, the infant will be excluded from the proceedings; the whole of the partnership assets, but not the infant's separate estate, will, however, be available for payment of the partnership debts.

But if a person, as an infant, enters into a partnership contract, he will be held liable as a partner for all partnership debts incurred after he comes of age, unless he repudiates the partnership contract within a reasonable time after reaching his majority. In the absence of express repudiation he is deemed to have adopted the contract.

"If he wished to be understood as no "longer continuing a partner, he ought to "have notified it to the world." [Best, J.]

Will.

An infant cannot make a valid will, unless he is a soldier in actual military service, or a mariner or seaman at sea.

In Formâ Pauperis.—A person may be allowed to sue or defend in the Superior Courts *in formâ pauperis* (*i.e.*, as a pauper) on proof that he is not worth £25, besides his clothes and the subject matter of the case, but he must first obtain counsel's opinion that he has reasonable ground for proceeding, which opinion, together with an affidavit of the facts either by the party or his solicitor, must be produced to the Court. When admitted to sue in this form, the Court may, if necessary, assign to him a counsel, or solicitor, or both, who may not refuse to act without good reason, and must act gratuitously.

Inhabited House Duty.—This duty is levied upon the annual value of inhabited houses and places of business if also used as habitations except by the necessary caretaker. It is collected by the Income-tax authorities from the tenant and is not deductible from the rent.

The duty is levied upon the following scale:—

	Shops, Inns, Farm Houses, Registered Lodging Houses, &c.	Private Houses.
Property of the annual value of £20 and not exceeding £40	2d. per £	3d. per £
Property of the annual value of £40 and not exceeding £60	4d. "	6d. "
Property, the annual value of which exceeds £60	6d. "	9d. "

Note.—Property of an annual value less than £20 per annum is exempt from inhabited house duty.

Injunction.—A writ issuable by the Court to restrain the continued commission of a wrong, or the commission of a wrong which has been threatened. The following are examples of the objects desired:—(1) The abatement of public or private nuisances, (2) the enforcement of specific performance, and (3) the restraining of infringments of copyrights, patents, trade marks, &c.

Inland Bill.—A bill which is, or on the face of it purports to be, (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands on some person resident therein. Any other bill is a foreign bill.

Unless the contrary appear on the face of a bill, the holder may treat it as an inland bill. (Bills of Exchange Act 1882, section 4.)

Innkeeper.—An innkeeper is bound to admit all travellers into his inn and entertain them at a reasonable charge, if there is room and they properly conduct themselves. He is liable for the loss of, or injury to, his guests' goods, &c., unless such loss is the result of inevitable accident. The Innkeepers Act 1863 provides, however, that no innkeeper is liable to make good any loss or injury to goods or property brought to his inn (except a horse or other live animal, or any carriage) to a greater amount than £30, except:—

(1) Where the goods are stolen, lost, or injured, through the wilful neglect or default of the innkeeper or any person in his employ; or

(2) Where the goods have been deposited with the innkeeper expressly for safe custody.

The innkeeper is only entitled to the benefit of the Act whilst a copy of section 1 of the Act is exhibited in a conspicuous place in the hall or entrance to the inn, and he will be deprived of the benefit of the Act where he either:—

(1) Improperly refuses to receive goods for safe custody, or

(2) So defaults that a guest is unable so to deposit them.

An innkeeper has a lien upon the goods of his guests for board and lodging, but he may not detain his guests personally or seize any of their clothes in actual wear. Although a lien is ordinarily a right of a passive nature the Innkeepers Act 1878 provides that the innkeeper may, after six weeks, sell by public auction all goods left with him by a guest leaving in debt, provided the sale be advertised at least one month beforehand.

In personam.—A judgment *in personam* binds only the person and his representatives, whilst a judgment *in rem* is an adjudication pronounced upon the status of some particular subject-matter, such as the condemnation of a ship by the Admiralty Court.

In rem.—*See title In personam.*

Inscribed Stocks.—These consist of the debts of various Governments, Consols, Colonial Stocks, &c., and are so called from the fact that the names of the holders of the various stocks are *inscribed* on the books of the London agent of the particular Government. Some municipal bodies now deal with their debts in the form of inscribed stock.

No certificates are issued to the holders of inscribed stock, and in order to ascertain whether any particular person or company is entitled to certain inscribed stock a formal request for the verification of the Stock Account must be forwarded to the bank where the register is kept.

The request must be signed by the stockholder or some duly authorised person, and in the case of the Bank of England, the London County and Westminster Bank, and the Crown Agents for the Colonies, the request must be accompanied by a fee of 6d. for each class of stock required to be verified, with a minimum fee of 1s. In all cases other than the above, the banks which keep registers of inscribed stocks will verify same on application without charge.

The auditor of a public company having investments in inscribed stocks should insist upon the same being verified on each occasion the Balance Sheet is certified.

(*See title* Investment.)

Insolvency.—The state of a person who cannot pay his debts as they become due in the ordinary course; the state of a person whose liabilities exceed his available assets; the state of a person who cannot pay twenty shillings in each pound (sterling) of his liabilities.

It was held prior to the Companies Act 1907 that insolvency meant inability to pay debts actually due (*i.e.*, debts which can be demanded to be paid instantly) (*Re European Life Assurance Co.*, 39 L.T. 136; L.R. 9 Eq. 122); and in *R. v. Saddlers Co.* (32 L.J. Q.B. 337) Willes, J.. said, "in insolvent circumstances" has always been held to mean not merely being behind the world *if an account were taken*, but insolvency to the extent of being unable to pay just debts in the ordinary course of business.

(The Sale of Goods Act adopts the foregoing definition.)

But, re-enacting a provision in the 1907 Act, section 130 (iv) of the Companies (Consolidation) Act 1908 provides that for the purpose of determining whether a company is unable to pay its debts (and as a consequence liable to be wound up) the Court may take into account the contingent and prospective liabilities of the company.

In specie.—In its own form, and not in the form of its equivalent.

Inspection.—

COMPANIES' ACCOUNTS.

Inspectors may be appointed to investigate the affairs of any company which is subject to the provisions of the Companies (Consolidation) Act 1908 as follows:—

(*a*) *By the Board of Trade.*

The Board of Trade may appoint one or more competent inspectors to investigate and report in such manner as the Board direct:

(1) 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;

(2) 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;

(3) 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 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.

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.

An inspector may examine on oath the officers 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 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.

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.

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. (Section 109.)

(b) *By the Company.*

A company may by *special resolution* appoint inspectors to investigate its affairs.

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.

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. (Section 110.)

A copy of the report of any inspectors whether appointed by the Board of Trade or the company 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.

(Section 111.) (*See titles* Auditor, Investigation.)

General.

Shareholders, creditors, mortgagees, debentureholders, and auditors of companies are also entitled to copies of various documents and inspection of records. Creditors and the committee of inspection have similar rights in bankruptcy; limited partners have rights in cases of limited partnerships; and "beneficiaries" are entitled to information and access to books under the Public Trustee Act. In addition, the general public may inspect on payment of prescribed fees documents filed with the proper authorities in pursuance of statutory obligations, and these are chiefly as follow:—

(1) As regards companies and limited partnerships, at the office of the Registrar of Joint Stock Companies.

(2) In bankruptcy, at the County Court at which the adjudication is made.

(3) As regards deeds of arrangement, at the Bills of Sale Registry.

(4) As regards wills, &c., at the Probate Registry, Somerset House, and, where applicable, at the office of the Public Trustee.

These various matters are dealt with in their appropriate places throughout this work.

The Senior Bankruptcy Registrar of the High Court, and every Registrar of the County Court having jurisdiction in bankruptcy, must keep:—

(1) A Register of Bankruptcy Notices,

(2) A Register of Petitions, and

(3) A Register of Receiving Orders,

and these books, on payment of the prescribed fee, are open for public information and search, provided that the Registrar may in any case before allowing a search require the applicant to satisfy him as to the object for which such search is required. In the event of refusal by the Registrar there is a right of appeal to the Judge in Chambers. (Bankruptcy Rule 283.)

Inspectorship, Deed of.—*See title* Deed of Arrangement.

Insurable Interest.—At common law, the very essence of insurance was the existence of an interest in the assured; that is to say, the assured must have something at stake capable of being lost by him as the proximate effect of the loss of the subject-matter of insurance.

This insurable interest was, however, often dispensed with by express agreement in the various policies, but statute law has now rendered the existence of an insurable interest an absolute necessity in marine, fire, and life insurance.

These three classes will be dealt with separately:—

Marine Insurance.—A contract of marine insurance by way of gaming or wagering is void, and the contract is deemed to be one of gaming or wagering where the insured has not an insurable interest. Every person who is *interested in a marine adventure* has an insurable interest. In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure, or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof. The interest must exist at the time of the loss, provided that where the subject-matter is insured "lost or not lost" the insured may recover, although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the insured was aware of the loss and the insurer was not. (Marine Insurance Act 1906.)

Any person who effects a contract of marine insurance without possessing an insurable interest now commits a punishable offence. (Marine Insurance (Gambling Policies) Act 1909.)

The basis of insurable interest ought to be the amount of *expectation* at the time of insuring, and the value of such expectation from the voyage is that which one estimates, at the time of insuring, the expectation will be worth on the safe accomplishment of the voyage.

The amounts recoverable in case of total loss are respectively:—

Cargo.—Prime cost, expense of shipment, and cost of insurance, and in some cases a percentage for loss of profit.

Ship.—Value of ship at outset of voyage (including cost of outfit, stores, provisions for crew), advance wages, and cost of insurance.

Freight.—Gross freight and cost of insurance.

Fire Insurance.—The statute 14 George III c. 48, requires the name of the person *interested* to be inserted in every policy of insurance, whilst the contract being one of indemnity there must be an interest at the *time of the loss*. "There "must be an insurable interest in someone both "at the time of insuring and at the time when "the fire happens."

Life Insurance.—The Act of George III (*supra*) applies equally to fire and life insurance, so that an interest is essential at the time of insuring, but the contract being an absolute one to pay a sum of money on the happening of a given event, and not necessarily a contract of indemnity, it is sufficient if the assured had an insurable interest *at the time of insuring*, and it is immaterial whether it is existent or not at the date of the death of the life insured. A contract of life insurance may operate as an indemnity, e.g. where a debtor's life has been insured by a creditor and death occurs before payment of the debt, but the insurance would be valid if continued by the creditor after payment of the debt which originally gave rise to the insurable interest. Insurances on the lives of children are not void for want of interest, but the Friendly Societies Act 1875 limits the insurance of children's lives according to age, the maximum for a child under ten years of age being £10.

A man has always been considered as having an interest to any amount on his own life, and according to circumstances may have an insurable interest on the life of his wife. (See *Griffiths v. Fleming and others*, C.A. 1909.) In

e Married Women's Property Act 1882 a arried woman may effect a policy on her own e or the life of her husband for her separate e. Further, a man may effect a policy on his e expressed to be for the benefit of his wife d children, or a woman may effect a policy her life for the benefit of her husband and ildren, and in such cases a trust is created in vour of the objects named, and the moneys yable under the policies are not part of the tate of the man or woman, as the case may be, subject to the payment of his or her debts. ut if it be proved that (1) the policy was effected d (2) the premiums were paid with intent to fraud creditors, the creditors are entitled to eive out of the moneys payable a sum equal the premiums paid. (*See titles* Expectation Life, Assurance Companies Act, &c.)

In rance.—The act of providing against possible ss by contracting with a person called the surer (or underwriter) that in consideration of sum called the premium paid by the insured ften styled the assured), he will be indemnified om such possible loss. In the case of life surance the contract may be, but is not usually, of indemnity.

The distinction between life insurance (or surance, to be more precise) and those forms insurance which constitute an indemnity, is inly this:—That life assurance is a provision secure a payment on the happening of an ent which must ultimately happen, although e time of its happening is uncertain, *e.g.*, ath; while insurance such as marine or fire is indemnity against any loss which may arise the happening of some event which may not ppen.

In all cases of life assurance or insurance, nether marine or fire, the insurer should be formed of every material circumstance within e knowledge of the assured, such contracts quiring *uberrima fides*.

An insurance company may be appointed stodian trustee under the Public Trustee Act 06. (*See title* Public Trustee.)

(*See titles* Fire Insurance, Insurable Interest, fe Assurance, Marine Insurance.)

Interest is the compensation allowed for the loan or forbearance of a sum of money. It may be divided into two parts, viz., a portion for the *mere use* of the principal sum, and a portion as a premium for the risk of *losing* it, although the safety of a particular investment may reduce the latter to an unimportant quantity.

Interest is regarded by some economists as the price of waiting while capital is in use; and the price, like all other prices, is governed largely by supply and demand (apart from the extra interest required where the risk of loss of the capital is greater). The theory of supply and demand is carried to extreme lengths by some economic writers. They say capital is increased by production and savings; the increase might result in such a supply of capital that interest would be nominal, and the capital available might reach such a point as compared with the demand that the " interest " would even be negative.

Recognising the great advantage of having their capital not only safe, but available on demand for future needs, and failing to obtain employment for their capital at interest because of the over supply, those who possessed such capital might consider the question of actually paying someone to take care of it until required, just as one already pays storage rent for the custody of chattels!

But this theory is not a tenable one if money be regarded, as it ought to be, as a mere medium of exchange. The rate of interest per annum current in a given community has been defined as an index of the preference in that community for a pound sterling or a pound's worth of goods at present over a pound sterling or a pound's worth of goods a year hence. To say that the rate of interest is 4 per cent. per annum is to say that £100 at present (either in money or goods to that amount) is the equivalent of money or goods to the value of £104 a year hence.

Interest may be computed in two ways—simple and compound.

Simple interest is that which is computed at the agreed rate upon the sum (or the outstanding balance of the sum) advanced or forborne only,

irrespective of the fact that any interest accrued due may not have been paid to the lender.

Compound interest is that which *arises* when simple interest, having accrued due at the end of any agreed period, instead of being paid to the lender, is added to the principal by which it was produced, thereby forming an increased principal upon which *simple* interest is charged during the succeeding period, and so on.

The amount of £1 at compound interest at any rate per cent. for any period may be expressed thus:—$(1+i)^n$ where i equals the interest on £1 for one year and n represents the particular number of years.

Compound interest tables are classified so as to show (*inter alia*):—

(1) The amount to which £1 will accumulate at the end of a given number of years, viz.:—$(1+i)^n$.

(2) The present value of £1 due at the end of a given number of years.

(3) The amount to which an annuity of £1 will accumulate at the end of a given number of years.

(4) The present value of an annuity of £1 to be enjoyed for a given number of years.

(5) The uniform sum necessary to be set aside periodically to a sinking fund to redeem or amount to £1 in a given number of years.

The particular rate of interest employed in the computation obviously affects the result, but having ascertained the amount to which £1 will accumulate at the end of a given number of years (No. 1 above) the remaining four results are readily deducible therefrom.

Take 4 per cent. and a period of twenty years as an example, and assume interest tables not to be available:—

(1) The amount of £1 at 4 per cent. at the end of twenty years is $(1{\cdot}04)^{20}$. This can readily be computed thus:—

$$(1{\cdot}04) \times (1{\cdot}04) = (1{\cdot}04)^2$$
$$(1{\cdot}04)^2 \times (1{\cdot}04)^2 = (1{\cdot}04)^4*$$
$$(1{\cdot}04)^4 \times (1{\cdot}04)^4 = (1{\cdot}04)^8$$
$$(1{\cdot}04)^8 \times (1{\cdot}04)^8 = (1{\cdot}04)^{16}$$
$$(1{\cdot}04)^{16} \times (1{\cdot}04)^4* = (1{\cdot}04)^{20}$$
$$= £2{\cdot}1911231.$$

(2) Having thus obtained the "amount" of £1, the present worth of same is its reciprocal, or $\frac{1}{2{\cdot}1911231} = £{\cdot}45638695$.

(3) The amount to which £1 will accumulate at compound interest over a period of years really represents the original £1, plus an accumulated annuity during the period equal to the *interest* on such original £1.

If therefore such original £1 be deducted, the accumulation of an annuity of the *annual interest* on £1 remains, and the value of an annuity of £1 is only a question of proportion.

Thus, amount to which £1 will accumulate at the end of twenty years ... ... = £2·1911231
Deduct the original £1 ... ... £1·

Accumulated amount of an annuity equal to the annual interest on £1 (viz., £·04) ... ... = £1·1911231

If £1·1911231 equals the accumulated amount of an annuity of £·04, then $\frac{£1{\cdot}1911231}{{\cdot}04}$ = accumulated amount of an annuity of £1 or £29·778078.

(4) The present worth of an annuity of £1 to be enjoyed for a given number of years is the accumulated value of such annuity divided by the accumulated amount of £1 at the end of the same period, viz.:— $\frac{29{\cdot}778078}{2{\cdot}1911231}$.

or expressed in terms of the accumulated amount of £1

$$\frac{(2{\cdot}1911231-1)}{{\cdot}04\times 2{\cdot}1911231} = £13{\cdot}590326.$$

(5) With regard to sinking fund instalments, it follows that if £1 per annum set aside for twenty years at 4 per cent. amounts to £29·778078, the sum necessary to produce £1 in that time is proportionate, being $\frac{1}{29{\cdot}778078}$ or expressed in terms of the accumulated amount of £1

$$\frac{{\cdot}04}{2{\cdot}1911231-1} = £{\cdot}033581.$$

Thus from the amount of £1 accumulated for any number of years at any rate per cent. (which itself can readily be computed), the other four results for such period and rate are readily deducible.

The periods in respect of which interest is mputed and added to the principal mark the sts in the calculation, and such rests may be ade yearly, half-yearly, or otherwise; but though in practice the rests are made on the piration of some specified (and substantial) riod, the true and logical idea of compound terest is the " momently " growth of principal nder its influence. A distinction must there-re be drawn between the *nominal* and *effective* tes per cent. per annum of interest, the latter ing greater than the former where the rest or eak is made more than once a year, and creasingly so where the rests are made at more equent intervals. Thus the nominal rate of 5 r cent. per annum is an effective rate of 0625 per cent. per annum when interest is cumulated half-yearly; when the accumulation made quarterly, the effective rate is 5.0946 per nt. per annum; when the interest is capitalised *omently* (*i.e.*, an infinite number of times per num), a nominal rate of 5 per cent. per annum comes an effective rate of 5.1271 per cent. per num, while a nominal rate of 3 per cent. com-ted momently becomes an effective rate of 0454 per cent. only, so that the effect of equent computations of compound interest is t so great as is generally supposed.

If the rate per cent. per annum of interest a sum of money at which it is to be allowed to cumulate at compound interest in yearly rests divided into the number 72, the quotient will ve (approximately) the number of years in hich the original sum will double itself.

Ordinarily, compound interest is not allowed by w on a sum lent or forborne, as the party titled to receive the interest is supposed to have s remedy in demanding it as and when it comes due.

Simple interest is allowed in the following ses:—

(1) Where provided for by agreement, express or implied.

(2) Where it is the usage of the trade to allow it.

(3) Where the debt is a sum certain a jury may grant interest at the current rate as damages, if the debt is payable on a fixed day, and the contract is in writing, or if the creditor has made a written demand for the debt and notified his intention of charging interest in default of payment.

(4) A judgment debt carries interest at the rate of 4 per centum per annum until the judgment is satisfied.

(For the effect of interest in special connections, see the following:—Interest in respect of Proof of Debt, Interest on Calls in Arrear, Interest on Capital, Interest on Capital during construction of Works, Interest on Moneys in Advance of Calls, Interest on Monthly Balances, Interest Secured by Bill of Exchange, Manufacturers' Accounts, Sinking Fund, Usury.)

Interest in Expectancy.—An interest in an estate to come in and be enjoyed *in future*, such as reversions and remainders.

Interest in respect of Proof of Debt (in bankruptcy and company liquidation):—

BANKRUPTCY.

(*a*) *The right to interest in the case of a Deficiency of Assets.*

(1) Where interest on a provable debt *has not been reserved or agreed upon*, but

(*a*) the debt was payable by virtue of a written instrument at a certain time, or

(*b*) a demand in writing was made for payment with notice of intention to charge interest on default and the debt is overdue at the date of the receiving order,

the creditor may prove for interest at a rate not exceeding 4 per cent. per annum from the time the debt was payable, or from the time of demand for payment to the date of the receiving order. (Bankruptcy Act 1883, Schedule II, Rule 20.)

(2) Where interest *has been reserved or agreed upon* proof can be made (for the purpose of voting) for the amount of such interest, but for the purposes of *dividend* interest shall be calculated at a rate not exceeding 5 per cent. per annum (to the date of the receiving order) without prejudice to the right of a creditor to receive any higher rate of interest to which he may be entitled after all the debts proved against the estate have been paid in full. (Bankruptcy Act 1890, section 23; but see paragraph (*f*) (3) hereof.)

(*b*) *The right to interest in the case of a Surplus of Assets.*

(1) If there is any surplus after payment of the costs of administering the estate, the preferential debts, and all debts provable in the bankruptcy, such surplus shall be applied in payment of interest *from* the date of the receiving order at the rate of 4 per cent. per annum on *all debts* proved in the bankruptcy. (Bankruptcy Act 1883, section 40 (5).)

(2) The balance of interest *reserved* which is in excess of 5 per cent. and in respect of a period *prior* to the date of the receiving order, and therefore postponed, is also payable " when all debts proved have been paid in full." (Bankruptcy Act 1890, section 23.)

(*c*) *Proof for interest for Voting and Dividend purposes respectively.*

There is a right of proof both for *voting and dividend* purposes in the cases provided for by Rule 20 of Schedule II of the Act of 1883. (See paragraph (*a*) (1) hereof.) But although in the case of interest being reserved in excess of 5 per cent. per annum such excess is postponed for *dividend* purposes (see paragraph (*a*) (2) hereof) it does not affect the right of proof for the full rate of interest for *voting* purposes. (*Ex parte Jones; re Herbert*, 1892, 9 Mor. 253.)

(*d*) *Interest accrued prior to the date of the Receiving Order.*

Creditors who are within the provisions of paragraphs (*a*) (1), (*a*) (2), and (*b*) (2) hereof may prove for interest up to the date of the receiving order, subject to the conditions and limits there mentioned.

(*e*) *Interest accruing subsequently to the date of the Receiving Order.*

(1) " There is a general rule in bankruptcy— " whether a right and reasonable rule or " not—that there is to be no proof in bank- " ruptcy for interest subsequent to the " bankruptcy." (James, L.J., in *Re Savin*, 7 Ch., at p. 764.)

(2) But this rule ((*e*) (1) hereof) does not apply where there is a surplus of assets (see paragraph (*b*) (1) hereof), and it is relaxed in favour of a secured creditor under special conditions. (See paragraph (*f*) (2) hereof.)

(*f*) *Secured Creditor.*

(1) Even a secured creditor whose debt carries interest cannot (ordinarily) apply the proceeds of sale or value of his security in payment first of interest *subsequent* to the receiving order (or winding-up order) and then in reduction of other portions of his claim, and prove in the bankruptcy (or liquidation) for the balance. His proof must be limited to what was due for principal and interest at the date of the bankruptcy (or liquidation) after deducting therefrom the proceeds of sale or value of his security. But the interest, *if agreed* at a higher rate than 5 per cent., is not restricted to 5 per cent., provided that (*a*) it ceases at the date of the receiving order (or winding-up order), and that (*b*) after deducting the proceeds of sale or value of the security the creditor does not *seek to prove* for a balance of interest which exceeds 5 per cent. (*London, &c. Hotels Company*, 1892, 1 Ch. p. 639.)

Note.—This was an insolvent company being wound up voluntarily under supervision of the Court, but the decision was based upon the rules in bankruptcy by virtue of that part of section 10 of the Judicature Act 1875, now embodied in section 207 of the Companies (Consolidation) Act 1908.

(2) But where a secured creditor whose debt carries interest realises profits while in possession of his security he may set off profits so realised *after* the bankruptcy (or liquidation) against interest accrued on his debt during the *same period.* (*London, &c., Hotels Company*, 1892, 1 Ch. p. 639.)

(3) And where the interest is not reserved at a stated rate per cent. per annum upon the debt, but is "a lump sum agreed upon, "repayment of principal and interest "combined to be by periodical instalments "extending over an agreed period, the "whole unpaid balance of principal and "lump sum by way of interest to become "at once due and payable on failure to "pay any one instalment"; then in the event of bankruptcy ensuing, before the agreed period for the repayment has elapsed, the creditor having security may realise or value the same, and first apply the proceeds or allocate such value in discharge of the interest, even though part of such interest so discharged (*a*) would but for the bankruptcy have in effect been in respect of a period subsequent to the receiving order (viz., the unexpired portion of the agreed period over which the instalments by way of repayment were to extend); and (*b*) may have been more than the equivalent of the limit of a fixed rate of 5 per cent. per annum upon the amount of the debt, as prescribed by section 23 of the Act of 1890. (See paragraph (*a*) (2) hereof.) He may then apply or allocate the balance (if any) of the proceeds or value in further reduction of interest (if any remains unsatisfied) and principal, and prove for the balance owing. (*In re Fox and Jacobs*, 1894, 1 Q.B. p. 438.) But any balance so proved for must not include interest at a greater rate than 5 per cent. (See paragraph (*a*) (2) hereof.)

(*g*) *Joint and Separate Estates.*

Although separate creditors have priority over joint creditors in respect of the separate estate they are not entitled, having been paid in full, to any interest on their debts *after* the date of the receiving order out of any surplus on the separate estate until the joint creditors have also been paid in full, but if in the latter event there is still a surplus on the separate estate the separate creditors are entitled (whether their debts do or do not by law carry interest) to interest out of such surplus in priority to the joint creditors. (*Whittingstall v. Grover*, 35 W.R. 4.)

EPITOME OF THE FOREGOING.

BANKRUPTCY.

(1) Where there is a deficiency of assets, interest ceases on all debts as from the date of the receiving order (*In re Savin*, 7 Ch. at p. 764); but where a secured creditor whose debt carries interest makes a profit with his security while it is in his possession he may set off profits realised after such date against interest accruing during the same period. (*London, &c., Hotels Company*, 1892, 1 Ch. p. 639.)

(2) Interest to the date of the receiving order may be proved for only in respect of debts upon which interest has been reserved or in respect of which a right to interest has been otherwise acquired as indicated in Rule 20, Schedule II, Bankruptcy Act 1883. A judgment debt carries interest at 4 per cent. from the date of the judgment. A debt may also carry interest under an implied contract, evidenced by the course of dealing between the parties. (*Re W. W. Duncan & Co.*, 1905, 1 Ch. 307.)

(3) Where interest has been reserved or is implied by the course of dealing, the rate to be proved for shall be that so reserved or

implied, provided that for *dividend* purposes the rate shall not exceed 5 per cent. per annum, without prejudice (*a*) to the right to be paid any interest to which a creditor may be entitled in excess of 5 per cent. after all debts have been paid in full (Bankruptcy Act 1890, section 23); and (*b*) to the right of a secured creditor to apply the value or proceeds of his security in satisfaction of the whole of the interest to the date of the receiving order, or such of the interest as may be in excess of 5 per cent., and to prove for the balance of principal and interest (if any). (*London, &c., Hotels Company*, 1892, 1 Ch. 639; *Fox and Jacobs*, 1894, 1 Q.B., p. 438.) As already mentioned, a judgment debt carries interest at 4 per cent. from the day of the judgment, but if the debt previously carried interest at a higher rate such would ordinarily merge in the judgment, so that the interest would henceforward be restricted to 4 per cent. (*Ex parte Fewings*, 1883, 25 Ch.D. 338; and *Re European Central Railway Company*, 1877, 4 Ch.D. 33.)

(4) Where interest has not been reserved, but a right to interest has been acquired, the rate must not exceed 4 per cent. (1883 Act, Schedule II, Rule 20.)

(5) Where there is a *surplus* of assets, interest is payable at the rate of 4 per cent. *from* the date of the receiving order on *all debts proved* in the bankruptcy. (Bankruptcy Act 1883, section 40 (5).)

Company Liquidation.

(1) Bankruptcy rules as regards proof for and right to interest apply to the winding-up of *insolvent* companies (section 10 of the Judicature Act 1875, but now section 207 of the Companies Act 1908), whether such companies are being wound up compulsorily or voluntarily (*Thos. Salt & Co.*, 1908, W.N. 63, and L.J. 146) or under the supervision of the Court. (*London, &c., Hotels Company*, 1892, 1 Ch. 639.)

(2) Apart from the general effect of section 207 of the Companies Act 1908, the provisions of Rule 97 of the Winding-up Rules of 1909 are precisely similar (*mutatis mutandis*) to those of Rule 20, Schedule II, of the Bankruptcy Act 1883. (See paragraph (*a*) (1) hereof.)

(3) There is no provision in the Companies Act or the rules thereunder corresponding to section 40 (5) of the Bankruptcy Act 1883 in the event of a surplus. (Paragraph (*b*) (1) hereof.) And, of course, section 207 of the Companies Act does not make section 40 (5) apply to *solvent* companies. Rule 26 of the General Order 1862 purported to grant interest from the date of the winding-up on *all debts* in the event of a surplus, but this was declared *ultra vires* and has not been embodied in the Rules of 1909. In fact, Rule 97 of 1909 by implication negatives any right to interest after the date of the winding-up upon debts not bearing interest by agreement. But debts bearing interest by agreement (express or implied) are entitled to same to the actual *date of payment* in the case of a company ultimately proving itself solvent. (*Re W. W. Duncan & Co.*, 1905, 1 Ch. 307.)

General Observations.

The joint effect of paragraphs (*a*) (1) and (*a*) (2) is that debts carrying interest are limited to 5 per cent. per annum where an estate is insolvent, while those not carrying interest are deemed under certain circumstances to carry interest at a rate not exceeding 4 per cent. per annum. In both cases *before* the date of the receiving order.

Paragraphs (*b*) (1) and (*b*) (2) provide for 4 per cent. upon all debts *after* the date of the receiving order, and for any excess agreed interest (disallowed previously) *before* the date of the receiving order, out of any surplus, in the event of there being one.

A difficulty might arise in bankruptcy in the event of a small surplus.

The Partnership Act provides for the postponement of certain claims until all other creditors have been *satisfied*.

The Married Women's Property Act provides similarly with regard to a wife's claim on her husband's estate.

The Bankruptcy Act 1890 (section 23) postpones claims for agreed interest in excess of 5 per cent. until all *debts proved* have been *paid in full*. Apparently paid in full means with interest since the date of the receiving order under section 40 (5). (See section 65 of the 1883 Act.)

Thus the last-mentioned class of claims may be proved for at the outset, although for dividend purposes excess interest is ignored pending the ascertainment of a surplus, but the two former classes cannot be proved for *until* all the claims of the other creditors have been satisfied. As regards the Partnership Act see *Ex parte Taylor*, 1879, 12 Ch.D. 366; and as regards the Married Women's Property Act see *In re Venese; ex parte District Bank of London*, 1886, 6 Q.B.D. p. 700.)

Suppose there was a surplus, but not enough for all "secondary" claims, it is questionable whether (1) the postponed claims for excess interest prior to bankruptcy already proved for, (2) the 4 per cent. since the bankruptcy on all debts already proved, and (3) the postponed claims under the Partnership Act and Married Women's Property Act (which could not at the time have been proved for) could rank *pari passu* and abate accordingly, or whether there is any priority *inter se?*

Note the difference between "paid in full" and "*satisfied*" and the difference between "debts proved"—*e.g.*, for excess interest, and those postponed debts which, *though provable* in certain event—*e.g.*, loan by wife, have not already been proved when the "surplus" first discloses itself.

The reason why a secured creditor may under certain circumstances avoid the limit of 5 per cent. interest prescribed by section 23 of the Bankruptcy Act 1890 was emphasised in both *Cox and Jacobs* (1894) and the *London, &c., Hotels Company* (1892).

A secured creditor may apply the proceeds of his security in any way he pleases, either specifically in reduction of interest or otherwise. If the proceeds are sufficient to pay all agreed interest although in excess of 5 per cent., then there will be no proof for interest, and section 23 will not apply at all, for it applies only to that part of the debt which is proved for the purposes of dividend. If the proceeds of the security are not sufficient to pay the whole of the interest, but are sufficient to reduce the interest to a sum which is equivalent to a rate less than 5 per cent. per annum, proof for the principal and the balance of interest will be in conformity with the section. A secured creditor has the right to allocate his security to a debt or that part of a debt for which he has no right of proof—*e.g.*, security held in respect of a debt which would otherwise be postponed. But except (1) out of profits derived from the security after the date of the receiving order or winding-up order, or (2) out of an ultimate surplus on the estate, interest after the date of the receiving order or winding-up order is neither payable nor provable.

(*See titles* Debts Provable in Bankruptcy, Debts Provable in Winding-up.)

Deed of Assignment.

In the case of a deed of assignment upon trusts for realisation and distribution according to the law of bankruptcy, a surety is debarred from proving in competition with the principal creditor in respect of the same debt; but where the creditor proves for interest up to the date of the deed only, and the surety is liable to pay interest from the date of the deed until satisfaction of the debt, the latter is entitled to prove for such interest against the estate. (*In re Pyke; Davis v. Jeffreys*, 1910.)

Interest on Calls in Arrear.—Table A (Companies (Consolidation) Act 1908) provides that if a call or instalment be not paid when due, the holder of the share shall pay interest on such call at the rate of 5 per cent. per annum until the call be actually paid, but the directors shall be at liberty to waive payment of such interest wholly or in part.

When Table A is not adopted and special articles are registered it is usual to adopt the above rule, but often at an increased rate of interest, generally 10 per cent.

Some companies' regulations further provide that no dividend shall be paid on, or any vote be given in respect of, any share whilst a call thereon remains unpaid.

The provisions in the articles as to interest on calls in arrear apply only in respect of calls made by the directors and not to those made by the liquidator. (*Re Welsh Flannel Co.*, 1875.) Where, however, a call is made in the winding-up, and the notice of call requires payment by a certain day, and states that in default of payment on the day named interest will be charged, the case appears to fall within the Statute 3 & 4 Will. IV, c. 42, and interest would be payable from the day named in the notice up to the day when payment is made.

Interest on Capital.—The sum charged against a business or undertaking for the amount of capital employed therein and credited to the accounts of the respective partners or others. In the case of a sole trader, or of a partnership where the capital contributed and profits enjoyed are in similar proportions, the result of such a proceeding is obviously to divide the profits into two parts, viz.:—

(1) In respect of interest on capital employed, on the assumption that such capital would have earned interest if employed elsewhere; and

(2) The balance or profit of the business itself, or "remuneration" of the proprietor after paying *all* legitimate charges.

But, apart from the above effect, it is really necessary to compute interest on capital at an agreed rate in a partnership concern where the shares in the profits are not in the same proportion as the capital contributed by the respective partners, so that their rights *inter se* may be properly adjusted. Notwithstanding such inequality, the articles of partnership sometimes provide that interest on capital is not to be computed in ascertaining the profits divisible, while in the absence of any arrangement between the partners, interest on capital is *not* chargeable in arriving at the profits, and unless specially arranged otherwise, interest, even if chargeable by agreement, ceases in the event of a dissolution of the partnership.

In cases where partners are owners of the premises in which their business is conducted, and such premises form part of the assets of the firm which constitute the capital of the partners in the firm's Balance Sheet, interest should be charged against the Trading Account upon the full capital sums only in the event of no charge being made for "rent." If a "rent" be charged, interest should only be computed upon such amounts of capital as would respectively appear to credit if the "premises" were not included among the assets.

Where interest is properly chargeable, although there has been an actual loss on trading or a profit insufficient to provide the full interest so chargeable, such interest should be charged notwithstanding, and the resultant loss charged against the partners in the same proportions as those in which they are entitled to share profits.

On advances for partnership purposes beyond the amount of capital agreed to be subscribed, partners are entitled to interest at 5 per cent. per annum from the date of such advances, unless there is an agreement to the contrary between the partners. (Section 24 (3), Partnership Act 1890.)

Interest on capital is not allowed as a deduction from profits for the purpose of arriving at the amount upon which income-tax is payable, such interest being deemed an appropriation of part of the profits and not a charge against them.

(*See title* Interest.)

With regard to the question as to whether interest on capital should form part of the cost of production of manufactured goods, *see title* Manufacturers' Accounts.

Interest on Capital during Construction of Works.—The question as to whether interest should be paid upon capital raised to carry out some large work or project during the necessary construction or preliminary proceedings, notwithstanding the

act that no profits have been earned or even attempted, raises important issues.

The points put forward from time to time in favour of paying interest out of capital during construction of works appear to be:—

(1) That the *application* of the capital to the construction of the particular work, *ipso facto*, enhances the value of the moneys which have been so employed, and that, as a consequence, the enhancement in value of the *completed* work makes up for the amount distributed as interest during construction.

(2) That capital *earns* interest just as much as borrowing necessitates its payment, and, as interest may be paid to lenders, it ought to be payable to shareholders.

(3) That the *mode* of *acquisition* of an undertaking should have no bearing upon its value; and if such undertaking were purchased "ready made" at its *cost*, the vendor would treat interest on capital as one of the elements of the cost, therefore, if the undertaking be "constructed" instead of purchased, interest on capital during such construction should also form part of the cost.

As *against* the payment of interest during construction of works it must be noted that:—

(1) There is a legal distinction between

(*a*) the capital contributed by members of a company, and

(*b*) the "capital" borrowed by the company.

(2) The former cannot be returned even in part except by statutory methods, nor can it be issued at a discount, but debentures and the like may be paid off when convenient, and may be issued at a discount.

In *Macdougall's* case (1864), Page Wood, V.C., said:—

"There are *no profits*, and interest has been "paid, or is about to be paid, out of capital; "the shareholders have paid £4 per share, "and are discharged to that extent, and they "are now about to take back sums equal to "£5 per cent. of that *very capital* in the shape "of interest. On grounds of public policy, "and on every principle, not only of honesty "as regards the public generally, but of the "interests of this company itself, I feel bound "to prevent this proceeding. This is not in "accordance with the contract entered into "with the Legislature on behalf of the public, "whereby it was determined that the share-"holders should be liable to a certain defined "amount (and no more) to the creditors of the "company, and not in accordance with the "contract between the parties whereby each "shareholder was protected against the "creditors to the extent of the contributive "liability of all the others."

In the case of the *Alexandra Palace Company* (1882), Fry, J., referring to the decision *Re Macdougall*, said:—

"In my view, that lays down the law with "perfect precision, and I think no subterfuge "by which it is attempted to return capital to "shareholders, and thereby to diminish their "liability, ought to be countenanced for one "moment by this Court. . . . Counsel has "very ingeniously argued that this was really "a payment out of profits, because, he says, "'you are entitled to compute interest on the "'money you lay out before it becomes "'remunerative, and to treat that interest as "'profit, and divide it accordingly among the "'shareholders.' I cannot yield to that "argument."

Note.—In this latter case, dividends on the preference shares had been paid during construction, and the directors were held jointly and severally liable to make good the amount.

A company cannot pay dividends out of capital directly or indirectly; the company cannot, for instance, enter into an agreement with a contractor upon such terms that, *inter alia*, he shall pay interest upon the company's capital.

"There is no doubt that if it cannot be done "directly, it cannot be done indirectly." [Chelmsford, L.C.]

Apart from the cases dealing specially with the point, the general principles laid down in *Trevor v. Whitworth* were deemed inconsistent with the legality of the payment of dividend on *share capital* out of capital; in fact, it was thought that an express provision in the memorandum or articles that such payments might be made would not *justify* such a course.

The foregoing may be modified by express permission by statute.

When the Legislature specifically permits the payment of interest out of capital by special Act, as in the case of railway, dock, or canal companies, it is subject to certain conditions, such as:—

(1) The rate of interest is limited.

(2) Interest is to be payable only for the period *allowed* for the completion of the works.

(3) At least two-thirds of the authorised capital must be subscribed for.

(4) Notice of the power to pay interest out of capital must be given in all documents inviting subscriptions for capital.

With regard to Companies registered under or controlled by the Companies (Consolidation) Act 1908, section 91 provides:—

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 4 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.

Note.—Sir F. B. Palmer says that the Indian Railways Act 1894 is, in effect, "a "Parliamentary recognition that dividends "may not, even during construction, be "paid out of capital without statutory "powers."

These provisions apply only to the share capital of a company. Interest contracted to be paid in respect of (1) money raised on loan, and (2) payments by shareholders in advance of calls, may legally be paid, although there are no profits available for the purpose. (*Lock v. Queensland Co.*, 1896.)

As regards interest during construction of works in respect of money raised on loan, *e.g.*, by way of debentures, see *Hinds v. Buenos Ayres Grand National Tramways Co.* (1906).

As regards payments in advance of calls, there would appear to be nothing to prevent a limited company from calling up 10 per centum of the capital and accepting the balance, or 90 per centum, if voluntarily advanced, as a payment in advance of calls, upon which advances interest could legally be paid and charged against capital during construction of works without complying with the provisions of the 1908 Act.

Interest on Moneys in Advance of Calls.—Table A (Companies (Consolidation) Act 1908 confers a discretionary power upon directors to receive moneys from members in advance of calls actually made, and to arrange to pay interest on such advances at such a rate (not exceeding, without the sanction of the company in general meeting, 5 per cent.) as may be agreed upon.

Where Table A is not adopted, a similar provision is usually contained in the company's articles.

The member is treated in *respect of his advance* as though a creditor of the company, whilst the company is a going concern, and the agreed rate of interest is payable out of capital if there are no profits available (*Hallcock v. Queensland Co.*, 1896), but in the distribution of the assets of the company in winding-up, members cannot compete in respect of any money due to them in their character as members against other non-member creditors, but such sums may be taken into account in the final adjustment of the rights of the contributories amongst themselves. (1908 Act, section 11.)

(*See title* Calls.)

Interest on Monthly Balances.—Where interest is payable or chargeable upon loans, capital, or running account, as the case may be, it is sometimes arranged that such interest shall be computed upon monthly balances, and not upon each debit and credit item, according to the number of days involved in each case.

This facilitates calculation, for as 5 per cent. per annum upon £1 for one month is one penny, it follows that the addition of the six balances at the (say) debit of a person on the first day of each month throughout (say) a half-year will give the interest (in pence) chargeable to him in respect of that half-year if the rate of interest be 5 per cent.

Thus, if a customer's monthly debit balances are:—

1st Jan.	... ...	£787	8 2
1st Feb.	... ...	521	7 3
1st Mar.	... ...	924	7 1
1st April	... ...	701	0 8
1st May	... ...	421	13 2
1st June	... ...	511	12 3
Total of balances		£3,867	8 7

3,867 pence equal £16 2s. 3d. The interest chargeable upon the customer's account to 30th June, if at 5 per cent. per annum, would thus be £16 2s. 3d.; whilst if the rate be 4 per cent. only four-fifths of the result must be taken, and so on.

Interest Secured by Bill of Exchange.—Where a bill is expressed to be payable with interest, such interest runs from the date of the bill, unless the instrument otherwise provides. If the bill is undated, interest will run from the *issue* thereof.

The fact that interest is reserved does not affect the stamp on the bill; thus, if a bill be for £500 payable six months after date with interest at 4 per cent. per annum, the sum payable at maturity would be £510, but the stamp required on the bill would only be 5s.

Interest reserved in the bill itself must be distinguished from interest forming part of the measure of damage on its dishonour. (*See title* Dishonoured Bill.)

Interim Dividend.—A dividend declared before the expiration of the ordinary financial period, either on account of current profits, or out of accumulations of past profits.

In the case of a joint-stock company dividends are declared by the *company* in general meeting, but the articles of association usually empower the *directors* to declare interim dividends when they are satisfied that there are profits to divide.

Table A (Companies (Consolidation) Act 1908) grants this power to companies having adopted same.

It is customary, when an interim dividend has been declared, to obtain the approval (ratification) of the shareholders at the next ordinary general meeting, before proceeding to declare a further dividend. (*See title* Intermediate Balancing.)

The proper treatment of interim dividends received in respect of trust estates is of importance. (*See title* Apportionment.)

Interim Receiver.—After the presentation of a bankruptcy petition, and pending the hearing thereof, the Court may, if it thinks fit, upon the application of a creditor or the debtor himself, and on sufficient grounds being given, appoint the Official Receiver as interim receiver of the property of the debtor.

Before such appointment will be made the person making the application must deposit with the Official Receiver the sum of £5 towards his prescribed fee and such further sum or sums for expenses which may be incurred as the Court may from time to time direct. If a receiving order is ultimately made, the deposits made by a creditor will be repaid to him out of the estate if there is a sufficiency of assets.

Where a petition is dismissed (*i.e.*, a receiving order is not made) and an interim receiver has been appointed, the Court will adjudicate upon any claim for damages arising out of the appointment of the interim receiver (if made within twenty-one days of the dismissal of the petition) and may make such order as the Court may think fit. (Bankruptcy Rules 170 to 175.) (*See title* Provisional Liquidator.)

Intermeddler.—*See title* Executor *de son tort.*

Intermediate Balancing.—A system of balancing the books of a concern at intervals during the currency of the ordinary financial period. It may take the form of a mere Trial Balance to check the clerical accuracy of the postings, or, stock having been taken, it may be extended to the ascertainment of the precise position at an intermediate date, (1) to check the clerical accuracy of the books, (2) to give the proprietors an idea of the probable result of the full period's working, and/or (3) to justify the payment of an interim dividend.

In some concerns, intermediate stocktaking is resorted to; that is, the books of account are not balanced as a whole, but stock is taken, so that the gross profit (only) may be ascertained.

Intermediate Ledger.—Where the sales or purchases of a trader are of almost daily occurrence with the same persons, it is usual to have an Intermediate Ledger, to which the various items are posted in the usual way, and from which, either monthly, quarterly, or according to the trade terms of credit, the totals of the various accounts are transferred to the debit or credit of the various accounts in the Ledger proper.

Internal Check.—A term used in accounting to denote the safeguard obtained by the institution of certain *domestic* arrangements in connection with the accounts of business concerns, with a view to the prevention and discovery of errors whether fraudulent or otherwise; as distinct from the periodical examination of the accounts by an auditor.

The ideal system of accounting is one which combines a satisfactory internal check with the investigation of a professional auditor, but usually the adoption of such a system is practicable only in comparatively large businesses *i.e.*, where a fairly large clerical staff is employed.

An auditor on commencing his duties should make himself conversant with the system of internal check (if any) in operation, and regulate his plan of audit accordingly. Amongst other advantages he may thereby be enabled to save a considerable amount of detailed checking.

The following suggestions (subject to the special requirements of each individual case) will be found useful when devising a system of internal check:—

(1) All cash received should be banked daily and all payments other than petty cash items should be made by cheque.

(2) The Petty Cash Book should be kept on the imprest system, and a proper supervision exercised by a responsible official. (*See title* Imprest System.)

(3) Printed counterfoil or (preferably) carbon copy receipt books should be used under proper supervision. The system adopted in some concerns is to place the books in charge of some responsible official who keeps a register of same, entering therein the total number received, the dates of issue and return, and the names of the persons to whom the books are issued. Customers should be notified that only the official printed form of receipt will be recognised.

(4) The cashier should not have any control over the posting of the entries in the Cash Book to the Ledgers.

(5) Purchase Invoices should be checked and initialled by the person or manager of the department (*a*) making the purchase; (*b*) receiving the goods; (*c*) responsible for the accuracy of the calculations, &c.

(6) All creditors' statements should be listed and passed for payment by some responsible official, and, in the case of joint-stock companies, submitted to the board of directors.

(7) Each Sales Invoice should be initialled by the salesman, or by an independent person who has checked it with the order form, and also by the person who has checked the calculations.

(8) Special attention should be directed to doubtful debts, *e.g.*, by means of a Doubtful Debts Ledger, and the entry for each debt written off should be initialled by a responsible official.

(9) All Ledgers should be self-balancing, and the clerks in charge of same should be changed periodically.

(10) Reliable Stock Accounts or Cost Accounts should be kept.

(11) A proper system of paying wages should be instituted which will involve the co-operation of several persons. (*See title* Wages.)

Interpleader.—When two or more persons claim the same goods from a third party and such third party makes no claim to the goods himself, but fears he may be prejudiced by allowing the parties to proceed against him to recover the goods, he may compel the parties to litigate their title between themselves; that is to say, he may cause the claiming parties to interplead.

Interpretation Act 1889.—An Act passed for the purposes of shortening the language used in Acts of Parliament, and defining certain terms used, or which may be used, in all Acts of Parliament passed after 1850.

Interpretation Clause.—A section or clause in an Act of Parliament, articles of association, charter, or the like, defining the terms used therein.

Inter vivos.—*See title* Gift *inter vivos*.

Intestate.—One who has not left any effective will. (*See title* Distribution (Statutes of).)

Intromission.—The assumption of possession and management of property belonging to another; the act of intermeddling with the effects of another (Scotch law).

Inventory.—A list, or catalogue, of articles; generally of furniture and chattels.

The Bills of Sale Acts require an inventory of the chattels comprised in a bill of sale to be annexed to such bill.

Executors and administrators are required to make an inventory of the deceased's "goods, chattels, wares, merchandise," &c., and although, in point of law, it is an executor's duty to exhibit such inventory, in practice it is rarely done.

Investigation.—Examination; research; a specialised audit.

An investigation must necessarily be conducted upon a basis more or less dependent upon the circumstances and conditions connected with the particular subject-matter, and this fact alone prompts the widest possible interpretation of the term. The subject will be treated here as an investigation of the accounts of a business with the object of certifying as

to the annual profits on the occasion of some change in proprietorship—such as (1) the admission of a partner, or (2) the sale of a business, either to an individual or a limited company, &c. Of course, the examination of the accounts of a concern would not be conducted upon similar lines, irrespective of the *precise object* of the investigation, but the various heads of inquiry given below will, *mutatis mutandis*, apply to the majority of investigations of the classes referred to. The points here raised must, however, be taken as *merely suggestive*, without any pretension to entirety, but the reasons given for many of the inquiries will decide whether they may be followed up or disregarded in the case under review, whilst the circumstances connected with the business itself, the mode in which the accounts have been kept, or the object of the investigation, will suggest such further inquiries as may be considered necessary.

The investigating accountant should clearly understand on whose behalf he is acting, what kind of a certificate is required of him, and what use is going to be made of his certificate when granted.

Preliminary:—

(1) Obtain a list of the books of account and important documents.

(2) Arrange to take notes of all important matters.

(3) Have the accounts been regularly balanced? Audited? Or specially prepared for the purpose of the investigation? If so prepared, by whom?

Period of Investigation:—

(1) Period must depend upon circumstances and instructions.

(2) Note the effect of lengthening and shortening the period in order to ascertain the *object* (if any) of fixing the precise length of period decided upon; but in any case, the actual period with dates thereof should be clearly stated in any certificate given.

(3) In particular, the period should terminate at the latest possible date prior to the investigation (*i.e.*, the examination should be " up to date "). (*See title* Average.)

Stocks on hand:—

(1) Ascertain that the stocks have been valued upon similar bases at the commencement and end of the period.

(2) If the valuation of the stock at the end of the period (as a result of an independent valuation) should be different from that based upon the lines previously adopted, the latter must be adhered to for the purpose of ascertaining the profits—although the former may be the amount to be paid for the stock by a prospective purchaser. If the market price is higher than cost, and market prices are adopted for the purposes of the Profit and Loss Account the period under review obtains as *profit* the benefit of this difference; and this is important, if the stocks carried are unduly large as a result of purchases made in excess of the normal requirements of the business. (See 7 *infra*.)

(3) Examine some of the " purchase " invoices of recent dates, and compare the prices with those for corresponding goods in the Stock Sheets.

Note whether market values or cost prices are adopted. Even where cost price is adopted, note whether any abnormal circumstances affected *cost* (*e.g.*, markets extremely low at *commencement* of period—large stocks carried—subsequent rise in prices).

(4) Where interest is added to the cost price of stock, on the plea that the stock must be held for a certain time, or in any case is *improving in value* whilst being held (*e.g.*, wines and spirits), the question must be carefully considered. The stock is part of the capital of the concern, and, assuming the addition of interest be justified in a particular case, such interest should not be credited to the Trading Account unless there is some corresponding charge to the debit. That is to say, if the valuation of successive stocks includes accumulating interest on goods held for lengthened periods, the Trading Account

should be debited each period with the correlative portions of such accumulating interest.

The following account will illustrate this principle:—

Dr. *Cr.*

	£		£
Stock on hand at commencement of year—		Sales for year	18,590
Cost £10,000		Stock on hand at end of year—	
Accumulated Interest .. 800		Cost .. £15,000	
	10,800	Accumulated Interest—	
Purchases for year ..	20,000	Last A/c £800	
Interest for year (per contra)	560	Interest for year 560	
		1,360	
			16,360
	31,360		
Gross Profit	3,500		
	£34,860		£34,860

The £560 debited to the above account would be passed to the credit of Interest Account, and it will be seen that if interest were not charged in the account the gross profits would be overstated to that extent, and this is of great importance where the stocks have materially *increased* during the period under review.

(5) If Cost Accounts or Stock Registers have been kept, inspect same—with the idea of substantiating prices or quantities—or compare therewith some of the "purchase" invoices, as the case may be.

(6) Apply percentage tests to the results of the various periods.

(7) Compare the values of the stocks held at the various dates throughout the period—pay particular attention to an abnormally large stock at the "ending" date, and especially so if the stock has been taken at market prices which are in excess of the cost, because the proprietors foreseeing a rise in the market may have deliberately and quite properly purchased materials, &c., during the period under review greatly in excess of what was reasonably necessary for the immediate requirements of the business, and as a consequence there will be a large stock in hand upon which, if taken into stock at market prices, a profit will be shown—a profit which, under such circumstances, is the result of buying, not of selling, and not a profit which can be regarded as ordinarily resulting from the business carried on.

(8) Where goods are included in the stock lists as "Stock out on approbation," or "on sale or return" inspect the Appro. Book. See that the various goods there recorded agree with the particulars in the stock lists. Examine the Ledger Accounts (if any) of some or all of the persons stated to have goods on appro.; for some goods may have been accepted by the customers and duly charged as sales, the entry in the Appro. Book not having been cancelled.

Where goods have been out for an unreasonable length of time, make inquiries about them, for the goods may either have been sold, and treated as sales (as already suggested), or they may have been returned and the entry in the Appro. Book overlooked. Such returned goods, of course, may have been subsequently sold to another person, or may still be in stock, and already included in the valuation of the *stock on the premises*.

Conversely, see that no goods are included as stock which have been obtained from other firms "on appro."

(9) With regard to uncompleted contracts and partly manufactured work, *see title* Incomplete Work.

Note.—It is not within the province of an accountant either to weigh, measure, or value stock-in-trade, and he would no doubt be justified in accepting a certificate as to the value of same from a person who is in a position to value the stock, but an *investigating* accountant should apply every reasonable test (dependent upon circumstances) in order to satisfy himself as to the accuracy of the stock valuation, for the effect of an excessive valuation may render nugatory the whole of his efforts in other directions. (*See title* Stock-in-trade.)

Sales:—

(1) Have the goods purported to have been sold and entered as sales been delivered?

Particularly those entered just prior to the "ending date." If not, have they been excluded from the stock? In the latter case, can "acceptance of delivery" by the reputed buyer be guaranteed? Is it usual for the business to be carried on in this manner (*i.e.*, to defer delivery)? Compare Cartage or Delivery Books with a few entries.

The same remarks apply to deliveries of goods by instalments.

(2) Is there a trade discount allowed? If so, is it provided for in the books, as regards *outstanding* debts?

(3) Are packages, casks, boxes, wrappers, &c., charged for among the sales (generally at arbitrary prices); if so, how are they treated in the accounts, as regards the possibility of *returns*?

(4) Obtain particulars of the sales for each year separately—monthly, if possible—for comparative purposes.

(5) Are goods sent out on approbation, on sale or return? These should not be included in the sales for more than the sum with which the "buyer" can be fairly charged, on the ground of having accepted or already re-sold the goods. (*See* Stocks on hand, note 8 above.)

(6) Where branches exist, see that all transfers of stock, from branch to branch, have been strictly at cost, and that such transfers are not included amongst the sales and purchases, in any consolidated account.

Note.—It is obvious that if branch transactions *inter se* were not recorded on a basis of cost, the profits of the business as a whole would be inflated to the extent of the paper profit on all *unsold* goods, really *stock*, so transferred.

(7) Where plant or other capital expenditure has been acquired or effected by the labour ordinarily employed in the business, and/or out of the materials and stock-in-trade purchased in the ordinary course of the business, the allowance to Profit and Loss Account in respect of same should be at *cost* and carefully substantiated.

Consignments:—

(1) Pending actual sale, these represent so much stock, although recorded in a separate account for the sake of convenience.

Expenses of transit may be allowed in the valuation (but *see title* Consignment Ledger).

(2) Obtain evidence as to (*a*) the actual consignment and (*b*) sales on account of same (if any)—the latter only should be included in sales—(the *cost price* of the balance (if any) of the goods consigned being proportionate to the cost of the total consignment).

(3) The sales taken to credit should bear their portion of the consignee's charges.

Purchases:—

(1) Are all included in the accounts?

(2) Inspect the Purchase Book entries for the following period, and search the invoice files—examine the *dates* of all invoices and the particulars (if any) as to date of despatch and mode of transit.

In doubtful cases examine Warehouse (Inward) Book to see whether the particular goods were really received *before or after* stocktaking.

In some instances it may even be possible to earmark in the valuation of stock-in-trade, as at a stated date, goods which are the subject-matter of an invoice which is being treated as pertaining to the subsequent period.

Inspect the personal accounts of the largest trade creditors—a clue may thereby be found to a missing invoice, *e.g.*, (1) Round sum paid on account, but no item passed to credit; or (2) no credit for (say) the last month of the period to an otherwise regular monthly account.

Note.—An explanation should always be required of any payment which appears in whole or part as a debit balance in an account which ordinarily should have a credit balance.

(3) If possible compare the balances of the Creditors' Ledger with the " statements " rendered by creditors at the closing date.

(4) Obtain particulars of the purchases for each year separately—monthly, if possible—for comparative purposes.

Expenditure :—

(1) Is all expenditure included in the accounts?

(2) Apportionments of rent, rates, taxes, travellers' and agents' commissions, accrued salaries, wages, &c.

(3) Are *necessary* " out of pockets " of proprietor on account of the business properly charged against the working?

(4) *Rent.*

Where the trader owns the freehold or the leasehold of the premises a fair rental must be charged against the business—generally the property tax assessment.

Mortgage interest and ground rent (if any) must not be charged where a " covering rent " is included.

Where the rent charged against the business is one considered fair as between landlord and tenant, the repairs, fire insurance, taxes, &c., which would strictly be payable by a landlord *out of such rent* should not be charged against the business. In such a case the *gross* assessment for property tax should be charged as rent, for the one-sixth allowance is in respect of repairs.

Where the tenure is leasehold provision must be made for ultimate loss (if any) of buildings, &c., being surrendered with the land on the termination of the lease (but see Depreciation, No. 8 below).

(5) *Fire Insurance.*

The proper proportion of premium must be charged against the Profit and Loss Account for insurance of stock, &c., whether the insurance has been effected or not.

(6) *Bad Debts.*

Past experience is not necessarily conclusive as to a fair charge; in particular, the amount actually written off over (say) three years may be no guide—the smallness of the amount may not be *evidence* of the superior quality of the debts, but the *cause* of the doubtful character of some of those still outstanding.

Obviously, the better test is to examine the debts still outstanding and judge each upon its merits. (*See title* Bad and Doubtful Debts.)

(7) *Repairs.*

Past experience in this case also is not necessarily conclusive as to a fair charge—in particular, if the trader is the *owner* of the business premises, the amount actually spent in repairs may not be *evidence* of the small amount necessary to maintain the premises, but the *cause* of their present unsatisfactory condition.

The question as to whether there is anything connected with the business or its operations rendering frequent renewals and heavy repairs necessary requires consideration.

These notes as to repairs are subject to the remarks under " Rent " (No. 4 above).

(8) *Depreciation.*

It is permissible to certify profits without taking into account the depreciation of the assets, and this is generally the practice, the fact that no depreciation has been provided for being, however, expressly stated in the certificate so given. The depreciation actually provided for in the past may or may not have been sufficient, and even if sufficient may not be so having regard to the increased amount (by reason of sale) at which the assets are to be transferred; but where the accountant is required to express some opinion as to the amount necessary to be set aside out of the profits for depreciation he should (*inter alia*) :—

Trace the various " wasting assets " back for a lengthened period or to the

date of their acquisition, according to circumstances.

Ascertain their age and probable after life. (*See title* Depreciation.)

(9) *General.*

Note whether any material decrease is alleged to have taken place in the working expenses in the later periods—particularly in proportion to the turnover, and, if so, inquire carefully into the cause.

(10) *Interest on Capital.*

(See Adjustments below.)

Balance Sheets:—

Carefully compare the Balance Sheets (if any) covering or in any way affecting the period under review, for an additional check upon many important points may be thereby obtained.

Adjustments:—

When the business is to be acquired by a company—

(1) Rent need not be charged against the profits—if the premises are to be acquired and are freehold.

(2) If leasehold, and the property is to be acquired, the profits must bear a charge for ground rent (if any), plus any necessary sinking fund against the expiration of the lease.

(3) If the premises are subject to a mortgage, the mortgage interest will not be chargeable against the profits if the principal is to be paid off.

(4) Partners' salaries. If all or any of the partners have been paid a salary, these may be omitted from the expenditure, but probably not where such salary has been paid in respect of services which would need to be specifically replaced by a paid servant. In such a case the *excess* of the ordinary remuneration might be all that should be omitted. (But see next paragraph.)

(5) Interest on capital and specific loans which are to be paid off must be omitted from the account, but to "write back" (say) bill discounts which it is *believed* will be saved when the company takes over the business with increased capital is open to question, and should be carefully considered.

Note.—Although interest on capital may be omitted when ascertaining the profits of a concern about to be acquired by a company, in order to state in (say) a prospectus the amount available for dividend and other purposes, this must not be confused with the assessment of the profits of (say) the same business for the purpose of valuing the goodwill upon the basis of a given number of years' purchase, for in the latter case a charge in respect of both interest on capital and proprietor's services should be made in arriving at the "profits" for such purpose. (*See title* Goodwill.)

(6) Income-tax may be omitted from the expenditure.

It is, however, usual (and most advisable) to state specifically in any certificate as to profits, what items have been *excluded* from the accounts, and where *new obligations* are about to be incurred, whether same have been disregarded or not—*e.g.*, where the vendor of the business in question is to be appointed the managing director of the purchasing company and is to be paid a fixed salary.

But the certificate should be in the clearest possible terms, devoid of problematic effect, and undoubtedly the best form is that which gives the precise figures year by year. These may be *supplemented* by a statement of the aggregate profits and the average annual profits for the period. An unqualified certificate stating the average annual profits (only) of a business may be the direct means of "covering up" the fact that such business was a declining one. (*See title* Average.)

Should this be so, the certificate, although stating *one* fact, would nevertheless be capable of misleading people with regard to the probable *continuity* of past results. It is generally accepted that accountants should not embody in their certificates of *past* results any opinion as to

ture profits (particularly as to prospective creases of profits because of altered circumances) so as to induce the public to take shares the company in question.

In this connection Mr. Pixley, F.C.A., has id:—

"The Chartered Accountant should, in his "report or certificate, strictly confine himself "to statements of fact, and never allow himself "to be persuaded to include estimates for the "future, no matter how satisfied he may be "that the business is progressive. The most "satisfactory certificate, from a professional "point of view, is a simple statement of the net "profits for the period under investigation. "There can be no objection to *amplify* this "certificate by the statement of the percentage "this net profit bears to the capital of the "partners, or even to the registered capital of "the company.

"Should the Chartered Accountant be asked "to give a certificate of the percentage the net "profit bears to a partial issue of the capital, "he must only acquiesce after he is satisfied "that the partial issue is sufficient to discharge "all the payments the company will have to "make after the allotment of shares, and leave "sufficient working capital to carry on the "business on at least as extensive a scale as "in the days of the firm, otherwise his "certificate might be most misleading.

"Under no circumstances whatever should a "Chartered Accountant give a certificate as to "the possible dividend a company might earn "were the business to increase either in ratio "corresponding with an increase of capital, or "to attain to a certain volume. A statement "of this nature might be justifiable for the "board of directors, but never for the Char"tered Accountant, who should, as I have "already stated, strictly confine himself to a "certificate of fact."

A few of the points affecting *continuity* may nevertheless be set out here for reference:—

(1) Date business established.

(2) Whether proprietors are continuing their services. If not, will they compete against the purchaser, or be restrained?

Nature and extent of services rendered in the past.

If not continuing, can they be replaced without loss to the business?

At what salary can they be replaced?

(3) Nature of the business. Is the subject-matter of trading a necessity, or a luxury, or something affected by the caprice of fashion? Is the business attached to the "person" of the proprietor, or the premises, or the reputation connected with the trade-name? Is the volume of business done the result of successful competition, or has the proprietor a monopoly? Are there any circumstances or conditions likely to affect the future working which were not applicable to the past? (*e.g.*, establishment of a rival business, the expiry of a patent, or the probable supersession of a patent process).

(4) Tenure of premises. If leasehold whether future rent under the lease higher than in the past. Probability of renewal, and at what rent.

(5) Number of customers. Changeable or constant. Any falling off in best customers? Generally, whether a declining business so far as can be judged from past results? Is the business mainly conducted by sales under large contracts requiring periodical renewal? Assuming renewal, will the same prices be obtainable in the future? Are there any *unfavourable* contracts to be taken over? Some contracts may have been favourable up to the ending date of the period under review, whilst subsequent circumstances may have affected them considerably. Have the results of the period investigated been inflated by the happening of events, or the obtaining of exceptional contracts, which cannot reasonably be expected to recur?

(6) Have the purchases for the past been made upon an ordinary basis, and one upon which it may reasonably be supposed future purchases may be effected, or have exceptionally large purchases been made by contract or otherwise under conditions which cannot reasonably be expected to recur?

(*See titles* Inspection, Public Trustee.)

Investment.—Money or some other species of property placed by one person in the possession or under the control of another, generally with the intention that a profit shall thereby accrue to the investor. In its restricted sense the term is applied to the purchase or acquisition of lands, stocks, or shares, or other money securities on the basis that the investor's profit shall consist of the interest, dividend, or other periodical *earnings* resulting from the outlay, the amount of which may either be fixed or capable of fair estimation.

An investment may thus be broadly distinguished from speculation, the latter generally involving an outlay or the incurring of a liability with the primary motive of making a chance profit upon the total withdrawal from the transaction (by sale or otherwise), or by the receipt, at some future time, of abnormal earnings which are incapable of present estimation.

In examining the securities of a company, the auditor should

(1) Verify their *existence.*

(2) Inquire into the *legality* of them, and

(3) Consider the *value* at which they are stated in the accounts.

Existence:—

(*a*) Examine the mortgage deeds, bonds, share certificates, scrip, &c., and where interest coupons are issued, require the production of all "future" coupons.

(*b*) In the case of inscribed stocks, require the production of certificates (as at the date of the Balance Sheet) from the respective banks where the stocks are inscribed.

(*c*) See that the various documents are issued, or the inscribed stocks are registered either in the name of the company itself, or of the proper officers—due regard being had to any regulations of the company in this connection. Where investments of a company are registered in the names of individuals (generally two or three directors) the auditor should require the written declaration of such persons to the effect that they disclaim any personal interest in the investments.

With regard to investments on mortgage, an auditor cannot be expected to certify (1) that the title to the security is good, or (2) that the advances are fully secured. So long as the auditor satisfies himself by perusal of the mortgage deed or otherwise (1) that the security is given in respect of the amount stated in the books, taken in conjunction with the various conditions as to interest, repayment and otherwise and (2) that the directors took proper precaution at the time of the advance that full security was being given (such as a proper investigation of title, and independent valuation of the property &c.), he will have performed all that can reasonably be expected of him. But in the case of a long-standing mortgage he might suggest a re-valuation.

The Building Societies Act 1894 provides that every auditor in attesting the annual account of a building society should either certify that it is correct, duly vouched, and in accordance with law, or specially report to the society in what respect he finds it incorrect, unvouched, or not in accordance with law, and shall also certify that he has *at that audit* actually inspected the *mortgage deeds and other securities* belonging to the society, and shall *state the number* of properties with respect to which deeds have been produced to and actually inspected by him.

Although the ordinary work in connection with an audit may be conducted at a later period, the examination of the securities should be made upon the day following the date as at which the Balance Sheet is to be prepared, so that no change in the investments, which will appear in the Balance Sheet, can be made before the examination. The auditor should require the production of the whole of the securities at one and, where practicable, having once commenced his inspection, he should examine all of them *seriatim* before ceasing, and he should not allow any security to be removed during the examination. Where, on account of the number of the securities to be examined (or from any other cause) it is not possible to inspect all of them without intermission, the auditor should require the whole of the securities to be put under his control simultaneously, and by means of a private

room or sealed packages, or otherwise according to the circumstances, he should maintain his control over the whole of the securities until the examination is completed.

Such a system will prevent the possibility of securities (after having been passed by the auditor) being made use of by pledge or otherwise, for the purpose of raising or redeeming other securities which require to be similarly produced to the auditor.

Legality:—

The auditor should see that all investments are in accordance with the provisions of the company's regulations. One of the "object clauses" in the memorandum may possibly restrict the power of investment, and even if a particular class of investment be *intra vires* the company it may be *ultra vires* the directors, for the powers of the company, as defined by the memorandum, may not all be conferred upon the directors by the articles of association. In such a case the auditor should ascertain that the sanction of the company has been obtained.

Valuation:—

It is a good plan to prepare a schedule of the investments showing, in separate columns, (1) their cost, (2) the amount at which they are to appear in the particular Balance Sheet, and (3) their present market value. Under ordinary circumstances such a practice is not absolutely necessary on every occasion that the Balance Sheet is certified, but it is necessary where the auditor is desired to certify that the present market values of the various investments are in excess of the values included in the Balance Sheet. The safest method of arriving at the proper figures to be inserted in the Balance Sheet, in respect of the investments, may be stated in the words of Mr. Pixley, F.C.A.:—

"If the securities have not depreciated since "they were purchased, or are of greater value, "the cost price is usually taken as the value "for the Balance Sheet; but if there has been "a depreciation from the cost price, taking the "investments *as a whole*, a reserve should be "made and charged against revenue to cover "such depreciation."

It should be pointed out, however, that the *reserve* referred to in the above extract is really a *provision* against a loss, which is presumed to have taken place already. If (1) the depreciation could be definitely attributed to specific investments, and (2) such depreciation were considered permanent, the proper method (where the depreciation is being recognised in the accounts) would be to "write down" the particular investments to the amount decided upon. But, as this is not always possible, the investments are considered *as a whole*, and the amount of depreciation based accordingly. If, in the opinion of the directors, the investments have *really depreciated* to the extent (at least) of the amount to be provided therefor, such amount is obviously *not a reserve, but a replacement of capital already lost*, and deductible, on the face of the Balance Sheet, from the *total* representing the book value of those investments in respect of which the provision has been made. A "charge against revenue to cover depreciation" can only be termed "reserve" to the extent to which such charge is *superfluous*.

It is worth noting that as the "cum div." market price of a stock includes the value of the accrued dividend, credit should not be taken to revenue for *both* the accrued dividend and for any appreciation in value attributable to its inclusion in the market value.

The question as to whether provision should be made for depreciation of investments which are in the nature of fixed capital (in an economic sense), before the distribution of a dividend, which might otherwise involve a payment out of capital, is dealt with under title "Profits available for Dividend," but the following extract from the judgment of Lindley, L.J., in *Verner v. General Trust* (1894) will be found appropriate:—

"It is plain there is nothing in the memo- "randum and articles of association which "requires lost capital to be made good before "dividends can be declared. On the contrary, "they are so framed as to authorise the sink- "ing of capital in the purchase of speculative "stocks, funds, and securities, and the pay- "ment of dividends out of whatever interest,

" dividends, or other income such stocks, " funds, and securities yield, although some of " them are hopelessly bad, and the capital sunk " in obtaining them is gone beyond recovery. " There is no suggestion of any improper " juggling with the accounts, and there is no " payment of dividend out of capital."

(*See titles* Gilt Edged Securities, Inscribed Stocks, Reserves and Reserve Funds, Sinking Fund, Trust Investments.)

Invoice.—A written statement giving full particulars of the quantities, prices, and nature of goods sold or consigned.

Invoice Book.—A record of invoices containing either (1) the entries from " purchase invoices," or (2) the invoices themselves, or (3) the press copies of " sales invoices," as the case may be. (*See titles* Guard Book. Purchase Book.)

I O U.—(I owe you.) A written acknowledgment of a debt usually in the following form:—

To Mr. B. R———
I O U
Five Pounds,
P. W———
18 May 1907.

In the above form it is neither a receipt, agreement, nor promissory note, and requires no stamp. If it contain a promise to repay, it must be stamped as a promissory note. If the name of the creditor be inserted, the instrument is evidence of an account stated between the parties; if the creditor be not named, the instrument is *primâ facie* evidence only of an account stated, and may be produced by a plaintiff. The instrument is not negotiable.

Irredeemable Debentures.—As a debenture imports a debt, a document which does not provide for payment of the sum thereby acknowledged can hardly be termed a debenture, but those issued upon the condition that the principal sums thereby secured shall only be payable (1) on default of payment of interest, (2) on the winding-up of the issuing company, or (3) in some other contingency, are called irredeemable or perpetual debentures. The fact that a debt is payable only in certain events does not render it any the less a debt. Debentures of this nature have been expressly declared to be valid by section 103, Companies (Consolidation) Act 1908. (*See titles* Debenture, Redeemable Debentures.)

Issue.—A bill of exchange or promissory note is deemed to be issued when it is first delivered complete in form to a person who takes it as a holder. (Bills of Exchange Act 1882, section 2.)

The term is used to express (1) the legitimate offspring of parents, (2) the rents or profits of lands or other property, or (3) the distribution of shares in or debentures of a joint-stock company.

The *issue* of a share in a joint-stock company does not mean merely allotment, or even the issue of the certificate therefor, but the bestowal of an absolute right to the share upon the holder.

Issued Capital.—The actual amount of registered capital (or nominal capital) which has been issued. It is also called subscribed capital. (*See title* Registered Capital.)

J

Jettison.—The deliberate throwing overboard of cargo, or of a ship's tackle, to lighten the ship in a storm or when otherwise in danger. The loss occasioned by jettison is made good by contribution.

The term is also applied to the goods themselves which are so cast overboard, if they sink and remain under the water, whilst the terms " jetsam " and " jetson " are sometimes used.

The term " flotsam " is applied to goods which remain upon the surface of the water, and those which are tied to a buoy or cork, so that they may be recovered, are called lagan. (*See title* General Average.)

Jobbers.—Members of the Stock Exchange are known as jobbers and brokers. The former are merchants; the latter are agents, who act for the outside public, buying and selling stocks

al shares on commission. Their practice is to rt to a jobber, or merchant who keeps a supply o stocks, usually of a specific class, and who is rdy to buy or sell, as the case may be. He qtes two prices, the one price being that at wch he is willing to purchase and the other that f which he will sell. But he does not know wther the broker is an intending buyer or ser. Whichever he elects to be, the jobber must dl with him at the quoted price. He makes hi own profit on the "turn" or difference bween the two, and he determines the price, in cpetition with other jobbers, by the supply or dnand at the moment. Having made a price, his bound to deal, if required, though in the le negotiable kinds of stock he will probably dline to make a price.

is obvious that the supply or demand on th part of the public controls the prices of all stks. If, for instance, on any given morning th total amount of orders received by brokers to ll a given stock amounted to £400,000, while th total amount of orders to buy such stock nunted to £1,200,000—although, of course, the t would be unknown to anyone—the brokers wld apply to the jobbers for quotations, and th price might be, say, 105 to 105¼. As, however, there would be more buyers than sellers, the jbers would soon run short of the stock, and wld thereupon become reluctant to sell, and mke higher quotations, the price rising exactly in proportion to the demand, and as long as it inued; if, on the other hand, there were re sellers than buyers, the reverse result wld follow. Hence, as all buying and selling re carried on for the general public, jobbers are rtically driven to make higher or lower quotaos, and thus it is that the law of supply and nand influences prices. When prices are ted as 111⅞—112⅛, the meaning is that an inding purchaser would have to give 1 2s. 6d. for every £100 of stock, while a r would receive only £111 17s. 6d. This is the "turn of the market," which forms the jber's profit. In addition, the broker's commission must be met, if the bargain is made through hi A jobber does not, or should not, charge commission, for that would be making a second profit in addition to the one which he makes out of the difference between purchasing and selling prices. The Rules of the Stock Exchange permit commission to be charged on the actual value, but brokers do not always exercise this right, because over a large number of transactions a natural average adjustment takes place between stocks above and below the nominal value.

Joint Account.—A record of the transactions of some particular undertaking, where two or more parties combine in contributing the necessary capital and services and share the profits or losses resulting therefrom.

Joint Adventure.—A partnership confined to a particular adventure or transaction, in which the partners as a rule use no firm-name, and limit their responsibility to the particular adventure. It almost invariably takes the form of a shipment or consignment of specific goods to a certain place to be dealt with by sale or otherwise for the joint benefit of the parties interested, in the proportions respectively agreed upon.

Joint and Separate Estates.—Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more of the partners of the firm without including the others. (Bankruptcy Act 1883, section 110.)

A receiving order made against a firm operates as if it were a receiving order made against *each* of the persons who at the date of the order is a partner in that firm. (Rule 262.)

No order of adjudication shall be made against a firm in the firm-name, but it shall be made against the partners individually. (Rule 264.)

In cases of partnership the debtors shall submit a statement of the partnership affairs, and each debtor shall submit a statement of his separate affairs. (Rule 263.)

Distinct accounts must be kept of the joint estate and of the separate estates. (Rule 293.)

Where a receiving order is made against a firm, the joint and separate creditors must collectively be convened to the first meeting of creditors. (Rule 265.) But the separate sets of creditors

may act independently as regards the consideration of any proposal for a composition or scheme. (Rule 266.)

Upon the adjudication in bankruptcy of a partnership, the trustee appointed by the *joint creditors* or by the Board of Trade, as the case may be, shall be the trustee of the separate estates also. Each set of separate creditors may appoint its own committee of inspection, but in default of such appointment by any set of separate creditors the committee (if any) appointed by the joint creditors shall be deemed to have been appointed also by such separate creditors. (Rule 268.)

The remuneration of the trustee is fixed by the creditors or the committees of the respective estates. (Rule 270.)

The costs up to the date of the *receiving order* are to be apportioned between the joint and separate estates in such proportions as the Official Receiver may determine (Rule 127), and application for his certificate should, where necessary, be made to him by the trustee. The payment of *further* costs of the joint estate out of the separate estates, or *vice versâ*, requires the sanction of the Official Receiver in the case of costs incurred prior to the appointment of the trustee, and the sanction of the committee of inspection, or of the Court, in the case of costs incurred after the appointment of the trustee. (Rule 128.)

Dividends of the joint and separate properties shall (subject to any order to the contrary that may be made by the Court on the application of any person interested) be declared together; and the expenses of, and incidental to, such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for, and the benefit received by, each property. (1883 Act, section 59.)

Where partners have been adjudicated bankrupt the joint estate is applicable in the first instance in payment of their joint debts, and the separate estate of each partner is applicable in the first instance in payment of his separate debts.

If there is a surplus from the separate estate it is dealt with as part of the joint estate. If there is a surplus of the joint estate it is dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. (1883 Act, section 40, subsection 3.)

In the case of dissolution arising from the bankruptcy of any one partner, such dissolution would date from the "act of bankruptcy," and the trustee of the bankrupt partner would require the accounts of the partnership to be made up to that date, provided (1) that he would be entitled to an account of the profits earned since the commencement of the bankruptcy by the employment of the capital (if any) of the bankrupt partner, and (2) that the trustee could not avoid *bonâ fide* transactions of the firm with third parties having no notice of the act of bankruptcy, and duly completed before the date of the receiving order.

No transfer of a surplus from a separate estate to a joint estate on the ground that there are no creditors under such separate estate shall be made until notice of the *intention* to make such transfer has been gazetted. (Rule 293.)

Where a trustee has already gazetted notice of intention to declare a dividend in a separate estate, a *Gazette* notice under Rule 293 is not required.

When necessity arises for the transfer of moneys from a separate estate to the joint estate or *vice versâ*, the application for such transfer should be addressed to the Inspector-General in Bankruptcy, and should state fully the circumstances which necessitate the transfer.

The rule as to the administration of joint and separate estates is subject to the "reputed ownership" clause, so that where the separate property of one partner was in the reputed ownership of the firm, it was dealt with as part of the joint estate. (*Ex parte Hare*, 1835.)

As already stated, joint creditors as a general rule cannot prove on the separate estates, nor can the separate creditors prove against the joint estate. The chief exceptions are:—

1) Where there is no joint estate and no solvent partner, the joint creditors may prove *pari passu* with separate creditors against a separate estate. (*In re Budgett; Cooper v. Adams*, 1894.)

Note.—A scintilla of joint estate will, however, be sufficient to deprive joint creditors of the benefit of this exception. In an old case the joint estate amounted to £13, and it was held that the joint creditors could not receive dividends from a separate estate until the creditors of such estate had been paid in full, although it did not appear that after payment of costs there would be any of the joint estate (£13) available for distribution.

) Where there has been fraudulent conversion of property from the joint estate to the separate estate, or *vice versâ*, the firm or partner, or the trustee of either, as the case may be, may prove against the separate or joint estate, as the case may be, in respect of the property so fraudulently converted. (*See title* Competitive Proof.)

) Where a creditor of a firm obtains an adjudication order against one partner, it has been held that he is entitled in respect of his joint debt to prove against the separate estate of such partner in competition with the separate creditors, the reason given being "that it would be inequitable "for the separate creditors to take advan- "tage of the bankruptcy proceedings, and "yet to exclude the author of them." This exception was created by decisions nearly 100 years ago, and a learned writer has suggested that it is possibly now obsolete.

) Where a creditor of a firm has also a distinct contract for the same debt with one or more of the individual partners he may prove against the joint estate and also against the separate estates of the partners respectively liable, provided that he may not receive more than 20s. in the £. This right is conferred by Article 18, of Schedule 2, of the Bankruptcy Act 1883:—

> "If a debtor was at the date of the "receiving order liable in respect of dis- "tinct contracts as a member of two or "more distinct firms, or as a sole con- "tractor and also as a member of a "firm, the circumstance that the firms "are in whole or in part composed of "the same individuals, or that the sole "contractor is also one of the joint con- "tractors, shall not prevent proof in "respect of the contracts against the "properties respectively liable on the "contracts."

In the case of *Ex parte Honey*, 1871, a joint and several promissory note was signed by (1) a firm as such, (2) two members of that firm, and (3) certain other persons. The firm became bankrupt, and it was held that the holder of the note was entitled to prove against and receive dividends limited to 20s. in the £ in all from the joint estate and also the separate estates of the two partners who had signed the note.

A joint creditor holding the security of one of the partners may prove against the joint estate without valuing or giving up his security, and *vice versâ*. (*Ex parte Caldicott*, 1884.)

In the bankruptcy of any one partner of a firm any creditor to whom that partner is indebted jointly with the other partners of the firm or any of them may prove his debt for the purpose of *voting* at any meeting of creditors, and shall be entitled to vote thereat (1883 Act, 1st Schedule, Rule 13), but he shall not receive any *dividend* out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts. (1883 Act, section 59.)

Where one member only of a firm has been adjudicated a bankrupt his discharge operates to release him from his joint as well as his separate debts (*Ex parte Hammond*, 1873), and where all the members of a firm have been adjudicated bankrupt and each has been granted his dis-

charge they are released from the joint and separate liabilities. (*Howard v. Poole*, 1734.)

The Bankruptcy Acts do not provide for the consolidation of joint and separate estates, but where such estates are inextricably mixed so as to render it impracticable to administer them separately, the Court has power to consolidate them. This power, however, will not be exercised unless the creditors assent, and the Court will also inquire whether the proposed consolidation will be for the benefit of the creditors generally. (*Ex parte Sheppard*, 1833, and *Ex parte Strutt*, 1821.)

Joint and Several Liability.—One in respect of which the parties liable may be sued either jointly or separately. If a covenant be *joint only*, a judgment recovered against some of the co-covenanters (even without satisfaction) is a bar to an action against the others, but not so if the liability under the covenant be several as well as joint. (*See title* Partnership.)

Joint Stock Bank.—A private bank is one carried on by an individual, or by a firm of partners not exceeding *six* in number. Where more than six persons enter into partnership to carry on the business of banking, the bank is termed a joint stock bank, but no association or partnership, consisting of more than *ten* persons, can now be formed for the purpose of carrying on the business of banking, unless registered as a company under the Companies Act, or formed in pursuance of some special Act, or of letters patent. Originally, the joint stock banks were founded on the principle of *unlimited* liability, and some of them have continued upon that basis, but the majority of the banks took advantage of the Companies Act 1879, now incorporated in the Companies (Consolidation) Act of 1908, and were either registered with *limited* liability, or adopted the principle of *reserve* liability, whereby a company may resolve by special resolution that a certain portion of the uncalled capital of the company (either already existing or specially created) shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon such reserved (uncalled) capital shall not be capabl of being called up, except in such event and f such purposes. (Companies (Consolidation) Ac 1908, section 59.)

A resolution in pursuance of the above sect apparently cannot be recalled by any subsequen resolution of the company.

Notwithstanding registration with limite liability, the members of a banking company ar not entitled to limited liability in respect of an notes issued by the company. (*See titles* Bank c Issue, Bank Shares, Reserve Liability.)

Joint Stock Companies Arrangement Act 1870.—This Act was passed to facilitate compromise and arrangements between a joint stock com pany incorporated under the Companies Act 18 and amending Acts, and the creditors and mem bers, or any class thereof, whereby the wishes the majority may bind the minority, but subjec to the sanction of the Court. It was repealed b the Companies (Consolidation) Act 1908, and th provisions as to such arrangements are now con tained in the Act of 1908. (*See title* Arrange ments (Joint Stock Companies).)

Joint Stock Company.—An association of person united for the purpose of carrying on some trad or other enterprise, the necessary capital bein contributed, in various proportions, by the severa persons so associated, hence the name "join stock." These associations were formed by a instrument called a *deed of settlement*, whic contained the regulations of the company, and th nature of its constitution generally. The genera scheme was much the same as that adopted b registered companies at the present time, viz.:—

(1) The joint stock (*i.e.*, the capital) wa divided into shares of equal amount, th various members holding one or more each

(2) The succession of the members was main tained by the transfer or transmission o the shares.

(3) The management of affairs was vested i a few shareholders, called directors, th general body of the shareholders taking n active part in the business of the com pany, beyond controlling the directors o special occasions.

(4) The members participated in the profits of the company in proportion to their shares.

The Courts, however, treated these associations s ordinary partnerships in determining their ghts and liabilities (1) as between the members emselves, and (2) as between the company and ird parties. This led to considerable incon-nience, and many of the existing companies btained private Acts of Parliament conferring on them the privileges of a corporation, but, timately, the Legislature recognised these com-nies, and general Acts were passed providing r the "registration and incorporation of joint ck companies." The various preliminary gislative attempts to deal with this subject, the st important of which were the Acts of 1844 d 1856, resulted in the Companies Act of 1862 ing passed. The Act of 1862 repealed all prior ts regulating joint stock companies. This Act alled for over forty years the principal Act), and e numerous Acts passed between 1862 and 1908, re consolidated into one Act in 1908, which me into force on the 1st April 1909. (*See title* mpanies Acts.)

The Companies (Consolidation) Act 1908, sec-n 1, provides that no company, association, or rtnership, consisting of more than *ten persons*, ll be formed for the purpose of carrying on business of *banking*, or of more than *twenty rsons* for the purpose of carrying on any other siness for the acquisition of gain, unless it is istered under the Act, or is formed in pur-nce of some other Act, or of letters patent, or is a company working mines within the Stannaries. (*See title* Cost Book Mining Company.)

ny seven or more persons (or where the com-y to be formed will be a "private company," two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of the Act in respect of registration, form an incorporated company, with or without *limited* liability. Such limitation of liability may be either (1) by shares or (2) by guarantee. (Section 2.) (*See title* Liability.)

Private companies, as defined by section 121, may consist of *two* but not more than *fifty* members, the latter number being exclusive of persons who are in the employment of the company. (*See title* Private Company.)

With certain specified exceptions and subject to prescribed conditions, every joint stock company existing at the time of the commencement of the Act of 1862 (including any company already registered under the Joint Stock Companies Act 1856, &c.), and every joint stock company formed after such commencement duly constituted by law, consisting of seven or more members, may at any time register itself under the Act of 1908, with or without limited liability, and no such registration will be invalid by reason that it has taken place *with a view* to the company being wound up. (Section 249.)

The Act of 1908 defines a joint stock company for the above purpose as one "having a per-"manent 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." (Section 250.)

Joint Tenancy.—An estate held as a whole, the joint tenants having no estate in any particular part; as the right of survivorship applies, the estate gradually concentrates from more to fewer, by the accession of the interest of those that die to the survivors, until it passes to one only, when the joint tenancy ceases. The estate can also be dissolved by voluntary or compulsory partition.

"It is not quite clear whether the interest of "partners in the partnership property is more "correctly described as a tenancy in common "or a joint tenancy *without benefit of survivor-*"*ship*, but the difference appears to be merely "verbal. . . A surviving partner has some-"times been said to be a trustee for the deceased "partner's representatives in respect of his "interest in the partnership; but this is a meta-"phorical and inaccurate expression. The claim "of the representatives against the surviving

" partner is in the nature of a simple contract " debt, and is subject to the Statute of Limita- " tions, which runs from the deceased partner's " death." [Pollock.]

A joint tenancy does not, *of itself*, create a partnership as to anything so held, whether the tenants do or do not share any profits made by the use thereof. (*See title* Tenancy in Common.)

Journal.—A Day Book; a diary; a chronological record.

Double-entry bookkeeping is based upon the axiom that " every debit has a correlative credit," and this principle is clearly exemplified in every Journal entry. But whilst the basis of such a system of accounting will necessarily be embodied in every recorded transaction, whether shown upon the face of the accounts or not, the question as to what extent a Journal should be utilised in the system of bookkeeping by double-entry has given rise to considerable discussion amongst accountants.

The double-entry system at its inception involved the use of three books, viz., the Waste Book, the Journal, and the Ledger.

The *Waste* Book was used to record every transaction immediately it occurred, whether purchase, sale, or otherwise, thus showing the various transactions in chronological order, irrespective of their varying nature.

The *Journal* was employed as a technical transcript of the Waste Book with this distinction—that, although the transactions were recorded in the same order as in the Waste Book, they were arranged so as to show that the account to which the particular item passed was to be treated as debtor to the account from which its equivalent had been taken. In other words, the original function of a Journal was to arrange the transactions in a technical form ready for posting to the Ledger, or, to quote from one of the early writers upon the subject, " the Journal was devised to " save the accountant a prodigious deal of con- " sideration and perplexity, and at the same time " obviate the errors which would be otherwise " introduced into the Ledger."

The multiplicity and greater complexity of mercantile transactions as a result of the great expansion of trade since the early days of double-entry accounting, first led to a more general adoption of the double-entry system (with a greater grasp of the principles involved as a natural consequence), and afterwards to a " breaking up " of the Journal into subsidiary books, such as Sale Book, Purchase Book, Bill Book, &c. By means of this subdivision the transactions are recorded chronologically (as regards each class) but in a more comprehensive form, and yet with less labour than was necessary in carrying out the double-entry system as originally devised.

The functions of the various subsidiary books, however, are merely as *aids* to the Journal, and the entries in them are undoubtedly Journal entries. Thus, when the Journal is referred to, the *book* called by that name must be distinguished from the *preparatory records* of a business which are either wholly recorded in such book or partly recorded there and partly in subsidiary books, for despite their number the latter must nevertheless be considered (theoretically) as one book, " bound up " in one common object, viz., to aid the Journal.

There is yet another feature connected with the Journal entries—that is, the check which the totals of its entries afford upon the totals when extracted of the debit and credit postings to the Ledger. This check can, however, be obtained by the modern method of utilising subsidiary books; by recording in the Journal periodically the totals of the entries of such subsidiary books; but even this is not considered necessary by some writers, the chief reason apparently being that, however commendable the practice of extracting the totals of the Ledger Accounts, and comparing them with the totals of the Journal entries, may be, the fact remains that with isolated exceptions the modern custom is to base the Trial Balance upon the *balances* of the Ledger Accounts, and not upon the *totals* of the debit and credit sides. But if it should be desirable to base the Trial Balance upon *totals* and not upon balances this function of the Journal can be *more readily and thoroughly* applied with the aid of the subsidiary books, for by means of the totals of

such books, not only may the postings of the entries to the Ledger or Ledgers be checked as a whole, and as regards both debit and credit entries respectively, but by a system of Controlling Accounts such Ledgers (should there be more than one) may be checked independently of each other.

It would therefore appear:—

(1) That a system of arranging the records of the transactions of a business preparatory to their being posted to the Ledger is indispensable to double-entry.

(2) That the manner in which such a system should be carried out—that is, the extent to which the Journal (itself) and its subsidiary aids should be respectively used must depend upon the circumstances connected with each case.

(3) That notwithstanding the number of books utilised for the preparatory records such books are theoretically one—*i.e.*, the Journal

(4) That the question of *actually consolidating* such books periodically must, in the absence of any real necessity for such consolidation, be dictated by the individual views of the various accountants performing the work. Sectional balancing, where adopted, is an instance of such necessity. (*See title* Sectional Ledgers.)

(5) That the Journal at the present time is used in the great majority of cases simply for opening, adjusting, and closing the accounts, and for any emergency entries—in short, for such entries only as are either incapable of being relegated to a specially devised subsidiary book, or are not sufficiently numerous to justify such a course.

The following is an extract from the Code de Commerce in operation in France.

Every trader *must keep a Journal* which shows day by day his debtors and creditors, operations of his commerce, his negotiations acceptances or indorsements of bills, and generally all that he receives and pays under whatsoever category it may be, and which shows clearly month by month the sums drawn out for his household; the whole to be independent of the other books used in his business, but which (*i.e.*, the other books) are not indispensable.

Journal Entry.—In its origin a Journal entry was merely a technical transcript of the record of a transaction from the Waste Book, preparatory to being recorded in classified form in the Ledger, and although at the present time the term is applied only to such entries as are made in the Journal itself, theoretically every entry in the various subsidiary books (which, after all, are only *aids* to the Journal) is a type of Journal entry, prepared and ready for posting to the Ledger, the "contra-post" for which is made periodically and in aggregate to save labour and to facilitate classification. (*See title* Journal.)

Judgment Creditor.—One who has recovered judgment against his debtor. He has—

(1) A right of action for non-fulfilment of the judgment;

(2) A right to issue execution;

(3) A right to issue a bankruptcy notice (if a *final* judgment);

(4) A right to interest at the rate of 4 per cent. per annum until the judgment is satisfied;

and, under certain circumstances,

(5) A right to apply for the committal of the debtor; but the Court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, make a receiving order against the debtor (Bankruptcy Act 1883, section 103), even though the judgment creditor's debt would have been insufficient to have enabled him to present a bankruptcy petition. Nor does the requirement as to the debtor being domiciled in England (applicable to petitions) apply under this section, for a receiving order in lieu of a committal order can be made against a foreigner if he is before the Court, although he may not

have a residence or place of business in England. (*Re Clark*, 1898, 1 Q.B. 20.) The Court has a further discretion with regard to an application for a committal order, Bankruptcy Rule 358 providing that, if it appears to the Court that the total liabilities of the debtor do not exceed fifty pounds, the Court may, if it thinks that an order for committal ought not to be made, make an administration order in lieu of making a receiving order. (*See titles* Administration Order, Bankruptcy Notice, Execution Creditor, Judgment Debtor, Receiving Order.)

Judgment Debtor.—A debtor against whom a judgment has been obtained ordering him to pay a sum of money, which judgment remains unsatisfied. The Court may order him to be examined by the judgment creditor, and he may be compelled to produce his books, so that any debts due to the debtor by third parties may be attached.

Judgments.—Obligations, dependent for their binding force, not on the consent of the parties, but upon their direct promulgation by the sovereign authority acting in its judicial capacity. [Anson.]

Although judgments are for convenience classed as contracts, they are not strictly so.

The characteristics of a judgment are:—

(1) Its terms are conclusively proved by its production.

[There is an apparent exception in bankruptcy, for the consideration for a " judgment by default " may be inquired into.]

(2) It merges all prior rights in connection with the *same* matter.

(3) The creditor can have execution upon his judgment or may bring an action for its non-fulfilment.

Judicial Trustees Act 1896.—This Act provides *inter alia* (1) for the appointment of judicial trustees, and (2) for the relief, under certain circumstances, of trustees (whether judicial trustees or not) from liability in respect of breach of trust.

Judicial Trustee:—

The Court may in its discretion appoint a person (or a corporation) to be a judicial trustee, either on the application of (1) a person creating or intending to create a trust, or (2) by or on behalf of a trustee, or (3) a beneficiary.

The judicial trustee may be appointed either as sole trustee or jointly with any other person, or (if sufficient cause is shown) in place of all or any of the existing trustees of the particular trust. The administration of the property of a deceased person, whether a testator or intestate, is deemed a trust, and the executor or administrator is deemed a trustee within the meaning of the Act.

Any fit and proper person nominated for the purpose in the application may be appointed a judicial trustee, but in the absence of such nomination, or where the Court is not satisfied as to the fitness of the person so nominated, the Court may appoint an official of the Court (or any other fit and proper person). (*Douglas v. Bolam*, C.A. 1900.) *In any case*, a judicial trustee will be subject to the control and supervision of the Court *as an officer* thereof.

The rules under the Act provide that the Court is not precluded from appointing any person to be judicial trustee by reason of that person being (1) a beneficiary, or (2) a relation, or husband, or wife of a beneficiary, or (3) a solicitor to the trust, or to a trustee, or to any beneficiary, or (4) a married woman, or (5) standing in any special position with regard to the trust.

A person may be appointed a *judicial* trustee of a trust, although he is already a trustee of the trust.

The Court may, with or without request, give to a judicial trustee any general or special directions in regard to the trust or the administration thereof, and the trustee may at any time request the Court to give him directions as to the trust or its administration.

A judicial trustee may be paid out of the trust property such remuneration as may be assigned by the Court, due regard being had to the duties entailed upon the trustee by the trust. The Court may alter the rate or basis of remunera-

tion at any time, and may also make special allowances for extra services by reason of exceptional circumstances; but in the absence of special directions the remuneration assigned to a judicial trustee must cover all his work and personal outlay; nor will the trustee be allowed any deduction on account of professional assistance, unless (1) specially authorised, or (2) justified by the strict necessity of the case.

A judicial trustee must give security for the due application of the trust property, unless the Court specially dispenses with same; but any premium payable to any guarantee society may, if the Court so directs, be paid out of the trust property.

A judicial trustee must, as soon as may be after his appointment (unless the Court considers it unnecessary), prepare a complete statement of the trust property, accompanied with an estimate of the income and capital value of each item. The statement must be lodged with the Court, and the trustee will be required to give such information to the Court as may from time to time be necessary for the purpose of keeping the statement of the trust property *correct for the time being*.

A judicial trustee must keep a separate account of his receipts and payments on behalf of the trust at some bank approved by the Court, and all documents of title and other securities of the trust property must be deposited either with that bank or in such other custody as the Court may direct.

Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited at such date in each year as the Court may fix. The accounts in ordinary cases will be audited by the officer of the Court, but the Court, if it considers that the accounts are likely to involve questions of difficulty, may refer them to a professional accountant for a report to be prepared thereon, and order the payment to the accountant of such amount in respect of his services in preparing his report as the Court may fix.

The accounts of the trust, when audited, are to be filed, and the Court may, if it thinks fit, having regard to the nature of the relation of the applicant to the trust, allow any person on application to inspect the filed accounts on giving reasonable notice to the officer of the Court. The judicial trustee must send a copy of the accounts, or, if the Court thinks fit, of a summary of the accounts, of the trust to such beneficiaries or other persons as the Court thinks proper.

Subject to conditions, a judicial trustee may resign if he desires to be discharged from the trust, and, under certain circumstances, the Court may remove or suspend him.

Breach of Trust:—

If it appears to the Court that a trustee, *whether appointed under this Act or not*, is, or may be, personally responsible for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted *honestly and reasonably* and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve the trustee, either wholly or partly, from personal liability for the same. (*See* also *title* Breach of Trust.)

A person who accepted a trusteeship in conjunction with another person but did nothing in connection with the trust, relying solely upon his co-trustee without inquiry was held not to have acted "honestly and reasonably" within the meaning of the Act.

A trustee, although he had acted honestly, had not acted reasonably, and was held liable for moneys which he had left in the hands of his solicitor. and which had been misappropriated.

This Act does not affect the *standard* of care and diligence required of trustees, and in considering whether a trustee has acted *reasonably* the term will be construed in the light of the previously existing law, whereby a trustee is expected to act in connection with the affairs of the trust with the same amount of care as a reasonable business man would bestow on his own affairs.

This Act does not extend to any charity.

(*See titles* Directors, Public Trustee Act 1906.)

Jurat.—The statement at the foot of an affidavit of the names of the party or parties swearing it, and of the officer before whom it is sworn, with the date, place, and any other necessary particulars.

Jus disponendi.—The right of disposition. If a vendor of goods retains a *jus disponendi* it evidences an intention not to part with the property in the goods until the happening of some event, or the performance of some condition.

Justifying Security.—Sureties to an administration bond are sometimes required to make an affidavit to the effect that after payment of all their debts they are worth a sum therein specified. This is termed justifying security.

K

Keeping House.—When a person, in embarrassed circumstances, confines or secretes himself in his house, with the intention of defeating or delaying his creditors, he is said to "keep house." This constitutes an act of bankruptcy. (Bankruptcy Act 1883, section 4.) A general order that a debtor be denied to all comers will, on denial to a creditor, constitute an act of bankruptcy, unless some satisfactory explanation of the denial be made.

Kentledge or Kintledge.—The permanent ballast of a ship which is deemed to be a part of such ship. The ballast usually takes the form of pigs of iron, or some other weighty material.

L

Lagan.—*See title* Jettison.

Land.—Every species of ground upon the earth—meadows, woods, water (the land under) and marshes; the term also embodies houses and all buildings upon the land. The Interpretation Act 1889 provides that in any Act of Parliament passed after 1850 the term "land" includes messuages, tenements, hereditaments, houses and buildings of any tenure.

Land is classed as real estate, but a leasehold interest therein (however long the term) is personal estate. Leaseholds are, however, liable (if at all) to succession duty, not legacy duty.

In partnership, unless a contrary intention appears, where land has become partnership property it is to be treated as between (1) partner and partner, (2) partner and the representatives of a deceased partner, or (3) heirs of a deceased partner and the executors or administrators of such deceased partner, as personal estate, and not real estate. (Partnership Act 1890, section 22.)

Companies:—

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. (Companies (Consolidation) Act 1908, section 19.)

Companies of this class are generally formed as limited companies, without the word "limited" as part of their names, in pursuance of a special licence from the Board of Trade. (Section 20.)

A company incorporated in a British Possession which has filed with the Registrar of Companies certain documents and particulars described in section 274 of the Act of 1908 (*see title* Foreign Incorporated Companies) shall have the same power to hold lands in the United Kingdom as if it were a company incorporated under the Companies (Consolidation) Act 1908. (Section 275.)

Every mortgage or charge created by a company comprising (*inter alia*) a mortgage or charge on any land, wherever situate, or any interest therein, shall, so far as any security is thereby conferred, be *void* against the liquidator and any creditor of the company unless filed with the Registrar within twenty-one days after its creation, but without prejudice to any contract for

repayment of the loan, and where a charge becomes void under this section the money secured thereby shall immediately become payable. (Companies (Consolidation) Act 1908, section 93.) (*See title* Register and Registration of Mortgages.)

Audit:—

An auditor should examine the title deeds of freehold or leasehold lands, said to belong to the business, the accounts of which he audits. The auditor will naturally restrict his examination to satisfying himself that the deeds are apparently in order on the face of them, as he will not claim any qualification to pass judgment upon defects in title, &c. It is suggested, however, that in cases of difficulty—and where possible on every *first* examination of the title-deeds belonging to a company—the auditor would be greatly assisted by the presence of the company's solicitor at his examination. Where lands are mortgaged, the deeds will in all probability be in the possession of the first mortgagee, who should therefore be asked to give a letter certifying that he holds them without notice of any further charges thereon, other than those which are recorded in the books.

In the case of copyholds the auditor should require the production of a certified copy of the roll from the lord of the manor.

nd Charge.—A rent, or annuity, or any principal moneys charged upon land otherwise than by deed under an Act of Parliament, *e.g.*, the Land Drainage Act.

nd Charges Act 1888.—This Act provides for the registration of all land charges, otherwise such charges will be void as against a purchaser for value of the land so charged.

This necessitates a double registration in the case of assignments for the benefit of creditors where land forms part of the estate, viz., (1) under the Deeds of Arrangement Act 1870, and (2) under the Land Charges Act. (*See title* Deed of Arrangement.)

nding Weight.—The weight of cargo as it is taken from a vessel at the port of discharge. As a general rule freight is agreed to be payable upon the landing weight, but sometimes the shipowner reserves to himself, in the contract of affreightment, the option to charge his freight upon the weight of the cargo "as shipped" or "as landed." In the case of cargoes which increase in weight in transit, this is an important advantage, but in the absence of any express arrangement, where any difference exists between the weights "shipped" and "landed," the freight is payable upon the weight landed.

Landlord.—The person from whom lands and tenements are held. He has a right to distrain for the rent payable to him. (*See title* Distress.)

Land Tax.—A tax payable annually in respect of the beneficial ownership of land. Generally, the charge is upon the landlord, and the tenant on paying same may deduct the amount from the next payment of rent. Although an agreement that the tenant shall pay the *property tax* (which is really the income-tax of the landlord upon the rent receivable by him) without any right of deduction from the rent is void, the tenant may nevertheless enter into a binding agreement with the landlord to pay and bear the burden of the land tax, and this is often done.

The land tax was first imposed in 1698, and made perpetual in 1798. The amount to be paid annually was a *fixed sum* of a little over two millions sterling, and the counties and boroughs had each to contribute their quota based upon the valuations of 1698.

Provisions have been made for the redemption of the tax, and about one-half of the two millions originally levied has been redeemed.

The Finance Act 1896 provides for the remission of land tax in excess of one shilling in the pound on the annual value of the land, and also provides greater facilities for the redemption of the tax and the raising of the redemption money. Subject to certain conditions and adjustments of the assessment (where necessary), the land tax may be redeemed (1) by the single payment of a capital sum equal to thirty times the sum last assessed upon the land; or (2) by the payment of such annual instalments of the aforesaid capital

sum as may be agreed upon, subject to interest at 3 per cent. per annum on so much of the capital sum as remains unpaid. In the latter case, the interest is payable with each instalment, but all the instalments remaining unpaid may be paid at any time.

(*See titles* Increment Value Duty, Land Values, Mineral Rights Duty, Reversion Duty, and Undeveloped Land Duty for the land taxes imposed by the Finance (1909-10) Act 1910.)

Land Transfer Act 1897.—In addition to the provisions for the registration of transfers of land (which are not dealt with here), this Act provides for the establishment of a " real " representative of persons dying after 1st January 1898.

This latter portion of the Act may be summarised as under:—

(1) Real estate vested in any person without right of survivorship on death, becomes vested in the personal representatives, as if a chattel real, *notwithstanding* any testamentary disposition.

(2) Real estate is not here deemed to include land of copyhold tenure, or customary freehold requiring an admission or any other act on the part of the lord to perfect the title; but the Act applies to real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3) The personal representatives hold the real estate in trust for those persons by law thereto entitled, and such persons have the same power of requiring transfer of real estate as they previously had as to personalty.

(4) Probate and administration may be granted in respect of real estate, although there is no personal estate, and the same rules of law as to chattels real and the dealing with same before probate or administration and as regards costs, shall apply to real estate, provided that it shall not be lawful for *some or one only of several* joint personal representatives to sell or transfer real estate without the sanction of the Court.

(5) In the administration of the estate of a deceased person, real estate shall be subject to the same liabilities for debts, costs, and expenses, and shall be administered in the same manner and subject to the same incidents as personalty, provided nothing shall alter or affect the *order* in which real and personal estate are respectively applicable towards payment of funeral and testamentary expenses, debts and legacies, or the liability of the real estate charged with the payment of legacies.

Note.—Real estate was previously liable (in the hands of the heir or devisee) for the payment of debts of the deceased, but only as a subsidiary fund—that is, after the personalty was exhausted. Now, the real estate will be liable in the *hands of the personal representatives* for the debts of the deceased, and the representatives may deal with such realty by way of sale, mortgage, or otherwise for the purpose of paying the debts, whether the real estate is charged for the payment of debts or not, but the realty *still remains the subsidiary fund*, and the residuary personalty the primary fund.

As the Act distinctly provides that nothing therein shall affect the *order* in which real and personal estate are respectively applicable to the payment of debts, an executor's right of retainer has not been extended by this Act to real estate.

Real estate is not subject to the payment of the legacies, unless specially charged therewith or unless the Court by marshalling so orders. In other cases, if there should be insufficient personalty to pay all debts and discharge the legacies, the legacies either fail or abate, as the case may be, and this rule is unaffected by this Act.

(6) Where a person dies intestate and possessed of real estate, the Court in granting administration shall have regard to the rights of persons interested in the real estate; and the heir-at-law, if not one of the next-of-kin, shall be equally entitled to the grant of administration.

(7) At any time after the death of the owner of land his personal representatives may

assent to any devise contained in the will, or may convey the land to the person lawfully entitled, either subject to a charge for the payment of moneys which the personal representatives may be liable to pay, or without any such charge; and upon such assent or conveyance the liabilities of the representatives in respect of the land shall cease, except as to acts done by them before such assent or conveyance. At the expiration of one year from the death, if the personal representatives have failed to convey the land on request, the person entitled may apply to the Court for an order to convey.

Note.—A written assent to a devise of real estate under this Act does not require a 10s. stamp as a conveyance for a nominal consideration. The written assent is merely evidence that the property is no longer required by the executor for the payment of the testamentary expenses, debts, &c. (*Kemp v. Commissioners of Inland Revenue*, 1904.)

(8) The personal representatives of a deceased person may (in the absence of a contrary provision in the will), with the consent of the person entitled to any legacy, or residuary share, appropriate any part of the residuary estate, whether real or personal, in satisfaction of the legacy or share, provided that before any such appropriation is effected, notice of intention to so appropriate shall be given to all persons interested in the residue. There shall be no higher duty payable in respect of a legacy so satisfied than there would be under ordinary circumstances.

(9) Nothing in the Act shall affect any debt payable in respect of realty, or impose on real estate any duties other than those previously payable. (*See title* Administration of Assets.)

Land Values.—For the purposes of the land taxes imposed by the Finance (1909-10) Act 1910—

(1) The *gross value* of land means the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances, and from any burden, charge, or restriction (other than rates or taxes) might be expected to realise.

(2) The *full site value* of land means the amount which remains after deducting from the gross value of the land the difference (if any) between that value and the value which the fee simple of the land, if sold at the time in the open market by a willing seller, might be expected to realise if the land were divested of any buildings and of any other structures (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with any such buildings, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon.

(3) The *total value* of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and to any covenant or agreement restricting the use of the land entered into or made before the thirtieth day of April nineteen hundred and nine, and to any covenant or agreement restricting the use of the land entered into or made on or after that date, if, in the opinion of the Commissioners, the restraint imposed by the covenant or agreement so entered into or made on or after that date was when imposed desirable in the interests of the public, or in view of the character and surroundings of the neighbourhood, and the opinion of the Commissioners shall in this case be subject to an appeal to the referee, whose decision shall be final.

(4) The *assessable site value* of land means the total value after deducting—

(*a*) The same amount as is to be deducted for the purpose of arriving at the full site value from gross value; and

(*b*) Any part of the total value which is proved to the Commissioners to be directly attributable to works executed, or expenditure of a capital nature (including any expenses of advertisement) incurred *bonâ*

fide by or on behalf of or solely in the interests of any person interested in the land for the purpose of improving the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture; and

(*c*) Any part of the total value which is proved to the Commissioners to be directly attributable to the appropriation of any land or to the gift of any land by any person interested in the land for the purpose of streets, roads, paths, squares, gardens, or other open spaces for the use of the public; and

(*d*) Any part of the total value which is proved to the Commissioners to be directly attributable to the expenditure of money on the redemption of any land tax, or any fixed charge, or on the enfranchisement of copyhold land or customary freeholds, or on effecting the release of any covenant or agreement restricting the use of land which may be taken into account in ascertaining the total value of the land, or to goodwill or any other matter which is personal to the owner, occupier, or other person interested for the time being in the land; and

(*e*) Any sums which, in the opinion of the Commissioners, it would be necessary to expend in order to divest the land of buildings, timber, trees, or other things of which it is to be taken to be divested for the purpose of arriving at the full site value from the gross value of the land and of which it would be necessary to divest the land for the purpose of realising the full site value.

Where any works executed or expenditure incurred for the purpose of improving the value of the land for agriculture have actually improved the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture, the works or expenditure shall, for the purpose of this provision, be treated as having been executed or incurred also for the latter purposes.

Any reference in this Act to site value (other than the reference to the site value of land on an occasion on which increment duty is to be collected) shall be deemed to be a reference to the assessable site value of the land as ascertained in accordance with this section.

The provisions of this section are *not* applicable for the purpose of the valuation of minerals. (Section 25.)

The Commissioners were authorised under the Act to cause a valuation as at 30th April 1909, and on other periodical occasions, to be made of all land in the United Kingdom, and for that purpose to obtain returns of particulars from all persons interested in land. Provision is made for appeals against the valuations of the Commissioners, if desired. (Sections 26, 27, 28, 29, 30, 31, 33, and 34.)

Lapsed Legacy.—*See title* Legacy.

Lapsed Policy.—A policy of insurance which has ceased to have effect by virtue of some default of the assured; generally for failure to pay the premium thereon.

Larceny.—A species of felony; the unlawful carrying away of things personal, with the intention of depriving the true owner of same.

The Sale of Goods Act (section 24) provides:—"Where goods have been *stolen* and the offender "is prosecuted to conviction, the property in the "goods so stolen re-vests in the person who was "the owner of the goods or his personal repre-"sentative, notwithstanding any intermediate "dealing with them, whether by sale in market "overt or otherwise."

Lateral Additions.—Cross additions; the addition of amounts which are all upon the same line (as distinct from the same column). The total of such items is also, as a rule, put upon the same line as the items themselves.

Law.—Law is "a rule of conduct sanctioned by "authority, by which certain acts are either "enjoined or prohibited. The primary objects of "law are the protection of persons, of property, "and of society."

The three principal divisions of the law are
he Common Law, Statute Law, and Equity.

Common Law, or unwritten law, is founded
pon the maxims, customs, and observances
hich have acquired force by immemorial usage.
he best evidence of what is the common law,
obtained from the decisions of the Courts.

" The authenticity of these customs, rules,
" and maxims rests entirely upon reception
" and usage, as declared by our Judges, who
" are the sworn depositories and interpreters
" of our law."

(*See title* Custom.)

Statute Law, or written law, consists of
atutes, or Acts of Parliament, *i.e.*, law made
the Sovereign with the advice and consent
the Lords spiritual and temporal and the
ommons in Parliament assembled. Before an
ct is passed it is called a Bill, and after passing
e Houses of Parliament it operates from the
te when it receives the Royal assent, unless
herwise provided for.

Acts of Parliament are either (1) public, (2)
ecial, or (3) private. Where common law and
atute law differ, the common law gives place to
e statute, whilst an old statute gives place to a
ntrary new one.

With regard to the construction of a statute
ssed for revenue purposes, Lord Cairns said:—

" The principle of all fiscal legislation is
" this—if the person sought to be taxed comes
" within the letter of the law, he must be taxed,
" however great the hardship may appear to
" be. In other words, if there be admissible in
" any statute what is called an equitable con-
" struction, certainly such a construction is not
" admissible in a taxing statute, where you can
" simply adhere to the words of the statute."

Equity is a species of unwritten law, which had
origin in the necessity for providing relief in
cial cases where the common law was harsh,
silent, or altogether inapplicable.

" From the effect of time and precedent, equity
rules and decisions have become *fixed laws*
themselves; sometimes supplying, sometimes
" controlling, as accident or occasion may have
" directed, the institutes of common and statute
" law."

" The distinction between law and equity is a
" matter of form and history rather than of sub-
" stance or of principle. A Court of Equity is
" now bound by settled rules and precedents as
" completely as a Court of Law."

As a result of the Judicature Acts, and the rules and orders made thereunder, one uniform system of procedure has been established in the Courts of Law and Equity; law and equity are to be concurrently administered, and where there is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter, the rules of equity are to prevail.

Thus equitable remedies are now given in all the Courts—not in the Chancery Division alone.

The House of Lords have declared that upon points of law they are themselves bound by their own previous decisions, which can only (where necessary) be affected by the Legislature.

Law Merchant.—One of the branches of the unwritten or common law, consisting of customs which for the benefit of commerce have been ingrafted into the common law so that they may render valid all commercial transactions which have been based upon such customs.

Lay Corporations.—Bodies politic; (1) civil for temporal purposes, and (2) eleemosynary for charitable purposes.

Lay Days.—*See title* Demurrage.

Lease.—A grant of property for life, or a period of years certain, or from year to year, by one who has a greater interest in the property than that granted. The consideration is generally an annual payment, although sometimes part of the consideration consists of a lump sum, called a premium.

The grantor, who is possessed of the " reversion," is called the lessor, whilst the person to whom the property is granted is called the lessee. On the determination of a lease a reversion duty

of 10 per cent. on the value of the benefit accruing to the lessor is payable under section 13 of the Finance (1909-10) Act 1910. (*See title* Reversion Duty.)

A lease is sometimes called a demise.

A " bankruptcy clause " in a lease providing for the forfeiture of the lease in the event of bankruptcy is inoperative against the trustee in bankruptcy of the lessee for a period of twelve months, by reason of the trustee's right of Disclaimer. (*See* that *title.*)

(*See titles* Depreciation, Land, Reversion.)

Leasehold.—A dependent tenure derived from a freeholder, copyholder, or someone having a greater interest in the property than that granted.

With regard to the method of valuing leaseholds, the following affords an illustration :—

The present value of a lease of the annual value of £100 for 50 years is 15.76186 years' purchase, or £1576.186, taking interest at 6 per cent. But this means that £1576 (odd) will permit of a purchaser obtaining 6 per cent. on his investments, and also will repay the whole of his purchase money only when he can obtain 6 per cent. upon his annual sinking fund contributions during the whole 50 years, thus :—

Annual value	£100.0000
Deduct 6 per cent. upon £1576.186	94.5711
	£5.4289
£1 per annum at 6 per cent. will amount in 50 years to	£290.3359
Therefore £5.4289 per annum will amount to	£1576.

But, in practice, 6 per cent. is not available upon sinking fund contributions; only 3 per cent. generally can be relied upon. The necessary sinking fund instalment for the replacement of £1 at the end of 50 years is £.008866, with interest at 3 per cent. But if 6 per cent. is required on all outlay, the total annual amount required on each £1 invested would be £.068866.

Now the present value of this annuity is, of course £1, and the present value of an annuity of £1 is £$\frac{1}{.068866}$ or £14.52095, so that the lesser rate of interest—viz., 3 per cent.—obtainable upon the sinking fund contributions reduces the number of years' purchase from 15.76 to 14.52 if 6 per cent. is to be enjoyed upon the original capital outlay.

Leaseholds are personal estate, whatever the length of the term, but on the death of the lessee they are subject (if at all) to succession duty and not legacy duty.

Ledger.—The principal book employed in the system of bookkeeping by double entry, wherein all the transactions recorded in the Journal and the subsidiary aids thereto (such as Sales Book, Purchase Book, &c.) are focussed, classified, and arranged for the purpose of ready reference. In the earlier days of " double entry," when the Journal (itself) recorded the *whole* of the transactions and was probably looked upon as the principal book of the system, the Ledger was regarded in the light of a mere index to the Journal. But this view is only correct to the extent that the Ledger is an index to the Journal and all the modern subsidiary books in so far as it contains a summary of the contents of them all. The word Ledger is, of course, used in the comprehensive sense that all subdivisions of the Ledger (Personal Ledger, Nominal Ledger and otherwise) are really one book. That the Ledger is, and was always intended to be, the dominant book of the system does not appear to be doubted at the present time.

The various kinds of Ledger Accounts may be grouped thus :—

I. (*a*) Real Accounts.

(1) Impersonal Accounts, *e.g.*, land and cash.

(2) Personal Accounts, *e.g.*, debtors and creditors.

(*b*) Nominal Accounts, *e.g.*, Sales Account, Purchases Account, &c.

Alternatively they may be grouped thus:—

II. (*a*) Personal Accounts, *e.g.*, debtors and creditors.

(*b*) Impersonal Accounts.

(1) Real Accounts, *e.g.*, land and cash.

(2) Nominal Accounts, *e.g.*, Sales Account, Purchases Account, &c.

(*See titles* Bookkeeping, Consignment Ledger, oubtful Debts Ledger, General Ledger, Inter-ediate Ledger, Nominal Accounts, Nominal edger, Personal Accounts, Personal Ledger, rivate Ledger, Sectional Ledgers, Sundries edger, Tabular Ledger.) In regard to Loose-af Ledgers, *see title* Slip Bookkeeping.

Lenman's Act.—*See title* Bank Shares.

Legacy.—A gift of personalty by will. Legacies ay be divided into three main classes, viz., neral (or pecuniary), specific, and demonstra-ve; but there are other qualifications, such as sted, contingent, cumulative, substitutional, gacies in satisfaction, &c.

General Legacy.—One payable out of the neral assets of the testator.

Specific Legacy.—A bequest of a particular or ecific part of the personalty of the testator.

Demonstrative Legacy.—A bequest which, ough general in its nature, is primarily pay-le out of a specific fund which has been pointed for this purpose by the testator, but hich, upon the failure or ademption of the imary fund, is entitled to rank as a general gacy.

Vested or Contingent Legacy.—A legacy is said be *vested* when the right to the property erein is acquired notwithstanding the postpone-ent of the actual enjoyment of it, and the term used to distinguish it from a *contingent* legacy, hich depends upon the fulfilment of some con-ion, such as the attaining of a certain age or herwise, the legacy lapsing upon the death of e legatee before the fulfilment of the condition. legacy which is *purely personal* is payable, if sted, notwithstanding the death of the legatee fore the time appointed for payment, and lapses contingent only, but a legacy charged upon d lapses on the death of the legatee before the pointed time for payment or vesting (as the case may be), whether the legacy be vested or contingent.

Cumulative Legacy.—Where a testator in the same instrument or different instruments bequeaths two or more legacies to the same person, and it is considered that the testator intended the legatee to take all, the legacies are termed cumulative, but where it is considered that the intention was that the legatee should take one legacy only, that legacy is termed *substitutional.*

Legacies in satisfaction are such as are considered to have been bequeathed, whether by express or implied intention, in satisfaction and as an extinguishment of some claim on the testator. The chief classes are those in satisfaction of debts and portions.

Abatement.—Should the assets of the testator be insufficient to pay the debts and legacies, the legacies must be abated.

As between the legacies themselves, general or pecuniary legacies must first abate, and then specific legacies abate *pari passu* on the exhaustion of the general legacies. Demonstrative legacies are treated as specific whilst the primary fund exists, and as general legacies on the failure of that fund. Demonstrative legacies are thus favourable to legatees in so far as they are not liable to ademption like specific legacies and yet have the advantages of the latter as regards abatement, should the primary fund exist.

Interest.—General legacies carry interest at 4 per cent. from the date they are payable, but as they are not (ordinarily) enforceable until a year from the death, they accordingly carry interest from that date unless the testator has expressly fixed an earlier date for payment. Legacies charged on land, legacies to infant children not otherwise provided for, and legacies in satisfaction of debts (upon which interest was payable) carry interest at 4 per centum per annum from the death of the testator.

Specific legacies carry interest from the time they are payable, but as such legacies are deemed to be severed from the estate for the benefit of the legatee, as from the *date of the death* of the testator, they carry interest or other accretion from that date, even where there is an express direction to postpone *payment* of the legacy.

Lapse.—If a legatee predecease the testator, the intended legacy lapses and falls into the residue of the estate, but if the legatee be a child or other issue of the testator, and predecease the testator, leaving issue living at the time of death of the testator, then such intended legacy does not lapse (unless a contrary intention appears in the will), but takes effect as if the death of such intended legatee had happened immediately *after* the death of the testator.

Limitation.—No action shall be brought to recover any legacy except within twelve years after the right to receive same has accrued to some person capable of giving a discharge therefor, or within twelve years after a written acknowledgment, or the last acknowledgment if more than one. (37 & 38 Vict., c. 57.) This applies to a share of the residue *under a will*, but an action to recover a share of the personal estate of an *intestate* may be brought within twenty years after a right to receive same has accrued, the time so prescribed by Lord St. Leonard's Act remaining unaltered. (*See titles* Administration of Assets, *Donatio mortis causâ*, Gift *inter vivos*, Legacy Duty.)

Legacy Duty.—The duty levied upon such of the personal property of a deceased person as passes to a legatee or next-of-kin.

For the purposes of duty a legacy is a gift by will or devolution on intestacy, to be paid or satisfied out of the following main classes of property of the deceased:—

(1) Pure personalty (leaseholds are, however, subject to succession duty, not legacy duty).

(2) Realty which, at the date of the death, would be treated in equity as personalty.

The liability to legacy duty does not depend upon the situation of the property within the jurisdiction of the Courts of the United Kingdom, but upon the domicile of the deceased being within the United Kingdom. (1) *Donationes mortis causâ*, (2) bequests to executors, (3) the *profits* derived from the office of executor (expressly conferred by the will), and (4) forgiveness of a debt due to the testator, are all subject to legacy duty, as also are ordinary pecuniary legacies to professional executors and fixed annual payments for the services of executors, but *not* profit costs. (*See title* Executor.)

Prior to the passing of the Finance (1909-10) Act 1910 the husband or wife of the deceased was not chargeable with legacy duty, but in the case of a person dying on or after 30th April 1909 the husband or wife will be chargeable unless the bequest comes within the provisions stated in Exemption No. (10) (*infra*).

Similarly, lineals, and the husbands or wives of such persons (otherwise chargeable with 1 per cent.), were exempt from legacy duty if estate duty had been paid upon the estate, but in the case of a person dying on or after 30th April 1909, the exemption only applies if the bequest comes within the provisions of Exemption No. (10) (*infra*).

The rate of duty chargeable depends upon the degree of relationship between the deceased and the legatee or next-of-kin, as follows:—

Lineals of the deceased, or their husbands or wives (subject to the foregoing and to Exemption No. (10) (*infra*)	1 per cent
Brothers and sisters of the deceased and their descendants, or the husbands or wives of such persons	3 ,, ,,
In the case of a person dying on or after 30th April 1909 ...	5 ,, ,,
Uncles and aunts of the deceased and their descendants, or the husbands or wives of such persons	5 ,, ,,
In the case of a person dying on or after 30th April 1909 ...	10 ,, ,,
Great uncles and great aunts of the deceased and their descendants, or the husbands or wives of such persons	6 ,, ,,
In the case of a person dying on or after 30th April 1909 ...	10 ,, ,,
Any person whose relationship is more remote, or who is a stranger in blood to the deceased	10 ,, ,,

(55 Geo. III., c. 184, Schedule, Part III. (Finance (1909-10) Act 1910, section 58.)

Relations of the husband or wife of the ceased are chargeable with duty at the rate of per cent., unless they are themselves related blood to the deceased.

Thus:—A. and B. are husband and wife spectively, and C. is the brother of B. If A. ed leaving a legacy to C., duty would be payle at the rate of 10 per cent., but if C. left a gacy to A., the duty would be only 3 per cent. or per cent (according to the date of the death).

Exemptions from Legacy Duty (inter alia):—

(1) Legacies to the husband or wife of a person dying prior to 30th April 1909.

(2) Legacies to lineals, &c., of a person dying prior to 30th April 1909, if estate duty has been paid.

(3) Legacies to or for the benefit of the Royal Family.

(4) *Specific* legacies under the value of £20, but *pecuniary* legacies and shares of residue under that amount are chargeable.

(5) Money left to pay duty if payable out of a fund *other than the legacy*.

Note.—A direction that legacy is to be "free of duty" amounts to an increase of the legacy itself, and a *specific* bequest "free of duty" amounts to a further pecuniary legacy to the extent of the duty. The result of the exemption, therefore, is that legacies "free of duty" (that is, the duty is to be paid out of the general residue) are chargeable only in respect of the *amount received* by the legatee, but legacies not bequeathed free of duty (which term necessarily includes residuary bequests) are chargeable upon the gross sum—that is, the legacy is liable to "compound duty."

Thus:—

(*a*) A bequest to A. of £1,000 free of duty (supposing the rate to be 10 per cent.) would be chargeable with £100, although the legatee receives £1,000 net, the money left to pay the duty being exempt, as it is payable out of another (the residuary) fund.

(*b*) A bequest to A. of £1,000 not expressed to be free of duty, would also be chargeable with £100, although in this case the legatee receives only £900 net. The reason of this is that duty is payable upon *the duty*, such duty not being payable out of another fund—it is paid out of the same fund, *i.e.*, the legacy.

(*c*) A residuary bequest to A., which results in a fund of £1,000, would be chargeable with £100, although (as in (*b*)) the residuary legatee receives only £900 net. Here, again, legacy duty is payable *upon the duty*, such not being payable out of another fund. Having ascertained the residue, there is no *other fund*, and the duty must necessarily come out of the same fund, *i.e.*, the residue.

(6) Estates of which the whole of the personalty does not exceed £100.

(7) Estates the *net* value of which (exclusive of property settled otherwise than by the will of the deceased, but inclusive of all real and personal property in respect of which estate duty is payable upon the death of the deceased) does not exceed £1,000, provided estate duty has been paid thereon.

(8) Books, prints, and specific articles given to a corporation for preservation and not for sale, and plate, furniture, and the like, not yielding income, given to different persons in succession; the duty will, however, be payable in the latter case when the subject-matter passes to a person competent to dispose thereof.

(9) Objects of national, scientific, historic, or artistic interest, subject to certain limitations. (See section 63, Finance (1909-10) Act 1910.)

(10) In the case of a person dying on or after 30th April 1909 the husband or wife of the deceased, and lineals or the husbands or wives of such lineals must pay legacy duty at 1 per cent., unless:—

(*a*) The principal value of the property passing on the death of the deceased in respect of which estate duty is payable (other than property in which the deceased never had an interest, and property of which the deceased never was competent to dispose and which on his death passes to persons other than the husband or wife or a lineal ancestor or descendant of the deceased) does not exceed *fifteen thousand pounds*, whatever may be the value of the legacy; or

(*b*) The amount or value of the legacy, together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor does not exceed *one thousand pounds*, whatever may be the principal value of such property; or

(*c*) The person taking the legacy is the widow or a child under the age of twenty-one years of the testator, intestate, or predecessor, and the amount or value of the legacy, together with any other legacies or successions derived by the same person from the testator, intestate, or predecessor, does not exceed *two thousand pounds*, whatever may be the principal value of such property.

Where an annuity is bequeathed the duty is payable upon the principal value in four annual instalments, and such value is ascertained from the succession duty tables. Simple interest at the rate of 3 per cent. per annum without deduction for income-tax is payable upon all unpaid instalments of the duty, the first payment being due on the completion of the payment of the first year's annuity. If the annuitant dies before the four years have expired, legacy duty is payable only upon so many of the payments of the annuity as actually become due and payable. If the annuity is determined within the four years by any contingency other than the death of the annuitant, future payments of duty cease, and any over-payment of duty may be recovered.

Where an annuity is charged upon a legac the annuity is valued and duty is payab thereon; the legacy being subject to duty aft deduction of the value of the annuity. In such case, the legatee (not the executor) pays th duty upon the annuity, and subject to any pr vision in the will, may retain such duty out the annuity. Where a specified sum is bequeathe to purchase an annuity, duty is payable upon tha sum, but where a direction is given to purchas an annuity of a certain amount, duty is payabl upon the principal value of such an annuit according to the succession duty tables.

Legacies given subject to a contingency ar chargeable as *absolute* legacies, but if the con tingency happens, the duty may be adjusted b repayment or by a further payment, as the cas may be.

The duty upon legacies given in joint tenancy is payable by the joint tenants in proportion to their dutiable interests.

A legacy may be disclaimed, when no duty will be payable thereon, and, where a legacy is released or compounded for, the duty is payable upon the consideration therefor. In case a legacy is given in satisfaction of another legacy, duty is not payable upon both subjects, but only upon that which will yield the greater duty.

Where a legacy is to be enjoyed by persons *in succession* the duty thereon (if chargeable) is ascertained as follows:—

(1) If all the persons interested are chargeabl at the *same rate*, the duty is payable upo the legacy as if it were a bequest to one an the same person.

(2) If the persons interested are chargeable a different rates, the persons having life o other temporary interests are to be charge upon such interests as if the annual incom from the legacy had been given to the *by way of annuity*, and the person wh becomes *absolutely* entitled will be charg able with duty upon the *corpus* when falls into possession.

Legacy duties are due on the death of th deceased, but are calculated upon the value

e legacy at the date of payment or retainer, that accretions (if any) since the death are bject to duty. Thus, in ascertaining the resi-e for the purpose of duty, all rents, dividends, terest, and profits arising subsequently to the ath from the personal estate (or from real tate directed by the will to be sold), and all cretions thereon down to the time of computing e duty must be considered as part of the estate d be accounted for accordingly. Such assets of e estate as shall have been converted into money st be brought into the Residuary Account at e realised amounts, whilst such property as shall t have been so converted is to be brought into count at its value on the day of rendering the count, stocks and shares unconverted being ken at a price " a quarter up " from the lower the quoted prices for that day. (*See title* siduary Account.)

Executors, or other personal representatives of deceased person, paying, and legatees receiving, y legacy, residue, or share of residue, which is ble to duty, without taking or signing, as the e may be, a receipt therefor in the prescribed m. are subject to a penalty of 10 per cent. upon amount or value of such *legacy*, &c.

Every legacy receipt must be dated on the day signing same, and the duty thereon must be d within 21 days from the date thereof (and amount of the duty stamped on the receipt) er a penalty of 10 per cent. upon the amount he *duty*. If the duty is not paid within three nths from the date of the receipt the penalty o per cent. upon the amount or value of the *cy*, &c.

he legacy receipt should express the names of deceased, the executor, and legatee, the degree elationship of the legatee to the deceased, the re and extent of the bequest, the amount or e of same, the amount of duty payable on, and any further explanations which may nsidered necessary.

npaid legacy duties are Crown debts, and re a legacy is paid without deduction of legacy where payable, both parties (representative legatee) are Crown debtors.

part from the penalties mentioned above, all cy duty in arrear (*i.e.*, not paid within 21 days from the date of the legacy receipt) is subject to interest at the rate of 4 per cent. per annum, and since the Finance Act 1896 simple interest upon legacy duty is payable from the date of the death of the deceased at 3 per cent. per annum, without deduction of income-tax.

The burden of the duty falls upon the legatee and not upon the estate of the deceased, unless an express direction to the contrary is contained in the will; and, even then, should the residue prove insufficient, the legatee must pay the duty or balance thereof, and this is so, even where the legatee is the creditor of a *third party* and the legacy is expressed to be in satisfaction of the debt due from such third party.

(*See titles* Free of Duty, Legacy, Succession Duty.)

Legacy Receipt.—*See title* Legacy Duty.

Legal Assets.—Property which creditors might make available in a *Court of Law* for the payment of the debts of a deceased person, such property having devolved upon the personal representative for that purpose, simply by virtue of his office.

Equitable assets are property which creditors could make available only in a *Court of Equity* for the payment of debts, either from its peculiar nature or because of some express disposition of such property.

An executor can only exercise his right of retainer out of legal assets, but otherwise the distinction between the two classes of assets has lost much of its importance as a result of recent legislation. As a result of the Land Transfer Act 1897 all real estate (except copyholds) will now be treated as legal assets, but an executor's right of retainer has not been thereby extended to real estate.

Legal Estate.—An estate in the contemplation of a Court of Law as distinguished from an equitable estate, to which a person was entitled only in the contemplation of a Court of Equity.

In the case of a trust the legal estate is vested in the trustee, and the interest of the *cestui que trust* is called an equitable estate.

" The trustee, by virtue of his legal estate, has " the right and power to receive the rents and " profits; but the *cestui que trust* is able, by " virtue of his estate in equity, at any time to " oblige his trustee to come to an account, and " hand over the whole of the proceeds."

" When a person has an estate at law and " does not hold it subject to any trust, he has, " of course, the same estate in equity, but with- " out any occasion for resorting to its aid . . . " his legal title is sufficient; the law declares " the nature and incidents of his estate, and " equity has no ground for interference." [Williams.]

Legal Mortgage.—One whereby the legal estate of the mortgaged property is in the mortgagee, the mortgagor retaining only the equity of redemption.

(*See title* Equitable Mortgage.)

Letter of Credit.—*See title* Circular Letter of Credit.

Letter of Indemnity.—A written indemnity containing an undertaking by the person or persons signing and issuing same to secure the person or persons to whom it is addressed and delivered from loss or damage which may arise on the happening or failure to happen of some specified event, or the performance or non-performance of some particular act, as the case may be. (*See title* Guarantee.)

Letter of Licence.—*See title* Deed of Arrangement.

Letter of Regret.—A letter forwarded to an applicant for stock or shares, stating that no allotment has been made to him, and at the same time returning the deposit made—so called from the fact that it is usually commenced, "*I regret to inform you*," &c.

Letter of Renunciation.—*See title* Renunciation.

Letters of Administration.—*See title* Administration, Letters of.

Lex mercatoria.—*See title* Law Merchant.

Lex non scripta.—The unwritten or common law, comprising general and particular customs and particular local laws.

Liability.—An obligation; the state of being obliged in law or equity to perform some act.

COMPANIES.

The liability of members of a joint stock company may be limited or unlimited, whilst limited liability may be subdivided into (1) limited by shares, (2) limited by guarantee. (*See* Companies (Consolidation) Act 1908, section 2.)

Limited by Shares.—Where a company is formed upon the principle that the liability of its members shall be limited to the amount unpaid on their shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares held by him. (*See title* Contributory.) But if any company registered under the Companies Acts carries on business when the number of its members is less than seven (or less than two in the case of a private company) 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 so carrying on business with fewer than seven members (or two members, as the case may be) shall be *severally liable* for the payment of the whole of the debts of the company contracted *during the time* (*query* after six months), and may be sued for the same, without the joinder in the action of any other member. (Section 115.)

A banking company, although registered as a limited company, is not entitled to limited liability in respect of its notes. (*See title* Bank of Issue.)

A limited company may, by special resolution declare that a portion of its uncalled capital shall not be called up, except in the event and for the purpose of the company being wound up. (Companies (Consolidation) Act 1908, section 59.) (*See title* Reserve Liability.)

Ordinarily the liability of a director of a company, apart from fraud and acts *ultra vires*, is that of an ordinary member (if a member) in respect of the shares he may hold, but the Companies (Consolidation) Act 1908, sections 60 and 61, provides that the liability of the directors of a limited company may be *unlimited* if so provided by the memorandum of association (as originally prepared or altered by special resolution under power contained in the articles). This provision is, however, not taken advantage of, and may be regarded as a "dead letter."

Limited by Guarantee.—Where a company is formed and registered under the Companies (Consolidation) Act 1908 upon the principle that the liability of its members shall be limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, no contribution shall be required from any member exceeding the amount so guaranteed.

Unlimited Liability.—Where a company is formed upon the principle that the liability of its members shall be unlimited, the members are, or any one of them is, liable to the full amount of their or his estate for the debts of the company.

Partnerships.

A limited partnership consists of one or more persons called "general partners" who are liable for all debts and obligations of the firm, and one or more persons called "limited partners" who at the time of entering into the partnership must contribute a fixed capital thereto in cash or property, and are not liable for the debts or obligations of the firm beyond such contribution, so long as they do not withdraw any part thereof or take part in the management of the business. (Limited Partnerships Act 1907, section 4.)

Bankruptcy.

The Bankruptcy Act 1883 (section 37) provides that:—

"'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."

(*See titles* Joint and Several Liability, Limited Company, Limited Partnerships, Postponed Creditors, Société en Commandite.)

As to the duty of an auditor in connection with the item "liabilities" in a Balance Sheet, *see title* Creditor.

License (or licence).—A grant of permission or authority given to another to do some act.

Penalties are imposed by the Licensing Act 1872 for selling or exposing for sale by retail, intoxicating liquors without a licence, but these penalties are not incurred by the following:—

(1) The heirs, executors, administrators, or assigns of any licensed person who dies before the expiration of his licence; or

(2) The trustee (of the property) of any licensed person who is adjudged bankrupt, or whose affairs are liquidated by arrangement before the expiration of his licence.

Provided that such sale or exposure for sale be made upon the licensed premises, and take place pending the holding of the special licensing session next ensuing, or the second session next ensuing when the first session takes place within 14 days after the death of the licensee, or appointment of a trustee, as the case may be.

At such session the representative of a deceased licensee, or the trustee of a bankrupt licensee, or a new tenant to whom the interest in the licence has been assigned, may apply for a grant, or, if he should so desire, the new tenant may apply for a temporary transfer *before* such session is held.

Compensation.

The Licensing Act 1904 provides (*inter alia*) that where quarter sessions refuse under that Act the renewal of an existing licence for the sale of any intoxicating liquor (other than wine alone or sweets alone) for consumption on the premises, a sum equal to the difference between (1) the value of the licensed premises (calculated as if the licence were subject to the same conditions of renewal as were applicable immediately before the passing of the Act, and including in that value the amount of any depreciation of trade fixtures arising by reason of the refusal to renew the licence), and (2) the value which those premises would bear if they were not licensed premises, shall be paid as compensation to the persons interested in the licensed premises.

(*See heading* Licence Duties, *infra*.)

The amount to be so paid shall, if an amount is agreed upon by the persons appearing to quarter sessions to be interested in the licensed premises, and is approved by quarter sessions, be that amount, and in default of such agreement and approval, shall be determined by the Commissioners of Inland Revenue in the same manner, and subject to the like appeal to the High Court as on the valuation of an estate for the purpose of estate duty, and in any event the amount shall be divided amongst the persons interested in the licensed premises (including the holder of the licence) in such shares as may be determined by quarter sessions.

Provided that in the case of the licence-holder, regard shall be had, not only to his legal interest in the premises or trade fixtures, but also to his conduct, and to the length of time during which he has been the holder of the licence, and the holder of a licence, if a tenant, shall (notwithstanding any agreement to the contrary) in no case receive a less amount than he would be entitled to as tenant from year to year of the licensed premises.

If, on the division of the amount to be paid as compensation, any question arises which the quarter sessions consider can be more conveniently determined by the County Court, they may refer that question to the County Court in accordance with rules of Court to be made for the purpose.

Any costs incurred by the Commissioners of Inland Revenue on an appeal from their decision to the High Court under this section shall, unless the High Court order those costs to be paid by some party to the appeal other than the Commissioners, be paid out of the amount to be paid as compensation.

Quarter sessions shall in each year, unless they certify to the Secretary of State that it is unnecessary to do so in any year, for the purposes of the Act impose in respect of all existing on-licences renewed in respect of premises within their area, charges at rates not exceeding, and graduated in the same proportion as, the rates shown in the scale of maximum charges set out in the first schedule to the Act.

These maximum charges vary according to the annual value of the premises taken as for the purpose of publican's licence duty, and range from £1 for premises under £15 annual value to £100 for premises of an annual value of £900 and over.

Charges payable under this section in respect of any licence shall be levied and paid together with, and as part of, the duties on the corresponding excise licence, but a separate account shall be kept by the Commissioners of Inland Revenue of the amount produced by those charges in the area of any quarter sessions, and that amount shall in each year be paid over to that quarter sessions in accordance with rules made by the Treasury for the purpose.

Such deductions from rent as are set out in the second schedule to the Act may, notwithstanding any agreement to the contrary, be made by any licence holder who pays a charge under this section, and also by any person from whose rent a deduction is made in respect of the payment of such a charge. The deductions vary

according to the unexpired term of the tenancy, and range from 100 per cent. to 1 per cent. of the charge, provided that the amount deducted shall in no case exceed half the rent.

Any sums paid under the Act to quarter sessions in respect of the charges under this section, or received by quarter sessions from any other source for the payment of compensation under the Act, shall be paid by them to a separate account under their management, and the moneys standing to the credit of that account shall constitute the Compensation Fund.

Any expenses incurred by quarter sessions in the payment of compensation under the Act, or otherwise in the exercise of their powers or the performance of their duties under the Act, and such expenses of the justices of the licensing district incurred under the Act as quarter sessions may allow, shall be paid out of the Compensation Fund, and quarter sessions, in the exercise of their powers under the Act, shall have regard to the funds available for the purpose. (Sections 2 and 3.)

Statutory Rules and Orders have been made by the Home Secretary in order to carry into effect the various provisions of the Act.

As to the treatment of receipts and payments in respect of Compensation in accounts, payments should be charged to revenue, and any moneys received in respect of "closed" houses should be treated as capital and credited against the book values of the particular houses in respect of which they are received. Any resulting deficiency or surplus is strictly speaking a capital loss or profit, as the case may be, but the prudent course would be to charge a loss against revenue, and where this principle is adopted it seems permissible to credit a realised surplus to Profit and Loss Account.

For income-tax purposes it appears to be admitted that the occupier of a licensed house (i.e., the tenant, where the house is let; and the brewer, where the house is "managed") is entitled to deduct from his gross profits as a licensed victualler such part of the compensation levy "as he is not able to throw upon his landlord." The Court of Appeal has decided (Kennedy, L.J., dissenting) that a brewer who owns or leases licensed premises acquired and held solely for the purpose of his business is further entitled to deduct from his profits as a brewer that portion of the compensation levy which falls upon him as owner or superior lessee, presumably whether the house is let to a "tied" tenant or whether it is "managed" on behalf of the brewer. (*Smith (Surveyor of Taxes) v. Lion Brewery Co.*, 1910.) This case was taken to the House of Lords. but that Court being equally divided on the question the Court of Appeal decision stands.

Licence Duties.

The Finance (1909-10) Act 1910 introduced a new scale of licence duties, including *inter alia* the following:—

(1) Licence to be taken out annually by a retailer of spirits (publican's licence)—a duty equal to *one-half* of the annual value of the licensed premises, subject to minimum duties ranging from £5 to £35 according to the population of the district in which the licensed premises are situate.

(2) Licence to be taken out annually by a retailer of beer (beer-house licence)—a duty equal to *one-third* of the annual value of the licensed premises, subject to minimum duties ranging from £3 10s. to £23 10s. according to the population of the district in which the licensed premises are situate. (First schedule to the Act.)

The annual value of any premises for the *above purposes* is to be determined in the same manner and subject to the same conditions as the annual value of the premises is determined for the purpose of a publican's licence and in the determination of that value the duty on the licence is not to be allowed as a deduction. But for poor rate assessment purposes (and other rating based thereon) the increased licence duty payable as a result of this Act must be considered in making the assessments of licensed houses. (*Rex v. Shoreditch Assessment Committee*, 1910.) Although this case applied to London only, there seems to be no reason why the principles enunciated should not apply

generally. It is the duty of the Commissioners of Inland Revenue to keep a Register showing the annual *licence* value of all fully licensed premises and all beerhouses. Such annual licence value is to be taken as the amount by which the annual value of the premises as licensed premises exceeds the annual value which the premises would bear if they were not licensed premises, those values being calculated on the same basis as that on which the amount to be paid as compensation under section 2 of the Licensing Act 1904 (*supra*) is calculated in default of agreement and approval in cases where compensation is payable under that Act, but there shall not be included in the value of the premises as licensed premises any amount on account of depreciation of trade fixtures.

The annual licence value is to be fixed and certified by the Commissioners of Inland Revenue, and a copy of the certificate stating the two annual values supplied to the licence-holder, who has a right to the like appeal as is provided under subsection 2 of section 2 of the Licensing Act 1904 (*supra*).

In estimating for that purpose the value as licensed premises of hotels or other premises used for purposes other than the sale of intoxicating liquor, no increased value arising from profits not derived from sale of intoxicating liquor shall be taken into consideration.

The licence holder and any person interested in licensed premises shall, if required by the Commissioners, make a return in such form and containing such particulars as the Commissioners may properly require for the purpose of the ascertainment under this section of the annual value or the annual licence value of the premises, subject to penalties in case of default. (Section 44.)

Where in the case of any licensed premises which are structurally adapted to be used and *bonâ fide* used for the purpose of the reception of guests and travellers desirous to sleep in the premises, or which are licensed premises structurally adapted for use, and *bonâ fide* used as a restaurant, it is shown to the satisfaction of the Commissioners that the receipts from the sale of intoxicating liquor were in the preceding year less in the case of a restaurant than two-fifths, and in the case of any other premises than one-third of the total receipts in that year from the business of all descriptions carried on by the licence holder in the premises, the duty payable under this Act in respect of the licence shall, subject to the minimum provided by this section, be a reduced duty bearing the same proportion to the full duty payable as the receipts from the sale of intoxicating liquor bear to the total receipts.

For the purpose of the calculation of receipts under this section, the year shall be the year ending the thirty-first day of March or such other day as the Commissioners may fix for any area or to meet the circumstances of a particular case or cases.

The reduced duty payable under this section may, at the option of the person by whom the duty is payable (but subject to the minimum provided by this section), be a duty of 25 per cent. on such amount as the Commissioners of Inland Revenue certify to be the annual licence value of the premises, and those Commissioners shall, on the application of any person by whom the duty is payable, certify that amount subject to appeal in manner hereinbefore provided in any case where that amount has not been determined for the purpose of the register to be prepared under this Act.

The reduced duty payable under this section shall not be less than one-thirtieth of the annual value of the premises in the case of fully licensed premises, and in any other case one-fifteenth of the full duty, but shall not in any case to which a minimum duty is applicable under Scale 3 in the First Schedule to this Act be less than that minimum duty.

The power to obtain a licence on payment of a reduced amount of duty in the case of a six-day licence and in the case of an early closing licence shall not apply where a reduced duty is payable under this section; but, in cases to which this section applies effect shall be given to the statutory enactments as to six-day and early closing licences by calculating the full duty payable as the amount of that duty reduced in the case of a six-day or early closing licence by one-seventh and in the case of a licence which is both a six-

day and an early closing licence by two-sevenths. (Section 45.)

Where the licence holder is bound by any covenant, agreement, or undertaking, or is otherwise under any direct or indirect obligation of any kind, to obtain a supply of intoxicating liquor from any person or persons, the licence holder shall be entitled, notwithstanding any agreement to the contrary, to recover as a debt due from or deduct from any sum due to any such person so much of any increase of the duty payable in respect of his licence occasioned by this Act as may be agreed upon, or in default of agreement determined by the Commissioners to be proportionate to any increased rent of the licensed premises, or increased prices of intoxicating liquor supplied, or other benefit obtained by such person by reason of any such covenant, agreement, undertaking, or obligation as aforesaid. (Section 46.)

Where it is shown to the Commissioners that the amount of any annual payments to be made, or of any capital sum which has been paid, in pursuance of conditions attached to the grant of a new on-licence for securing to the public monopoly value under section 4 of the Licensing Act 1904 exceeds the amount which should reasonably be required having regard to the increase in the duty on the licence under this Act, the Commissioners shall, after giving the justices by whom the conditions have been attached to the licence an opportunity of reporting to them on the matter, reduce in such manner as shall be just the amount of any payment to be so made, or, in cases where a capital sum has been paid, allow such a reduction from the duty to be paid for the licence as shall be just, having regard to the decrease, if any, of the monopoly value owing to the increase of the duty on the licence, but any decision of the Commissioners as to the reduction to be made under this provision shall be subject to the like appeal as that to which the determination by the Commissioners of Inland Revenue of the amount to be paid for compensation under subsection (2) of section 2 of the Licensing Act 1904 is subject under that Act. (Section 47.)

As to duties payable by clubs, *see title* Club Statement of Purchases.

Lien.—Lien may be divided into three main classes, viz.:—

(*a*) Possessory.

(*b*) Equitable, and

(*c*) Maritime.

A.—Possessory.—A right of a person who has possession of goods which belong to another to retain them whilst a debt or other money demand due or payable by the owner to the person claiming to exercise the right remains unsatisfied.

Possessory liens may be subdivided into (*a*) particular (or specific) and (*b*) general.

A *particular* lien is a common law right to retain the particular property or thing in respect or on account of which the debt or claim arises; whilst a *general* lien is a right to retain the property of another person, not only in respect of specific charges, but for a general balance of account. The law favours a particular as against a general lien, so that the former may arise out of an express or implied agreement or by implication of law, but a general lien, not existing in the common law, will only be allowed where justified by an express contract between the parties or an implied contract resulting from usage of trade. Where a general lien is claimed to exist by custom the existence and extent of such custom must be conclusively proved; moreover, it must be notorious and reasonable. (*See title* Custom.) General liens have been established in the cases of bankers, factors, insurance brokers, solicitors, wharfingers and others. Ordinarily a lien can only be commensurate with the interest of the person through whom it arises, and the debt giving rise to the lien must be actually due; but such liens as are based upon agreement between the parties may be limited or modified, or be made subject to such conditions as may be lawfully agreed upon. Possession is essential to the existence of the lien. "There can be no lien "upon any property unless it is in the possession "of the party *who claims the lien*." (Chelmsford, L.C.)

With certain exceptions, which are dealt with in their appropriate places below, a lien is a right of a passive nature, the holder being merely entitled to bare possession. He is, more-

over, bound to preserve the debtor's property, taking the same care of it as if it were his own, but he cannot add the expense of so doing to the debt, to enforce payment of which the lien is being exercised. As an instance, a shipwright, who had a lien upon a ship for his charges for repairing her, was not allowed anything for the dock charges he had incurred in retaining possession of the ship. (*See* Maritime Lien below.)

A lien may be *waived* by agreement between the parties or by some act of the party having the right to exercise it, and a lien may be lost by a surrender of the subject-matter or by the happening of some event which interrupts the creditor's possession. But the lien will not be lost where the creditor's possession is involuntarily determined; furthermore, a creditor having surrendered or lost possession of the subject-matter may revive and re-attach his lien (1) if he regains possession of (2) the same subject-matter (3) as the property of the same owner, (4) if the original debt exists, and (5) if intermediate equities have not subsequently affected the right.

A lien is not lost by reason only that the debt or demand in respect of which it was acquired cannot be enforced by action on account of any Statute of Limitation, for ordinarily the statute does not extinguish the debt but only bars the remedy by action. On the other hand, if a debt be not barred by the statutes, a creditor having a lien may none the less maintain an action for his debt.

A person holding a lien upon the property of a bankrupt or of an insolvent company which is indebted to him is, to the extent of such lien, a secured creditor for the purpose of proof in the bankruptcy or the winding-up, as the case may be.

B.—Equitable lien has nothing to do with possession, but is "a right to have a specific "portion of property dealt with in a particular "way for the satisfaction of specific claims." (*See headings* Unpaid Seller (land), and Partnership, below.)

C.—Maritime Lien.—A privileged claim upon a thing in respect of service rendered to it, or injury caused by it, in connection with some maritime adventure, which claim must be carried into effect by *legal* process in the Admiralty Court.

This right differs from the common law lien to the extent that it exists without possession (actual or constructive) of the subject upon which it is established. Salvage claims, collision claims, seamen's wages, and bottomry bonds are instances of such claims as give rise to a maritime lien.

A shipwright has not a maritime lien in respect of his claim for repairs to a ship, but if he is "in possession" of the vessel he has a possessory lien.

Accountant.—The question of an accountant's lien upon books and papers for his fees is dealt with under the heading Workman. (*See* below.)

Agent.—Ordinarily an agent has a lien upon the principal's goods for any moneys due to him by the principal, *e.g.*, an auctioneer for his charges.

Banker.—A banker has a *general* lien upon all securities deposited with him *as banker* unless there be an express contract, or circumstances showing an implied contract, inconsistent with such lien. "Bankers have a general lien on all "securities in their hands for their general "balance, unless there be evidence to show that "any particular security was received under "special circumstances, which would take it out "of the common rule." (Lord Kenyon, in 1794.)

The lien cannot attach to securities of the customer known by the banker to be affected by a trust. (*Cuthbert v. Robarts, Lubbock & Co.* (C.A. 1909.)

A distinction must be drawn between securities deposited with a banker merely for safe custody and those which are sent to be dealt with by him in his capacity of banker. In the former case the banker is an ordinary bailee and he has no lien; and where a banker receives bills from a customer upon which he would ordinarily have a lien, such right does not attach where the banker is aware that the bills do not belong to his customer. Securities may also be deposited with a banker upon such terms as to create a particular lien to the exclusion of the general lien.

A bill broker may have a lien upon bills similar that of a banker. Where the holder of a bill exchange has a lien upon it, arising either om contract or implication of law, he is deemed be a holder for value to the extent of the sum which he has such lien.

Carrier.—In the absence of any express agreeent a carrier, whether by sea or land, has a rticular lien upon the whole of the goods rried under the same agreement for the full nount of the freight or carriage. (*See ading* Warehouseman, below.)

Executor.—An executor's lien is his right to tain out of the testator's legal assets as against her creditors of equal degree the amount of y debt due to him by the deceased. (*See le* Retainer.)

Factor.—A factor has a lien upon the goods of s principal for any sum due in respect of comssion, or moneys advanced by the factor on his incipal's behalf. By the general usage of trade e lien of a factor is a general one, and he may tain any of the property of his principal until e *general balance* of the account between them satisfied. The lien, moreover, is available, not ly against the principal, but against all persons iming through him, *e.g.*:—

(1) An indorsee of the principal on the bill of lading of goods in the factor's possession;

(2) The personal representatives of a deceased principal; or

(3) The trustee in the principal's bankruptcy.

Although at common law a factor's lien was capable of transfer to another person, being garded as a purely personal right, the Factors t 1889 provides for the validity of any pledge or her disposition of goods or the documents of le thereto where the person taking under the sposition acts in good faith; and as the word pledge " includes the giving of a lien on goods ction 1 (5)) it follows that a factor may now nsfer his lien to another person.

Innkeeper.—Although an innkeeper cannot tain the person of his guest until his charges e paid, he has a right of lien upon the property ought by the guest to the inn, even though it is t ordinary travellers' luggage. The Innkeepers Act 1878 gives the innkeeper a right of enforcing his lien actively, for the innkeeper may after six weeks, provided he gives one month's notice of his intention to sell the goods (by advertising in a London, and also in a local, newspaper), lawfully cause such goods to be sold by public auction. The person so leaving the goods with the innkeeper is entitled to the surplus (if any) of the proceeds of sale, after payment of the innkeeper's debt and expenses.

Insurance Broker.—An insurance broker has a general lien upon all policies in his possession, which he has effected, for all premiums he may have paid or rendered himself liable to pay, and also for his commission and general balance. The right is a passive one as regards the policies, but if any moneys become payable in respect of them, and pass through the broker's hands, either under claims or in return of part premiums, he may deduct therefrom what is due to him.

Official Receiver.—Where a debtor is adjudged bankrupt and a trustee is appointed the Official Receiver must forthwith put the trustee into possession of all the property of the bankrupt of which he may be possessed or have custody, but the trustee must first pay to the Official Receiver any balance which may be due (1) for fees, costs, and charges properly incurred and payable, and (2) on account of any advances made by him (with interest upon such advances at the rate of 4 per cent. per annum), and the trustee must also discharge all guarantees properly given for the benefit of the estate; until such payment has been made and such guarantees have been discharged the Official Receiver is deemed to have a lien upon the estate. (Rule 318.)

The Official Receiver has the same rights in winding-up procedure against a company's assets. (Rule 161.)

No person shall as against the Official Receiver (or trustee) be entitled to withhold possession of the books of account *belonging* to a debtor, or to set up any lien thereon. (Rule 349.) This must be distinguished from the circumstances existing where the debtor has made an assignment of his book debts, which is binding as against the trustee in bankruptcy, for in such a case the

assignment of the debts carries with it the books in which they are recorded. (*Re White*, 1884.)

Partnership.—On the dissolution of a partnership every partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interest as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm, and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm.

This is a type of equitable lien (*see* definition); ordinarily it does not carry with it a right of dealing with the property in any way. During the existence of the partnership the lien affects the partnership property for the time being, and upon a dissolution it extends only to the property of the partnership as at the date of dissolution.

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is without prejudice to any other right entitled (1) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, (2) to be indemnified by the fraudulent party against all the debts and liabilities of the firm, and (3) to a lien on the surplus of the partnership assets (after paying the liabilities) for any sum of money paid by him for the purchase of a share in the partnership business and for any capital contributed by him.

Unpaid Seller.—(*a*).—*Land.*—When a binding contract is entered into for the sale of land, the equitable ownership of same vests in the purchaser, and the seller and purchaser immediately become "reciprocal trustees" for each other, the former holding the land and the latter the purchase-money in trust for the other.

The vendor has, therefore, a charge in equity upon the land for the unpaid purchase-money, irrespective of the possession of the land.

The vendor's lien is binding as against:—

(1) The purchaser.

(2) All parties deriving title under voluntary conveyance of the purchaser.

(3) Subsequent purchasers of the land *with notice*, although for value.

(4) Subsequent purchasers who have not obtained the legal estate, with or without notice.

(5) The trustee in bankruptcy of the purchaser, with or without notice. In such a case the vendor is in the position of a secured creditor, and must conform to the general rules governing proof by secured creditors.

The lien, however, is not enforceable against (1) a *bonâ fide* purchaser (2) for value (3) without notice of the lien who has (4) obtained the legal estate. A vendor's lien for unpaid purchase-money on real estate is personal property, and the liability of the purchaser to pay the purchase-money is also personal. Formerly upon the death of the purchaser, the unpaid purchase-money was payable out of the personal assets, but Locke King's Act (as amended) constitutes the purchased estate the *primary* fund for the discharge of the unpaid purchase-money unless (in the case of a testator) there is a contrary intention contained in the will. But such contrary intention is not deemed to be signified (1) by a charge of or direction for the payment of the debts due upon or out of the residuary real and personal estate, or the residuary real estate; or (2) by a general direction that the debts or that all the debts of the testator shall be paid out of his *personal estate* unless such contrary intention be further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate.

The vendor's lien is assignable, and he may assign it by parol, but as the assignee can only take subject to equities, he should immediately give notice of the assignment to the purchaser and all parties interested, including such persons as the assignee has reason to believe are negotiating for the purchase of the estate.

(*b*) *Unpaid Seller.—Goods.*—The unpaid seller of goods which are still in his possession is entitled in the following cases to retain possession of the goods until payment or tender of the price, viz.:—

(1) Where the goods have been sold without any stipulation as to credit.

(2) Where the goods have been sold on credit, but the term of credit has expired.

(3) Where the buyer becomes insolvent (that is to say, has either ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not).

The right of lien of an unpaid seller may be exercised not only by the seller but by any person who is in the position of a seller, as, for instance, (1) an agent of the seller to whom the bill of lading has been indorsed or (2) a consignor or (3) an agent of the buyer who has himself paid or is *directly* responsible for the price of the goods (the latter will include *del credere* agents, but it apparently excludes sureties).

It should be noted that a right of lien cannot arise except where the *property* in the goods has passed to the buyer; but where the possession of and property in the goods both remain in the unpaid seller, he has a right of *withholding delivery* similar to and co-extensive with his right of lien.

The right of lien is conferred by *implication of law*, but the Sale of Goods Act provides that any right which would arise under a contract of sale by implication of law may be negatived or varied by express agreement or by a course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

The unpaid seller loses his lien under the following circumstances:—

(1) When he delivers the goods to a carrier for the purpose of transmission to the buyer without reserving the right of disposal of the goods (but *see heading* Revival of Lien, below.)

(2) When the buyer or his agent lawfully obtains possession of the goods.

(3) When the buyer or his agent lawfully obtains possession of the documents of title to goods, and they are transferred by way of sale to a person who takes the documents in good faith, and for valuable consideration, the unpaid seller's right of lien is *defeated;* where, however, the transfer is not by way of sale, but only by way of *pledge* or other disposition for value, the right of lien is not altogether defeated, but can only be exercised subject to the rights of the pledgee or other transferee.

Note.—The lien is not affected by any re-sale or other disposition of the goods by the buyer unless (as above stated) (1) the documents of title are *bonâ fide* transferred, or (2) the unpaid seller has assented to the disposition.

(4) When he expressly or impliedly *waives* his right of lien.

(5) When he takes a bill of exchange, not as conditional payment, but in *satisfaction* of the price. This, however, is an unusual course, and the *onus probandi* would lie upon the buyer, that the bill was taken as an absolute discharge. (*See heading* Revival of Lien, below.)

(6) When he is estopped from exercising the right. If a vendor by word or conduct wilfully endeavours to make a person believe that his lien is satisfied, and succeeds in so doing, he will be estopped from exercising his lien as against a *bonâ fide* purchaser who has bought under the belief so induced.

(7) A lien may be lost by the operation of the "mutual credits" section in bankruptcy (1883 Act, section 38), whereby an account is to be taken of what is respectively due from one party to the other in respect of their mutual dealings, and the sum due from one party is to be set off against any sum due from the other party, and the *balance of the account*, and no more, claimed or paid on either side respectively.

Note.—Set-off is not allowed where credit has been given to the debtor with notice of an available act of bankruptcy,

but the section apparently operates regardless of the fact that one of the parties may have a lien as security for his particular debt.

Thus, suppose A. owes B. £3,000 on certain dealings, and B. owes A. £1,000 in respect of other transactions, A. having a lien on certain goods belonging to B. as security for the £1,000, B. having no security in respect of the £3,000.

In the event of A. becoming bankrupt the position would be:—

Amount owing to B.	£3,000
Amount owing by B.	1,000
Balance due to B.	£2,000

The debt in respect of which the security was held is thereby extinguished, and the trustee in bankruptcy must release the goods held under the lien and allow B. to prove against the estate for £2,000. In other words, B. cannot be called upon (1) to pay the £1,000 to release his goods, and (2) prove for £3,000 against the estate. The trustee would have a similar right of calling for the security if it were held by the solvent party, and by the operation of set-off the claim of the latter against the bankrupt's estate (in respect of which he would be holding the security) would be extinguished.

Unpaid Seller.—Revival of Lien:—

(1) Where an unpaid seller has parted with the possession of the goods *and the buyer becomes insolvent*, he has a right of stoppage *in transitu*—that is to say, he may resume possession of the goods so long as they are in course of transit, and may retain them until payment or tender of the price.

(2) Where a bill of exchange or other negotiable instrument is taken as conditional payment, as is usually the case, and the condition upon which it was received is not fulfilled by reason of the dishonour of the instrument, or otherwise, the seller becomes an *unpaid seller*, and if the goods are still in his possession the lien which was lost during the currency of the instrument thereupon revives. The lien will also revive during the currency of the instrument if and when the buyer becomes openly insolvent.

The right of lien of an unpaid seller *is not affected* by reason only of any of the following circumstances, viz.:—

(1) That the buyer has effected a sale or some other disposition of the goods unless:—

(*a*) The seller has assented thereto; in which event a subsale would defeat the right; or

(*b*) The documents of title have been lawfully transferred to the buyer, and he or his agent transfers same to a person who takes the documents in good faith and for valuable consideration; in which event the right would be defeated if the transfer were by way of *sale* but if only by way of *pledge* or other disposition for value, the right would still be exercisable, subject to the right of the pledgee or other transferee.

Summarised:—A sale without the unpaid seller's assent does not affect his lien, but a *bonâ fide* transfer of the documents of title by the buyer or his agent will either defeat or affect it according to circumstances.

(2) That the seller has obtained judgment for the price of the goods.

(3) That the seller is in possession of the goods as agent or bailee for the buyer.

(4) That the seller has made part delivery of the goods, for he may exercise his right of lien on the remainder unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

(5) That a specific appropriation of goods (still in the seller's possession) has been made to the contract, or even that the buyer's name has by mutual consent been placed upon the goods.

(6) That an action for the price of the goods is barred by the Statute of Limitations.

Unpaid Seller.—Resale.—Although ordinarily lien is a right of a passive nature and es not confer a right of sale, the unpaid ller may resell the goods and recover from e original buyer damages for any loss casioned by his breach of contract under e following circumstances, viz.:—When the ods are of a perishable nature, or where e unpaid seller gives notice to the buyer of his tention to resell, and the buyer does not within reasonable time pay or tender the price. The paid seller may also resell and claim for mages (if any) for the breach of contract, here the seller expressly reserved the right of sale in the event of the default of the buyer, and e original contract of sale is thereby rescinded. his latter right of resale is, however, the outne of the right of *withholding delivery* (not n), for as the contract is conditional, and the pperty in the goods as a consequence does not ss thereunder to the buyer (awaiting fulfilment the condition), a right of *lien* in the strict nse cannot arise.

Where an unpaid seller has exercised his right lien and subsequently sold the goods the buyer quires a good title thereto as against the ginal buyer.

Shares in Companies.—The regulations of a mpany usually provide that the company shall ve a first and paramount lien upon all the ares registered in the name of each member ether solely or jointly with others for his debts, bilities, or engagements solely or jointly with y other person, to or with the company, ether the period for the payment, fulfilment, discharge thereof shall have actually arrived not. The lien is generally extended to the idends from time to time declared in respect of shares.

A company can *alter* its articles of association as to extend the lien which it previously had on *unpaid* shares for debts due to it from its mbers to *fully paid up* shares issued before the te of the alteration. (*Allen v. Gold Reefs of st Africa* (1900), 1 Ch. 656.)

But where a Stock Exchange quotation is required for the shares, the lien must not extend to *fully-paid* shares, as the Stock Exchange Committee require fully-paid shares to be transferable without restriction.

The original Table A attached to the Companies Act 1862 provided that "the company may "decline to register any transfer of shares made "by a member who is indebted to them." Although it has been held that this provision (where applicable to any particular company) is not limited to cases where the member is indebted for calls or otherwise in respect of the particular shares proposed to be transferred, but enables the company to decline to register a transfer if the member is indebted to the company on any account whatever, the refusal to transfer is only a *passive* right giving no right of sale.

No "active lien" is conferred except as regards dividends which may be declared upon the shares, and it was customary for the regulations of companies not adopting Table A in its entirety to provide for the enforcement of the lien by conferring upon the directors the power of sale.

The revised Table A, which came into force on the 1st October 1906, and which is now scheduled to the Companies (Consolidation) Act of 1908, provides (1) that the directors may decline to register . . . . any transfer of shares on which the company has a lien, and (2) that the company shall have a lien (extending to dividends) upon every share *not being a fully-paid share*:—

(*a*) For all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share; and

(*b*) For *all* moneys presently payable to the company by the holder or his estate, if the share stands registered in the name of a single person.

The directors, where the revised Table A applies, may declare any particular share or shares exempt from the lien clause, or they may enforce such lien actively by sale, where some

amount in respect of which the lien exists is presently payable and due notice demanding payment has been given; and the proceeds of the sale are to be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) paid to the person entitled to the shares at the date of the sale.

It will be seen that the revised Table A complies with the Stock Exchange requirement that the lien must not extend to *fully-paid* shares where the particular company requires a " quotation " for such shares.

Solicitor.—A solicitor's lien for his costs may be divided into three classes, viz.:—

(1) He has a general lien for his costs, charges, expenses and general balance upon all the books and documents of his client which come into his possession in his professional capacity. But the lien does not extend to the papers and documents of third parties; a solicitor cannot, therefore, retain a deceased client's will. The lien is a dormant security, but the solicitor may assign a debt due to him for costs, with the benefit of any lien he may have for such costs.

Whilst a solicitor has a *general* lien as against his client, a solicitor acting as agent for another solicitor has also a general lien against his principal, but only a *particular* lien against the principal's client. The lien is not lost by reason of an involuntary loss of possession of the documents or by reason only that the right of action for the costs is barred by one of the Statutes of Limitation. The right of lien may, however, be excluded by express or implied agreement, and where the solicitor accepts security from a client for his costs, the *primâ facie* inference is that he intends to waive his lien. In the event of a client's bankruptcy, his solicitor, if exercising a right of lien, is a secured creditor, and is governed by the rules as to proof of debt by such class of creditors.

But the existence of a lien will n entitle a solicitor to refuse to produce fo the inspection of the trustee any document of the bankrupt in his possession. (*R Toleman*, 1880.)

(2) He has a particular lien by the comm law upon the proceeds of a judgme obtained through his exertions in favour his client for all his costs in connect with the action, and the solicitor i entitled to require that such proceeds sha pass through his hands. The lien is no lost by reason only that the right to rec ve is barred by any Statute of Limitation.

(3) Under the Solicitors Act 1860 he ma obtain a charging order for his taxe costs, charges, and expenses in reference t the suit, upon all property recovered preserved by his exertions or through h instrumentality. The charge may exte to property of any kind, including re estate, upon which latter, apart from th Act, a solicitor has no lien, the comm law right extending only to the documen and deeds relating thereto.

Although the general lien upon doc ments and the particular lien upon th proceeds of a judgment, are not affect by the fact that the right of action for th costs is barred by one of the Statutes Limitation, this Act provides that charging order cannot be made " in a " case where the right to recover pa " ment of such costs, charges, a " expenses is barred by any Statute " Limitation."

Where a company had issued debentures up a condition *inter alia* that the company could n create any mortgage or charge on its property priority to such debentures, it was held that claim of a lien by the solicitor of the compa was not thereby postponed to the claims of t debenture-holders, such lien being a right giv by law, and not a charge *created by the compa* (*Brunton's* case, 1892.)

Warehouseman and Wharfinger.—Warehouse-keepers, dock-keepers, and wharfingers have a general lien upon the goods in their possession for their rents and charges. This right has been established in their favour by long usage, but in the absence of an agreement to the contrary, they have no power of sale—merely a right of retention.

A carrier has no lien in his capacity of warehouseman unless he is expressly constituted as such, but he may remove the goods in question to a wharf or warehouse, and provided he does not allow them out of his possession or control he is deemed to hold the goods as carrier. In particular it would appear that the master of a vessel may on the default of the consignee to take delivery in reasonable time, land and warehouse the goods consigned to a foreign port, and yet retain his lien for the freight. Freighters' lien on cargoes landed at a wharf or warehouse in the United Kingdom is specially provided for by statute.

Workman.—A workman has a particular lien by common law upon goods and chattels in his possession upon which he has expended labour and skill in their improvement, to the extent of his charges for such services. Although in ordinary cases the lien is specific, in certain instances (such as some of those enumerated above) the right has been extended to a general lien as the result of the evolution of the law merchant; for upon *strict evidence* being adduced to show the existence of a general lien, such usage will be judicially noticed.

Furthermore, the right is not confined to a workman or artisan, the specific lien being allowed in favour of businesses generally, but there are instances where even a specific lien does not exist although apparently within the principle involved. In the case of agistment and in respect of the charges of a livery stable keeper, a lien is said not to exist, the reason for the latter being that the horses cannot be said to have improved by standing in the stable. The general principle, however, in certain cases appears to be that no lien can be allowed where the nature of the employment *presumes an immediate resumption* of possession by the employer and is as a consequence inconsistent with a right of retention in the employed.

The question as to whether an accountant has any lien for his fees upon the books which he has written up or otherwise expended labour upon is a difficult one, and would vary considerably with the circumstances of the case. (As to Bankruptcy *see heading* Official Receiver, *supra*.) The general opinion is that an accountant has a lien for his fees upon any *accounts* he may have prepared (as distinct from the books of a client which he may have written up), but with regard to the books, if he has a lien it is only in a limited sense. Where a particular statute or the regulations of a (limited) company expressly provide that some or all of the books shall be kept at the registered offices, it is doubtful whether an accountant could claim to have a lien on such books. Although it might be inexpedient under special circumstances to give up possession of the books until he has been paid, the accountant would probably render himself liable to damages for retaining the books in purported exercise of his lien after demand had been duly made for them. These damages might possibly be purely nominal, but the question of retention of the books by the accountant is one upon which a considerable amount of discretion should be used. (See also *Burleigh v. Ingram Clark, Lim.*, 1901; *Accountant* Law Reports, p. 65.)

Life Annuity.—An annual payment during the life or lives of one or more given person or persons.

"The *value* of a life annuity is an average "quantity deduced upon the supposition of the "life or lives in question being associated with "a number of other lives of the same ages and "the prospect of longevity, upon which similar "annuities are conceived to depend; the "mortality among the whole mass being "assumed equal to that represented by some "given table.

"The value of an annuity on a given life con-"sidered abstractedly, without reference to "others, is *totally indeterminable*; and the idea "entertained by those who regard the value of "an annuity on the life of any given age as the

" value of an annuity certain for as many years " as a person of that age is *expected to live*, is " altogether erroneous."

The value of a life annuity is ascertained upon different principles (*see title* Expectation of Life), and is generally less than the supposed value ascertained as suggested above.

For instance, according to the Carlisle Table the expectation of life of one of a class of 35 years of age is 31 years. The following table, at different rates, shows the value of an annuity of £100 for the life of a person of that age, and the " alleged " value based upon the " expectation of life ":—

Rate of Interest Employed	Actuarial Value of Annuity of £100	Value of Annuity of £100 according to Expectation of Life	Error (excess) shown by the Expectation Basis of Valuation
	£	£	£
3 %	1,843	2,000	157
4 %	1,604	1,759	155
5 %	1,412	1,559	147

The reason for this discrepancy is that the expectation of life of A. may be *e* years, but the value of an annuity of £*p* for the life of A. is *not* the present worth of £*p* per annum for *e* years, and the present value of the liability to pay £*x* on the death of A. is *not* the present value of £*x* due *e* years hence.

As an approximation of an individual case the expectation of life serves, but as a basis of valuation involving thousands of pounds it is inadmissible.

One thousand persons of 35 years of age would, according to the Carlisle Tables, live 31,000 years between them, and if interest were *entirely ignored*, it would take £31,000 to pay £1 per annum to each of them during their respective lives. But when the question of interest comes into the calculation, the expectation of life, even when used in conjunction with compound interest tables, is misleading.

Where a life assurance company is being wound up, the value of every life annuity requiring to be valued in such winding-up is to be estimated " 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, then according to " such rate of interest and table of mortality as " the Court may direct." (6th Schedule, Assurance Companies Act 1909.)

Any annuity purchased or provided by a person (since deceased) either by himself alone or in concert or by arrangement with any other person, is deemed to be property passing on the death of the deceased, within the meaning of the Finance Act 1894, to the extent of the beneficial interest accruing or arising by survivorship or otherwise upon the death of the deceased, and is liable to estate duty accordingly; provided (1) that if any consideration was paid in respect thereof to the grantor, the value of such consideration will be allowed as a deduction from the value of the property for the purpose of estate duty, and (2) that a single annuity not exceeding £25 purchased or provided by a person (since deceased) either alone or in concert with another for the life of himself and some other person and the survivor of them, or to arise on his own death in favour of some other person, is not liable to estate duty. If, in any case, there should be more than one such annuity, the first granted is alone entitled to such exemption.

Annuities are assessable for income-tax, and any person paying an annuity should deduct—and account to the Revenue for—tax on the amount of same.

Life Assurance.—A contract whereby, in consideration of certain periodical payments, called premiums, the assurer undertakes to pay to the person entitled an agreed sum upon the death of the person whose life is assured, or upon the death of one of two or more joint lives, or upon the happening of some specific event, such as the attainment of a certain age by the person whose life is assured. This last is termed " Endowment Assurance." (*See title* Insurable Interest.)

Le Assurance Companies.—Life assurance companies—or life offices—may be divided into two main classes, viz.: Proprietary and Mutual. A proprietary office has a paid-up capital upon which dividends are payable, a part only of the profits of the business being, therefore, available for distribution amongst the profit-participating policy-holders.

A mutual office has no paid-up capital, the whole of the profits of the business being distributable amongst the policy-holders. Some "mutual" offices, however, whilst substantially adhering to this principle, are constituted upon different bases as regards the mode and extent of the distribution.

In regard to Income-Tax:—

(*a*) A proprietary assurance company is liable to be assessed on all its surplus, whether distributed to policy-holders or not.

(*b*) A mutual company is not liable to assessment on its surplus.

This is, of course, subject to adjustment in respect of income by way of interest, dividends, &c., which has been received by the company and forms part of the surplus, but from which tax has already been deducted by those making the payments.

In discussing the relative merits of proprietary and mutual life offices, Mr. Wm. Schooling says:—

"Interest on capital, and dividends and bonuses to shareholders, is an important item; it raises the question whether a mutual office, or a proprietary office whose shareholders and policy-holders each receive part of the surplus, is preferable from the latter's point of view. Many people are apt to take it for granted that a mutual office must invariably be the better, but this is by no means the case; judged by the actual results obtained, it cannot be said that either proprietary or mutual offices are necessarily the better. There are instances in which the shareholders receive so large a proportion of the surplus that the bonuses are exceptionally small; but in some proprietary offices there are sources of surplus that more than compensate for the payments to shareholders. Many proprietary offices transact an exceptionally large proportion of non-participating business, in the profits of which participating policy-holders share, with the result that the profits so derived equal, if they do not exceed, the payments to shareholders. In other cases, especially when fire insurance business is transacted as well as life, the Life Assurance Account is sometimes only charged a fixed percentage of the premiums—say, 10 per cent.—for the management of the life business, and the low rate of expenditure so produced is distinctly favourable to the participating policy-holders. It may, perhaps, be added that the additional security afforded by shareholders' capital seems to attract the purchasers of annuities, and the participating policy-holders sometimes share in the profits of the annuity business. It must, however, be remembered that nearly all British life offices, whether proprietary or mutual, are so thoroughly sound that the additional security of share capital is superfluous. It thus appears that the question whether a life office is proprietary or mutual is one of entirely subordinate importance, and in selecting a life office this question plays a very small part."

Accounts:—

Copies of the annual Balance Sheet and Revenue Account of every life assurance company must be lodged with the Board of Trade as prescribed by the Act of 1909. (*See title* Assurance Companies Act 1909.)

The Balance Sheet of the company will not of itself give the precise financial position, for although it shows the amount and nature of the funds available in respect of the liabilities under the policies, &c., in force, it does not reveal the actual surplus or deficiency of the company, as the case may be. To ascertain this the "valuation returns" (in the forms prescribed by the Act of 1909) must be carefully examined.

These valuations are prepared by the actuary, and show (1) the net liability of the office under assurance and annuity transactions, and (2) the net assurance and annuity funds to meet such

liabilities, the latter agreeing with the respective amounts in the Balance Sheet made up to the same date as the valuation return. In connection with these valuations, the rate of interest assumed on investments and the mortality table adopted are of great importance, for obviously a low rate of interest will necessitate a larger amount in hand to meet the liabilities than would be the case if a higher rate of interest were relied upon; so the adoption of a high rate of mortality will result in an exaggeration of the company's liabilities.

Profits:—

The sources of profit of a life office may be summarised as under:—

(1) The gains from the adoption of a favourable mortality table, whereby less deaths occur within a given period than the number stated in the mortality table.

(2) The saving in office and establishment expenses—that is to say, the premiums are "loaded" (either arbitrarily or by percentage) to meet expenses, and a profit will arise where the actual expenditure is less than the amount so provided.

(3) The profits from interest in respect of the accumulating funds—that is, where the actual interest obtained is greater than that assumed in the previous actuarial calculations.

(4) Profits from lapses and surrenders.

(5) "Capital" profits from changing investments, &c.

Mr. H. W. Andras, F.I.A., thus refers to the accounts of a life assurance company:—

"The sources of profits or losses of a life "office (other than those arising from the "increased or decreased value of securities, "due to outside influences) are due to the "divergence of the actual *experience* year by "year from the *assumptions* upon which the "calculations are based, chiefly as to mortality, "interest, and expenses.

"The profits (or losses) from mortality in "any year arise from the actual net claims "(that is, after deducting reserves in hand) "not exceeding (or exceeding) the amount "estimated to fall in out of the net sums "assured at risk (that is, after deducting the "reserves in hand) according to the mortality "table.

"The profits from interest in the year arise "from the margin between the rate *earned* in "the year by the assurance fund, and the rate "*assumed* in the previous valuation as the "minimum rate likely to be earned in years "to come.

"The profit from expenses is the difference "between the marginal percentage *provision* "made therefor out of the premiums at the "last valuation, and the percentage of the "premiums actually *expended* during the year "in commission and expenses of manag- "ment. . . . . .

"The profits on a life assurance policy are "not, therefore, made by a sort of sinking fund "transaction, the premiums being accumulated "at compound interest until they reach the "sum assured, and after that the profit—if "that were the case, from what source would "the claims and expenses be paid in the early "years of a life office?—but they arise from "the experienced results being better each year "than the assumptions made in the calcula- "tions, those assumptions being usually made "well on the side of safety. But for what "purpose, then, you may say, are the reserves "of the office for contingent liabilities? These "reserves are necessary for the following "reasons:—Owing to the increasing cost of "assurance against death as age advances, "the risk premium charged by an office should "really increase yearly; but all ordinary life "offices (called by the Americans level- "premium companies, in contradistinction to "assessment companies) charge the same "premium throughout life in the case of an "ordinary whole-life assurance; therefore, the "excess premiums paid in the early years of "the assurance beyond the natural or risk "premium have to be reserved and accumu- "lated to provide for the excess mortality risk "beyond the level premiums paid in the later "years of the assurance. Out of those "premiums, as they are paid, a certain con- "tribution is made to the claims of the year, a "further contribution to the expenses of the "year, and the balance goes to reserve, as "stated. This complex subject of the source

" of life assurance profits has a bearing on the " fact that accountants are not expected to " certify to the profits of life assurance com- " panies; that is strictly an actuarial matter, " and necessarily so, as the contingent liabili- " ties have to be valued as well as the assets " and immediate liabilities in order to arrive " at the surplus, and these contingent liabilities " can only be estimated by an actuary. . . . " It would be difficult also for an account- " ant without actuarial knowledge to say, " in the case of a proprietary life assur- " ance company, whether the declaration of a " dividend to the shareholders is or is not " justifiable, and for this reason, in the case of " such an office valuing for the purpose of " ascertaining the surplus at longer intervals " than a year, the annual dividends are pro- " vided in anticipation out of the surplus " ascertained periodically, and are not declared " out of the annually accruing profits. In the " rare case of a proprietary life assurance com- " pany valuing annually and showing a " sufficient surplus the dividend could be " declared, of course, annually out of the " year's profits. . . . .

" *Balance Sheet.*—And now as to the " Balance Sheet, and the important question, " peculiar to the province of the auditor, as to " whether it is a full and fair Balance Sheet " properly drawn up, so as to exhibit a true " and correct view of the state of the com- " pany's affairs. It is here that an auditor " has to exercise his best judgment, and " especially as to the question of values. He " can only certify as a matter of fact to the " arithmetical valuation of the public securi- " ties, according to the daily list, on the prin- " ciples laid down by the directors, whether by " taking them at their full market price at the " close of the books (after taking off accrued " interest), or providing for fluctuations by " either deducting a percentage from the " market price or by setting up an investment " reserve fund; the former being, in my " opinion, the better plan. With regard to " other items in the Balance Sheet, I think an " auditor can only *express an opinion* after " obtaining information and reports from other " parties; for example, as regards liquid " securities not quoted in the daily list, he must " obtain the best information possible through " the company's stockbrokers as to their value; " and as to the mortgages, he should from time " to time (say every five years) ask for a " special report from a committee of the " directors on the subject, and similarly from " the actuary of the company as to the values " of any reversionary interests or life interests " purchased or mortgaged. Having these " various reports he is in a position to say that, " in his opinion, the Balance Sheet correctly " states the value of the assets; but I don't " think, in the case of a life assurance com- " pany, he can go so far as to say that it " exhibits a true and correct view of the state " of the company's affairs; that is a phrase- " ology which, it seems to me, might give too " much confidence to anyone unversed in the " technical meaning of such words. The assets " may be all good enough, but what about the " liabilities? Is there a sufficient reserve for " them on the other side of the Balance Sheet? " I have known such a state of things actually " exist, namely, the accounts and Balance " Sheet of a life assurance company duly " audited and such a certificate given, the " office being really insolvent owing to the " insufficiency of the actuarial reserves. I am " quite aware that such a certificate is not " necessarily a certificate of solvency, but many " persons think so, and therefore it is, I think, " desirable for an auditor using this form to " use qualifying words to the effect that the " Balance Sheet, in his opinion, exhibits a true " and correct view of the state of the com- " pany's affairs as regards matters of account, " and he may go on to state to what extent he " has been able to verify the values of the " assets.

" The auditor's certificate should, I appre- " hend, *contain a statement of what he has* " *done to verify the accounts*, and to satisfy " himself that they have been properly and " accurately kept; that, so far as he can say, " the assets in the Balance Sheet are not over-

" valued, and that all the securities are in safe " custody . . . . . It is impossible for a " professional accountant to express any " opinion as to the solvency of a life assurance " company, unless he is also a qualified " actuary.

" The source for that information is the " Valuation Balance Sheet of the fourth " schedule to the Assurance Companies Act " 1909, and that is usually published only once " in five years, the actuary making the valua- " tion being responsible for it. Even this can " only be of any value as evidence of solvency " when considered in the strictest connection " with the basis of valuation; that is to say, " (1) the mortality table, (2) the rate of " interest, and (3) the method of valuation " used in the calculations, and of the " sufficiency of this basis for adequate reserves " an actuary only can be a judge."

The more important items in connection with the accounts and transactions of a life assurance company may be classified as under:—

Income:—

First premiums (new policies).

Renewal premiums.

Consideration for annuities granted.

Claims on account of re-assurances.

Periodical interest and dividends from investments.

Assignment fees.

Transfer fees (if any).

Profits on changes of investments.

Expenditure:—

Premiums on re-assurances.

Claims, surrenders, and cash bonuses.

Annuities.

Expenses of management, including in addition to the ordinary commercial expenditure, medical fees, policy stamps, printing and stationery in respect of booklets, pamphlets, proposal and other forms, prospectuses, annual reports, calendars, &c.

Commissions, (*a*) new business, (*b*) renewals, (*c*) commuted.

General:—

Branch and agency returns, policy loans and repayments, investments and changes in same, capital receipts and payments in general.

Balance Sheet Items:—

Investments.

Outstanding premiums.

Outstanding interest on investments.

Balances in hands of bankers and/or agents.

Claims admitted but not paid.

(*See title* Assurance Companies Act 1909.)

Life Interest.—The beneficial interest in property, or the income therefrom, for the life of the beneficiary.

Life Tenant.—One beneficially entitled to property for life.

Lighterage.—The sum payable for the employment of craft for lightening or loading a vessel, either (1) by taking off cargo in the event of the grounding of the ship, or (2) by bringing alongside or taking away from the vessel, cargo with which it is impossible or inconvenient to deal by means of quay accommodation.

Limitation of Actions.—The various Statutes of Limitation have been passed to compel persons having rights of action to bring their actions within specified times, or in default to lose such rights. The principles involved proceed from the maxims (1) The vigilant, and not the sleepy, are assisted by the laws; and (2) it concerns the State that there be an end of lawsuits.

Lapse of time raises a presumption of payment or release, for it is not to be supposed that a creditor will wait indefinitely for payment; furthermore, it would be a hardship to require a *quondam* debtor to keep his receipts and releases beyond a reasonable period.

The statutes relating to *personal* actions merely bar the *remedy* by action, and do not extinguish any other rights attached to the particular case. *e.g.*:—

(1) A debt in respect of which a right of action is barred will nevertheless justify the continuance of a lien; and

(2) Where a debtor makes a payment to his creditor without making any appropriation of his payment, although he may owe more than one debt, the creditor may appropriate the payment to any debt he may think fit, even though a right of action in respect thereof may be barred by the Statutes of Limitation.

The statutes relative to *real* actions—that is to say, actions relating to lands—not only bar the remedy by action but extinguish all rights.

The Act of 21 James I., c. 16 (the principal Act affecting simple contracts), provides (*inter alia*) :—

That all actions of account (including, since 1856, accounts between merchant and merchant), all actions of debt grounded upon any lending or contracting *without specialty*, all actions of debt for arrearages of rent, or any of them, shall be commenced and sued within six years next after the cause of such action or suit, and not after.

Specialty debts are governed by 3 & 4 William IV, c. 42, which provides (*inter alia*) that all actions of debt for rent upon an indenture of demise, or covenant or debt upon any bond or other specialty, shall be brought within 20 years after the cause of such actions or suits, but not after; provided that nothing in the Act shall extend to any right of action given by any statute where the time for bringing such action is or shall be by any statute specially limited.

In cases of infancy, lunacy, or other disability, *at the time the right of action arises*, the period of limitation does not begin to run until the removal of the disability. Time runs against a plaintiff during his absence beyond the seas, but it is stayed in his favour should the defendant be beyond the seas; should the defendant, however, return to England, even though without the plaintiff's knowledge, and only for a very short period, time commences to run against the plaintiff from the date of such return. Where one of two or more defendants is beyond the seas, an action brought against the other defendants who are not absent will not affect the plaintiff's rights against such of the defendants as may not be immediately accessible.

The Real Property Limitation Act 1874 provides (*inter alia*) that no action shall be brought to recover land rent or money charged on land (but see *Barnes v. Glenton*, 1899, 1 Q.B. 885), rent and *legacies*, except within 12 years after the right to receive the same has first accrued to some person capable of giving a discharge therefor, or within 12 years after the last payment of principal or interest, or after a written acknowledgment, signed by the person liable or his agent, or the last of such acknowledgments, if more than one. The above applies to legacies whether charged upon land or not, and includes a share of a residue under a will (but not a share under an intestacy—20 years in such a case being still allowed). In cases of infancy, lunacy, or other disability *at the time when the right of action arises*, six years is allowed (wherein to bring the action) from the termination of the disability or from the date of death, if death occurs prior to the removal of the disability. Absence beyond the seas is not deemed a disability, and the utmost allowance for any disability is 30 years.

The Rules of the Supreme Court 1883 provide that no advantage can be taken of the Statutes of Limitation unless an issue thereon be raised by the pleadings.

The incidence of the statutes upon various classes of actions will be dealt with *seriatim* :—

Accounts.—Time runs against each item separately, in the case of *mutual* transactions debit and credit, and as regards items in a *running* or *current* account, some of which are beyond, and others are within, the limit of time allowed, the Mercantile Law Amendment Act 1856 provides that no claim in respect of any matter arising *more* than six years before the commencement of the action, shall be

enforceable by action or suit by reason only of some other matter of claim comprised in the same account having arisen *within* six years next before the commencement of the action. (*See title* Appropriation of Payments.)

Auditor.—An auditor has been granted the benefit of the Statutes of Limitation in respect of a liability for damages for breach of duty *as auditor*. (*Leeds Estate &c., Co. v. Shepherd*, 1887, 36 C.D. 787.)

Award.—All actions upon any award, where the submission is by way of specialty, must be brought within 20 years after the cause of action, and where the submission is not by way of specialty, an action thereupon must be brought within six years after the cause of action.

Banker.—The relation between banker and customer is ordinarily that of debtor and creditor, or *vice versâ*, and their ordinary dealings by way of loan or deposit are within the Act of James I, and actions thereon may be barred by lapse of time.

Bankruptcy and Liquidation (of Company).—Debts barred by any Statute of Limitation are not provable in bankruptcy or winding-up, as the case may be, but as regards debts not already barred the time ceases to run at the date of the receiving order and winding-up order respectively. The inclusion of a statute-barred debt by a bankrupt in his statement of affairs is not *per se* sufficient acknowledgment to take the debt "out of the statutes." Such an admission does not either express or imply a promise to pay, except as to part of the debt (*i.e.*, the dividend which is *presumed* to fall short of 20s. in the £), or in some qualified manner which is not a sufficient acknowledgment. (*Ex parte Topping*, 1865.) With regard to a debt due to the bankrupt, if during the continuance of the bankruptcy the trustee takes no steps to enforce the claim, and it becomes barred by the Statutes of Limitation, such claim will still be barred even though the bankruptcy be subsequently annulled.

The Companies (Consolidation) Act 1908 (section 169) provides that 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. This may be made applicable to voluntary winding-up under section 193 of that Act. (*See title* Proof of Debt.)

Bills of Exchange.—An action cannot be maintained on a bill against any party thereto after the expiration of six years from the time when the cause of action first accrued to the *then* holder against *such* party. As regards the acceptor, time begins to run from the maturity of the bill, and as regards the drawer or an indorser (generally) from the date when notice of dishonour is received.

Where a person issued a cheque by way of loan, it was held that he had no right of action against the borrower until the cheque had been cashed. (But see *Marreco v. Richardson*, 1908.)

Calls on Shares.—Section 14 of the Companies (Consolidation) Act 1908 provides (*inter alia*) that "all money payable by any member to "the company under the memorandum or articles "shall be a debt due from him to the com-"pany . . . . . and be of the nature of a "specialty debt."

Section 125 of the 1908 Act provides that the liability of a *contributory* shall create a debt 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.

Directors.—Directors being regarded as *quasi* trustees of a company, and the funds of the company being regarded as a trust fund, any misfeasance in connection with the funds is deemed a breach of trust, and the Statutes of Limitation will be no defence either to a director or his personal representatives (in the event of his death) unless the case is within the exceptions granted by the Act of 1888. (*See* Trustee, below.)

Dividends.—Frequently the articles of association of a company prescribe the period (say three or four years) after the expiration of which all unclaimed dividends are liable to forfeiture, but the Stock Exchange Committee object to any such limitation. In the absence of any such limitation in the articles of association the position appears doubtful. The moneys due

from a member are of the nature of a specialty debt (Companies (Consolidation) Act 1908, section 14), but there is no such provision in the Act relative to dividends due *from* the company. The decision in *Re Severn Railway Co.* (1896, 1 Ch. 559) would suggest that the period of limitation is six years only. (See also *Cornwall Minerals Co.*, 1897, 2 Ch. 74.)

Executors.—An executor is not compelled to take advantage of the Statutes of Limitation, but may pay statute-barred debts; and he may retain his own debt even though it be statute-barred. And this is so, even where the personal estate is insufficient, for the payments will be allowed as against the devisees of the real estate, upon which a burden may be thrown as the direct consequence of satisfying such debts. But an executor cannot pay a statute-barred debt of his testator if the Court has actually adjudged the debt irrecoverable on that account. Time runs against an executor from the date of the death of the deceased, and if the statute has begun to run *before* the death it is not stopped, whether the deceased die testate or intestate. But, where a person dies intestate and the statute has not already begun to run, it will not commence to run against the personal representatives until letters of administration have been taken out, for no cause of action can accrue until there is someone capable of suing. (*See* Trustee, *infra*.)

Legacies.—Legacies are payable a year after the testator's death, so that an action to recover same must be brought within twelve years from one year after the testator's death. With regard to a share of the residue, time runs against the residuary legatee as soon as he has the present right to receive the residue—that is to say, from the time the residue is or can be ascertained. (*See* Trustee, *infra*.)

Partner.—During the existence of a partnership, the Statutes of Limitation do not apply as between the partners, but upon the death of a partner or a dissolution of the partnership, the amount due from the surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death. This is, however, subject to any agreement to the contrary between the partners; and generally the partnership agreement provides for the payment of the amount of a deceased or outgoing partner's share either at the expiration of a fixed period after the date of the death or dissolution or in instalments at stated intervals. The claim in respect of the share of a deceased or outgoing partner is in the nature of a simple contract debt, is subject to the Statutes of Limitation, and will be barred after six years from the date or dates of the share or instalments thereof becoming payable.

Trustee.—The Judicature Act 1873 provided that no claim of *cestui que trust* against a trustee for any property held on any express trust, or in respect of any breach of such trust, should be held to be barred by any Statute of Limitation, but section 8 of the Trustee Act 1888 has effected a material alteration in this rule of law, providing, *inter alia*, that a trustee may have all rights and privileges conferred by any Statute of Limitation in the like manner and to the like extent as if he had not been a trustee, provided that in the action in which the statute is so pleaded the claim is not (1) founded upon any fraud or fraudulent breach of trust to which the trustee was a party or privy, or (2) to recover trust property or the proceeds thereof (*a*) still retained by the trustee, or (*b*) previously received by the trustee and converted to his use.

The term " trustee " in the Act of 1888 includes an executor or administrator, and a trustee whose trust arises by construction or implication of law, as well as an express trustee, but it does not include the official trustee of charitable funds; and the provisions of the Act relating to a trustee apply as well to several joint trustees as to a sole trustee.

The directors of the Lands Allotment Company applied moneys of the company to an *ultra vires* purpose, but without any fraud. As more than six years had elapsed before an action was brought, the claim against them was held to be barred by the Act of 1888. (*In re Lands Allotment Co.*, 1894, 1 Ch. 616.) (*See titles Actio personalis, &c.*, Acknowledgment of a Debt, Distress.)

Limited Administration.—Administration of the effects of a deceased person, which is limited either as to time or as to the assets to be administered.

Limited by Guarantee.—*See title* Liability.

Limited by Shares.—*See title* Liability.

Limited Company.—A company subject to the provisions of the Companies (Consolidation) Act 1908, whereby the liability of its members is limited, either (1) to the amount unpaid (if any) upon the shares respectively held by them, or (2) to the amount which they have respectively undertaken to contribute to the assets of the company. Section 2 of the Act provides that:—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 limited liability.

The last word in the registered name of any such company must be the word "limited," and such registered name must be painted or affixed to the outside of every office or place in which the business of the company is carried on, in some conspicuous position, and the full name (including the word "limited") must be engraven upon the common seal of the company, and mentioned in legible characters upon all advertisements, notices, invoices, receipts, bills of exchange, cheques, and other documents. (Companies (Consolidation) Act 1908, sections 3, 4, and 63.)

Every company incorporated outside the United Kingdom having a place of business within the United Kingdom 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. (Section 274.)

Failure to comply with the foregoing requirements renders the parties concerned liable to certain penalties.

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. (Section 282.)

Where any association is about to be formed as a limited company it may be registered as such *without* the addition of the word "limited" in its name, if it is proved to the Board of Trade that the association is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association in promoting its objects, and to prohibit the payment of any dividend to the members of the association. Companies of this class are generally restricted to the holding of not more than two acres of land. The Board of Trade may at any time revoke the licence granted to register such a company, and upon revocation the Registrar shall enter the word "limited" at the end of the name of the company upon the register. The company is entitled to written notice of the intention to revoke and must also be afforded an opportunity of being heard in opposition before the revocation takes place. (Sections 19 and 20.) (*See titles* Foreign (Incorporated) Companies, Liability, Limited Partnership, *Société en Commandite.*)

Limited Executor.—An executor whose appointment is qualified by limitations as to time or place wherein, or the subject-matter as to which, the office is to be exercised.

Limited Liability.—*See titles* Liability, Limited Company, Limited Partnership.

Limited Partnership.—The Limited Partnerships Act 1907, which came into operation 1st January 1908, effected an important change in partnership law.

Apart from this Act one person can lend money to another person or to a firm under a written contract that he shall receive a share of the profits by way of interest, but such lender is a creditor, not a partner, though his claim is postponed until the claims of other creditors are satisfied. (*See title* Postponed Creditors.)

This kind of arrangement may still be entered into, for the Act of 1907 has not affected the previously existing law except where expressly so stated.

But now persons may become limited partners provided there is *at least one general partner* in the firm.

As in the case of an ordinary partnership, there must not be more than 10 persons for banking, and not more than 20 persons for any other business.

The limited partner or partners shall, at the time of entering the partnership, contribute a sum or sums (or property valued at stated amounts) as capital, and they shall not be liable for the debts or obligations of the firm beyond the amounts so contributed; but the general partner or partners will be liable for *all debts and obligations* of the firm.

A limited partner shall not, during the continuance of the partnership, either directly or indirectly draw out or receive back any part of his contribution. If he should do so he will be liable for the debts and obligations of the firm to the amount so received back.

Note.—Presumably, if a limited partner draws profits without providing for depreciation of assets, he will be receiving back indirectly, under the name of profits, a part of his contribution.

A body corporate may be a limited partner.

A limited partner shall not take part in the management of the partnership business and shall not have power to bind the firm; but he may, by himself or his agent, at any time inspect the books of the firm, and examine into the state and prospects of the business, and may advise with the partners thereon.

If a limited partner takes part in the management of the business he becomes liable in respect of obligations incurred while he so takes part as if he were a general partner.

A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the Court, unless the lunatic's share cannot be otherwise ascertained and realised.

In the event of a dissolution the affairs of the firm shall be wound up by the general partners, unless the Court otherwise orders.

Applications to the Court to wind up a limited partnership shall be by petition under the Companies Act, and, subject to the necessary modifications which may be made by the Lord Chancellor, the provisions of the Acts and Rules relating to the winding-up of companies shall apply to the winding-up of limited partnerships with the substitution of general partners for directors.

Note.—It is conceivable that this will lead to conflict of jurisdiction as regards general partners, who would otherwise have a petition in bankruptcy presented against them.

Subject to any agreement, expressed or implied, between the partners—

(1) Differences as regards ordinary matters connected with the partnership business may be decided by a majority of the *general* partners.

(2) A limited partner may, with the consent of the general partners, *assign* his share in the partnership.

(3) The other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be *charged* for his separate debt.

(4) A person may be introduced as a partner without the consent of the existing limited partners.

(5) A limited partner shall not be entitled to dissolve the partnership by notice.

Every limited partnership must be registered by sending to the Registrar of Joint Stock Companies a statement signed by all the partners containing the following particulars—

(1) The firm-name.

(2) The general nature of the business.

(3) The principal place of business.

(4) The full name of each of the partners.

(5) The term, if any, for which the partnership is entered into, and the date of its commencement.

(6) A statement that the partnership is limited and the description of every limited partner as such.

(7) The sum contributed by each limited partner and whether paid in cash or how otherwise.

Any change made in any of the foregoing must be notified to the Registrar within seven days.

Upon registration of a limited partnership a registration fee of £2 is payable, and also an *ad valorem* stamp duty of 5s. for every £100, or fraction thereof, of the amount to be contributed by the limited partner or partners, or of any subsequent increase in that amount. Upon registration a limited partnership is entitled to have a certificate of registration.

Notice of any arrangement whereby a general partner becomes a limited partner in a firm, or whereby the share of a limited partner is assigned to any person, must be forthwith advertised in the *Gazette*, and until so advertised the arrangement shall (for the purposes of the Limited Partnerships Act) have no effect.

The Registrar shall keep a Limited Partnerships Register, which shall be open to public inspection on payment of a fee of one shilling, and copies may be obtained of documents upon payment of the prescribed fees. (*See titles* Differentiation, *Société en Commandite.*)

Lineal Consanguinity.—The relationship subsisting between persons descending in a direct line, as father, son, grandson.

Liquid Assets.—Cash and such assets as can be instantly converted into cash. To take the case of a banker, his liquid assets would consist of coin, bank notes, money at call, and readily realisable securities.

Liquidated Damages.—The amount agreed between the parties, or otherwise ascertained as payable in respect of a breach of contract or otherwise.

Sometimes a sum is specified in a contract as being the amount payable in the event of non-performance, and in such a case the sum may be either a penalty or by way of liquidated damages. If the sum named be deemed a penalty, then it is the maximum sum payable, the actual amount recoverable being proportionate to the actual damage sustained. Where the sum named is considered as being by way of liquidated damages, then such sum will be recoverable in the event of breach. But it is a question of construction whether the sum named is one or the other, and the Court will not necessarily follow the description given in the contract, for if the sum is, in fact, a penalty, it will be treated as such, although specified in the contract as being by way of liquidated damages.

Where a *fixed sum* is expressed as being payable under the following circumstances, it is deemed to be, and is treated as, a penalty and not as liquidated damages:

(1) Where the value of the subject-matter is known, and the sum specified as payable in the event of breach is in excess of such value.

(2) Where there are several terms in the contract, some of which are capable of present valuation, the others being of uncertain value, and the specified sum is payable in the event of the breach of *any* of the terms.

(3) Where there are several terms in the contract, and "some may occasion serious and others trifling damage." (*See title* Unliquidated Damages.)

Liquidator.—

COMPULSORY LIQUIDATION.

Appointment.
Security.
Gazette notice.
Remuneration.
Committee of Inspection (special article).

Powers:—
Exercisable without sanction of the Committee or Court.
Exercisable with such sanction.
General.
Control by Board of Trade.
Duties.

Creditors and Contributories (rights of):—
As regards meetings.
As regards accounts.
Dividends.
Resignation.
Removal.
Release.

LIMITED PARTNERSHIP.

General.

VOLUNTARY LIQUIDATION.

Appointment.
Security.
Gazette notice.
Remuneration.
Powers.
Duties.
Liability.
Removal.

WINDING-UP UNDER SUPERVISION.

General.

Note.—The accounts of liquidators are treated in a special article entitled "Liquidators' Accounts." (*q.v.*)

A liquidator, in the special sense in which the term is now generally applied, is the officer appointed to wind-up a joint stock company, by (1) realising the assets, and making calls on contributories where necessary and outstanding, (2) paying the costs and expenses of winding-up, (3) paying the liabilities of the company, and (4) distributing the balance (if any) amongst the members, or otherwise adjusting their respective rights *inter se*.

The same title has been bestowed upon the officer appointed by the Court in cases where application is made to the Court to wind-up the affairs of a limited partnership. (*See title* Limited Partnership.)

COMPULSORY LIQUIDATION (OR WINDING-UP BY THE COURT.)

The liquidator is appointed by, and is the agent of, the Court, and if the company being wound up is insolvent, the liquidator is trustee for the creditors only.

Appointment.

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.

The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up. (The appointment may be made on the application of a creditor, contributory, or the company. (Winding-up Rules 1909, Rule 31.))

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. (See heading Security.)

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.

A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

In a winding-up the Official Receiver shall by virtue of his office be the liquidator during any vacancy.

Note.—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 any vacancy shall be filled. (Winding-up Rule 55.)

A liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of the Liquidator, and, where the Official Receiver is liquidator, by the style of the Official Receiver and Liquidator, of the particular company in respect of which he is appointed, and not by his individual name.

The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification. (Companies (Consolidation) Act 1908, section 149.)

When a winding-up order has been made by the Court 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.

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.

In case a liquidator is not appointed by the Court the Official Receiver shall be the liquidator of the company. (Section 152.)

The decision of the creditors and contributories is determined by an ordinary resolution as defined by Rule 128 of the Winding-up Rules 1909. (*See title* Resolution.)

The meetings of creditors and contributories shall be held within 21 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. (Winding-up Rules 1909, Rule 115.)

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. (Rule 116.)

The Official Receiver shall summon the meeting 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. (Rule 123.)

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. (Rule 118.)

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 seve

das' notice of the time and place appointed for eh meeting. The notice may either be dvered personally or sent by prepaid post-letter as may be convenient. It shall be the duty of ev y director or officer who receives notice of sh meeting to attend if so required by the Oicial Receiver. (Rule 119.)

he Official Receiver shall also, as soon as pticable, send to each creditor mentioned in th company's statement of affairs, and to each pson appearing from the company's books, or otrwise, to be a contributory of the company, a smary of the company's statement of affairs, inuding the causes of its failure, and any ervations thereon which the Official Receiver m think fit to make. The proceedings at a mting shall not be invalidated by reason of any smary or notice required by these rules not hing been sent or received before the meeting. (ule 120.)

he meetings shall be held at such place as is the opinion of the Official Receiver most conient for the majority of the creditors or conributories, or both. Different times or places, or bh, may, if thought expedient, be named for the tings of creditors and for the meetings of tributories. (Rule 125.)

he Official Receiver or some person nomid by him shall be the chairman at the meet-. (Rule 127.) A person shall not be tled to vote as a creditor unless he has duly ged with the Official Receiver not later than th time mentioned for that purpose in the notice vening the meeting a proof of the debt which claims to be due to him from the company. (ule 133.)

Where it appears to the satisfaction of the rt that any solicitation has been used by or behalf of a liquidator in obtaining proxies or procuring his appointment as liquidator, except by the direction of a meeting of creditors or contributories, the Court, if it thinks fit, may order th no remuneration shall be allowed to the pson by whom or on whose behalf the solicitati was exercised, notwithstanding any resolutio of the committee of inspection or of the editors or contributories to the contrary. (Rule 1.)

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. (Rule 146.)

Security.

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. (Section 149, subsection 3.)

The following are the rules as to security:—

(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. (The security may take the form of (*a*) a bond with one or more sureties, (*b*) a sum deposited in Court, or (*c*) the bond of an approved guarantee society.)

(2) It is not necessary that security 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 liquidator.

(3) The Board of Trade 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 (but security cannot, in any case, be entirely dispensed with).

(4) The cost of furnishing the required security by a liquidator, including any premiums which he may pay to a guarantee society, must be borne by him

personally, and *not* charged against the assets of the company as an expense incurred in the winding-up.

Note.—This differs from bankruptcy procedure, inasmuch as a trustee in bankruptcy may, with the consent of the committee of inspection, charge the premium on his guarantee bond against the estate.

(5) The certificate of the Board of Trade, that a liquidator has given security to their satisfaction, is filed with the Registrar.

(6) If a liquidator (*a*) fails to give the required security within the time stated for that purpose in the order appointing him or within any extension thereof, or (*b*) having given security fails to keep up such security, the Official Receiver reports such failure to the Court, who thereupon may rescind the order appointing the liquidator, or remove him, as the case may be, making such order as to costs as the Court may think fit. (Rules 57 and 58.)

Gazette Notice.

A copy of the order of the Court appointing a liquidator must be transmitted to the Board of Trade by the Official Receiver, and the Board of Trade, 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 against the assets of the company. The appointment of a liquidator or committee of inspection may also be advertised in such other manner as the Court may direct.

Remuneration.

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. (Section 149, subsection 8.)

The remuneration of a liquidator, unless th Court otherwise orders, is fixed by the committe of inspection, and must be in the nature of commission or percentage, of which one part sha be payable on the amount realised after deduc ing the sums (if any) paid to secured creditor (other than debenture-holders) out of the proce of their securities, and the other part on th amount distributed in dividend. If the Board Trade is of opinion that the remuneration, fixed by the committee of inspection, is unne sarily large, the Board of Trade may apply to th Court and thereupon the Court shall fix th amount of the remuneration. Where there is n committee of inspection, the remuneration of th liquidator, unless the Court otherwise orders, fixed in accordance with the scale of fees and p centages payable for realisations and distribu tions by the Official Receiver as liquidat (Rule 154.)

Note.—Assets realised by the Official Receiv and moneys expended in carrying on the busin must be deducted from the gross realisations.

The liquidator of a company is not entitle to receive out of the estate any remuneration f services rendered to the company, except th remuneration to which under the Act an Rules he is entitled as *liquidator;* in pa ticular, he must not make any arrangement f or accept from any solicitor, auctioneer, or an other person connected with the company, employed in or in connection with the winding-up any gift or pecuniary or other consideration, n shall he make any arrangement for giving up a part of his remuneration to any such solicito auctioneer, or other person. (Rule 155.)

Where no personal unfitness is shown, a pr fessional liquidator will not be removed so th another may be appointed who will act gratu tously (*Civil Service, &c., Stores*, 1884), but l may be removed on the petition of a lar majority of unsecured creditors, who allege th a saving of expenses and a better realisation the assets will accrue. (*In re Association Land Financiers*, 10 Ch.D. 269.)

The claim for remuneration of a liquidator in voluntary winding-up, whose appointment w

invalid, was rejected, except in so far as the company had accepted the benefit of his services irrespective of the liquidation, and except in so far as the liquidator under the compulsory winding-up had availed himself of such services. (*Allison, Johnson & Foster, Lim.*, 1904.)

Committee of Inspection.

(*See title* Committee of Inspection.)

Powers.

Note.—In all cases where more persons than one are appointed to the office of liquidator, the Court shall declare whether any act required or authorised to be done by the liquidator is to be done by all or any one or more of such persons. (Section 149, subsection 4.)

1. *Exercisable without the sanction of the Committee of Inspection or the Court:*—

The liquidator in a winding-up by the Court shall have power,

(*a*) To sell the real and personal property, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:

(*b*) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other 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.

The exercise by the liquidator in a winding-up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Where a liquidator is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him. (Section 151.)

The liquidator may also apply to the Court for directions in relation to any particular matter arising in the winding-up of the company (section 158), and he may apply for the examination of any director, manager, or other officer who has misapplied the moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company. (Section 215.)

The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes on all matters relating to the winding-up, 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. (Section 158.)

B. Exercisable only with the sanction of the Court or of the Committee of Inspection:—

The liquidator in a winding-up by the Court shall have power, with the sanction either of the Court or of the committee of inspection,

(*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:

Note.—The word "necessary" here means "highly expedient under all the circumstances of the case," and is not synonymous with "beneficial." (*Re Wreck Recovery Co.*, 1880, 15 Ch.D. 353.)

A winding-up order operates as notice of dismissal to the company's servants, but if the liquidator carries on the business and employs them in the business of the company, it would appear that the liquidator re-engages them, and if no fresh arrangements are made, that the old terms apply.

(*c*) 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. (Section 151.)

The liquidator may also with a like sanction:—

(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. (Section 214.)

(iv) Make calls upon the contributories. (Section 173.) (*See title* Calls.)

But the exercise of these powers, as in the case of those exercisable without sanction, 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 them. (Sections 151 and 214.)

A liquidator has no power of disclaimer of onerous property, for the property of the company does not *vest* in him (as in the case of a trustee in bankruptcy), nor does he by taking or retaining possession of leaseholds of the company become *personally* liable for the rents and covenants thereof, for the occupation is not that of the liquidator, but of *the company*, whose "ministerial officer" the liquidator is, while the company is in existence. (*Wearmouth Co.*, 19 Ch.D. 640.)

If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by order of the Court, 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. (Section 158.)

Subject to the provisions of the Companies (Consolidation) Act 1908 (and the Rules thereunder), the liquidator shall use his own discretion in the management of the estate of a com

any being wound up by the Court and its distribution among the creditors. (*Ibid.*)

The liquidator 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. (Rule 75.)

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. (Rule 76.)

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Control by Board of Trade.

The Board of Trade shall take cognisance of the conduct of liquidators of companies which are being wound up by the Court, 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.

The Board may at any time require any liquidator of a company which is being wound up by the Court 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. (Section 159.) (*See title* Liquidators' Accounts.)

Duties.

The duties of a liquidator are (*a*) to take possession of the property of the company, protect it, and in due course realise same; (*b*) to pay the costs, charges, and expenses of realisation and liquidation; (*c*) to pay the debts and liabilities of the company in due order of priority (but *pari passu* as regards classes of equal degree), so far as the funds will allow; and (*d*) to distribute the surplus, if any, amongst the contributories, in accordance with their respective rights.

The more important duties involved in carrying out the above are:—

(1) The liquidator must, with all convenient speed, after his appointment, settle the list of contributories of the company, and must appoint a day for that purpose. (*See title* Contributory.)

Note.—The liquidator shall not without special leave of the Court rectify the Register of Members (section 173), but *see* Powers of a Liquidator under Voluntary Winding-up (*below*).

(2) Deal with the creditors' proofs. (*See title* Proof of Debt.)

(3) Summon meetings of the creditors or contributories at such times as the creditors or contributories by resolution 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. (Section 158.)

(4) Keep and render proper accounts as prescribed. (*See title* Liquidators' Accounts.)

(5) Pay all moneys received as liquidator into the Companies Liquidation Account at the Bank of England, and not into his private banking account. If any liquidator retains for more than ten days a sum exceeding £50, or such other amount as the Board of Trade in any particular case may authorise him to retain, he shall (1) pay interest on the amount so retained in *excess* at the rate of 20 per cent. per annum; (2) be liable to disallowance of all or such part of his remuneration as the Board of Trade may deem just; (3) be

liable to be removed from his office by the Board; and (4) be liable to pay any expenses occasioned by reason of his default.

But a liquidator is not subject to the above penalties where he can explain the reason for retaining any excess balance to the satisfaction of the Board of Trade. (Section 154.) *See title* Local Bank Account.)

(6) The liquidator must give the Official Receiver such information, and such access to and facilities for the inspection of the books and documents of the company, and generally must afford such assistance as may be necessary to enable the Official Receiver to perform his duties. (Section 153.)

(7) Subject to the provisions of the Act, the liquidator shall, in the administration of the assets of the company, and in the distribution thereof amongst 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 so 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. Subject to the foregoing, the liquidator may use his own discretion in the management of the estate and its distribution among the creditors (? and others entitled thereto). (Section 158.)

Creditors and Contributories, Rights of.

A. As regards Meetings.—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. (Section 158.)

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 to ascertain the wishes of creditors or contributories, the liquidator may himself from time to time summon, hold, and conduct meetings of the creditors or contributories for the purpose of ascertaining their wishes in all matters relating to the winding-up. (Rule 121.)

The 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. (Rule 123.)

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. (Rule 124.)

The meeting shall be held at such place as is in the opinion of the 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. (Rule 125.)

The costs of summoning a meeting of creditors r contributories at the instance of any person ther than the Official Receiver or liquidator hall be paid by the person at whose instance it s summoned, who shall before the meeting is ummoned deposit with the Official Receiver or quidator (as the case may be) such sum as may e required by the Official Receiver or liquidator s security for the payment of such costs. The osts shall be repaid out of the assets of the com- any if the Court shall by order, or if the credi- ors or contributories (as the case may be) shall y resolution, so direct. (Rule 126.)

Where a meeting is summoned by the Official Receiver or the liquidator he or someone nomi- ated by him shall be chairman of the meeting. t every other meeting of creditors and con- ributories the chairman shall be such person as he meeting by resolution shall appoint. (Rule 27.)

At a meeting of creditors a resolution shall be eemed to be passed when a majority in number nd value of the creditors present, personally or y proxy, and voting on the resolution, have oted in favour of the resolution, and at a meet- ng of the contributories a resolution shall be eemed to be passed when a majority in number nd value of the contributories present, person- lly or by proxy, and voting on the resolution, ave voted in favour of the resolution, the value f the contributories being determined according o the number of votes conferred on each con- ributory by the regulations of the company. Rule 128.)

The Official Receiver or (as the case may be) he liquidator shall file with the Registrar a opy, certified by him, of every resolution of a neeting of creditors or contributories. (Rule 29.)

Where a meeting of creditors or contribu- ories is summoned by notice, the proceedings nd resolutions at the meeting shall, unless the Court otherwise orders, be valid, notwithstand- ng that some creditors or contributories may ot have received the notice sent to them. Rule 130.)

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 adjourn- ment another place is specified or unless the Court otherwise orders. (Rule 131.)

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 contribu- tories, 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 con- tributories is not present or represented the meet- ing 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 21 days. (Rule 132.)

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 proceed- ings, 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 pro- ceedings until he has paid the same. (Rule 152.)

B. As regards Accounts.—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. The cost of printing and posting such copies shall be a charge upon the assets of the company. (Rule 173.)

Where an order has been made for winding-up a company by the Court, 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. (1908 Act, section 221.)

A liquidator, before making application to the Board of Trade for his release, shall give notice of his intention so to do 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. (Rule 197.)

Dividends.

Not more than two months before declaring a dividend the liquidator 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 be not less than 14 days from the date of such notice.

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.

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 (the above-mentioned) 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. (Rule 150.)

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, which list shall be in the prescribed form. 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. 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 prescribed form, which shall be sufficient authority for payment of the dividend to the person therein named. (Rule 150.)

The payment of dividend 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 Board of Trade will require *ten* days' notice to enable them to prepare the cheques or money orders for dividends. As imperfect or inaccurate lists would cause considerable inconvenience and increased labour, great care should be exercised in the preparation of them, and in all cases of payment to executors, trustees, representative officials, &c., the name or names should be inserted in the list.

The several payees 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 or money orders remaining in hand to the Accountant-General to the Board of Trade.

If the dividend has been paid through a special bank, the liquidator will be required, at the expiry of six months from the date of the declaration of a dividend, to forward to the Comptroller of the Companies Department, 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. (Board of Trade Regulations, 1909.)

The liquidator should make careful provision before declaring a *final* dividend for the various expenses incidental to the audit of his accounts and to his application for release.

Resignation.

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. (Rule 162.) (But *see heading* Release.)

Removal.

A liquidator may be removed by the Board of Trade (1) for retaining a sum exceeding £50 for more than ten days, unless he can explain such retention to the satisfaction of the Board of Trade (section 154), and (2) where he is not faithfully performing his duties and duly observing all the requirements imposed upon him by statute, rules, or otherwise, with respect to the performance of his duties. A liquidator may also be removed by the Court, (1) " on cause shown " (section 149), and (2) for failure to keep up his security. (Rule 58.)

If a receiving order is made against the liquidator he shall thereby vacate his office, and his vacation shall operate as a removal. (Rule 163.) (But *see heading* Release.)

Release.

When the liquidator of a company which is being wound up by the Court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and 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.

Note.—A liquidator, before making application to the Board of Trade for his release, shall give notice of his intention so to do 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. (Rule 197.)

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 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.

Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office. (Section 157.)

Where 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* (5s.), which he may charge against the company's assets. (Rule 197.)

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. (Rule 175.)

The following are the documents which the liquidator should forward to the Board of Trade on making application for release, in addition to those required in connection with the final audit:—

(1) Formal application for release.

(2) Affidavit verifying postage of notice of intention to apply for release to all creditors who have proved their debts, and to all contributories, with a copy of the notice as an exhibit. A 2s. winding-up stamp to be attached to the affidavit.

(3) Certificate by committee of inspection (if any) as to realisation of all reasonable assets.

Note.—If the liquidator certifies that all assets have been realised, this certificate will not be required.

(4) Form of notice of release for insertion in *Gazette*. A 5s. winding-up stamp to be attached.

(5) Cheques for unclaimed dividends (if any).

(6) Statement of dividend (or dividends) declared during last six months, distinguishing between those claimed and unclaimed.

Note.—There is no provision in company liquidation, as in bankruptcy, for a fee to the Board of Trade on the application for release.

LIMITED PARTNERSHIP.

Applications to the Court to wind up a limited partnership are to be by petition under the Companies Acts 1862, *et seq.*, now Companies (Consolidation) Act 1908, and the provisions thereof relating to the winding-up of companies by the Court are, subject to such modifications (if any) as the Lord Chancellor, with the concurrence of the President of the Board of Trade, may by rules provide, to apply to the winding up by the Court of limited partnerships, with the substitution of general partners for directors. (Companies (Consolidation) Act 1908, section 208.) Rules were made and issued accordingly entitled "The Limited Partnerships (Winding-up) Rules 1909." (*See title* Winding-up.)

VOLUNTARY LIQUIDATION.

Appointment.

When a company has resolved by valid resolution to wind up voluntarily,

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:

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:

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. (Companies (Consolidation) Act 1908, section 186.)

A voluntary liquidator may be appointed by the company in general meeting, by (*a*) ordinary, (*b*) extraordinary, or (*c*) special resolution. The resolution appointing a liquidator cannot, however, be effectively passed until *after* a valid and effective resolution to wind up has been passed, *i.e.*, at the second meeting in the case of a special resolution to wind up, but a liquidator may be appointed at the meeting at which the resolution to wind up is passed, although the notice of that meeting does not refer to the intention so to appoint (*Oakes v. Turquand*, L.R. 2 H.L. 325); it is usual, however, to give notice of the proposed appointment, and where the name of a proposed liquidator was inserted in the notice and resolution and another person was appointed at the meeting, the appointment was held to be a valid one. (*Re Trench Tubeless Tyre Company*, 1900.)

The liquidator must be a person who will act *independently*. Where it appeared that the liquidator in the voluntary winding-up of a company had an intimate business connection with several of the directors of the company who were also directors of other companies, between which and the company in question there had been dealings requiring investigation, the Court made an order removing him from the office, and appointed another liquidator in his place. (*In re Charterland Goldfields, Lim.*, 1909.)

Note.—The voluntary winding-up of a company shall not bar the right of any creditor or contributory of such company to have it wound up by or under the supervision of 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. (*See titles* Execution, Petition to Wind up a Company.) 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. (Sections 197, 198, and 199.)

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.

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. (Section 187.)

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.

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.

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.

No appeal shall lie from any order of the Court upon an application under this section.

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 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. (Section 188.)

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.

For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

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. (Section 189.)

If from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator.

The Court may, on cause shown, remove a liquidator, and appoint another liquidator. (Section 186.)

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.

Any act done by creditors in pursuance of any such delegated power shall have the same effect

s if it had been done by the company. (Section 90.)

Security.

There is apparently no necessity for a liquidator in voluntary winding-up to give security, but the terms of his appointment may require him to do so.

Gazette Notice, &c.

Notice of any special or extraordinary resolution passed for winding up a company voluntarily must be given by advertisement in the *London Gazette*. (Section 185.) Notice of a special or extraordinary resolution to wind up must, in common with any other special or extraordinary resolutions, be filed with the Registrar of Joint Stock Companies within 15 days. (Section 70.)

Notice of the meeting of creditors to be called by every liquidator appointed by a company shortly after his appointment must also be gazetted. (*See heading* Appointment, *above*.)

Remuneration.

The remuneration may be fixed either by the company, the creditors or a committee of them, or by the Court.

1. By the Company:—

In the ordinary course the remuneration would be sanctioned by the company in general meeting. (Section 186.) In practice, where it is possible to judge the nature and extent of the services necessary, the remuneration is sometimes fixed at the time of the liquidator's appointment, but it may be arranged at any time during the progress of, or at the conclusion of, the winding-up. Where the amount or basis has not been fixed, the liquidator usually himself assesses the amount, and inserts the item in the account which he must present to the members for approval at the final meeting. It need not necessarily be based by means of a percentage, as in compulsory liquidation, but may be a lump sum.

2. By the Creditors:—

In the event of the contributories delegating the power of appointing a liquidator, to the creditors, or to a committee of creditors (section 190), the creditors (or committee) would as a consequence fix the remuneration.

Note.—Where the company is insolvent, the remuneration is a matter which more nearly affects the creditors than the contributories, and in practice any committee of creditors appointed in pursuance of section 188 would always be consulted.

3. By the Court:—

Any contributory or creditor dissatisfied with the remuneration of the liquidator could apply to the Court thereon under the provisions of section 193, and in difficult cases, where it has not been fixed by the members, and the liquidator cannot obtain a quorum at the final meeting to pass his account, it would afford him considerable protection if he himself applied to the Court to have the amount fixed.

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. (Section 196.)

Note.—No provision is made for the priority of costs *inter se*, as in the case of winding-up by the Court.

Powers.

Note.—Upon the appointment of the liquidator all the powers of the directors cease except so far as the company in general meeting, or the liquidator, may sanction the continuance of such powers. (Section 186.)

A.—The liquidator in a voluntary winding-up may without the sanction of the Court exercise all the powers under the Companies (Consolidation) Act 1908 given to a liquidator in a winding-up by the Court (section 186), viz.:—

(1) Bring and defend actions.

(2) Carry on the business of the company, but only so far as may be necessary for the beneficial winding-up of the same.

(3) Sell the property of the company.

(4) Do all necessary acts, execute deeds, and use the company's seal.

(5) Prove and draw dividends in the bankruptcy of any contributory.

(6) Draw or accept and issue bills on behalf of the company.

(7) Take out letters of administration to any deceased contributory.

(8) Do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Note.—The nature and extent of the above powers is stated more fully in connection with Compulsory Liquidation (*above*).

B.—The liquidator may exercise the powers of the Court of settling the list of contributories, and any list so settled is *primâ facie* evidence (only) of the liability of the persons named therein as contributories. (Section 186.) (*See title* Contributory.)

C.—The liquidator may make calls (section 186), but his remedy for enforcement is either by action or by application to the Court. (*See title* Calls.)

D.—The liquidator (or any contributory or creditor) of the company 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. (Section 193.)

E.—The liquidator may from time to time, during the continuance of the winding-up, 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. (Section 194.)

The following powers (*inter alia*) are exercisable only with the sanction of the company:—

By *extraordinary* resolution:—

(1) Pay any classes of creditors in full.

(2) Make compromises with creditors or persons claiming to be creditors.

(3) Make compromises with contributories in respect of calls or liability to calls, and with debtors in respect of any sums due to the company.

(Section 214.)

A compromise by the voluntary liquidator of a company of a claim by the company against a third party was held to be binding on the company, notwithstanding that it had not been sanctioned by an extraordinary resolution under section 160 of the Companies Act 1862, now section 214 of the Consolidation Act 1908. (*Cycle Makers' Co-operative Supply Company v. Sims*, 1903, 1 K.B. 477.)

By *special* resolution:—

Sell or transfer the whole or part of the company's business to another company, in consideration of shares, policies, or other like interests in such other company for the purpose of distribution among the members of the company being wound up. This is subject to the resolution receiving the sanction of the Court in the event of an order being made within a year for winding-up by or subject to the supervision of the Court. (Companies (Consolidation) Act 1908, section 192.) (*See title* Amalgamation.)

F.—The liquidator may sanction transfers of shares made after the date of the commencement of the winding-up (section 205), and can rectify the Register of Members so far as may be necessary to give effect to such transfers. (*Re National Bank of Wales*, 1897.) The liquidator cannot, however, alter the status of a contributory. (Section 205.)

Note.—Where several liquidators are appointed, every power given by the Companies Act may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination, by any number not less than two. (Section 186.)

Duties.

Apart from the formal compliance with rules and regulations, the duties of a liquidator in voluntary winding-up are similar to those of a liquidator under compulsory liquidation, but the

former has greater individual powers than the latter (as explained under the heading Powers).

The duties may be briefly stated as under:—

(1) To take possession of the property, books, and documents of the company, to settle the list of contributories, to wind up the affairs of the company, and to realise the assets.

Note.—The liquidator cannot displace a receiver appointed by the debenture-holders or their trustees. He is entitled, however, to call upon the receiver for an account.

(2) To advertise for claims.

(3) To pay the debts of the company and to adjust the rights of the contributories amongst themselves. (Section 186.)

(4) To keep and render proper accounts in the manner prescribed. (*See title* Liquidators' Accounts.)

(5) To summon a general meeting of the company at the end of each year to report upon the winding-up, in the event of the liquidation continuing for more than a year. (Section 194.)

(6) To summon a final general meeting of the company as soon as the affairs of the company are fully wound up (whether the liquidation has continued for more than a year or not), for the purpose of laying his accounts before the meeting and of giving his explanations thereof. (Section 195.)

Note.—The final meeting must be called by advertisement specifying the time, place, and object of such meeting, and such advertisement shall be published in the *London Gazette* one month at least previously to the meeting. (Section 195.)

(7) Within one week after such final meeting to make a return to the Registrar of Joint Stock Companies of its having been held, and of the date on which same was held. The Registrar, on receiving such return, shall forthwith register it. On the expiration of three months from the *registration* of such return the company is deemed to be dissolved. (Section 195.) (But *see infra.*)

Note.—If the liquidator makes default in respect of such return he is liable to a penalty.

Where the final meeting return has been registered 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 (section 195), and, even where the dissolution has taken place, the Court may at any time within two years of the date of the dissolution on a similar application make an order declaring the dissolution to have been *void*, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved. The person on whose application the order was made must file with the Registrar an office copy thereof within seven days. Penalty in case of default, five pounds per day. (Section 223.)

Liability.

It is the duty of the liquidator to find out from the books and papers of the company and from the statement of affairs who are the creditors of the company, and if any creditor omits to put in his claim the liquidator should communicate with him. Section 186 of the Companies (Consolidation) Act 1908 imposes a statutory duty on the liquidator to pay the debts of the company *pari passu*, and, subject thereto, unless the articles otherwise provide, to distribute the property of the company amongst the members; and whilst the liquidation continues a contributory or creditor can apply under section 193 of the Act to the Court for relief in respect of his rights. When the company is dissolved the statutory remedy is gone, unless the dissolution is declared void under section 223 of the Act (see above), but the duty of the liquidator remains, and a contributory or creditor has a remedy at common law for injury

caused to him by a breach of the liquidator's statutory duty. (*Pulsford v. Devenish*, 1903.) (*See title* Misfeasance.)

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Removal.

The Court may, on cause shown, remove the liquidator and appoint another liquidator to act in a voluntary winding-up. (Section 186.)

———

WINDING-UP UNDER SUPERVISION OF THE COURT.

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 (to the one appointed for the purposes of the voluntary winding-up).

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.

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. (Section 202.)

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 the Act, namely, those relating to:—

(*a*) Statement of Affairs (Section 147).
(*b*) Official Receiver's Report (Section 148).
(*c*) Appointment of Liquidator (Section 149).
(*d*) First Meeting of Creditors and Contributories (Section 152).
(*e*) Regulations as to Books, Accounts, Banking of Moneys, Audit, Control of Liquidator, Release of Liquidator, &c. (Sections 153 to 159).
(*f* Committee of Inspection (Section 160).
(*g*) Special Manager (Section 161).
(*h*) Receiver (Section 162).
(*i*) Delegation to Liquidator of certain Court powers (Section 173).
(*j*) Public Examination of Directors, &c. (Section 175).

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, and the exercise of all other powers, be deemed to be an order for winding-up by the Court. (Section 203.)

The remuneration of the liquidator when the winding-up is under the supervision of the Court is fixed by the Court and not by the members of the company.

Liquidators' Accounts.—

WINDING-UP BY THE COURT.

Books.—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. (Winding-up Rules 1909, Rule 166.)

With the exception just referred to, but subject always to the control of the Court, any creditor or contributory may, either personally or by his agent, inspect the books and records of the liquidator. (Companies (Consolidation) Act 1908, section 156.)

Where an order has been made for winding-up a company 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. (Section 221.)

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 as to Trading Accounts) enter from day to day the receipts and payments made by him. (Rule 167.)

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 amounts of the receipts and payments on such Trading Account. (Rule 171.)

Each receipt and payment should be entered in the Cash Book in such detail as will fully explain its nature. Payments for Rent, Salaries, Wages, &c., due at the date of the commencement of the winding-up, or the date of the winding-up order, as the case may be (*see title* Preferential Payments, &c.), should be entered under the head of Preferential Payments, and carefully distinguished (by apportionment, if necessary) from similar payments which may arise or become necessary while carrying on trade: the latter should be entered in a separate Trading Account. Petty expenses should be entered in the Estate Cash Book in sufficient detail to show that no estimated charges are made, and vouchers should, where possible, be obtained.

The Cash Book must record the actual dates upon which all moneys are received on account of the estate, and the payments out should be entered as of the date when the cheques are issued, except in the case of dividends, which should be entered as of the date when the cheques are received, and the total amount of each dividend should be charged in the Cash Book in one sum. In the case of any sale by private contract the account should show the name, address, and occupation of the purchaser, and the mode in which the amount of the purchase-money has been arrived at.

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. (Rule 176.)

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 (*i.e.*, in connection with the preparation of the statement of affairs), 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 a 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.

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. (Rule 187.)

Moneys.—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 at the Bank of England, unless an account with any other (generally a local) bank has been authorised by the Board of Trade. The remittances are to be made once a week, or forthwith if a sum of £200 has been received. 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.

The remittances to the Bank of England should 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, who will furnish a certificate of receipt of the money so remitted. Halfpence should not be included in remittances. Forms of receivable order will be supplied on application to the Comptroller of the Companies Department, Board of Trade.

A liquidator is absolutely prohibited from paying any sums received by him as liquidator into his private banking account (even when a local banking account has been authorised), and if a 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 authorises him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall (1) pay interest on the amount so retained in excess at the rate of £20 per cent. per annum, (2) be liable to disallowance of all or such part of his remuneration as the Board may think just, (3) be liable to be removed from his office by the Board, and (4) be liable to pay any expenses occasioned by reason of his default. (Companies (Consolidation) Act 1908, section 154.)

All current bills of exchange should be remitted to the Companies Liquidation Account.

Where a special Bank Account is sanctioned by the Board of Trade all moneys received must be paid into the appointed bank. (*See title* Local Bank Account.) All payments thereout must be made by cheques payable to order, such cheques to have marked on the face of them the name of the company, to be signed by the liquidator and countersigned by at least one member of the committee of inspection, and by such other person (if any) as the committee may appoint. (Rule 165.) The Pass Book with the special bank should be forwarded at each audit.

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.

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.

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 the prescribed form.

Under no circumstances will the Board of Trade hold themselves responsible for payments made on the requisition of the liquidator.

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. There appears to be no fee payable.

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 payment column.

The payments into the bank should appear only in the "paid into bank" column in the Cash Book.

(Board of Trade Regulations, 1909.)

An account shall be kept by the Board of Trade of the receipts and payments in the winding-up of each company, 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.

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

[illegible]all, on the request of the committee, raise such [illegible]m as may be required by the sale of such part [illegible] the said securities as may be necessary.

The dividends on investments under this sec[illegible]n shall be paid to the credit of the company.

When the balance at the credit of any com[illegible]ny's account in the hands of the Board of [illegible]rade exceeds two thousand pounds, and the [illegible]uidator gives notice to the Board that the [illegible]cess is not required for the purposes of the [illegible]uidation, the company shall be entitled to [illegible]terest on the excess at the rate of two per [illegible]ntum per annum. (Companies (Consolida[illegible]n) Act 1908, section 231.)

Note.—Although bankruptcy and compulsory [illegible]uidation procedure are, generally speaking, [illegible]nilar, there is no provision in bankruptcy of [illegible]e same nature as the foregoing, but in reply [illegible] an inquiry as to the disposition of a large [illegible]sh balance not required for the immediate [illegible]rposes of a bankruptcy, the Inspector-General [illegible] Bankruptcy drew attention to the provisions [illegible] the Bankruptcy Act 1883, section 74 (4), viz., [illegible]at if required (*inter alia*) "because of the [illegible]obable amount of the *cash balance*," a local [illegible]nk Account may be opened. The trustee would [illegible]us be able to arrange with the local bank for [illegible]terest upon such balance. (*See title* Local [illegible]nk Account.)

Accounts and Audit.—The several audits and [illegible]spections to which the accounts of a liquidator [illegible] a compulsory winding-up are to be submitted [illegible]ay be summarised thus:—

Trading Account.—By Committee of Inspec[illegible]tion not less than once a month.

Cash Book.—By Committee of Inspection [illegible]not less than once every three months.

Cash Book.—By the Board of Trade half-[illegible]yearly.

Cash Book.—By the Board of Trade so soon [illegible]as the assets have been fully realised and [illegible]distributed.

Summary of Account of Receipts and Pay[illegible]ments.—Every six months (under Rule 156). [illegible]To be approved by Board of Trade.

Summary of Receipts and Payments (under Rule 180).—To accompany notice to creditors and contributories of intention to apply for release.

And if the liquidation is not concluded within one year after its commencement, certain returns are also to be sent to the Registrar of Joint Stock Companies. (*See heading* Pending Liquidations, *infra.*)

The following are the regulations relating to the foregoing:—

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. (Rule 171.)

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) for audit when required, but not less than once every three months (Rule 167), and the committee shall certify in the Cash Book under their hands the day on which the said book was audited. (Rule 169.)

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.

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.

The accounts sent in by the liquidator shall be verified by him by affidavit. (Rule 170.)

Immediately the accounts become due for the official audit the liquidator should summon a meeting of the committee of inspection so that they may be audited before being forwarded to the Board of Trade; but the accounts must not be delayed in consequence of any neglect on the part of the members of the committee to attend such meeting, for in such event a memorandum should be inserted in the Cash Book to the effect that the meeting was duly summoned but a quorum was not present. The accounts should then be forwarded to the Board of Trade.

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. (Rule 172.)

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.

The cost of printing and posting such copies shall be a charge upon the assets of the company. (Rule 173.)

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 an affidavit of "no receipts or payments." (Rule 174.)

In practice the affidavit of no receipts or payments is seldom required; for even in those cases where there are no assets coming to the liquidator by virtue of his office, he will in almost every period for which the return is required have to make some small disbursements. Where it is unlikely that any assets will come to the liquidator's hands, he may have obtained an undertaking before accepting office that these disbursements will be repaid to him by the parties for whom he is acting; but while receipts by way of reimbursement from such sources are not deemed to be on behalf of the estate, the payments actually made by the liquidator are so considered.

Upon one copy of the Cash Book (showing the assets realised) forwarded by the liquidator to the Board of Trade an *ad valorem* scale fee is payable in money, *not* stamps, upon the gross amount of the assets realised and brought to credit, viz.:—Upon the first £5,000, or fraction thereof, a fee of one per cent.; upon the next £95,000 or fraction thereof, a fee of one-half per cent.; over £100,000 the rates are less, gradually diminishing to one-sixteenth per cent.

The following is a detailed list of the documents, &c., which it is necessary to send to the Board of Trade in connection with the periodical official audit, viz.:—

(*a*) A complete copy of the Estate Cash Book (with all analysis columns), which is retained by the Board of Trade.

(*b*) Affidavit verifying same.

(*c*) A copy of the Estate Cash Book containing "Bank" and "Total" columns only, for filing purposes.

(*d*) The Trading Account or Accounts (if any), together with vouchers, and the affidavit or affidavits verifying same in accordance with Rule 171 (*supra*).

(*e*) Special Manager's Account (if any), with vouchers and affidavit.

(*f*) Receipts for cash paid and allocaturs for taxed costs.

(*g*) Vouchers in support of assets realised, such as Auctioneer's "Sale Account" and "Marked Catalogue" (if any).

(*h*) Record Book.

(*i*) Bank Pass Book, where a special Bank Account has been authorised, together with a certificate by the banker of the balance due at the date of the account.

(*j*) Order on the Companies Liquidation Account authorising the payment to the Board of Trade of the departmental fees upon the assets realised.

(*k*) A list of dividends paid (if any declared) to creditors and of those unclaimed.

(*l*) A list of dividends paid (if any declared) to contributories and of those unclaimed.

(*m*) A report on the position of the estate in the prescribed form must be sent with every account (Rule 170), and with the first account only there must be submitted a copy of the front sheet of the statement of affairs, and also of Schedules B, C, G, and H, attached thereto, duly certified by the Court.

(*n*) The summary of accounts prescribed by Rule 173. (See above.)

A liquidator, before making application to the Board of Trade for his release, shall give notice of his intention so to do 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. (Rule 197.) This is a summary of the cash transactions from the date of the winding-up order, and although the form follows the same lines as that prescribed under Rule 173, the practical effect is that it must be sent to the creditors and contributories *in addition* to the usual six-monthly accounts unless the liquidation is concluded within six months from the commencement of the winding-up. In that case the one account, may accompany the notice of intention to apply for release.

PENDING LIQUIDATIONS.

Where a winding-up of a company (*whether compulsory, under supervision, or voluntary*) is not concluded within one year after its commencement, the liquidator of such company shall, at the prescribed intervals (see below), transmit *in duplicate* to the Registrar of Joint Stock Companies a detailed statement of all the liquidator's receipts and payments on account of the company. (Companies (Consolidation) Act 1908, section 224.) The statement must be verified by affidavit. (Rule 189.)

Every statement must contain a detailed account of all the liquidator's realisations and disbursements in respect of the company. The statement of realisations should contain a record of all receipts derived from assets existing at the date of the winding-up order or resolution and subsequently realised, including balance in bank, book debts and calls collected, property sold, &c.; and the account of disbursements should contain all payments for costs and charges, or to creditors or contributories. Where property has been realised, the gross proceeds of sale must be entered under realisations, and the necessary payments incidental to sales must be entered as disbursements. These accounts should not contain payments into the Companies Liquidation Account (except unclaimed dividends; see below), or payments into or out of bank, or temporary investments by the liquidator, or the proceeds of such investments when realised, which should be shown separately:—

(*a*) By means of the Bank Pass Book:

(*b*) By a separate detailed statement of moneys invested by the liquidator, and investments realised.

Interest allowed or charged by the bank, bank commission, &c., and profit or loss upon the realisation of temporary investments, should, however, be inserted in the accounts of realisations or disbursements, as the case may be.

Each receipt and payment must be entered in the account in such a manner as sufficiently to explain its nature. The receipts and payments must severally be added 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.

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.

When dividends or instalments of composition 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 payment to contributories *actually paid* must be entered in the statement of disbursements as one sum, and the liquidator must forward separate accounts showing in lists the amount of the claim of each creditor and the amount of dividend or composition payable to each creditor and of surplus assets payable to each contributory, distinguishing in each list the dividends or instalments of composition and shares of surplus assets actually paid and those remaining unclaimed.

When unclaimed dividends, instalments of compositions, or returns of surplus assets are paid into the Companies Liquidation Account, the total amount so paid in should be entered in the statement of disbursements as one sum.

Credit should not be taken in the statement of disbursements for any amount in respect of the liquidator's remuneration unless it has been duly allowed by resolution of the company in general meeting, or by order of the Court. (Winding-up Rules 1909, Form 92.)

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 Joint Stock Companies the prescribed statement in duplicate containing the particulars 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." (Rule 190.)

In practice the affidavit of no receipts or payments is seldom required; for even in those cases where there are no assets coming to the liquidator by virtue of his office, he will in almost every period for which the return is required have to make some small disbursements. Where it is unlikely that any assets will come to the liquidator's hands, he may have obtained an undertaking before accepting office that these disbursements will be repaid to him by the parties for whom he is acting; but while receipts by way of reimbursement from such sources are not deemed to be on behalf of the estate, the payments actually made by the liquidator are so considered.

The first statement, commencing at the date when a liquidator was first appointed and brought down to the end of 12 months from the commencement of the winding-up, shall be sent within 30 days from the expiration of such 12 months, or within such extended period as the Board of Trade may sanction.

The subsequent statements shall be sent at intervals of half a year, until the winding-up is concluded, each statement being brought down to the end of the half-year for which it is sent. (Rule 189.)

No registration or *ad valorem* fees are payable in respect of the statements required by section 224.

For the purpose of the statements required to be transmitted to the Registrar of Joint Stock Companies the winding-up of a company is deemed to be concluded:—

(*a*) In the case of companies 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 Joint Stock Companies, or at the date of the order of the Board of Trade releasing the liquidator.

(*b*) In the case of companies wound up voluntarily or under the supervision of the Court at the date of the dissolution of the company (*see title* Winding-up), 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. (Rule 188.)

As ordinarily a company in voluntary liquidation is not deemed to be dissolved until the expiration of three months from the date of registration of the final meeting having been held, it follows that in all cases of voluntary winding-up where the final meeting has not been held and the fact registered *within nine months from the commencement* of the winding-up the Registrar of Joint Stock Companies will require the return to be made. *Note.*—The Court has discretionary power on due application to defer the date of the dissolution even beyond the time mentioned, Companies (Consolidation) Act 1908, section 95), or to declare the dissolution void at any time within two years thereafter. (Section 93.)

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, upon payment of a fee of 1s. 6d., to inspect the statement lodged with the Registrar, and upon payment of a fee at the rate of fourpence for every folio of 72 words or figures he is entitled 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.

If a liquidator fails to comply with the requirements with regard to this statement he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues. (Section 224.)

Where 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 registered address of 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 that at the expiration of three months from the date of that notice the name of the company will, unless cause is shown to the contrary, be struck off the Register, and the company will 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. (Section 242.)

If it appears from any statement of the liquidator or otherwise that a liquidator of a company 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. (Section 224.) 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 14 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. (Rule 191.)

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 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. (Rule 191.)

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 moneys 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. (Rule 192.)

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. (Rule 193 (1).)

For the purpose of ascertaining and getting in any money payable into the Bank of England (and representing unclaimed or undistributed assets of the company) 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.

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. (Section 224.)

A liquidator who requires to make payments out of money paid into the Bank of England either by way of distribution or in respect of the costs 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 to make such payments, or may direct cheques to be issued to him for transmission to the persons to whom the payments are to be made. (Rule 196.)

The following fees are payable in respect of unclaimed dividends, undistributed funds and balances which have been paid into the Companies Liquidation Account:—

(1) On every application to the Board of Trade for payment of money out of the Companies Liquidation Account, and every application for the reissue of a lapsed cheque or money order in respect of moneys standing to the credit of the Companies Liquidation Account:—

	£	s	d
Where the amount applied for does not exceed £1 ...	0	1	0
Where the amount applied for exceeds £1	0	2	6

(2) On every payment 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.

Winding-up under Supervision.

A liquidation subject to the supervision of the Court is really the continuation of a voluntary winding-up, and, subject to any special provision which may be made by the Court in the order for supervision, the accounts relating to such a liquidation will be kept on the same lines and governed by the same regulations as those in voluntary liquidation; for the provisions of sections 153 to 159 dealing with the books, accounts, banking of moneys, audit, and other matters do not apply to a winding-up under supervision (section 203), but the requirements of section 224 (as to unclaimed or undistributed assets and the accounts in connection with same) apply to a winding-up under supervision. (*See heading* Pending Liquidations, *supra*.)

Voluntary Winding-up.

In the event of a voluntary 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 at the end of each succeeding year, or as soon thereafter as may be convenient, and shall lay before such meeting an account of his acts and dealings, and of the conduct of the winding-up during the preceding year. (Companies (Consolidation) Act 1908, section 194.)

Where a company is being wound up *voluntarily* and the liquidation is concluded within the year from the commencement of the winding-up, the liquidator is not required to file any statement or account either with the Registrar of Joint Stock Companies or the Board of Trade (*see heading* Pending Liquidations, *supra*); but, in any case (*i.e.*, whether the liquidation is extended beyond a year or not, and whether accounts are sent to the Registrar or not), the liquidator must, so soon as the affairs of the company are fully wound up, prepare a final account showing the manner in which such winding-up has been conducted, and the property of the company 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. In addition to the notices to be delivered in proper form and time to the members of the company, in accordance with the company's regulations, the meeting must be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement must be published, as respects companies registered in England, in the *London Gazette* one month at least before the meeting. (Section 195.)

Within one week after such meeting the liquidator must make a return to the Registrar of the holding of the meeting and of its date. The Registrar on receiving such return shall forthwith register it, and on the expiration of three months from the *date of the registration* of such return the company shall be deemed to be dissolved: if the liquidator makes default in making such return to the Registrar he shall be liable to a fine not exceeding five pounds for every day during which such default continues. (Section 195.)

Note.—The Court may on due application before the three months expire order the date of dissolution to be deferred (section 195), and even after dissolution may declare the dissolution *void* within two years of the date thereof. (Section 223.)

Although the liquidator may not be called upon to render any *account* unless the liquidation extends beyond a year, he will usually be asked by the Registrar for a *certificate* that he has no unclaimed dividends or undistributed assets in his hands or under his control.

Disposal of the Company's Books.

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.

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. (Section 222.)

Subject to the above, the following rule applies to companies wound up by order of the Court:—

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.

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. (Rule 175.) (*See titles* Liquidator and Special Manager.)

Lloyd's.—An association consisting of underwriting and non-underwriting members. The underwriting members carry on insurance business, but independently; each member conducting his own business in his own judgment at his own risk. The association also collects information from all parts of the world, and transmits same to members and others entitled to the information.

Lloyd's Bonds.—Instruments under seal issued by a railway company or other corporate body, admitting indebtedness, generally for work done, and covenanting to pay the amount therein specified to the obligee with interest upon some future day. A Lloyd's bond given to secure a present advance is invalid, so that these bonds cannot be used as a means of raising money. They will be good security for a debt other than for money advanced, and even for a debt in respect of a loan, if it is a past advance, and the money has been applied *bonâ fide* for the purposes of the borrowing company.

Note.—This class of bond received its name from the counsel who originally settled the terms of it.

Lloyd's Certificate.—A document granted by the Committee of Lloyd's Register, certifying as to the class and condition of a vessel, classed by them, based on reports received from their surveyors.

Lloyd's Register.—A register containing particulars of all vessels classed by the Committee of Lloyd's Register, and stating their respective classes, by means of symbols, such as A1, 100A1, and so on. By this means underwriters and others are enabled readily to acquire information as to the character and condition of a vessel. The classification of a vessel is obtained and kept up to date by periodical inspections made by Lloyd's surveyors.

"Loading."—The amount added to the premium in respect of a policy of life assurance in order to provide for office and other expenses. The "loaded" premium is called the "office premium," and is the amount the assured has to pay.

The loading in some offices is based upon the amount assured—in others, it is a percentage of the premium; but in many offices it is determined in an arbitrary manner.

Loan.—*See titles* Debenture, Mortgage, Postponed Creditors.

Loan (in consideration of share of profits).—*See titles* Limited Partnership, Postponed Creditors.

Loan Capital.—*See titles* Capital, Debenture.

ocal Bank Account.—Ordinarily, the liquidator of a company which is being wound up by the Court must pay all moneys received into the Companies Liquidation Account at the Bank of England, but where 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 of Trade 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. (Companies (Consolidation) Act 1908, section 154.)

Where the liquidator is so authorised 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 be signed by the liquidator and 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. (Winding-up Rules 1909, Rule 165.)

The Board of Trade may authorise such special Bank Account 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. (Rule 165.)

These provisions apply *mutatis mutandis* to a trustee in bankruptcy, the Bankruptcy Act confining the privilege to a *local* bank, which is defined as "any bank in or in the neighbourhood of the bankruptcy district in which the proceedings are taken." (Bankruptcy Act 1883, sections 74 and 168; Rule 340, &c.)

The Companies (Consolidation) Act 1908 (section 231) provides for the investment of surplus funds in a liquidation, awaiting distribution, or an allowance of 2 per cent. interest on moneys in excess of two thousand pounds. There is no similar provision in the Bankruptcy Acts, but in view of the *probable amount of the cash balance*, a trustee in bankruptcy having a substantial sum which is likely to remain undistributed for some time may apply for permission to open a local Bank Account; and on such permission being granted (as it will be in a proper case), the trustee, when transferring the balance from the credit of the estate at the Bank of England to his credit at such local bank, may make his own arrangements as to interest.

In both bankruptcy and winding-up procedure a fee of £1 is payable upon every *application* by a committee of inspection to the Board of Trade for a local or special Bank Account, and a fee of £2 is payable upon every order of the Board of Trade granting such account.

As cheques are (in common with other documents) exempt from stamp duty when used in connection with the liquidation of a company by the Court or the administration of a bankrupt's estate, an unstamped cheque book should be applied for at the particular bank by the liquidator or trustee, as the case may be. (Finance Act 1895, section 16; Bankruptcy Act 1883, section 144.)

Where a dividend has been paid through a local bank the trustee will be required, at the expiry of six months from the date of the declaration of a dividend, to forward to the Inspector-General in Bankruptcy, for audit, vouchers for the dividends paid, and a list of those remaining unclaimed.

The trustee 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 Inspector-General.

Where a local Bank Account has been sanctioned, the Bank Pass Book must be forwarded by the trustee or liquidator with the accounts at each audit. (Board of Trade Regulations applicable to Trustees and Liquidators.)

Local Director.—One appointed by the articles of association of a company for the purpose of managing the company's affairs in a particular locality. The powers of a local director may be either co-extensive with those of an ordinary director, or modified according to circumstances.

Locke King's Act (1854).—This Act, as amended by the Acts of 1867 and 1877, provides:—

(1) When any person shall die possessed of or entitled to any estate or interest in any land or other hereditaments which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not by his will (in the case of a testator) or by deed or other document have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be *primarily liable* to the payment of all mortgage debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage debts charged on the whole thereof; provided that nothing shall affect or diminish any right of the mortgagee of such lands or hereditaments to obtain full payment or satisfaction of his mortgage debt either out of the personal estate of the person so dying or otherwise.

(2) The Acts extend (*a*) to freeholds, leaseholds and lands of any tenure, (*b*) to the estates of persons dying testate or intestate, and (*c*) to mortgages or any equitable charge, including a lien for unpaid purchase-money.

(3) A charge of, or direction for, the payment of debts due upon or out of residuary real and personal estate, or residuary real estate, shall not amount to a signification of a contrary or other intention to avoid the provisions of the Acts; nor will a general direction that the debts, or that all the debts, of the testator shall be paid out of his *personal estate*, be deemed to be a declaration of an intention contrary to or other than the rule established by the Acts, unless such contrary or other intention shall be further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate.

Loose-Leaf Ledgers.—*See title* Slip Bookkeeping.

Loose Plant and Tools.—Plant, tools, and other accessories employed in manufacture or in carrying on a business; so called because:—

(1) It is not essential to their utility that they be permanently located upon the business premises or lands, *e.g.*, tools, patterns, &c., or

(2) Their only, or chief, function depends upon their portability, *e.g.*, trucks, trolleys, carts, &c.

The ordinary method of depreciating assets by means of a percentage or other annual sum is not to be recommended in the case of loose plant and tools. The better plan is to keep a separate account for this class of plant, and to charge all expenditure to that account. At each stock-taking a valuation upon the basis of a going concern should be made of the various articles appertaining to the account, and any shortage between (1) the valuation at the previous stock-taking plus subsequent purchases, and (2) the present valuation plus the proceeds of the sale of tools, &c. (if any), should be charged to the Revenue Account for the period in question, the amount of the present valuation being "brought down" in the account.

This system has many advantages, for it overcomes the difficulty of assessing appropriate percentages of depreciation where (as is usually the case) the "classes" of plant and tools are numerous; it also shows periodically the extent of the leakage by theft, abnormal breakages, and

such like. Such a leakage is more possible in the case of tools and the like than large machinery, and is, moreover, a difficult matter to provide against accurately by means of percentages.

Apart from the foregoing, the knowledge of the existence of such a system with regard to tools has its "moral effect" upon those responsible for their custody.

To facilitate the keeping of the Loose Plant, &c., Account upon this basis, it is advisable to keep a "Plant and Tools Register" of the more important articles, their importance in this connection being determined by their size or value, or both.

The Register should be ruled with columns at the left-hand for (1) the date of purchase, (2) description, and (3) cost of the article, about a dozen cash columns then following across the right-hand side of the book, each of which will be headed with the dates of successive stocktakings. As each article is purchased it should be added to the Register, and as each article is sold that fact should be recorded. Thus there is a check upon each important "part" of the asset, and the valuation can readily be made at any date by simply placing it in the appropriate column, due regard being given to the previous valuation, which is conveniently recorded in the adjoining column.

The income-tax authorities will allow as a deduction from profits the cost of *actual replacements* or renewals of loose tools, &c., but they will not allow any charge for depreciation ascertained either by way of percentage calculation or revaluation.

Lord Campbell's Act.—*See title Actio personalis moritur cum personâ.*

Lord St. Leonard's Act.—*See title* Executor.

Lost Bill.—Where a bill has been lost, *before it is overdue*, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatsoever, in case the bill alleged to have been lost shall be found again. If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so. (Bills of Exchange Act 1882, section 69.)

The remedy provided by the Bills of Exchange Act is inadequate, for no power is given to demand an indorsement or an acceptance upon the duplicate bill which the drawer is bound to provide.

In any action or proceeding upon a bill the Court may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the Court against the claims of any other person upon the instrument in question, and this applies to all Courts and proceedings (section 70), including proof of debt in bankruptcy, (Bankruptcy Rules 1886, Rule 233).

The fact that a bill has been lost or destroyed does not of itself excuse the omission to give notice of dishonour, and where a bill is lost or destroyed protest may be made upon a copy or written particulars thereof.

Lucid Interval.—A period of sanity intervening between two attacks of insanity. An act done during a lucid interval is as valid, and entails the same responsibilities, as the act of a sane person.

Lunatic.—With the exception of the criminal laws and some unimportant matters, the English statute law as to lunatics is contained in the Lunacy Acts of 1890 and 1891, as supplemented by the Rules in Lunacy.

A lunatic so found by inquisition is one who has been subjected to an inquiry as directed by the Judge in Lunacy and declared as a person of unsound mind and incapable of managing his own affairs. The inquiry is held before a jury, if the person to be examined so demands, but a jury will not be granted if the Judge is satisfied that the person is not mentally competent to form and express a wish for a jury. A jury may specially find that the person examined, although incapable of managing himself, is capable of managing his affairs.

Contracts.—When a person enters into a contract, and afterwards alleges that he was so insane at the time that he did not know what he was doing, and proves the allegation, the contract is as binding upon him in every respect, *whether it is executory or executed*, as if he had been sane when he made it, unless he can prove further that the person with whom he contracted *knew him to be so insane* as not to be capable of understanding what he was doing. (*Imperial Loan Co. v. Stone*, 1892, 1 Q.B. 599.)

Where *necessaries* are sold and delivered to a person who by reason of mental incapacity is incompetent to contract, he must pay a reasonable price therefor. (Sale of Goods Act 1893.)

Should the plaintiff be insane at the time a cause of action arises, the disability will suspend the operation of the Statutes of Limitation until the person is of sound mind. (*See title* Limitation of Actions.)

Partnership.—Lunacy does not of itself effect a dissolution of partnership, but where a partner is found lunatic by inquisition, or is shown to the satisfaction of the Court to be of permanently unsound mind, the Court *may* decree a dissolution of the partnership. The application may be made either on behalf of that partner by his committee or next friend, or by any other partner.

Limited Partnership.—The lunacy of a limited partner shall not be a ground for dissolution of the partnership by the Court unless the lunatic's share cannot be otherwise ascertained and realised. (Limited Partnerships Act 1907, section 6.)

Bankruptcy.—It is still doubtful whether a lunatic can be made a bankrupt, but he cannot commit an act of bankruptcy involving an *intent* unless during a lucid interval. Where, however, the Court considered it was for the lunatic's benefit, leave was given for the committee to file a declaration of inability to pay the debts or to present a petition. But it is doubtful whether an adjudication without the consent of the Court of Lunacy is valid, and in any case such property of the lunatic as may be under the control of the Court in Lunacy will be first applied towards providing the proper maintenance of the lunatic.

For all or any of the purposes of the Bankruptcy Acts a lunatic may act by his committee (Bankruptcy Act 1883, section 148), or where a person is a lunatic not so found by inquisition the Court may on the application of a relative, friend, or other proper person, appoint such person as it may think fit to appear for, represent, or act for and in the name of the lunatic in the bankruptcy proceedings. (Rule 271a.)

Should the bankrupt be a lunatic or suffer from any mental affliction the Court has power, on application being made, to dispense with the public examination of the bankrupt. (Bankruptcy Act 1890, section 2.)

Executor.—A lunatic is incapable of being either an executor or an administrator; but mere weakness of mind will not be sufficient ground to exclude from grant of probate a person named executor in the will.

If a sole executor becomes a lunatic, administration *cum testamento annexo* may be granted: in such a case the grant would be limited *durante dementiâ*.

Will.—A testator must be of sound mind to the extent that he must have an understanding of the nature of the business he is engaged upon when making his will. A person may make a will after he has been insane, but it must be shown to have been made after his recovery or during a lucid interval. Where a will is made by the testator himself, the rational character of its contents will be admitted as evidence to show that it was made during a lucid interval.

M

Machinery.—*See titles* Depreciation, Fixed Capital, Fixtures, Income Tax, Wear and Tear, &c.

Maintenance.—The officious intermeddling by a person in a suit at law which in no way belongs to him, by maintaining or assisting either party, with money or otherwise, to prosecute or defend it. (*See title* Champerty.)

The supplying of necessaries to those who are unable to provide for themselves, such as infants and lunatics.

The " maintenance clause " in a will or other disposition is one empowering the trustees to make provision for infants becoming entitled thereunder, out of their expectant or presumptive shares in the trust fund.

The Conveyancing Act 1881 provides that executors and administrators may, at their sole discretion, apply the *income* of property which they hold in trust for an infant, either absolutely or contingently, towards his or her maintenance, education, and benefit. The residue of the income is to be accumulated and go to the person ultimately entitled to the property, but the trustees may use the accumulations of past years as if they were the income of the current year.

Although the statute applies to cases where the gift of capital and *income* is contingent (*e.g.*, on attaining the age of 21 years), it does not extend to a legacy or other property which is not to carry interest during minority. The Act applies to all instruments which do not express a contrary intention, and an express trust to accumulate the income of the infant's share has been held not to be a contrary intention. (As to income-tax or income used for maintenance of minors *see title* Income Tax [Infant].)

aintenance of Way.—In its application to a railway company, this term comprises the expenditure in respect of repairing, renewing, and otherwise maintaining the permanent way; the roads, bridges, railway lines, stations, signals, &c. &c. Such expenditure is a charge against Revenue Account, there being a statutory obligation to keep up the assets out of revenue to at least the same condition as when acquired by means of the capital originally borrowed for the purpose. (*See title* Double Account.)

ake-up.—*See title* Auditor.

aking a Market.—A company or the vendor thereto, or some person interested in the promotion, who holds a large amount of shares, enters into an engagement with one or more stock jobbers, whereby the latter acquire the right to call for these shares at a fixed price—it may be at par, or at a discount, or at a premium, the understanding being that the owner of the shares shall also give orders to brokers to buy the shares in the market at the price thus fixed, or at a fraction above it. The transactions which then ensue, consisting of sales and purchases on behalf of the same person or persons, are quoted either in the official lists, or on the Stock Exchange tape, or in certain financial newspapers and private circulars which lend themselves to this class of transaction. Means are also frequently adopted (by the insertion in these papers of leading articles, paragraphs, or telegrams of a recommendatory character) to draw attention to the favourable prospects of the company, and to the probability of the shares increasing in value. As a rule, these are sufficiently vague to avoid coming within the legal definition of " false pretences," but, at the same time, sufficiently suggestive to induce the public to take an interest in the undertaking. By these means, and by a repetition of the market dealings, and of quotations from day to day at gradually increasing prices, independent purchasers are attracted, and it becomes the jobber's interest to raise the price as much as possible, inasmuch as whatever he obtains above the limit originally fixed goes into his own pocket. The whole operation is based upon the well-known tendency on the part of the public to follow a rising market.

Making-up Price.—When stocks, shares, and/or produce, which are the subject-matter of speculative transactions, are to be " carried over " to another settlement day (that is to say, they are not taken up or delivered, as the case may be), the transactions are " closed " at the prices for the current settlement, and re-opened (*plus* contango or *less* backwardation) for the following settlement day. These are called making-up prices, or " striking " prices.

Mala in se.—Acts which are wrong in themselves, whether prohibited by human law or not, such as murder and robbery, as distinct from *mala*

prohibita, acts which are not necessarily wrong in themselves, but are prohibited by human laws.

Managing Director.—One of the directors of a company to whom special powers are delegated. He has the general management of the concern, and is almost invariably required to give his whole time to the company's affairs. Where directors have power to appoint *any one of their number* to be a managing director, his appointment is automatically terminated should he fail to secure re-election as a director when retiring by rotation. (*Bluett v. Stutchbury's, Lim.*, C.A. 1908.)

Managing Owner.—The person having the management of all matters connected with the chartering, fitting out, &c., of one or a fleet of vessels, having himself a part interest in the vessel or vessels.

Mandamus (We command).—A writ of a remedial nature issuing from the Court of King's Bench requiring the person, corporation, or inferior Court to whom or to which it is addressed, to perform some act therein specified, which the Court considers ought in justice to be performed. It is used principally as a means of enforcing the performance of public rights and duties, and private rights withheld by public officers, where the party has no other specific remedy.

Manifest.—A schedule of all the goods comprising a ship's cargo (containing the descriptions, marks, numbers, &c.) to be delivered to the Custom House authorities at the port of destination.

Man of Straw.—A man of no substance.

The term is said to have originated from worthless men who, in former times, used to frequent the Law Courts for the purpose of giving false evidence, and who made their "occupation" known by a straw in one of their shoes.

The term is frequently used in connection with the assignment of a lease and the transfer of shares in a joint stock company.

In the former case the intention is to escape the liability under some onerous covenant in the lease, whilst the transfer of shares under such circumstances is an attempt to avoid liability for calls. A transfer of shares to such a person is good, and will have the effect of relieving the transferor of the liability for calls if (1) the transferee be *sui juris*, and (2) there is no resulting trust for the transferor.

Of course, if winding-up ensue within a year of the transfer, the transferor would be placed upon the "B" list of contributories, and as it may be assumed that the transferee would be unable to pay the calls the transferor would still be liable as a "B" contributory. (*See title* Contributory.)

Manufacturers' Accounts.—A manufacturer's functions are twofold—to manufacture and to sell—and, as these functions are distinct and severable, his accounts should be prepared in such a manner as to show the result of each of them. A manufacturer may produce in order to identify himself with the manufacture of a particular article, or being a retail dealer he may manufacture the goods in which he deals (or some of them) in order to acquire the manufacturer's profit in addition to that of the retailer, or he may manufacture his own commodities solely to ensure a given standard of quality, and so on. But whatever be the *raison d'être* of a manufactory, the ultimate object, generally speaking, is to realise the products thereof. Thus theoretically, the selling or trading department is under an implied contract to take over all the products of the manufactory—that is to say upon the *completion* of a manufactured article it is to be *ipso facto* acquired by the selling or trading department. The price at which the goods are so to be transferred may be assessed in two ways, viz.:—

(1) At the actual cost of production, whatever that may be, irrespective of the current market value, so that the manufactory may show no profit or loss. The principle in this case is that, as the manufactory is conducted in the interest and for the benefit of the selling departmen

the latter should acquire the goods either at a less price or of a better quality than would be the case if other manufacturers' products were purchased in the open market, provided that if the cost of production by the manufactory, by reason of the extra quality of the products, the small output, bad management, or otherwise, is higher than current market prices, the selling department must, nevertheless, take the goods over at that price in pursuance of the *implied contract* already referred to.

(2) At the current trade prices for the goods in question, whatever the cost of production may have been. The principle in this case is that the manufacturer should place his manufactory upon a market basis, allowing neither more nor less for the manufactured goods than he would have paid for precisely similar goods (assuming they were procurable) had he purchased them in the open market. This system is considered by some authorities to be the only satisfactory test of the value of a manufactory to its owner under ordinary circumstances, but in practice great care should be exercised in connection with this system to guard against any profit being passed to the credit of the manufactory in respect of manufactured goods that are not *readily saleable*, and where there is an accumulation of stock on hand in the selling or trading department it is suggested that the manufacturing profit is to some extent an "anticipated" one.

If under the first method the prices chargeable to the selling department become, commercially speaking, prohibitive, or if where the second method is adopted the manufactory shows a loss which is not justified by collateral results, such as the guarantee of purity, or otherwise, the seller's remedies are either (1) to economise and so reduce the cost of production, or (2) terminate his *implied contract* by closing the manufactory. In order to judge fairly the position of affairs in this manner the manufacturer must obviously keep distinct accounts showing the results of his manufactures and sales.

A *pro formâ* set of accounts of a manufacturer is appended, showing the general principles enunciated above, the valuation of the stock-in-trade being taken at the actual cost of production (*i.e.*, the first of the two methods just stated). If the second method be adopted the valuations of the stock-in-trade will be altered accordingly, and profit or loss (as the case may be) shown in the Manufacturing Account, but otherwise the general principles involved in the accounts will be unaffected. To facilitate the construction of the *pro formâ* accounts, the "expenses of the manufacture" have been assumed as being equal to one-seventh of the "prime cost." It will be seen that whether the actual cost of production or the current market prices are taken as the basis of adjustment between the manufacturing and selling departments, the *expenses of manufacture* are (proportionately) included in the valuation of manufactured and partly manufactured stock, at the end of any given period.

Some economists regard interest on capital employed in a manufactory as forming part of the cost of production of the goods, for capital "earns" interest just as much as borrowed money necessitates its payment. Goods take time to produce, varying, of course, according to circumstances, and economists define interest in this connection as the price of waiting, and such "waiting" they regard as synonymous with the "use of capital," and therefore a factor of production. But for accountancy purposes it is perhaps advisable on the grounds of consistency to treat interest on capital, whether a book entry in favour of capital or an actual payment in respect of borrowed money, as part of the fixed or establishment charges of the concern. In the accounts of a limited company "interest" upon the ordinary share capital would hardly find a place among the "costs of production." Thus (1) a company with no borrowed capital, (2) another with a large proportion of borrowed capital, and (3) a partnership concern, might, if interest entered into the question of cost, show vastly different "costs" though working under similar conditions, and except for the different

methods of raising their capital, almost identical in extent and character. (*See title* Interest.)

Where the goods manufactured are mostly of one class, or, although of different classes, are practically similar as regards cost of production, the percentages will afford the manufacturer valuable information as to the working of his business, whilst a further comparison can be instituted by reducing the results to a fixed unit of measure or weight. But where the products are not similar in this respect, some costing considerably more in proportion to others, a thorough system of Cost Accounts should be adopted, so that, so far as possible, the cost of (1) each article, (2) each part, or (3) each process (as the case may be) may be ascertained. In this connection, Garcke and Fells, in their work on *Factory Accounts*, state:—

"Localisation of cost should be carried as far as possible, so that the varying rates of realisable profit on parts may be known, and the pressure to minimise cost of production be applied in the right direction. The tendency of the specialisation of labour has grown, and is growing, with the extension of the factory system, and the economy thereby induced can only be rendered thoroughly effective by a complete analysis of cost."

The important question of localisation of cost cannot be pursued further in a work of this kind, but authorities, such as those just named, dealing specially with this subject, must be consulted. (*See title* Cost Accounts.)

Manufacturing Account.

Dr. I.—*Prime Cost Account.* *Cr.*

	£		£
(1) Raw materials and other manufacturing necessaries on hand at commencement of period, valued at cost	5,000	(15) Goods manufactured during period, carried down [see item No. (6)], valued at prime cost, but see item No. (18) ..	37
(2) Partly manufactured stock on hand at commencement of period, valued at prime cost, but see item No. (7)	7,000	(16) Raw materials, &c., on hand at end of period, valued at cost	4
(3) Raw materials and other manufacturing necessaries purchased during period (less trade discounts)	17,400	(17) Goods *partly* manufactured during the present or any previous period, and on hand at end of this period, valued at prime cost, but see item No. (19)	9
(4) Carriage inward on raw materials, &c., during period ..	300		
5) Directly productive wages during period	20,500		
	£50,200		£50

Dr. II.—*Cost of Production Account.* *Cr.*

	£		£
(6) Prime cost of goods manufactured during period, per item No. (15) being the balance of Prime Cost Account	37,100	(18) Manufactured goods transferred to Trading Account [see item No. (10)], valued on the basis of cost of production	42
(7) Expenses of manufacture during previous period in respect of item No. (2)	1,000	(19) Expenses of manufacture in respect of goods *partly* manufactured during the present or any previous period, see item No. (17), and carried forward to next period in the same manner as item No. (7) was previously dealt with ..	1
(8) Expenses of manufacture during the present period, such as:— Rent, rates and taxes of factory buildings, &c. .. .. Fire Insurance of machinery and factory stock .. .. Supervision and Management .. .. Wages of factory clerks, packers, and others engaged exclusively upon work connected with the factory .. Repairs to and renewals of machinery and tools .. Depreciation of machinery and tools .. .. .. Proportion of interest on capital where charged or payable .. .. &c. &c.	5,600		
	£43,700		£43

Trading (or Selling) Account.

I.—*Gross Profit Account.*

Dr.	£		£	*Cr.*
Stock of manufactured goods on hand at commencement of period, valued on basis of cost of production	9,000	(20) Sales (less trade discounts)	51,500	
Goods manufactured during the period transferred from Cost of Production Account, per item No. (18) being the balance of Cost of Production Account	42,400	(21) Stock of manufactured goods on hand at end of period ..	8,300	
Gross profit carried down	8,400			
	£59,800		£59,800	

II.—*Net Profit Account.*

Dr.	£		£	*Cr.*
Expenses of distribution, such as:—		Gross profit brought down, per item No. (11)	8,400	
Carriage of goods (outward)				
Wages of travellers, despatch clerks, packers, &c. ..				
Travelling expenses				
Books and stationery	2,300			
Advertising				
Bad debts, &c.				
Establishment expenses, such as:—				
Rent, rates and taxes				
Cash discounts				
Salaries of officials				
Audit fee				
General expenses	3,200			
Sundry repairs				
Interest on capital (proportion) where charged or payable				
Depreciation				
&c.				
Net profit for period, carried down	2,900			
	£8,400		£8,400	
		Net profit for period, brought down	£2,900	

The following **Comparative Statement** is obtained from the foregoing accounts:—

	Amount	Percentage based upon prime cost	Percentage based upon selling prices
	£		
Materials and labour, being the prime cost	37,100	100.00	73.22
Expenses of manufacture	5,300	14.28	10.46
Total, being the cost of production of the goods *completed* during the present period	42,400		
Add—Cost of production of goods completed in previous periods, but sold during this period (*i.e.*, the decrease in the value of the manufactured stock)	700		
Note.—This item is made up as to 7 parts prime cost and as to 1 part expenses of manufacture, being the proportion assumed throughout, as already stated.			
Total, being cost of production of goods *sold* during the period	43,100		
Gross Profit £8,400			
Equals:—19·5% upon the cost of production, *i.e.*, upon the price charged to the Trading Account; or 16·3% upon selling prices.			
Expenses of distribution	2,300	6.09	4.47
Establishment expenses	3,200	8.48	6.22
Net profit	2,900	7.68	5.63
Sales	£51,500	136.53	*100 00

* *See title* Percentage.

Dr. **Re-statement** OF THE FOREGOING IN ONE ACCOUNT. *Cr.*

	£	£		£	£
Stocks on hand :—			(20) Sales		51,500
(1) Raw materials on hand	5,000		*Stocks on hand :—*		
(2) Partly manufactured goods on hand £7,000			(16) Raw materials on hand	4,000	
(7) Proportion of expenses of manufacture of same 1,000			(17) Partly manufactured goods on hand £9,100		
	8,000		(19) Proportion of expenses of manufacture of same 1,300		
(9) Manufactured goods on hand	9,000			10,400	
		22,000	(21) Manufactured goods on hand	8,300	
(3) Purchase of raw materials, &c.		17,400			22,700
(5) Wages		20,500			
Other Expenditure, viz :—					
(4) Carriage Inward	300				
(8) Expenses of manufacture	5,600				
(12) Expenses of distribution	2,300				
(13) Establishment expenses	3,200				
		11,400			
(14) Net profit		2,900			
		£74,200			£74,200

Marine Insurance.—A contract whereby the insurer (usually termed the underwriter) undertakes to *indemnify* the insured against marine losses. The contract may be extended so as to protect the insured against losses on inland waters, or on any land risk incidental to any sea voyage, or any risk analogous to a marine adventure—*e.g.*, a ship in course of building. Every contract of marine insurance by way of gaming or wagering is void. (*See title* Insurable Interest.)

A contract of marine insurance is a contract based upon the utmost good faith. (Marine Insurance Act 1906.) (*See title Uberrima fides.*)

On payment of a total loss by the underwriter he is entitled to the subject-matter insured—that is, he is subrogated to the rights of the insured in respect of the subject of insurance, and against other contributing parties, for any unpaid contributions to the loss. (*See titles* Abandonment, General Average, Particular Average, Total Loss, &c.)

Marital Control.—The control exercisable by a husband. The interest of a married woman in property for her separate use is sometimes referred to as being free from marital control. (*See title* Restraint on Anticipation.)

Maritime Lien.—A privileged claim upon a thing in respect of service rendered to it, or injury caused by it in connection with some maritime adventure, which claim must be carried into effect by *legal* process in the Admiralty Court.

It differs from the common law lien to the extent that it exists *without possession*, actual or constructive, of the subject-matter upon which it is established. Salvage claims, collision claims, seamen's wages, and bottomry bonds, *inter alia*, give rise to a maritime lien.

Marked Cheque.—A cheque marked by one banker to signify to another banker that it is in order. As between banker and banker, this may amount to a binding representation that the cheque will be paid, but it is hardly an acceptance that a *holder* could take advantage of, for, in the first place it is doubtful whether it would comply with the requisite formalities of a valid acceptance, whilst (with the exception of the Bank of England and banks issuing bills prior to 1844) the Bank Charter Acts render the acceptance of a bill payable on demand by a banker an illegal act. As to this latter objection, however, it has been suggested that where a cheque requires the indorsement of the payee *after* the acceptance by the banker (*e.g.*, an order cheque, not indorsed) such acceptance by the banker would not amount to a breach of the law.

Marketable Security.—For purposes of stamp duty, a marketable security means a security of such a description as to be *capable of being sold* in any stock market in the United Kingdom, and a security is *capable of being sold* in a stock market, although there may not be any quotation in any official list. A marketable security therefore includes amongst other securities the regis-

red bonds and debentures, generally, of companies, corporations, and public bodies. (*See title* Nominal Consideration.)

Market Overt.—"An open, public, and legally constituted market," held in London every day except Sunday, and in other places on certain specified days.

The Sale of Goods Act 1893 (section 22) provides that "where goods are sold in market overt according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith, and without notice of any defect or want of title on the part of the seller."

A sale by sample will not be sufficient to bring the transaction within the above provision; the goods themselves must be openly sold and transferred in market overt. Nor will a sale in a private room or a transaction between sunset and sunrise afford protection to a buyer.

Where, however, any goods have been stolen and the offender is prosecuted to *conviction*, the property in the goods so stolen revests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, *whether by sale in market overt or otherwise*.

The sale of horses is regulated by special statutes of Ph. & Mary and Elizabeth. (*See title* Horses.)

Marriage Settlement.—A settlement of property or other arrangement made before and in consideration of marriage (*i.e.*, ante-nuptial) whereby, as a rule, a jointure is secured to the wife and portions to children in the event of the husband's death. (*See title* Fraudulent Conveyances and Settlements.)

Married Woman.—The Married Women's Property Act 1882 provides (*inter alia*) that:—

(1) Every woman who *marries after* 1882 shall be entitled to acquire, to have and to hold and to dispose of by will or otherwise as her separate property in the same manner as if she were a *feme sole* (and without the intervention of any trustee), all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

(2) Every woman *married before* 1883 shall be entitled to have, to hold, and to dispose of by will or otherwise as her separate property in the same manner as if she were a *feme sole* (and without the intervention of any trustee), all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, *shall accrue after* 1882, including any wages, earnings, money, and property gained or acquired by her subsequent to her marriage under the circumstances already referred to.

Notes.—The Married Women's Property Act 1907 declares that the foregoing powers of a married woman as to disposal of real and personal property extend to her when acting as a trustee or personal representative.

A settlement or agreement for a settlement made after 1st January 1908 by the husband or intended husband whether before or after marriage respecting the property of his wife or intended wife shall not be valid unless executed by her, if of full age, or confirmed by her after she attains full age. Provided that if she dies an infant any disposition made in the settlement or agreement by her husband shall bind or pass any interest in her property to which he may become entitled on her death, and which he could have bound or disposed of if the 1907 Act had not been passed. (Married Women's Property Act 1907, section 2.)

(3) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued either in contract or in tort or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property, and any damages or costs recovered against her in any such action shall be payable out of her separate property and not otherwise.

(4) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown, and every such contract shall not only bind the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire.

Note.—The Married Women's Property Act 1893 has extended the above provisions to the extent that every such contract shall bind the separate estate acquired after the contract was made, although the woman possessed no separate property at the time of making the contract.

(5) Every married woman carrying on a trade separately from her husband shall *in respect of her separate property* be subject to the bankruptcy laws in the same way as if she were a *feme sole*.

Notes.—The liability of a married woman is not a personal one—it cannot come into existence unless there is a separate estate, and it is limited to that estate. On the other hand, it is not necessary to prove the existence of separate property at the time when a receiving order is made against her, although the existence of separate property is a fact that the Court will have to consider. So long as the married woman is the sole proprietor of a business, the fact that her husband has the management thereof is immaterial. (*In re a Debtor*, 25 T.L.R. 140, C.A.) Although a judgment against a married woman is against *her*, execution is nevertheless limited to her separate property. It has been held that a bankruptcy notice cannot be issued upon a judgment against a married woman, although she may be trading separately from her husband and *otherwise* subject to the bankruptcy laws. (*Re Lynes*, 1893.) The hearing of a bankruptcy petition against a spinster was adjourned, and before the hearing came on she married, and it was held that she could not then be made bankrupt. (*In re a Debtor*, 14 T.L.R. 508.) On the other hand, "trading" means so long as any trade debts remain unpaid which were incurred by a married woman whilst actively carrying on trading operations. (*Re Worsley*, 1901, 1 K.B. 309.)

(6) A married woman may effect a policy of assurance upon (1) her own life, or (2) the life of her husband, for her separate use, and the same and all benefit thereof shall enure accordingly.

A policy of assurance effected—

(1) By any man on his own life and expressed to be for the benefit

(*a*) of his wife, or

(*b*) of his children, or

(*c*) of his wife and children, or

(*d*) any of them, or

(2) By any woman on her own life and expressed to be for the benefit

(*a*) of her husband, or

(*b*) of her children, or

(*c*) of her husband and children, or

(*d*) any of them,

shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured *or be subject to his or her debts*, provided that if it shall be proved that (1) the policy was effected, *and* (2) the premiums were paid *with intent to defraud* the creditors of the insured, they shall be entitled to receive out of the moneys *payable under the policy* a sum equal to the premiums so paid.

(7) A woman after her marriage shall continue to be liable in respect of and to the extent of her separate property for all debts contracted, all contracts entered into, or wrongs committed before her marriage, including any sums for which she may be liable as a contributory (either before or after she has been placed on the list of contributories) under and by virtue of the Acts relating to joint stock companies (now the Companies (Consolidation) Act 1908). A husband shall be liable in respect of his wife's ante-nuptial debts and liabilities to the extent only of any property he may have acquired or become entitled to from or through his wife (after deducting payments already made or judgments already recovered against him in that respect), and under such circumstances the husband and wife may be sued jointly for any such debts or liabilities. (But *see title* Contributory.)

(8) The legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would have or be if she were living.

A married woman may accept a trust, or the office of executrix or administratrix, and may act as such independently of her husband. (See note to paragraph (2) above.)

(9) Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any *trade or business* carried on by him or otherwise shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, *but not before*, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied. (*See title* Postponed Creditors.)

Note.—Proof cannot be made at all, even for the purpose of voting, until all the other creditors have been satisfied. (*Ex parte Taylor; re Grason*, 1879, 12 Ch.D. 366; and in *Re Genese; ex parte District Bank of London*, 1885, 16 Q.B.D. 700.) This postponement only applies to loans made to the husband for the purpose of his trade or business (*Ex parte Tidswell*, 4 Mor. 219) and to loans made to the husband as a *sole* trader. It does not prevent proof being made in respect of a loan to a firm of which the husband is a member. (*Re Tuff and Nottingham*, 19 Q.B.D. 88.) In the case of a deceased insolvent, the widow's claim to prove for money lent to him for the purpose of his trade or business was postponed. (*In re Leng*, 1895, 1 Ch. 652.) But a widow as executrix can retain such a claim out of the assets she may have in hand. (*Re Ambler*, 1905.) (*See also titles* Contributory, Fraudulent Conveyances, &c., Income Tax.)

Marshalling.—The doctrine of the marshalling of assets is based upon the principle "that a "person having *two* funds out of which to "satisfy his demand shall not by his election "prejudice another party who for his claim can "only resort to *one* of such funds." So that, if the person having the right against *any one of the two* funds, elects to resort to that *one* fund against which the other person had a right, then the latter will be allowed a right of recourse

against the other fund (against which he would not otherwise have had access) to the extent of the fund out of which he originally had a right to be paid. (*See title* Administration of Assets.)

The term "marshalling the assets and liabilities" is also used in connection with the arrangement of the order of the items in a Balance Sheet. (*See that title.*)

Master of a Ship.—One entrusted with the care and navigation of a ship. His authority, generally speaking, is limited to the navigation of the ship, but under special circumstances his authority extends so as to enable him to cope with such circumstances. When authorised so to do, either specially or in the usual course of his employment, a master can enter into a binding contract of carriage on behalf of the owners. He may also raise money on the security of the ship or cargo, but only when it is not possible to communicate with the owners or their agents from whom the money might have been obtained. (*See titles* Bottomry Bond, Portage Bill.)

Mate's Receipt.—A document given to a shipper on delivery of goods for shipment, which operates as a receipt for the goods. The receipt is afterwards exchanged for the bill of lading.

Mayor's Auditor.—*See title* Borough Auditors.

Measurement Goods.—Packages forming part of a ship's cargo, which are found by measurement to exceed the cubical capacity of space apportioned to the weight contained—that is, in excess of 40 cubic feet for every ton of measurement.

Measurement of Distances.—In the measurement of any distance for the purpose of any Act of Parliament passed after 1st January 1890, that distance, unless a contrary intention appears, is to be measured in a straight line on a horizontal plane.

Meeting.—*See titles* General Meetings, Statutory Meeting.

Member.—The members of a company registered under the Companies (Consolidation) Act 1908 are:—

(1) The subscribers of the memorandum of association of the company. These persons are deemed to have agreed to become members of the company, and upon the registration of the company they "shall be entered as members in its Register of Members." (Section 24.) The Act thus declares the signatories as members, and no formal allotment by the company is necessary, but in practice it is usually done.

(2) All other persons who have agreed to become members of the company, and whose names are entered in its Register of Members. (Section 24.) The agreement may be with the company, as in the case of allotment, or with an existing member, as in the case of transfer. The agreement is also with the company in the case of succession to a deceased member by his representatives, or in the case of a bankrupt member by his trustee.

Every member of a company having a capital divided into shares is a shareholder, and every shareholder a member, but a debenture-holder, as such, is not a member of the company issuing the debenture.

In *Dunster's* case (1894, 3 Ch. 473) it was decided that a firm may be a member of a company, but *Re Vagliano Anthracite Collieries, Lim.* (1910) seems to be contrary to this view.

A corporation (including companies incorporated under the Act of 1908) may be a member of another corporation or company, provided the power to hold shares therein is contained in its regulations.

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, with power to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company. (Section 68.)

Holders of preference shares (and debentures) of a company (not being a private company as defined by section 121 of the Companies (Consolidation) Act 1908, nor a company registered before 1st July 1908) shall have the same right

o receive and inspect the Balance Sheets of the ompany and the reports of the auditors and ther reports as is possessed by the holders of rdinary shares in the company. (Section 114.)

The minimum number of members of a company registered under the Companies Acts is xed at seven, except in the case of private ompanies so registered within the meaning of ection 121 of the Companies (Consolidation) ct 1908, when the minimum number of embers is two; and the maximum number of embers in such private companies is fifty, the tter number being reckoned exclusively of persons who are in the employment of the company. (*See titles* Contributory, Liability, and Limited Company.)

Memorandum of Association (of a Company).—A document containing the fundamental conditions upon which a company is incorporated, under the Companies (Consolidation) Act 1908.

Any seven or more persons (or, where the company to be formed will be a private company 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—

(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 (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 (termed a company limited by guarantee); or

(iii) A company not having any limit on the liability of its members (termed an unlimited company). (Section 2.)

COMPANY LIMITED BY SHARES.

In the case of a company limited by shares—

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 (which includes Wales), 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.

Every subscriber of the memorandum must take at least one share and must write opposite his name the number of shares he takes. (Section 3.)

COMPANY LIMITED BY GUARANTEE.

In the case of a company limited by guarantee—

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 (which includes Wales), 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. If the company has a share capital—

(*a*) 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;

(*b*) Every subscriber of the memorandum must take at least one share;

(*c*) Each subscriber must write opposite to his name the number of shares he takes. (Section 4.)

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.

For the purpose of the provisions of the 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. (Section 21.)

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 the Act. (Section 56.)

Unlimited Company.

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 (which includes Wales), 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) Every subscriber of the memorandum must take at least one share;

(ii) Each subscriber must write opposite to his name the number of shares he takes. (Section 5.)

The memorandum of association in the case of a company limited by shares *may*, and in the case of a company limited by guarantee or unlimited *must*, when registered, be accompanied by articles of association signed by the subscribers to the memorandum of association, and prescribing regulations for the company. If the memorandum (in the case of a company limited by shares) is not accompanied by articles, or in so far as the articles do not exclude or modify the regulations contained in "Table A," the last-mentioned regulations are, so far as applicable, the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles. (Sections 10 and 11.) (*See title* Articles of Association.)

As between the memorandum and the articles, the former is to be regarded as the dominant instrument. Contemporaneous articles (not articles as amended) may, however, be referred to, to supply the construction to be placed upon a doubtful phrase in the memorandum, but this must be cautiously done, for the articles cannot amplify or expand the memorandum. Every person having dealings with a company, whether a member or a creditor or otherwise, is deemed to have constructive notice of the memorandum and articles of association, as regards the external position of the company. The memorandum has been described as the charter of the company, defining the area beyond which the action of the company cannot go, although within that area the shareholders may make such regulations for their own government as they may think fit, subject

ways to the provisions of the Companies Act, d to general principles of law, *e.g.*, a com- ny cannot issue shares at a discount, even ough a clause in the memorandum purports to nfer such a power. It is usual in practice for e signatories to subscribe for one share only, though more are being taken in fact. But, nce the 1900 Act, where a company issues an vitation to the public to subscribe for shares e directors generally sign for the whole of their ualification shares (if any) to avoid the expense a specially prepared contract, which, since oo, would otherwise need to be filed with the egistrar.

The contents of the memorandum of associa- n must be set out in every prospectus issued or on behalf of a company. (*See title* ospectus.)

The memorandum may be in writing (though practice it is printed), and must bear a 10s. amp as if it were a deed, and be signed by ch subscriber in the presence of, and be ested by, a witness (section 6), and on the *gistration* of the memorandum the company d the members thereof are bound thereby and the same extent as if each member had sub- ibed his name and affixed his seal thereto, and re were in the memorandum, on the part of nself, his heirs, executors, and administrators, venants to observe all the provisions of such morandum subject to the provisions of the mpanies (Consolidation) Act 1908. (Section)

The signatories to the memorandum are embers of the company *on registration* of the cument, and even though no shares have been otted to them, or their names have not been aced upon the Register, they can demand the ares on the one hand, and are liable thereon the other, unless the whole of the shares of e company have been allotted to other persons.

Note.—A limited company may sign the morandum by its duly authorised agent.

On registration of the memorandum a regis- tion fee is payable, rising by scale, according the capital of the company, from £2 (the nimum) to £50 (the maximum), and, in addition thereto, there is payable an *ad valorem* duty at the rate of 5s. per centum on the capital of the company.

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 such place of business file with the Registrar a certified copy of the charter, statutes, or memorandum and articles of association, 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, and in the event of any alteration being made in any such instrument, notice thereof must also be filed with the Registrar. (Section 274.)

A share transfer office is a "place of business" within the meaning of the section.

Penalties are incurred if a company fails to comply with these provisions.

With regard to the various clauses of the memorandum of a company:—

Name.

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.

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.

Note.—Special permission is required before certain words, such as "Royal," can be registered as part of the name of a company. In practice, it is found advisable to obtain the

provisional assent of the Registrar to a proposed name for a new company before proceeding with the printing and other arrangements.

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

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.

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. (Section 8.)

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:

(*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.

Failure to comply with the foregoing provisions renders the company and those of its officers who wilfully permit the default liable to penalties. (Section 63.)

Every company incorporated outside the United Kingdom, which establishes a place of business in the United Kingdom, 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 billheads and letter-paper, and in all notices, advertisements, and other official publications of the company.

The company and every officer or agent of a company which fails to comply with these requirements shall be liable to penalties. A share transfer office is a place of business within the meaning of the section. (Section 274.)

Any association may be registered with limited liability without the addition of the word "limited" to the name, on the Board of Trade being satisfied that it is being formed for the purpose of promoting commerce, art, science, religion, or charity, &c., and that payment of dividends to the members is prohibited—the profits (if any) to be applied in promoting the objects of the company. (Section 20.)

Such a company may not, without the sanction of the Board of Trade, whether registered without the word "limited" or not, hold more than two acres of land; the Board of Trade may however, by licence empower any such company to hold lands in such quantity and subject to such conditions as the Board think fit. (Section 19.)

The licence to register without the addition of the word "limited" to the name may at any time be revoked by the Board of Trade. (Section 20.)

Registered Office.

Every company shall have a registered office to which all communications and notices may be addressed.

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. (Section 62.)

Failure to comply with these requirements nders a company liable to penalties.

The registered office of a company is generally, ough not necessarily, the domicile of the mpany. The registered office *must* be situate that part of the United Kingdom specified in e memorandum of association (Wales for is purpose is deemed part of England), but it not necessary that it be situate where the mpany carries on business, although the place, the principal place, of business is generally lopted as the registered office. (*See also title* oreign (Incorporated) Companies.)

Objects of the Company.

This clause is probably the most important rt of the memorandum. As a company cannot gally act beyond the limits prescribed therein, e objects are usually stated very fully and cover wide area, because the alteration of such jects is attended with some difficulty, the ture of such permissible alterations being rrowly defined. (*See infra.*)

The more important general powers set out the objects clause of the memorandum, as stinct from those specially applicable to the rticular company, are:—(1) to carry on busi- ss abroad, (2) to hold shares in other com- nies, (3) to borrow money and issue deben- res, and *inter alia* to create a charge upon e uncalled capital, (4) to sell the undertaking a whole either for cash or shares in another mpany, and such like extraordinary powers. *See title* Reconstruction.)

With regard to possible alterations of the jects of a company, it is provided as follows:—

Subject to the provisions of this section a com- ny may, by special resolution, alter the pro- sions of its memorandum with respect to the jects of the company, so far as may be quired 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.

The alteration shall not take effect until and except in so far as it is confirmed on petition by the Court.

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.

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.

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.

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.

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. (Companies (Consolidation) Act 1908, section 9.)

Liability.

As already indicated, a company may be registered with the liability of the members either—

(1) limited to the amount (if any) unpaid on the shares held by them respectively, or

(2) limited to the amount (if any) unpaid in respect of their guaranteed amounts respectively, or

(3) unlimited. (Section 2.)

Provision is made in the Companies (Consolidation) Act 1908 (section 57) for the registration of an unlimited company as a limited company.

Provision is also made whereby a company can be formed with limited liability as regards its members, but with the liability of its directors or managers or its managing director unlimited (section 60), and an existing limited company, if 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. (Section 61.)

These provisions are, however, not taken advantage of in practice. (*See title* Liability.)

Capital.

A company limited by shares, if so authorised by its articles (as originally framed or as altered by special resolution), 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.

The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution.

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.

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. (Section 41.)

Notice of the exercise of the foregoing powers must be given to the Registrar of Joint Stock Companies. (Sections 42 and 44.)

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.

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. (Section 45.)

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. (Section 46.)

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. (Section 47.)

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." (Section 48.)

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.

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 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. (Section 49.)

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. (Section 50.)

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.

On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

Notice of the registration shall be published in such manner as the Court may direct.

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. (Section 51.)

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. (Section 52.)

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. (Section 55.)

Where a company had a reserve fund created out of undistributed profits the Court sanctioned a scheme for the reduction of its capital which provided for an apportionment of the losses between capital and the reserve fund. (*Re Hoare & Co.*, 1904.)

Where the creditors are not concerned, all that is required of the Court before giving its sanction is to see that the resolution is not unfair, for it is no part of the business of the Court to

determine the wisdom of a course adopted by a company in the management of its own affairs.

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 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. (Section 40.) (*See also title* Accumulated Profits.)

The resolutions required in connection with the modification of the capital clause in the memorandum may be summarised thus:—

(1) To reduce the issued capital (subject to confirmation by the Court) or subdivide the shares:—

(*a*) Where the articles authorise the modification—a special resolution.

(*b*) Where the articles do not authorise the modification—two special resolutions: one to amend the articles and acquire the power, and another afterwards to exercise the power.

(2) To increase the capital, consolidate and divide into shares of larger amount, cancel unissued shares, convert paid-up shares into stock, or reconvert stock into paid-up shares:—

(*a*) Where the articles authorise the modification—such a resolution as the articles may prescribe, whether special, extraordinary, or ordinary. In fact, with regard to the *increase* of capital, the articles may confer the power on the directors. (*Campbell's* case, 9 Ch. 1.)

(*b*) Where the articles do not authorise the modification—one special resolution, for the power may be taken and exercised by the same (special) resolution.

(3) To reorganise the capital apparently whether the articles do or do not authorise the modification—a special resolution, but subject to the confirmation of the Court.

Table A (as revised) provides that an increase in the capital may be effected by the directors with the sanction of an extraordinary resolution of the company; that conversion and reconversion may be effected by the directors with the sanction of an ordinary resolution, but that reduction, consolidation, subdivision, and cancellation may only be effected by a special resolution of the company, subject always to the consent of the Court in the case of a reduction and to other statutory conditions.

On an increase of capital the *ad valorem* duty of 5s. per £100 must be paid within fifteen days of the resolution authorising the increase (see section 5 of the Revenue Act 1903), and, in addition, a registration fee on the capital if the maximum sum of £50 has not already been paid. The additional duty must be paid, even though the increase of the nominal amount of share capital be merely due to the re-arrangement and consolidation of the several classes and denominations of the shares and stocks of the company (*Midland Railway Co.*, H.L. 1902), *e.g.*, by the issue of £120,000 of 3 per cent. Consolidated Stock in lieu of previously existing £60,000 of 4 per cent. and £24,000 of 5 per cent. stock. (See also *Attorney-General v. The Anglo-Argentine Tramways Co., Lim.*, 1909, and *Attorney-General v. Caledonian Railway Co.*, 1910.)

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. (Companies (Consolidation) Act 1908, section 59.)

A resolution in pursuance of the above is in effect an alteration in the memorandum of association, and it is considered that the alteration cannot be recalled by a subsequent special resolution.

The decision in *Andrews v. Gas Meter Company* (1897, 1 Ch. 361) considerably affected previous conceptions as to the effect of the capital clause of the memorandum. The decision in that case may be summarised thus:—

(1) If the memorandum determines the rights of the shareholders *inter se*, such rights cannot be affected by the articles (either original or as amended).

Note.—It is sometimes provided in the memorandum that the rights of shareholders as therein expressed may be amended at some future date in manner prescribed, but Sir F. B. Palmer is of opinion that such a power of variation, even though contained in the memorandum itself, is of doubtful validity.

(2) If the memorandum does not determine the respective rights, the articles, as originally framed, may do so, and such provisions may be varied from time to time by special resolution.

(3) If neither the memorandum nor the articles determine the respective rights, nor even provide for an increase of capital, such increase may first be effected under section 12 of the Act of 1862 (now section 41 of the Companies (Consolidation) Act 1908), and the *rights* of the shareholders, whether in respect of the new shares or the original capital, may by a further special resolution be determined or altered from time to time by the articles.

(4) If neither the memorandum nor the articles determine the respective rights but *do* provide for an increase of capital, such increase may be effected (either by special resolution, extraordinary resolution, ordinary resolution, or even a resolution of the directors according to the requirements of the company's regulations) and the rights of the shareholders determined as in paragraph (3) above.

A copy of the memorandum of association and articles of association (if any) shall be forwarded to every member, on request, on payment of one shilling or such less sum as may be prescribed by the company for each copy; and if any company makes default in forwarding such copy on request it shall be liable for each offence to a fine not exceeding one pound. (Companies (Consolidation) Act 1908, section 18.)

Of course, *any person*, whether member or not, may inspect and obtain extracts from the memorandum and articles on the file at Somerset House on payment of the prescribed fees.

Mercantile Agent.—A mercantile agent (within the meaning of the Factors Act, *q.v.*) means a person having, in the customary course of his business as such agent, authority either (1) to sell goods, or (2) to consign goods for the purpose of sale, or (3) to buy goods, or (4) to raise money on the security of goods.

Merger.—One of the characteristics of contracts under seal and contracts of record.

Where parties enter into a simple contract and subsequently enter into an identical engagement by deed, the simple contract is merged in and extinguished by the deed.

Upon judgment being entered in respect of certain rights of action, such rights are merged in or extinguished by the judgment. The effect of this is important, for if a person obtains judgment against a principal he cannot afterwards sue the agent in respect of the same matter, and *vice versâ*. So also in the case of joint debtors, if judgment is obtained against any one or more, but not all of them, the judgment is only

nforceable as regards those against whom it vas pronounced, and as the creditor's previously xisting rights have become merged in the judgnent, he cannot subsequently obtain judgment gainst the others. This has an important bearng upon partnership debts, for which the artners are jointly liable. Should a creditor btain judgment against, say, two partners, he annot afterwards, on discovering that a third artner exists, sue the latter, as the joint ability would have become merged in the judgnent. But if the third " partner " in question ere dead and his estate is in course of dministration, the creditor would have a subsequent right against such estate, for the estate f a deceased partner is severally liable in due ourse of administration for the firm's debts, ubject to the prior payment of his separate ebts.

The rights of a surety are not affected by the peration of merger by a judgment, for where a reditor sued one partner and obtained judgment, hus precluding himself from suing the other artner, the surety for the debt was held not ound by this act of the creditor and was allowed o sue *both* partners.

Messuage.—A dwelling-house, its outbuildings, and he adjacent land (if any) assigned to the use hereof.

Metric System.—The system of weights and easures involving the decimal system, wherein e standard unit in the ascending series is ultiplied by ten, and in the descending series is vided by ten. Under this system linear rface and cubic measure are related to weight nd volume. The system is based upon the etre as the unit of measurement, which is puted to be $\frac{1}{10,000,000}$ part of the quadrant of e meridian, and equal to 39.37079 English ches.

The unit of *lineal* measure is the metre.

10 millimetres = 1 centimetre.

100 millimetres or 10 centimetres = 1 decimetre.

1,000 millimetres or 100 centimetres or 10 decimetres = 1 metre = 39·37079 English inches.

10 metres = 1 decametre.

100 metres = 1 hectometre.

1,000 metres = 1 kilometre = 1093·633 English yards.

10,000 metres = 1 myriametre

Superficial Measure:—

100 square metres = 1 are = 119·6 English square yards.

10,000 square metres = 1 hectare = 2·471 English acres.

Capacity or Volume Measure:—

10 litres = 1 decalitre = 2·2 English gallons.

100 litres = 1 hectolitre = 22·0 English gallons.

1,000 litres = 1 kilolitre = 220·0 English gallons.

Solid or Cubic Measure:—

1 cubic metre = 1 stere.

10 cubic metres = 1 decastere.

Weight Measure:—

1,000 milligrammes = 1 centigramme.

100 centigrammes = 1 decigramme.

10 decigrammes = 1 gramme.

10 grammes = 1 decagramme.

100 grammes = 1 hectogramme.

1,000 grammes = 1 kilogramme = 2·204621 lbs. avoirdupois.

A gramme is a cubic centimetre of distilled water at the temperature of maximum density, and a cubic decimetre of such water is a litre, and as a consequence the lineal capacity and weight measures of the metric system are all connected, thus:—

$(\frac{1}{10}$ metre$)^3$ ... ... = 1 cubic decimetre.

1 cubic decimetre of water = 1 litre.

1 litre ... ... = 1 kilogramme.

The metric system as a decimal system of weights and measures based upon the metre as a standard unit must be distinguished from decimal systems of coinage, which deal with values, and with which obviously the metre as a standard unit has no connection.

Mineral Rights Duty.—There shall be charged, levied, and paid for the financial year ending the thirty-first day of March nineteen hundred and ten and every subsequent financial year on the rental value of all rights to work minerals and of all mineral wayleaves, a duty at the rate in each case of one shilling for every twenty shillings of that rental value.

The rental value shall be taken to be—

(*a*) Where the right to work the minerals is the subject of a mining lease, the amount of rent paid by the working lessee in the last working year in respect of that right; and

(*b*) Where minerals are being worked by the proprietor thereof, the amount which is determined by the Commissioners to be the sum which would have been received as rent by the proprietor in the last working year if the right to work the minerals had been leased to a working lessee for a term and at a rent and on conditions customary in the district, and the minerals had been worked to the same extent and in the same manner as they have been worked by the proprietor in that year:

Provided that the Commissioners shall cause a copy of their valuation of such rent to be served on the proprietor; and

(*c*) In the case of a mineral wayleave, the amount of rent paid by the working lessee in the last working year in respect of the wayleave:

Provided that if in any special case it is shown to the Commissioners that the rent paid by a working lessee exceeds the rent customary in the district, and partly represents a return for expenditure on the part of any proprietor of the minerals which would ordinarily have been borne by the lessee, the Commissioners shall substitute as the rental value of the right to work the minerals or the mineral wayleaves, as the case may be, such rent as the Commissioners determine would have been the rent customary in the district if the expenditure had been borne by the lessee.

Note.—The expression "proprietor" includes a person entitled to the possession of land comprised in a lease for any long term of years to which section 65 of the Conveyancing and Law of Property Act 1881 applies. "Rent" includes a fine or premium.

Every proprietor of any minerals and every person to whom rent is paid in respect of any right to work minerals or of any mineral wayleave must (subject to penalties in case of default) furnish to the Commissioners on request particulars of rents received and/or minerals worked.

Mineral rights duty shall not be charged in respect of common brick clay, common brick earth or sand, chalk, limestone, or gravel. (Finance (1909-10) Act 1910, section 20.)

An immediate lessor paying the duty who is himself a lessee of the right to work the minerals or other wayleaves shall be entitled to deduct the duty from the rent paid by him to his lessor.

Where in any special case mineral rights duty has been charged on a rental value based on a rent which has been substituted under the provisions of this Act for the rent actually payable by the working lessee, or where in any special case the rental value with reference to which increment value duty is charged has been reduced under the provisions of this Act for the purposes of the collection of that duty, the Commissioners shall, on the application of any lessor from whose rent a deduction may be made in respect of mineral rights duty or increment value duty, as the case may be, make a corresponding substitution or reduction as regards that rent, if they consider that the grounds for the substitution or reduction, as the case may be, are applicable in the case of the rent with respect to which the application is made. (*Ibid*, section 21.)

Rating authorities are exempt from payment of mineral rights duty. (*Ibid*, section 35.)

Minimum Rent.—*See title* Royalty.

Minimum Subscription.—*Minimum subscription* is the term used in the Companies (Consolidation) Act 1908 in connection with the provision therein to control the *first* allotment of shares by directors of companies other than "private companies" as defined by section 121. The minimum subscription on which the directors may proceed to allotment is as follows:—

(1) In the case of any share capital offered to the public for subscription:—

(*a*) The amount (if any) *fixed* by the memorandum or articles of association and *named* in the prospectus as the minimum subscription; or

(*b*) If no amount is so fixed and named, then the *whole amount* of the share capital *so offered for subscription.*

(2) In the case of share capital *payable in cash* of a company which does not issue any invitation to the public to subscribe for its shares:—

(*a*) The amount (if any) *fixed* by the memorandum or articles of association and named in the statement in lieu of prospectus as the minimum subscription; 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.

The amounts so fixed and named or the whole amounts aforesaid, as the case may be, must be reckoned exclusively of any amount payable otherwise than in cash. (Companies (Consolidation) Act 1908, section 85.)

Not only must the minimum amount be subscribed for, but not less than 5 per cent. of the nominal amount of each share (payable in cash) must have been paid to and received by the company. If the conditions of the minimum subscription are not complied with on the expiration of forty days after the first issue of the prospectus, all moneys received from applicants for shares must be returned forthwith without interest.

Note.—The Act requires the *amount* to be fixed, but in *Re West Yorkshire Darracq Agency, Lim.* (25 T.L.R. 77) it was held that a fixed percentage of the shares offered was a sufficient compliance with the section.

(*See titles* Allotment; Commencement of Business, restrictions on; Prospectus; Statement in lieu of Prospectus.)

Minor.—*See title* Infant.

Mint Par of Exchange.—*See title* Par of Exchange.

Minutes and Minute Book.—

BANKRUPTCY.

The chairman of every meeting 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 at the next ensuing meeting. (Bankruptcy Act 1883, 1st Schedule, Rule 25.)

A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof. Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had. (1883 Act, section 133.)

The Official Receiver, or, as the case may be, the trustee, shall send to the Registrar of the Court in which the matter is pending a copy, certified by him, of every resolution of a meeting of creditors. (Rule 255.)

(*See title* Record Book.)

COMPANIES.

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.

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.

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 been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors,

managers, or liquidators, shall be deemed to be valid. (Companies (Consolidation) Act 1908, section 71.)

In large companies the administration of affairs is usually divided, and committees are formed amongst the directors, in which case it is usual to have separate Minute Books for each committee, and in other cases the minutes of the general meetings of members are recorded in one book, and those of meetings of directors or of any committee in another.

The auditor of a company should carefully inspect the Minute Books, and take short extracts therefrom of all resolutions or proceedings which affect the accounts, so that he may ascertain that the directions of the shareholders or of the directors have been duly observed.

On second and subsequent audits, the auditor, if not invited to attend the annual general meeting, should examine the Minute Book to see that it is therein recorded that his report upon the accounts for the previous year was *read* to the members.

Note.—An auditor is entitled to see *all* the books of the company. (Companies (Consolidation) Act 1908, section 113.)

COMPANY LIQUIDATION.

The chairman (of a meeting of creditors or contributories) 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. (Winding-up Rules 1909, Rule 138.) (*See title* Record Book.)

Misdemeanour.—A breach of the law, which does not amount to, and is not so serious as, a felony. (*See titles* Debtors Act, Discharge of a Bankrupt.)

Misfeasance.—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.

This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

Where in the case of a winding-up 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 4 of the Bankruptcy Act 1883 (Companies (Consolidation) Act 1908, section 215)—that is to say, a bankruptcy notice may be founded upon the order.

It would appear that mere loss on realisation in a winding-up as compared with the figures on the Balance Sheet immediately preceding the winding-up is not of itself evidence that the auditor has been guilty of misfeasance. Even if it can be shown that the auditor has not exercised reasonable care and skill in the discharge of his duties, the company's assets may not have been diminished as a direct consequence.

Where a liquidator distributed the assets of a company without providing for a sum of income-tax due to the Crown it was held that he had been guilty of *misfeasance* within section 10 of the Companies (Winding-up) Act 1890, now section 215 of the Companies (Consolidation) Act 1908, and he was ordered to pay the income-tax personally. (*New Zealand Joint Stock and General Corporation*, 1907.)

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. (Companies (Consolidation) Act 1908, section 279.)

Mistake.—

(1) Where two parties are brought into contractual relationship by a third party, who by fraud or negligence has induced one of the parties to contract with a person unacceptable to him, or to enter into a transaction which was not contemplated by him; or

(2) Where one of two parties mistakes the *intention* of the other to the knowledge of the latter; or

(3) Where the subject-matter of a contract has ceased to exist at the time the contract is entered into or where there is a mutual error as to its identity;

the contract may be set aside or otherwise affected, or there may be no contract at all—according to the precise circumstances.

Where one is induced by *mistake of fact* to pay a sum of money to another he may recover the amount, provided that the payer would have been liable to make the payment had the particular inducement been a fact. But money paid under a *mistake of law* is not recoverable since " every one is presumed to know the law."

Mixed Policy.—One which combines the characteristics of a *voyage* and of a *time* policy.

Money Lenders' Act 1900.—*See title* Usury.

Moneys in Advance of Calls.—*See title* Interest on Moneys in Advance of Calls.

Monometallism.—A system of currency based upon a single standard of value, with one metal only a legal tender for any and every amount; as distinct from a system based upon a double standard, called *Bimetallism.*

Monopoly.—An exclusive privilege; a licence from the Crown for the *sole* buying, selling, making, working, using, or otherwise dealing in anything. Monopolies were abolished in 1623 by the Statute of Monopolies, but the Act excepted patents for 14 years for the sole working of new manufactures by the true and first inventors thereof. (*See title* Patent Right.)

Month.—In every Act of Parliament passed after 1850, the word " month " means calendar month, unless the contrary is expressed. Formerly the word " month " meant lunar month, or 28 days.

The Bills of Exchange Act specially adopts the calendar month for bills and notes, and in the absence of a contrary intention a calendar month is implied as against a lunar month in all commercial documents.

Moral Consideration.—*See title* Consideration.

Mortality Tables.—Tables based upon observations on a large number of lives, recording the numbers living and dying at every age, so that by actuarial calculations information is afforded whereby a life assurance company or others may ascertain (1) the premiums payable in respect of life assurance, (2) the sum payable in respect of a life annuity, or (3) any other matter dependent upon the duration of human life. (*See titles* Expectation of Life, Life Annuity.)

Mortgage.—A conditional transfer of property to secure payment of a sum of money (generally with interest thereon) at a given date. Upon the payment of the moneys thereby secured the interest of the mortgagee in the property is annulled, but upon default by the mortgagor the legal estate (at common law) is perfected in the mortgagee. Equity, however, treats this as a penalty, and confers upon the mortgagor a right (under conditions) to redeem the property.

After the time fixed for payment has passed, the mortgagor must give the mortgagee six months' notice of his intention to redeem the mortgaged property, or pay six months' interest in lieu thereof. (*See titles* Bill of Sale, Consolidation, Equitable Mortgage, Equity of Redemption, Fixtures, Foreclosure, Legal Mortgage, Receiver, Register and Registration of Mortgages, Tacking.)

Mortgage (of a Ship).—A registered ship or a share therein may be made a security for a loan, and the instrument creating the security (in the prescribed form or as near thereto as circumstances permit) may be recorded in the Custom House Register Book at the ship's port of registry. The Registrar notifies on each mortgage the day and hour of registration, and if there are more mortgages than one in respect of the same ship, the mortgagees shall have priority, one over the other, according to the date of registry, notwithstanding any notice, whether express, implied or constructive, and irrespective of the dates of the various mortgages.

When a registered mortgage is discharged it may be produced to the Registrar so that the original entry in the Register may be annulled.

A registered mortgage of a ship or share therein takes the subject-matter out of the order or disposition of the mortgagor, and in the event of his bankruptcy, such ship or share will be subject to the preferred rights of the mortgagee, provided the mortgage was duly registered before the commencement of the bankruptcy (*i.e.*, the date of the first act of bankruptcy proved as having been committed by the mortgagor within three months next preceding the date of the presentation of the petition).

The Register may be inspected by any person on payment of a fee not exceeding one shilling, and it is advisable (and usual) for an auditor of a ship's accounts to avail himself of this opportunity, so that he may satisfy himself that no mortgage is in existence (at all events registered) other than those disclosed, if any.

A mortgage of a ship passes all articles necessary for the equipment of the ship in her adventure, on board when the mortgage was given, and all articles of a like kind brought on board afterwards in substitution for those which were there when the mortgage was given. (*Coltman v. Chamberlain*, 25 Q.B.D. 328.) But it is doubtful whether this rule extends to consumable articles, or to articles used for the accommodation of passengers of a special class. For example, the cabin fittings of a "liner" would be part of the ship, and probably the stores for maintenance of the passengers and crew, but stocks of wines and spirits, and (say) a catering plant (which must vary according to the season and to circumstances) would probably be held not to pass under a mortgage of a ship.

Mortgages, Register of.—*See title* Register and Registration of Mortgages.

Movable Property.—Personalty; goods and other movables. (*See titles* Estate Duty, Legacy Duty.)

Municipal Accounts.—

Audit.—The audit of the accounts of municipal corporations is provided for by the Municipal Corporations Act 1882. The auditors are three in number, two, called elective auditors, being elected by the burgesses (by ballot if more than two are nominated), the third being appointed by the mayor and called mayor's auditor. An elective auditor must be qualified to be a councillor, but may not be a councillor, or the town clerk or treasurer. The mayor's auditor must be a councillor. (*See title* Borough Auditors.)

Accounts.—The treasurer is required to make up the accounts of the borough half-yearly at such dates as may be appointed. On the completion of the second half-year in each financial year, the accounts for the year must be consolidated and issued in printed form. The Local Government Board require the annual return to consist of receipts and payments only—*i.e.* that they shall be merely an analysed Cash Account without taking into account amounts outstanding, whether assets or liabilities, at the

beginning or end of the period. Some local authorities issue their printed accounts also in this form, but as such an account does not ordinarily exhibit the true financial result of a particular period, other authorities have adopted the practice of issuing the Account of Receipts and Payments together with an Income and Expenditure Account. This enables them, while complying with the requirements of the Local Government Board, to show the true result of the period under review.

As to the Balance Sheet, there have long been differences of opinion among accountants as to the best method of stating the assets, some contending that *all* capital expenditure, whatever its nature, should appear as an asset at its original cost; others consider that only that portion which represents realisable property should stand permanently in the Balance Sheet, the remaining assets being gradually written-off out of Revenue; while a third contention is that all the assets should stand in the Balance Sheet, but at the amounts remaining due in respect of each respectively (*i.e.*, at the unpaid amount of the loan by means of which they have been acquired), or, in other words, that they should be "depreciated" periodically by such proportions of the Sinking Fund instalments as represent Capital repayments.

The Departmental Committee appointed to inquire into the accounts of local authorities made a report in July 1907, and amongst other things recommended (1) that the most efficient system of account keeping for local authorities is a system of income and expenditure in which all incomings and outgoings pertaining to any given period, whether actually received and disbursed or not, are included in the accounts of that period; (2) that full accounts should be kept of stores and accurate Cost Accounts prepared of work executed by direct labour employed by the local authority; (3) that separate Revenue Accounts, Net Revenue Accounts, and Balance Sheets should be prepared of all trading undertakings; (4) that where the loan in respect of a given asset has to be repaid within a period not longer than the probable life of the asset (due allowance being made for contingencies and the risk of obsolescence), the repayment of the debt may be regarded as provision for depreciation, but if the period allowed for repayment of the loan be excessive, it may be necessary to make further provision for depreciation; (5) that all assets having an abiding or realisable value, including the *whole* of the assets and capital outlays in respect of each trading undertaking, should be maintained in the Balance Sheets at their original cost, so long, of course, as they remain in the possession of the particular authority; (6) that other capital expenditure, such as street improvements and sewers, should be periodically reduced by the amount of the provision made for the repayment of the debt thereon; (7) that although it is not considered practicable to *present* the accounts of all local authorities to the ratepayers completely uniform, it should be made compulsory that all the accounts of local authorities should be *kept* upon one general system.

With regard to Rate Fund Accounts, the Departmental Committee referred to the desirability from an accounting point of view of applying the system of income and expenditure to all accounts, whether in respect of Trading or Rate Fund Accounts, but recognised the difficulty with regard to Rate Fund Accounts, and advanced opinions which had been expressed to the effect that in the latter respect the circumstances did not call for an Income and Expenditure Account in the full sense of the term, but one which included (*a*) all receipts and payments, and also (*b*) all outstanding debit and credit items which had actually become due at the date to which the account was being made up, but which did not include apportionments of items not actually due.

Municipal Trading.—With regard to municipal trading there is much difference of opinion, some condemning municipal trading altogether, others advocating its extension to all branches of trading. But the general opinion appears to be that municipal trading is advantageous and commendable so long as it is confined to those trading departments which it is desirable in the

public interest should be under public control. Of these, gas, water, electric light, tramway and ferry undertakings, are prominent examples. From an accountant's point of view, the subject is of interest, particularly as regards the method of ascertaining and disposing of the profit of such trading.

The chief difference of opinion as to the disposal of the surplus arises in connection with the provision for loss arising from depreciation of assets. There are three methods advocated:

(1) To charge against earnings the interest on the loan and the Statutory Sinking Fund instalment to redeem such loan.

(2) To charge against earnings not only the interest on the loan and the Statutory Sinking Fund instalment, but also the ordinary provision for depreciation which would be made in the case of a privately owned company.

(3) To charge against earnings (*a*) the Statutory Sinking Fund instalment or provision for depreciation, whichever is the greater, and (*b*) the interest upon the loan.

It is contended by the advocates of method (1) that the Sinking Fund instalment fixed by statute is sufficient provision for depreciation, but while this may be legally correct, it is not so from an economic standpoint *unless* the expected "life" of the asset is equal to or less than the period during which the Sinking Fund instalments have to be provided and at the end of which the loan is to be paid off. If this proviso be fulfilled, this method then becomes equivalent to that set out under heading (3).

In support of method (2) it is usually urged that if the Sinking Fund instalment is by statute directed to be paid out of "profits," there can be no "profits" until *after* adequate provision has been made for depreciation. But it is submitted that this is an endeavour to attach too limited a meaning to a word obviously of wide application (compare "profits for income-tax purposes," "profits available for dividend," &c.). Whatever be the nature of the undertaking, public or private, if capital be repaid by periodical instalments out of earnings, Revenue should be relieved *pro tanto* from its obligations to provide depreciation.

As to method (3) the economic provision is undoubtedly the same depreciation as would be chargeable in the case of a privately owned concern, and if the Sinking Fund instalment is less than such provision, the *difference* should be charged *in addition* to the Statutory Sinking Fund instalment. The instances where the Sinking Fund instalment is greater than the provision for depreciation are rare, but where any such exist, then the statutory obligation must necessarily be fulfilled, notwithstanding that it exceeds the economic requirement as regards depreciation.

In addition it may be desirable to set aside some portion of the surplus to a reserve fund to meet contingencies before transferring any sums in aid of the rates, for even after providing depreciation in such amounts as may appear necessary, having regard to past experience, there are so many municipal undertakings which involve the acquisition of plant and machinery in connection with entirely modern industries, *e.g.*, electric dynamos, that sufficient experience has not yet been attained to enable the actual rate of depreciation, or the probable "life," of such assets to be gauged with the same precision as is possible in other cases. But the amounts so set aside should not be unreasonable—the ideal should be to hold an even balance between present day and future ratepayers; in fact, many of the local Acts limit the sums so to be set aside. The economically correct charge against Revenue is such a sum as is sufficient to pay the loan and interest thereon during the *life of utility* of the asset, and yet during the period in question to reduce the loan so that the net liability is fairly commensurate from time to time with the utility value of the particular asset. (*See titles* Equation of Loan Periods; Sinking Funds.)

Mutual Credits, Debts, and Dealings.—Section 38 of the Bankruptcy Act 1883 provides that:—

> Where there have been mutual credits, mutual debts, and other mutual dealings

between a debtor against whom a receiving order shall have been 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 the 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.

The term "mutual credit" is wider than mutual debt." Lord Brougham distinguished em thus:—

"Now, although generally speaking debt "and credit are correlative terms, and A. "giving credit to B. may seem to imply that "B. is indebted to A., yet it may be admitted "that the introduction of the words 'mutual "credit' *extends the right of set-off* to cases "where the party receiving the credit is not "debtor *in præsenti* to him who gives the "credit. Accordingly the relation contem- "plated by the statute has been held to be "established when the debt is *immediately* "due from the one party and only due on a "*future* day from the other." (*Young v. Bank of Bengal*, 1836.)

The term "mutual dealings" includes every ase of provable claim, so that provided there mutuality, all claims provable in the bank- uptcy may be the subject of set-off. The fact at one claim arises on a deed and the cross- aim arises on a simple contract will not prevent em from being set off against each other. *Ex parte Law*, 1846.) A secured debt and an nsecured debt may also be set off against each ther, and the set-off operates as payment *pro anto*, so that if the amount of set-off be equal the secured debt, the debt is satisfied and the security must be released. (*Ex parte Barnett*, 1874.)

Thus, suppose A. owes B. £3,000 on certain dealings, and B. owes A. £1,000 in respect of other transactions, A. having a lien on certain goods belonging to B. as security for the £1,000, B. having no security in respect of the £3,000.

In the event of A. becoming bankrupt the position would be:—

Amount owing to B.	£3,000
Amount owing by B.	1,000
Balance due to B.	£2,000

The debt in respect of which the security was held is thereby extinguished, and the trustee in bankruptcy must release the goods held under lien and allow B. to prove against the estate for £2,000. In other words, B. cannot be called upon (1) to pay the £1,000, (2) to release his goods, and (3) to prove for £3,000 against the estate. The trustee would have a similar right of calling for the security if (1) it were held by the solvent party, and (2) by the operation of set-off the claim of the latter against the bankrupt's estate (in respect of which he would be holding the security) would be extinguished.

"In order to constitute that *mutuality* of "debts, credits or dealings which is required by "the statute, it is necessary that the debt, credit "or dealing, which is set off, and the debt, credit "or dealing against which it is set off, should "be between the same parties, and therefore a "joint debt cannot be set off against a separate "debt, nor a separate debt against a joint debt, "nor a debt due from three partners against "a debt due to two of them, or the like." (Williams.)

Further, in order that debts may be set off, they must ordinarily be respectively due in the *same right*, *e.g.*, a debt due from an executor on his own account cannot be set off against a debt due to him *as executor*.

"The right of set-off in bankruptcy does not "appear to rest on the same principle as the "right of set-off between solvent parties. The "latter is given by the Statutes of Set-off, to

" prevent cross-actions, and if the defendant " could sue the plaintiff for a debt due to him, " not in his representative character, he might " set it off under these statutes in an action by " the plaintiff suing in his individual character " also, though the plaintiff, or defendant, might " claim their respective debts as trustee for a " third person. If the debts were legal debts, " due to each in his own right, it would be " sufficient. But under the bankrupt statutes the " mutual credit clause has not been so con- " strued. The object of this clause is not to " avoid cross actions [for none would lie against " assignees, and one against the bankrupt would " be unavailing], but to do substantial justice " between the parties where a debt is really due " from the bankrupt to the debtor to his estate; " and the Court of King's Bench, in construing " this clause, has held that it did not authorise " a set-off where the debt, though legally due to " the debtor from the bankrupt, was really due " to him as trustee for another, and though " recoverable in a cross action, would not have " been recovered for his own benefit." (Parke, B., in *Forster v. Wilson.*)

There are, however, possible exceptions to the rule that in order that debts may be set off they must be respectively due in the same right, for under certain circumstances agents *del credere* and those acting for undisclosed principals have, or are subject to, a right of set-off in respect of transactions on their own behalf and those on behalf of their respective principals.

Although the section provides that " a person " shall not be entitled to claim the benefit of any " set-off against the property of a debtor in any " case where he had, at the time of giving credit " to the debtor, notice of an act of bankruptcy " committed by the debtor and available against " him," yet, as regards the holder of a bill of exchange, if he was himself liable upon the instrument and was *compelled* to take it up, the rule as to notice does not apply, and he may set off any liability of the bankrupt in respect of the bill against any claim the trustee may have against him, notwithstanding the fact that at the time he took up the bill he had notice of an available act of bankruptcy having been committed by the debtor. (*Mackinnon v. Armstrong*, 1877.)

The bankruptcy rules as to set-off are imported into winding-up procedure by section 207 of the Companies (Consolidation) Act 1908, and although a contributory cannot ordinarily set off a debt due to him from the company against calls due from him to the liquidator (but must first pay his calls and then rank for dividend in respect of his full claim), yet, in the case of a bankrupt contributory, his trustee may set off against the calls any debt due from the company to the contributory, except a debt due to the bankrupt *quâ* member. (*Re Duckworth*, 1867; and Companies (Consolidation) Act 1908, section 123 (1).)

Mutuality.—Reciprocity of obligation; the state of things in which one person is bound to perform some act for the benefit of another, that other being bound to do something for the benefit of the former.

Mutuality of assent—where both persons know clearly what each of them is undertaking to do.

Mutuality of remedy—where each party to a contract can enforce it against the other.

N

Narration.—In its application to bookkeeping, the details of a recorded transaction; in particular the description and full particulars appended to an entry in the Journal.

Necessaries.—" Necessary meat, drink, apparel " physic, and such other necessaries, and like " wise good teaching and instruction whereby " one may profit himself afterwards." [Coke.

" Goods suitable to the condition in life of a " person, and to his actual requirements at the " time of sale or delivery."

Where necessaries are sold and *delivered* to an infant, or to a person who, by reason of mental incapacity or drunkenness, is incompetent to con

act, he must pay a reasonable price therefor. ale of Goods Act 1893.)

An infant cannot, however, be sued on a bill exchange or promissory note, even though it as given for necessaries. (*See title* Infant.)

Negotiable Instruments.—Negotiability in its idest sense means:—

(1) Free transferability by

(*a*) Delivery, or

(*b*) Indorsement and delivery.

Conferring:—

(2) An indefeasible title in favour of a *bonâ fide* transferee.

Negotiable instruments as a consequence:—

(*a*) Give a right of action to the holder of the document for the time being, although he may be unknown to the person liable thereon; and

(*b*) Give a holder in due course a title free from any defects in the title of the assignor.

Cheques are negotiable unless or until they e:—

(1) Drawn with the addition of the words "not negotiable." (*See title* Not Negotiable.)

(2) Restricted by indorsement or by the terms of the instrument to a special purpose or person; or

(3) Discharged by payment.

An overdue bill can only be negotiated subject any defect of title affecting it at its maturity. *See titles* Indorsement, Transfer of a Bill by elivery.)

Bills of exchange, promissory notes, bank otes, cheques, exchequer bills, East India onds, and dividend warrants, unless they are xpressly drawn "not negotiable," are negotiable, provided they are in condition to be sued pon by the bearer, *i.e.*, if, being originally payable to order, they have been indorsed in blank. ost office orders, share certificates and arrants, share transfers, and I O U's are *not negotiable*. Scrips, bonds (including under the latter term debentures) are in a doubtful position, but in this connection see *Goodwin v. Robarts* (L.R. 10 Ex. 337 and 1 App. Cas. 476).

Bills of lading are assignable without notice, but they are not "negotiable" in the wider meaning of the term, an assignee taking the bill of lading subject to the defects (if any) in the title of the assignor. (*See title* Bill of Lading.)

Negotiation Back.—*See title* Re-issue of a Bill of Exchange.

Net Proceeds.—The net amount issuing out of any particular matter or venture. Generally applied to the net balance due to the consignor in respect of a particular consignment, as shown by the account sales prepared by the agent or consignee. (*See title* Account Sales.)

New Style.—The modern system of computing time. This was introduced into Great Britain in 1752, the 2nd day of September of that year being treated as the 14th. (*See title* Old Style.)

Next-of-kin.—Those standing nearest in blood relationship to a given person. (*See title* Distribution, Statutes of.)

Nominal Accounts are accounts in name only, used for the purpose of classifying income and expenditure under such heads as rent, rates and taxes, discounts, sales, purchases, wages, general expenses, &c. When finally adjusted, the balances of these accounts are transferred to one account at a specified date, thus forming the material for the construction of the Profit and Loss Account. These accounts are sometimes included under the term Impersonal Accounts as distinguished from the strictly Personal Accounts which show a trader's position with those with whom he deals, but it is hardly correct to assert, as a foreign writer does, that these accounts "represent neither personal interest nor obligation," for, as the trader's name is implied at the head of each Nominal Account (*e.g.*, *John Rowlands, Sales Account*, or ignoring the full name of the trader, *My Sales Account*), he has a personal interest and obligation in all such

accounts, and on the *balance* of same being struck in the form of a Profit and Loss Account the trader is entitled to, or responsible for, such balance, according to whether there be a profit or a loss. (*See titles* Ledger, Real Account.)

Nominal Capital.—*See title* Registered Capital.

Nominal Consideration.—The stamp duty on transfers of marketable securities (*see title* Marketable Security) is at the rate of 10s. per cent. (by scale) upon the consideration or agreed consideration therefor, but where the amount stated in the deed or other instrument of transfer as the consideration is a merely nominal sum (*e.g.*, five shillings) a *fixed* duty of 10s. is payable.

With regard to transfer "deeds" wherein a nominal consideration is inserted, the following regulations have been issued by the Stamp Office, viz.:—

(*A*) If the transfer is made (1) on a sale, or (2) in satisfaction in whole or in part of a *pecuniary* bequest, or (3) in liquidation of a debt, or (4) in exchange for other securities, or (5) by way of gift *inter vivos*, *ad valorem* duty is payable at the rate of 10s. per cent. (by scale) on the value or agreed value of the consideration.

(*B*) The *fixed* duty of 10s. is only payable when the transaction falls within one of the following descriptions:—

(*a*) Vesting the property in trustees on the appointment of a new trustee, or the retirement of a trustee.

(*b*) A transfer, as for a nominal consideration, to a mere nominee of the transferor where no beneficial interest in the property passes.

(*c*) A transfer by way of security for a loan; or a re-transfer to the original transferor on repayment of a loan.

(*d*) A transfer to a residuary legatee of stock, &c., which forms part of the residue divisible under a will.

(*e*) A transfer to a beneficiary under a will of a *specific legacy* of stock, &c.

(*f*) A transfer of stock, &c., being the property of a person dying intestate, to the party or parties entitled to it.

Where the true consideration for a transfer is "nominal," the fixed duty of 10s. is none the less payable, although the real market value of the property or the par value (in the case of stocks and shares) may be such that the *ad valorem* duty would be less than 10s.

Nominal Exchange.—*See title* Par of Exchange.

Nominal Ledger.—A Ledger used for separately recording the transactions in connection with the various Nominal Accounts; it is sometimes called the Trade Ledger. (*See title* Nominal Accounts.)

Nominal Partner.—One who has no actual interest in the trade, business or profits of a partnership, but who allows his name to be used in connection therewith. If he holds himself out to the world as apparently having an interest in the partnership he is liable for the debts as though he were a partner.

The fact that a retiring partner allows his name to remain as part of the firm-name after his retirement does not *of itself* make him liable for debts contracted subsequently. He may exonerate himself by giving express notice of his retirement to all who have had dealings with the late firm, and by "gazetting" the dissolution, which will operate as notice to all who have not had dealings before the retirement.

The continued use of a deceased partner's name in the firm-name does not *of itself* make the executor's or administrator's estate or the effects of such deceased partner liable for partnership debts contracted after his death.

(*See titles* Dormant Partner, Gazette Notice, Holding out, Partnership, Limited Partnership.)

Nominal Value.—Face value; the value which has been assigned to anything, such as shares or stocks, as distinct from the market value. (*See title* Book Value.)

Nomination.—The act of mentioning a name. (*See title* Advowson.)

Nnage.—Minority. (*See title* Infant.)

Non-cumulative Preference Shares.—*See title* Preference Stock and Shares.

Nonfeasance.—An offence of omission.

Notary or Notary Public.—An officer who takes a note of anything of a public character, principally in mercantile affairs, such as protesting bills of exchange. He also attests documents to give them authenticity in other countries. (*See title* Noting a Bill of Exchange.)

Notice.—Notice may be either in writing or verbal, except where required by statute or otherwise to be in writing.

Notice is either (1) statutory (*i.e.*, by legislative enactment); (2) actual; or (3) constructive.

Actual Notice is that which directly brings the knowledge of a fact to the party.

Constructive Notice (implied or imputed) is really *evidence* of notice, but evidence so strong as to raise such a presumption of notice that equity will not allow the presumption to be rebutted; for instance, (1) actual notice of a fact which necessarily leads to notice of another fact; and (2) the wilful avoidance of reasonable inquiry by the party requiring notice.

Bankruptcy.—A person is deemed to have notice of an act of bankruptcy (1) if he has knowledge of it; or (2) if he wilfully abstains from acquiring such knowledge; or (3) if he knows facts from which any impartial person would naturally infer that an act of bankruptcy had been committed.

The notice by a debtor to any of his creditors that he has suspended, or is about to suspend, payment of his debts, need not, to constitute an act of bankruptcy, be in writing, but it must be given formally and deliberately, for a mere casual conversation will not amount to notice of suspension of payment.

A notice calling a meeting of a man's creditors to consider his position does not *per se* amount to notice of suspension of payment. (*See title* Suspension of Payment.)

All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith. (Bankruptcy Act 1883, section 142.)

Company.—A shareholder of a company is deemed to have notice of (1) the Act under which the company is incorporated, and (2) the memorandum and articles of association (if any); and a knowledge of the contents of these documents is also imputed to strangers who have had dealings with the company, so far as regards the *external* position of the company.

As regards a promoter:—"To inform a "person of a fact is one thing; to give him the "means of finding out, if he will take trouble "enough, is another thing. A promoter of a "company whose duty it is to disclose what "profits he has made does not perform the duty "(of disclosure) by making a statement not disclosing the facts, but containing something "which if followed up by further investigation "will enable the inquirer to ascertain that profits "have been made (by him out of the company) "and what they have amounted to." (Lindley, M.R., *Re Olympia, Lim.*, 1898.)

The various *periods* of notice required in different circumstances are dealt with in their appropriate places.

(*See titles* Foreign (incorporated) Companies, Gazette Notice.)

Notice to Treat.—When a public company requires lands for the purposes of its undertaking, and is empowered so to do by the Lands Clauses Act 1845, it gives to all parties interested in such lands a notice to treat for the purchase thereof by the company; generally the notice cannot afterwards be withdrawn, and its effect is to constitute an incomplete contract between the company and the owners of the lands, the purchase money being afterwards ascertained or agreed upon in the manner provided by the Act.

The term is also applied to a similar notice issued by a municipal corporation to the owners of lands and buildings required by it for street widening or other purposes.

Noting a Bill of Exchange.—By noting is meant the minute made by a notary public on a dishonoured bill at the time of its dishonour.

The noting consists of the notary's initials, the date, the notary's charges, and a mark referring to the notary's register, all written upon the bill itself. The notary makes a full copy of the bill in his register, and either by himself or his clerk makes the "notarial presentment." If the bill be not accepted or paid, as the case may be, the notary attaches a small ticket or label to the bill and writes thereon the answer given when the bill was presented. When a bill is noted it must be noted on the day of its dishonour, but the notary having made his minute, the formal notarial certificate, or protest, may be drawn up at any time thereafter, as of the date of the noting.

There is no necessity to note or protest an inland bill in order to preserve the recourse against the drawer or indorsers (Bills of Exchange Act 1882, section 51 (1)), but it is necessary to protest (or at least note) an inland bill:—

(1) As a necessary preliminary to acceptance or payment for honour;

(2) Prior to presentment for payment to a referee in case of need;

(3) On dishonour by non-payment by an acceptor for honour. (Section 67.)

In practice, however, most inland bills are noted as evidence of due presentment.

Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance or non-payment, as the case may be, it must be duly protested, otherwise the drawer and indorsers are discharged. (Section 51 (2).)

It is not necessary to protest a foreign *note* (section 89), nor is it necessary to protest any *bill*, whether inland or foreign, in order to charge the acceptor. (Section 52.) (*See titles* Extension of Protest and Protest.)

Not Negotiable.—Negotiability in its widest sense means:—

(1) Free transferability by

(*a*) Delivery, or

(*b*) Indorsement and delivery.

Conferring:—

(2) An indefeasible title in favour of a *bonâ fide* transferee.

The words "not negotiable" do not prohibit the *transfer* of a cheque, but they deprive the document of the quality of conferring an indefeasible title upon the transferee.

The Bills of Exchange Act 1882 provides:—

Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had. (Section 81.)

(*See titles* Crossed Cheque, Negotiable Instruments.)

Novation.—A contract of substituted liability whereby a new debtor takes the place of an old one. It is a tripartite agreement, requiring the consent of the old debtor, the new debtor, and the creditor. The assent of the creditor may be expressed, or inferred from a course of dealing, but where the business of a life assurance company is transferred to, or amalgamated with, another company, a policy-holder is not deemed to have abandoned his claim against the original company and accepted the liability of any other company in lieu thereof, unless he shall have so agreed in writing, signed by him or by his agent duly authorised. (*See title* Partnership, *subheading* Partnership Debts and Liabilities.)

Nudum pactum.—A naked agreement; an agreement made without consideration, and in respect of which, unless under seal, no right of action exists; for example, an agreement to accept a smaller sum in settlement of a debt of a larger amount is *nudum pactum* in the absence of further consideration.

Nuncupative Will.—One made by word of mouth by a person dying, before witnesses who afterwards commit the declarations to writing.

The Wills Act abolished nuncupative wills, but (1) soldiers in actual military service and (2) sailors at sea may still make such a will so as to dispose effectively of personal estate.

O

Oath.—

Bankruptcy.—For the purpose of any of his duties in relation to proofs of debt, a trustee in bankruptcy may administer oaths and take affidavits. (1883 Act, 2nd Schedule, Rule 26.)

Liquidation.—For the purpose of any of his duties in relation to proofs of debt, the liquidator of a company being wound up by the Court may administer oaths and take affidavits. (Winding-up Rules 1909, Rule 107.)

Note.—"Oath" includes affirmation and statutory declaration.

Arbitration.—The Arbitration Act 1889 provides that the arbitrators or umpire acting under a (written) submission shall, unless the submission expresses a contrary intention, have power *inter alia* to administer oaths to, or take the affirmations of, the parties and witnesses appearing.

Obiter Dictum.—A saying by the way. An opinion of a Judge, not necessary to the judgment given, as distinct from a *judicial dictum*, which is necessary to the judgment delivered.

Obligation.—An act which binds a person to some performance; a *bond*, containing a penalty, to ensure the performance of some act, such as the payment of a sum of money at a stated time.

Obsolescence.—The diminution in value of assets by reason of the introduction of more modern and usually more economical appliances of a similar character. (*See title* Depreciation.)

For special treatment of this matter from an income-tax point of view, *see title* Wear and Tear.

Office Copy.—A transcript of a proceeding filed in the proper office of a Court under the seal of such office. Colloquially, the copy of a document retained in possession upon the issue of the original.

Official Assignees.—*See title* Defaulter.

Official Liquidator.—This was a term used originally in the Companies Act 1862 in regard to liquidators appointed in compulsory winding-up. It was abolished by the Companies Winding-up Act 1890, and a distinction is now made as follows:—

(1) Where a person other than the Official Receiver is liquidator he is described as "liquidator," and

(2) Where the Official Receiver is liquidator he is described as "Official Receiver and Liquidator." (Companies (Consolidation) Act 1908, section 149.)

Official Receiver.—

BANKRUPTCY.

This officer is appointed by the Board of Trade under the Bankruptcy Act 1883 to act as Official Receiver of debtors' estates for the particular district or districts assigned to him. Judicial notice is to be taken of the appointment of Official Receivers, and they are officers of the Courts to which they are respectively attached. (Bankruptcy Act 1883, section 66; and Rule 321.)

Duties.—The duties of an Official Receiver have relation both to the *conduct* of the debtor and the administration of his estate, and the trustee in bankruptcy must supply the Official Receiver with such information and give him such access to, and facilities for, inspecting the bankrupt's books and documents, and generally afford such aid as may be requisite for enabling the Official Receiver to perform his duties. (Section 68.)

It is also the duty of the Official Receiver, if so requested by the trustee, to communicate to the trustee all such information respecting the bankrupt and his estate and affairs as may be necessary or conducive to the due discharge of the duties of the trustee. (Rule 318.)

As regards the debtor, the more important duties of the Official Receiver are:—

(1) To investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that

the debtor has committed any act which constitutes a misdemeanour under the Debtors Act 1869, or any amendment thereof, or under the Bankruptcy Acts, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge. The Official Receiver has also to report upon the debtor's conduct, upon an application for discharge or for the approval of a composition or scheme, and to make such other reports concerning the conduct of the debtor as the Board of Trade may direct.

(2) To take such part in the public examination of the debtor as the Board of Trade may direct, and for that purpose, if specially authorised by the Board of Trade, he may employ a solicitor with, or without, counsel.

(3) To take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct. (Section 69.)

(4) To furnish the debtor, as soon as a receiving order has been made, with a copy of instructions for the preparation of his statement of affairs, together with the necessary forms. (Rule 324.)

Note.—When the debtor cannot himself prepare a proper statement of affairs, the Official Receiver may, at the expense of the estate, employ some person, or persons, to assist in the preparation thereof. The remuneration of the person, or persons, so appointed is generally fixed beforehand by the Official Receiver, but, in any case, the sanction of the Official Receiver must be obtained before the employment, otherwise the person, or persons, so employed will have no claim to any remuneration out of the estate. The amount fixed by the Official Receiver as the remuneration where the prescribed conditions as to the employment have been complied with, is subject to the order of priority of payment fixed by the Rules. (Section 70.)

(5) The Official Receiver (or some person deputed by him) must also hold a personal interview with the debtor for the purpose of investigating his affairs. The debtor is required to answer numerous questions (printed) and to sign written replies to same. (Rule 324.)

As regards the estate of the debtor, the more important duties of the Official Receiver are:—

(1) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and where a special manager is not appointed, to act as manager thereof. (*See heading* Powers, *infra.*)

(2) To authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do. (*See heading* Powers, *infra.*)

(3) To summon and preside at the first meeting of creditors, and to issue forms of proxy for use at the first and any subsequent meetings of creditors before the appointment of a trustee. In summoning the first meeting of creditors the Official Receiver should send a summary of the debtor's statement of affairs, including the causes of his failure and any observations thereon which the Official Receiver may think fit to make; but the proceedings at the first meeting will not be invalidated by reason of any notice or summary not having been sent or received before the meeting. The Official Receiver may nominate a chairman of the first meeting instead of attending personally.

(4) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs. (*See title* Arrangements in Bankruptcy.)

(5) To advertise the receiving order, the date of the creditors' first meeting, and of the debtor's public examination, and such other matters as it may be necessary to advertise.

(6) To act as trustee where the creditors do not appoint any other person as trustee, also during any vacancy in the office of trustee, and after the release of the (creditors') trustee. Subject to the power of the creditors by *special* resolution to appoint their own trustee, the Official Receiver acts as trustee in small bankruptcies. Subject to the power of the creditors by *ordinary* resolution to appoint another trustee, the Official Receiver also acts as trustee of the estate of a deceased insolvent. With these four exceptions the Official Receiver cannot act as trustee of a bankrupt's property; but there is nothing to prevent him from acting as trustee under a composition or scheme of arrangement, and Rule 209 provides that in certain cases he is to act *ex officio* as trustee under compositions and schemes. Where the Official Receiver is trustee the Board of Trade act as committee of inspection.

(7) To account to the Board of Trade, to pay over all moneys and deal with all securities in such manner as the Board may from time to time direct. When a trustee has been appointed by the creditors the Official Receiver must account to him for all receipts and payments made since the date of the receiving order. (Section 70.)

Powers:—

(1) All expressions in the Bankruptcy Acts referring to the trustee under a bankruptcy shall, unless the context otherwise requires, or the Acts otherwise provide, include the Official Receiver *when acting as trustee.* (Section 68.)

(2) The Official Receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business, or the interest of the creditors generally, requires the appointment of a special manager of the estate or business, other than the Official Receiver, appoint a manager thereof accordingly, to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the Official Receiver. (Section 12.)

Note.—The Official Receiver has an absolute discretion with regard to the appointment of a special manager. (*Re Whittaker*, 1884.)

Where the Official Receiver has appointed a special manager he *may* at any time remove him if his employment seems unnecessary or unprofitable to the estate, and he *must* remove him if so required by a special resolution of the creditors. (Rule 331.)

(3) For the purpose of his duties as interim receiver or manager, the Official Receiver has the same powers as if he were a receiver and manager appointed by the High Court, but he must, so far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and must not, unless the Board of Trade otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property or the *disposing of perishable goods.* (Section 70.)

Note.—Where the Official Receiver is in doubt as to whether certain goods should be sold or not, he should apply to the Court for directions, but, prior to adjudication, the Official Receiver has no power to sell any of the property of the debtor other than that which is perishable.

(4) The Official Receiver, before the appointment of a trustee, has all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto is subject to the like appeal. (Bankruptcy Act 1883, 2nd Schedule, Rule 27.)

(5) An Official Receiver may, for the purpose of affidavits, verifying proofs, petitions or other proceedings under the Bankruptcy Acts, administer oaths. (Section 68.)

Note.—"Oath" includes affirmation and statutory declaration. (Section 168.)

(6) Where there is no committee of inspection appointed in any bankruptcy, any act or thing, or any direction or permission authorised by the Bankruptcy Acts, or required to be done or given by the committee, may be done or given by the Board of Trade upon the application of the trustee, and where such functions so devolve upon the Board of Trade they may, subject to any directions of the Board, be exercised by the Official Receiver. (Section 22 and Rule 337.)

Subject to any general or special directions which the Board of Trade may give, the Official Receiver, while in the possession of the property of a debtor, may make him such allowance out of his property for the support of himself and his family as may be just. In fixing the amount of such allowance the assistance rendered by the debtor in the management of his business or affairs may be taken into account. (Rule 325.)

Where a debtor against whom a receiving order has been made has no available assets, the Official Receiver shall not be required to incur any expense in relation to the estate (*sic*) without the express directions of the Board of Trade. (Rule 335.)

Upon the making of a receiving order the Official Receiver is thereby constituted receiver of the property of the debtor, *but the effect of a receiving order is not to divest the debtor of his property*, but merely to protect it until either a composition or a scheme has been sanctioned, or adjudication in bankruptcy has been resolved on. Should adjudication ensue the property of the bankrupt *thereupon* becomes divisible amongst his creditors, and vests in a trustee—that is to say, the creditors' appointee or the Official Receiver according to circumstances. (Section 20.)

Where a debtor is adjudged bankrupt, and a trustee is appointed, the Official Receiver shall forthwith put the trustee into possession of all property of the bankrupt of which the Official Receiver may be possessed; provided that such trustee shall have, before the estate is 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 payable under the Bankruptcy Acts, and on account of all advances properly made by him in respect of the estate together with interest on such advances at the rate of £4 per cent. per annum, and shall have discharged or undertaken to discharge all guarantees which have been properly given by the Official Receiver for the benefit of the estate and the trustee shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the trustee before being put into possession of the property of the bankrupt, and whether incurred before or after he has been put into such possession.

The Official Receiver shall be deemed to have a lien upon the estate until such balance shall have been paid, and such guarantees and other liabilities shall have been discharged. (Rule 318.)

Company Liquidation.

The Official Receiver or some other fit person may be appointed by the Court provisional liquidator of a company at any time after the presentation of a petition and before a winding-up order has been made, on the application of a creditor, contributory, or the company. Upon an order being made by the Court for winding-up a company, the Official Receiver attached to the Court for bankruptcy purposes *becomes*, by virtue of his office, provisional liquidator of the company, and continues to act as such until *he or another person* becomes liquidator and is capable of acting as such. If any vacancy occurs in the office of liquidator of a company the Official Receiver by virtue of his office becomes liquidator during the vacancy (Companies (Consolidation) Act 1908, section 149) and in case a liquidator is not appointed by the

ourt, the Official Receiver becomes liquidator. Section 152.) When the Official Receiver is quidator of a company he is styled "Official eceiver and Liquidator." (Section 149.) Where an application is made to the Court to ppoint a receiver on behalf of the debenture-olders or other creditors of a company which being wound up by the Court the Official eceiver may be so appointed. (Section 162.)

uties:—

Statement of Affairs.—On the making of a inding-up order the Official Receiver must take mmediate steps to obtain a statement of the ffairs of the company from its officers; he must r this purpose give such officers proper notice ereof, supply them with forms, and afford any ecessary information. (Section 147.) Although is not now essential that the statement of ffairs be prepared before the first meetings of e creditors and contributories, a summary of e statement of affairs should, where possible, forwarded to each creditor and contributory efore the first meetings.

Preliminary Report.—As soon as practicable fter receipt of the statement of affairs, the fficial Receiver must submit a preliminary eport to the Court,

(*a*) As to the amount of capital issued, subscribed, and paid up, and the estimated amount of the 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. (Section 148.)

Further Report.—The Official Receiver may so, if he thinks fit, make a further report, or ther reports, stating the manner in which the mpany was formed and whether in his inion any *fraud* has been committed by any rson in its promotion or formation, or by any rector or other officer of the company in rela-n to the company since the formation thereof, d any other matters which in his opinion it is desirable to bring to the notice of the Court. (Section 148.)

The responsibility for any further report made under the above section rests exclusively with the Official Receiver. It is his duty to collect and consider the facts upon which a judgment can be formed by him whether or not any such report shall be made. If he decides to make a report, it is his duty to communicate the draft report, and the facts upon which it is founded, to the Board of Trade, in order that the Board may make such observations and suggestions as may occur to them with a view to ensure that the Court is placed in possession of all the material facts and circumstances of the case. The observations and suggestions will be made in writing upon the draft report, which draft should be retained by the Official Receiver. If the Official Receiver does not propose to make a further report under the section, he shall forthwith furnish to the Board a statement of his reasons for thinking a report unnecessary, and shall send a copy of the statement to the Registrar acting in the winding-up of companies. Upon the Board of Trade communicating their observations to the Official Receiver, whether upon the draft report or upon the statement of reasons for thinking a report unnecessary, it becomes his duty to give careful consideration to them, and thereupon to determine on his *personal responsibility alone*, whether the report shall be presented or not, and, if presented, the terms in which it shall be expressed, and the opinions which it shall record. (Board of Trade instructions.)

The Court may, after considering such further report (if made), direct that any promoter, director, or officer shall be publicly examined as to the promotion or formation of the company, or the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company. The Official Receiver takes part in any such examination, and for that purpose, if specially authorised by the Board of Trade in that behalf, may employ a solicitor with or without counsel. (Section 175.)

Although the Board of Trade for some time thought otherwise (and acted thereon) it was

held by the House of Lords (in *Ex parte Barnes*, 1896) that a public examination cannot be ordered as a result of the Official Receiver's preliminary report, but only upon his making a further report containing an allegation of fraud against some specified person or persons. It was further held that even when a public examination be ordered, only those individuals against whom fraud has been alleged can be examined. In a proper case, therefore, the Court, after considering the (further) report of the Official Receiver, will direct that a certain person (or persons) be publicly examined, and will appoint a day for that purpose.

First Meetings.—When the Court has made an order for winding-up a company 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 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 such committee if appointed. (Section 152.)

If possible, these first meetings should be held within 21 days after the winding-up order, or if a special manager has been appointed within one month (Winding-up Rules 1909, Rule 115), but the meetings need not now be delayed until the statement of affairs has been submitted to the Official Receiver.

The Official Receiver acts *ex officio* as chairman of the first meetings of creditors and contributories, but he has power to depute the duty to some person in his employment or under his official control, or an officer of the Board of Trade. (Rule 127 and Form 79.)

Where a liquidator is appointed by the Court, and has notified his appointment to the Registrar of Joint Stock Companies, and has given security, the Official Receiver must account (Rule 204) to the liquidator and forthwith put him into possession of all property of the company of which the Official Receiver may have the custody; provided that the liquidator must first discharge any balance which may be 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, together with interest on such advances at the rate of £4 per cent. 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 is deemed to have a lien upon the company's assets until such balance and the other liabilities shall have been discharged.

It is the duty of the Official Receiver to communicate to the liquidator, if so requested, 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. (Rule 161.)

Where a company against which a winding-up order has been made has no available assets the Official Receiver is not required to incur any expense in relation to the winding-up without the express directions of the Board of Trade. (Rule 203.)

Powers.—Judicial notice is to be taken of the appointment of the Official Receivers by the Board of Trade, and they are officers of the Courts to which they are respectively attached. (Rule 198.)

Where there is no committee of inspection any functions of the committee which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the Official Receiver. (Rule 205.)

Where the Official Receiver becomes the liquidator of a company, whether provisional or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributor

nerally, require the appointment of a special anager of the estate or business of the com- ny other than himself, apply to the Court to, d the Court may on such application, ppoint a special manager thereof to act during ch time as the Court may direct, with such wers, including any of the powers of a receiver manager, as may be entrusted to him by the urt. (Companies (Consolidation) Act 1908, ction 161.)

Before the appointment of a liquidator, the fficial Receiver, *ex officio*, has all the powers of liquidator, subject to any special restrictions hich may be imposed by the Court, or the oard of Trade; in particular, the Official eceiver, prior to the appointment of a liqui- tor, has all the powers of a liquidator as to the amination, admission, and rejection of proofs. *See title* Liquidator.)

The Official Receiver is entitled to obtain om the liquidator in a compulsory winding-up where some other person is appointed liqui- tor) such access to and facilities for inspect- g the books and documents of the company, nd generally such aid as may be requisite for abling him to perform his duties. (Section 3.)

Where a company is being wound up volun- rily or subject to the supervision of the Court, e Official Receiver attached to the Court ving jurisdiction to wind up the company may esent a petition that the company be wound by the Court, but the Court shall not make winding-up order on the petition unless it is tisfied that the voluntary winding-up or wind- g-up subject to supervision cannot be continued ith due regard to the interests of the creditors contributories. (Companies (Consolidation) t 1908, section 137.) (*See title* Petition to nd up a Company.)

Limited Partnership.

The provisions of the Companies (Consolida- on) Act 1908 with respect to winding-up apply ubject to modification) to the winding up of nited partnerships, and the Limited Partner- ships (Winding-up) Rules 1909 provide (*inter alia*) as follows:—

For the purposes of the application of sections 148 and 175 of the Companies (Consolidation) Act 1908 the preliminary report of the Official Receiver to the Court shall be a report:—

(*a*) As to the contributions of the parties 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.

Official Referees.—Permanent officers of the Court to whom such matters are referred as may be referred to a special referee. (*See title* Special Referee.)

Old Style.—The method of computing time according to the Julian reckoning. The Gregorian calendar was adopted by Pope Gregory XIII in

1582 as the new style. This gradually spread over Europe, and Great Britain ultimately adopted it by Act of Parliament, the 2nd September 1752 being accounted as the 14th September. Russia, however, still adheres to the Julian or Old Style.

One-Man Company.—In *Salomon's* case (1896) the facts were these:—Salomon converted his business into a limited liability company which was duly registered under the Companies Act 1862 (now the Companies (Consolidation) Act 1908). Salomon held 20,001 fully-paid shares and six members of his family (as signatories to the memorandum) held one share each; there were no other shareholders. Salomon had also taken mortgage debentures for £10,000 in part payment of the purchase-money. Salomon was solvent at the date of the formation of the company, but subsequently the company became insolvent, and a winding-up order was made. The liquidator of the company questioned the validity of the debentures held by Salomon, and Vaughan Williams, J., held that the company was entitled to be indemnified by Salomon to the amount of the unsecured liabilities. The Court of Appeal affirmed the decision of Vaughan Williams, J., and declared that the whole scheme was a fraud upon the policy of the Act, and that the Legislature had never intended that a company should consist of one substantial person and six dummies devoid of any real interest.

The House of Lords reversed the decision of the Court of Appeal, declaring that the requirements of the Acts had been complied with by the company. The following extract from the judgment of Lord Herschell shortly states the ground upon which the decision of the House of Lords was based:—

> "It is said that the respondent company is "a 'one-man' company, and that in this "respect it differs from such companies as "those to which I have alluded. But it has "often happened that a business transferred "to a joint stock company has been the pro- "perty of three or four persons only, and that "the other subscribers of the memorandum "have been clerks or other persons who "possess little or no interest in the concern. "I am unable to see how it can be lawful "for three or four or six persons to form a "company for the purpose of employing their "capital in trading, with the benefit of "limited liability, and not for one person to "do so, provided, in each case, the require- "ments of the statute have been complied "with, and the company has been validly con- "stituted. How does it concern the creditor "whether the capital of the company is owned "by seven persons in equal shares, with the "right to an equal share of the profits, or "whether it is almost entirely owned by one "person who practically takes the whole of "the profits? The creditor has notice that he "is dealing with a company the liability of "the members of which is limited, and the "Register of Shareholders informs him how "the shares are held, and that they are sub- "stantially in the hands of one person, if this "be the fact. The creditors in the present "case gave credit to and contracted with a "limited company: the effect of the decision "[of the Court of Appeal] is to give them "the benefit, as regards one of the share- "holders, of unlimited liability. . . It may "be that a company constituted like that under "consideration was not in the contemplation "of the Legislature at the time when the Act "authorising limited liability was passed: "that, if what is possible under the enact- "ments as they stand had been foreseen, a "minimum sum would have been fixed as the "least denomination of share permissible, "and it would have been made a condition "that each of the seven persons should have "a substantial interest in the company. *But* "*we have to interpret the law, not to make* "*it;* and it must be remembered that no one "need trust a limited liability company unless "he so please, and that before he does so he "can ascertain, if he so please, what is the "capital of the company, and how it is held."

With regard to the latter part of Lord Herschell's statement it may be added that both the Register of Members and Register of

Mortgages of a company are open to the inspection of any person. (*See titles* Register of Members and Register and Registration of Mortgages.)

In his Sixth Annual Report (1896) on the working of the Companies Winding-up Act 1890 (now repealed and re-enacted in the Consolidation Act of 1908) the Inspector-General in Companies Liquidation drew special attention to the large and increasing proportion of one-man companies to the total of companies wound up. He expressed the opinion that in the larger number of cases these companies "constitute an abuse of the Limited Liability Acts, although formally complying with their requirements." He stated that generally speaking the basis of the company was the transfer of an insolvent or declining business, the object being, *first*, to transfer to a limited company obligations for which the promoters were personally liable, the personal debts being paid off by the proceeds of fresh debts contracted by the company: *second*, to obtain means for carrying on the business through the facilities for obtaining credit afforded by the Companies Acts, which the vendors could not have obtained as private individuals" (*e.g.*, debentures).

In his Twelfth Annual Report (1902) the Inspector-General again referred to the question, especially in connection with the working of the Companies Act 1900, which is now incorporated in the Consolidation Act of 1908. After recapitulating the reasons which induced the Departmental Committee, presided over by Lord Davey, to restrict to "public" companies the obligation contained in the Committee's draft Bill requiring disclosure of material facts relating to the constitution, capital, and promotion profits of companies, the Inspector-General added:—

"But even the very moderate provisions which the Departmental Committee deemed necessary to meet the abuses arising from the formation of private companies were subsequently eliminated. . . . The provision for winding up companies formed to defraud creditors was omitted from the Bill in the House of Lords, and the provision for allotment only on the minimum subscription was restricted in the House of Commons to companies which offered shares for public subscription. The result is that private companies are free from nearly all the restrictions of the Act in regard to the manner of their formation."

"That these restrictions have operated in a powerful manner with regard to the formation of *public* companies is clearly shown by the great diminution in the total number of companies registered . . . . and the present tendency of company formation is clearly in the direction either of 'one-man' companies or of companies which obtain their capital without any restriction on allotment or on commencing business and without the disclosure of facts required by . . . . the Act."

"I estimate the reduction in the number of companies issuing a prospectus during the last two years immediately preceding the passing of the new Act at about 70 per cent."

"This great reduction in so far as it is due to the suppression of enterprises which could not bear the test of publicity enforced by the new Act will probably be regarded as a public advantage, but the evasion of this test by the mass of the new joint-stock enterprise of the country is a matter which appears to call for serious consideration. A strong representation on this subject has recently been made by the Committee of the London Stock Exchange, who complain that the proportion of companies seeking a settlement which issue no prospectus has largely increased, and call attention to the danger to public interests which the practice involves."

These considerations doubtless led to the framing of many provisions of the Companies Act 1907 (now incorporated in the Consolidation Act of 1908), whereby companies are divided as follows:—

(1) Public Companies

(*a*) which issue a prospectus on or with reference to their formation,

(*b*) which do *not* issue such a prospectus.

The latter class of company must file a "Statement in lieu of Prospectus" (*see* that *title*), containing most of the information which companies of class (*a*) have to include in the filed prospectus.

(2) Private Companies.

These companies are freed from the restrictions as regards the "Statement in lieu of Prospectus," filing Balance Sheets, &c., and their constitution is defined by section 121 of the 1908 Act as follows:—

They must by their articles (*a*) *restrict* the right of transfer of all the shares, (*b*) *limit* the number of members (exclusive of persons 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.

A special and important concession is afforded by the Act reducing the minimum number of members of a "private company" to *two*. (*See title* Private Company.)

Onerous Legacy.—A legatee may reject a legacy, and so he may decline one the acceptance of which would render him liable to perform any onerous act; but if an onerous legacy and a beneficial legacy are given together as one entire gift, or where there is an intention that they shall be taken together, the legatee must take all or none.

Onerous Property.—A lease, shares, a contract, or other property, the liabilities in respect of which are greater than the probable benefits attached thereto. (*See title* Disclaimer.)

Open Account.—An account, the items of which are not finally agreed upon, and which (if necessary) are to be proved by the party seeking to enforce the effect of the account.

When a bill of exchange is received in respect of the balance of an account, the account then ceases to be an open one, for value is presumed in favour of the holder of the bill.

Open Cheque.—A cheque not crossed and payable either to bearer on presentation, or to order on presentation duly indorsed. (*See title* Crossed Cheque.)

Open Court.—A court to which the public have a right of access.

Opening Entries.—The term applied to the entries, or set of entries, necessary to prepare a set of books of account before commencing to record the current transactions.

Open Policy.—One in which the value of the ship or goods insured is not stated, same being fixed subsequently. (*See title* Floating Policy.)

Options.—A mode of dealing in stocks, shares, or other commodities, whereby, in return for the payment of a premium, an operator becomes entitled either to buy or sell the commodity, at an agreed price, at any time within a fixed period, his loss, if any, being limited to the amount of premium paid, the profit depending solely upon the movements of the market and the exercise of the option.

The *call option* gives a right to *buy* or call for a certain quantity of the commodity, whilst a *put option* gives a right to sell or put the quantity bargained for. These are called *single options*.

A *put and call option* gives a right to buy or sell according to whether the market price of the commodity rises or falls. This is termed a *double option*.

Order.—A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable. (Bills of Exchange Act 1882, section 8.) A bill payable to order is negotiated by the indorsement of the holder, completed by delivery. (Section 31.)

Oler or Disposition.—*See title* Reputed Ownership.

Olinary Business.—The term given to the business transacted at an ordinary general meeting of a joint stock company, as prescribed by the regulations of the company. The ordinary business generally includes (1) the consideration and adoption of the accounts and the reports of the directors and auditors (N.B.—The auditors' report must be *read*), (2) the election of directors and auditors, and the fixing of the remuneration of either or both of these classes of officers, and (3) the declaration of a dividend.

Other business is generally classed as "special," the articles providing that such business shall only be transacted at an extraordinary general meeting of the company. (*See title* General Meetings.)

Olinary General Meeting.—*See title* General Meetings.

Olinary Resolution.—*See title* Resolution.

Olinary Shares.—Shares which do not confer any special or deferred rights or privileges upon the holders thereof.

They are subject to the special rights attached to preference shares and founders' shares (if any), but where deferred shares are issued, the ordinary shares have priority over same, either as regards capital, dividend, voting power, or otherwise, the precise status of the various classes of shareholders depending upon the memorandum and/or articles of association, or the deed of settlement, or the Act of Parliament (as the case may be) pertaining to the company in question. (*See title* Preference Stock and Shares.)

Ostensible Partner.—*See title* Holding out.

Outfit.—For the purpose of marine insurance the term "outfit of a ship" includes all necessary stores put on board for use upon the voyage. If the voyage be of a special character, necessitating special outfit and apparatus, the term will include all such requirements provided the character of the voyage was known to all parties to the contract of insurance.

Output.—The term used to express the deliveries or shipments of an undertaking during a specified period, the word "turnover" being colloquially applied to the amount of the output stated in money. Thus a merchant would say: "My 'turnover' is £20,000 a year, and my "'output' is 4,000 tons."

Outstanding Accounts.—This is an ambiguous expression, which may mean either debts due to a trader (debtors or book debts) or sums due from him to others (creditors). The use of the term cannot be recommended.

Overdue Bill.—Where an overdue bill is "negotiated" it can only be so dealt with, subject to any defect of title affecting it at its maturity. The person taking it cannot acquire or give a better title than that which the person from whom he took it had.

A cheque or bill of exchange payable on demand is deemed to be overdue when it appears, upon the face of it, to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for determining whether or not such a cheque or bill is overdue is a question of fact. (Bills of Exchange Act 1882, section 36.)

A bill payable otherwise than on demand is overdue after the expiration of the last day of grace.

Overt Act.—An open act.

P

Packages.—*See title* Empties.

Paid on.—A term used by railway and shipping companies and other carriers to denote charges

paid by them to other parties concerned in the forwarding or transport of goods. Where goods are transhipped and there is no through rate in operation, and charges such as sea freight, custom house duty, port dues, wharfage, &c., are actually incurred, the railway or shipping company receiving the goods from the carter or wharfinger must pay such charges before possession can be obtained. These payments thus constitute actual disbursements of the railway or shipping company, and are recoverable by them from the consignee in addition to their own freight charges. There is no profit on these payments, and railway companies and other carriers keep them carefully distinguished from their own freight charges and include them as a separate item on the advice and debit note rendered to the consignee.

Paid-up Capital (of a Company).—The actual amount which has been paid up, or is (legally) considered as paid up, in respect of the capital. (*See title* Registered Capital.)

Paper Money.—Bills of exchange, bank notes, and the like.

Par.—Equal value. Stocks and shares are said to be " at par " when their respective market and nominal values are the same.

Shares in a limited company are generally issued at par. They may be issued at a premium, but they cannot legally be issued at a discount.

Paraphernalia.—The personal apparel and ornaments of a wife which she possesses and which are suitable to her rank and condition of life.

Par of Exchange.—If the debts due by two given countries to each other were equal in every respect, that is to say, if there were no differences as regards amounts, the dates upon which the money is receivable or due, currency in which payable, and the degree of credit of those so indebted, there would not, theoretically, be any fluctuation in the rates of foreign exchange, and the rate would be said to be at *par*. But such a state of things (*i.e.*, exchanges at real par) is purely ideal.

For instance, if an Australian merchant gave one hundred pounds sterling for a sight draft for that exact sum on London (the currencies in this case being, of course, the same), that could hardly be called an exchange at par, for the cash paid in Australia could not be collected and used in London for some weeks later; so that the question of interest must be considered.

The Mint par of exchange is determined by the Mint regulations of the various countries, and shows the relation between the legal weight and fineness of the coins of their respective countries. For instance, the fine gold in a sovereign (£1) is equivalent to that in 4.86⅔ (U.S.A.) dollars, or 20.43 (German) marks, or 25.22½ (French) francs.

With the Mint par of exchange as a basis the rates of exchange between the various countries rise and fall owing to the inequalities in the amounts, dates, currency and credit, which, as already stated, render the real par of exchange a mere ideal.

Nominal par of exchange is closely connected with the Mint par of exchange, but differs from it in so far as the former involves a comparison of the fluctuating values of gold and silver, and recognises any depreciation of the paper currency that may take place in those countries which possess such a currency.

If at a given date the balance of indebtedness between England and France is against France and in favour of England there will be a greater demand in Paris for bills on London than Paris can supply. Consequently those who have to make payments in London will enter into competition for the available bills, which as a result will command a premium, *i.e.*, realise more than their nominal value.

But the premium ordinarily is limited by the gold point or specie point, that is, the price beyond which it would pay a person in France remitting to London to export bullion and pay

e cost and insure against the risk of transit, stead of buying a bill on London.

Conversely, if the balance of indebtedness was gainst England, there would be an excess pply in Paris of bills on London, and they ould be offered at a discount, *i.e.*, something ss than their nominal value, but as in the case a premium, the discount is limited by the ecie point.

Under special circumstances, however, the dinary range of fluctuations between the specie points" may be departed from, for in ldition to the variations caused by the balance indebtedness, the question of the general state credit, the ruling rates of interest on money, e differences in the due dates for payment and olitical disturbances, all have their effect upon e rates of exchange from time to time.

The rate of exchange may be stated in two ays: in one the sterling is fixed and the foreign oney is variable; in the other the foreign oney is fixed and the sterling is variable. hus in the former method £1 would be stated being equal to (say) 20.43 German marks, nd in the latter mode a 20 mark piece would set out as equal to 19s. 7d. (*See title* Rate Exchange.)

Pol Agreement.—*See title* Simple Contract.

Partial Acceptance.—*See title* Acceptance of a Bill.

Partial Indorsement.—*See title* Indorsement.

Partial Loss arises when the subject-matter of surance is only partly damaged, or when the wner is called upon to make a general average ayment in respect of damage or loss to other oods. It is also termed *Average loss*. (*See tle* Total Loss.)

Particular Average.—Every kind of involuntary pense incurred, or accidental damage sus-ined, short of total loss, in respect of a par-cular thing, whether ship or cargo, which is to borne by the owners of such thing. The arine Insurance Act 1906 defines a particular verage loss as a partial loss of the subject-matter insured caused by a peril insured against, which is not a general average loss. The liability of the insurer in respect of particular average is excluded by the operation of the "average clause," or memorandum, in the policy, certain goods being specified and percentages stated, below which the underwriter is not liable. But if the article insured does not properly come within the words of the excluding clause, the underwriter will be liable, and if the subject-matter is excluded from average then the underwriter is liable only when the loss or damage exceeds the stated percentage for such class of goods. The insurance under the latter circumstances is said to be "warranted free from average," or "free from particular average." or F.P.A. (*See title* General Average.)

Particular Lien.—*See title* Lien.

Particulars of Sale.—*See title* Conditions of Sale.

Partly Secured Creditor.—*See title* Secured Creditor.

Partner.—One who partakes; a sharer; a member of a partnership or firm. A sole trader is often erroneously referred to as the sole partner—an obvious contradiction of terms. (*See titles* Limited Partnership, Partnership.)

Partner by estoppel.—*See title* Holding out.

Partnership.—The relation which subsists between persons carrying on a business in common with a view of profit. The relation of partnership does not exist between members of a registered joint stock company by reason of such membership. (Partnership Act 1890, section 1.)

The number of persons who may form either a "General" or a "Limited" partnership is restricted to 10 in the case of a banking business, and to 20 in respect of any other business. (Companies (Consolidation) Act 1908, section 1; Limited Partnerships Act 1907, section 4.)

Joint tenancy, tenancy in common, or part ownership does not of itself create a partnership, nor does the sharing of gross returns.

The receipt by a person of a share of the profits of a business is *primâ facie* evidence that he is a partner, but standing alone it is not conclusive, and in particular:—

(1) The receipt of a debt by instalments,

(2) The remuneration of a servant,

(3) An annuity to a widow or child of a deceased partner,

(4) Payments to a lender of sums by way of interest, under a written agreement, or

(5) Payments by way of purchase-money for the goodwill of the business,

do not by reason only of such receipt make the respective recipients partners, although such payments may be in the form of shares in the profits of the business. (Partnership Act 1890, section 2.)

Since 1st January 1908 partnerships have been divided into two classes, "general" and "limited."

The following is a summary of the law relating to "general" partnerships:—

Nature of relationship.—Every partner is an agent of the firm and of his other partners for the purpose of the partnership business, and although the partners may agree between themselves to restrict the ordinary powers of one or more partners, such restriction must be notified to third parties, or they will be entitled to deal with any restricted partner on the basis of his apparent authority. (Partnership Act 1890, section 5.)

Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives, and, subject to any agreement to the contrary, every partner must account to the firm for every benefit or profit derived by him without the consent of the other partners:—

(1) From any partnership transaction.

(2) From the use of the partnership property, name, or connection.

(3) From any business of the same nature as and competing with that of the firm. (Sections 29 and 30.)

Property.—All property and rights, and interests in property, originally brought into the partnership, or acquired by purchase or otherwise on account or for the purposes of the partnership, are termed partnership property, and must be held and applied exclusively for the purposes of the partnership; provided that the legal estate in land shall devolve according to the nature and tenure thereof and the general rules of law applicable thereto, but in trust so far as is necessary for the persons beneficially interested therein. (Section 20 (1).)

Unless a contrary intention appears:—

(1) Property bought with money belonging to the firm is deemed to have been bought on account of the firm, and to be partnership property. (Section 21.)

(2) Where land has become partnership property, it is to be treated as between

(*a*) Partner and partner,

(*b*) Partner and representatives of a deceased partner,

(*c*) Heirs of a deceased partner and executors or administrators of such deceased partner,

as personal estate and not real estate. (Section 22.)

The interest of partners in the partnership property is a tenancy in common, or what is practically the same thing, a joint tenancy without the benefit of survivorship. The mode of ascertaining the value of an outgoing or deceased partner's share depends in the majority of cases upon the partnership agreement, and varies considerably; but in the *absence of any agreement* to the contrary, every item of value (including the goodwill, if any) must be brought into account. The amount payable to an outgoing partner or the representatives of a deceased partner in respect of such share, unless there be an agreement to the contrary, is a debt accruing at the date of the dissolution or death, and is in the nature of a simple contract debt, and subject to the Statute of Limitations. (Section 43.)

Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets with

but any final settlement of accounts as between the firm and the outgoing partner or his estate, then, *in the absence of any agreement to the contrary*, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his *share of the partnership assets*, or to interest at the rate of 5 per cent. per annum on the amount of his share of the partnership assets.

Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section. (Section 42.)

Assignment of a Share in the Partnership.—An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not as against the other partners entitle the assignee, during the *continuance* of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

In the case of a *dissolution* of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution. (Partnership Act 1890, section 31.)

In the absence of agreement to the contrary, the *assignment* of a partnership share does not give the partner or partners other than the assigning partner an option to dissolve the partnership, as in the case of a *charge* being made thereon in respect of the partner's separate debt (*infra*), but such assignment might constitute a ground for application to the Court for a dissolution under the "just and equitable" clause. (Section 35, below.)

Separate Debt of a Partner.—A writ of execution cannot now be issued against partnership property in respect of the separate debt of a partner, but the Court may make an order charging that partner's interest in the partnership property and profits, and may also appoint a receiver thereof. The other partners may at any time redeem the interest so charged, or, in case of a sale being directed, they may purchase same. Such receiver has no right to interfere in the management of the business, and the other partners may *at their option* dissolve the partnership. (Section 23.)

As in the case of an assignee under an assignment by a partner of his share in the partnership, a receiver is (ordinarily) bound to accept the account of the profits agreed to by the other partners. for it was held in *Brown Janson v. Hutchinson* that the discretion given by the Partnership Act (section 23) to direct accounts should only be exercised under special circumstances, *e.g.*, with a view to a dissolution; so that although a receiver of a partner's share may not be entitled to an account during the continuance of the partnership, he would, on a dissolution, be entitled to a full account of the realisation of the assets.

Partnership Debts and Liabilities.—Partnership debts are joint only, with the following exceptions:—

(1) The estate of a deceased partner is also severally liable in respect of debts incurred whilst he was a partner (but subject to the prior payment of his separate debts). (Section 9.)

(2) Partners are jointly and severally liable in respect of any loss or injury done

(*a*) To a person not a partner by reason of a wrongful act or omission of a partner either in the ordinary course of business or in pursuance of his co-partners' authority, and

(*b*) Where one partner within the scope of his apparent authority receives money or property of a third person and misapplies it, or the firm in the ordinary scope of business receives money or property of a third person, and any one of the partners misapplies it whilst it is in the custody of the firm. (Sections 10, 11, 12.)

Where a partner, being a trustee, makes improper use of trust moneys in the business, or on account of the partnership, no other partner is liable therefor to the persons beneficially interested, provided he was not aware of the breach of trust; but the trust money can be recovered if still in the possession of the firm or under its control. (Section 13.)

A person who is admitted as a partner into an existing firm does not thereby become liable for debts incurred previous to his admission, nor does retirement itself release a partner from debts of the firm incurred previous to retirement, but a retiring partner may be so released by a tripartite agreement between:—

(1) The retiring partner.

(2) The new firm.

(3) The creditors.

The assent of the creditors is essential, but it need not be given expressly, for it may be inferred from a course of dealing. (Section 17.)

This contract of substituted liability whereby a creditor accepts a new firm for an old one, or one debtor for another, is called novation.

Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he receives notice of the change. (Section 36 (1).)

Thus, a retiring partner ordinarily remains liable for existing debts, and, with three exceptions (below), he may be held liable for debts incurred after his retirement unless he has given due notice thereof. (Section 36 (2).)

An advertisement in the *Gazette* is deemed sufficient notice to all who have not had dealings with the firm—that is to say, to the world at large, but it is necessary to give separate notices to all those who have had dealings with the firm. No special form of notice is necessary; it is sufficient to prove that notice has, in fact, been given. (Section 36 (2).)

On (1) the death, or (2) the bankruptcy, of a partner, or (3) the retirement of a dormant partner, the estate of such partner, or deceased partner, as the case may be, is not liable for partnership debts contracted after the death, bankruptcy, or retirement, respectively. (Section 36 (3).) (*See title* Holding out.)

Rights and Duties.—Partners may, to a great extent, regulate the terms of their partnership, but they cannot affect the rights of third parties.

In the *absence of agreement to the contrary*, the Partnership Act 1890, section 24, determines the rights, interests, and duties of the partners, such as:—

(1) Equal distribution of profits or contribution to losses.

(2) No interest payable in respect of capital, but interest allowed at 5 per cent. on distinct advances.

(3) Every partner entitled to be indemnified in respect of payments properly made for the firm.

(4) No partner entitled to remuneration for his services.

(5) Every partner may take part in the management of the business.

(6) No person to be introduced as a partner without the consent of all the partners.

(7) Differences on ordinary matters to be decided by a majority of the partners, but no change to be made in the nature of the business without the consent of all the partners.

(8) Partnership books to be kept at the *principal place* of business, and every partner to have access to them and a right to make copies thereof.

Note.—The right to inspect the books and copy same or make abstracts therefrom may be exercised by the duly authorised agent of a partner. (*Bevan v. Webb*, 1901, 2 Ch. 59.)

A partner cannot be expelled by a majority of the partners unless such a power has been conferred by express agreement between the partners. (Section 25.)

Dissolution.—A partnership may be dissolved :—

(1) Effluxion of time. (2) Termination of a single adventure. (3) Proper notice by any partner. (4) Death of any partner (as regards the *surviving* partners, or the deceased's representatives). (5) Bankruptcy of any partner (as regards *all* the partners).	Subject to any agreement between the partners.
(1) Death of any partner (as regards the deceased). (2) The happening of an event which makes the partnership business unlawful. (3) Assent of all the partners. (4) Decree of the Court.	*Ipso facto.*
The appointment of a receiver of, or the making of a charging order against, a partner's interest in respect of his separate debt.	At the option of the other partners.

(Sections 32, 33 and 34.)

In the case of dissolution arising from the bankruptcy of any one partner, such dissolution would date from the "act of bankruptcy," and it would be upon that date that the trustee of the bankrupt partner would require the accounts of the partnership to be made up, provided (1) that he would be entitled to an account of the profits earned since the commencement of the bankruptcy, by the employment of the capital (if any) of the bankrupt partner; and (2) that the trustee could not avoid *bonâ fide* transactions of the firm with third parties having no notice of the act of bankruptcy, and duly completed before the date of the receiving order.

The Court may decree a dissolution of partnership upon application in any of the following cases :—

(1) Where a partner is found a lunatic by inquisition, or is shown to the satisfaction of the Court to be permanently of unsound mind. In such a case application may be made either on behalf of that partner or by any other partner.

(2) When a partner, other than the partner suing :—

(*a*) Becomes in any way permanently incapable of performing his part of the partnership contract.

(*b*) Has been guilty of conduct which, in the opinion of the Court, is prejudicial to the partnership business.

(*c*) Wilfully or persistently commits a breach of the partnership agreement.

(*d*) So conducts himself in partnership matters that it is not reasonably practicable for the other partner, or partners, to carry on business with him.

(3) When the partnership business can only be carried on at a loss, or where circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved. (Section 35.)

Distribution of Assets.—In settling the accounts between partners after a dissolution, in the absence of agreement to the contrary, the following rules are to be observed :—

A. Losses, including losses and deficiencies of capital, shall be first paid out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits.

B. The assets of the firm, including any sums contributed by the partners, to make up losses or deficiencies of capital, are to be applied :—

(1) In paying the debts of the firm to persons who are not partners.

(2) In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital.

(3) In paying to each partner rateably what is due from the firm to him in respect of capital.

(4) The ultimate residue, if any, is to be divided among the partners in the proportion in which profits are divisible. (Section 44.)

Without prejudice to the priority of the "external debts" of the firm, the above rules as to the incidence of losses and as to the distribution of the assets may be modified as between the partners themselves in any way they may think fit.

Rights of Partners inter se.—The decision in *Garner v. Murray* (1904, 1 Ch. 57) is of considerable importance in this connection. The position of affairs was as follows:—

Capital Accounts.	£	*Assets.*	£	£
Garner	2,500	Cash		1,916
Murray	314	Wilkins (overdrawn)	£263	
		Deficiency of Firm	635	
				898
	£2,814			£2,814

Wilkins was unable to pay anything. Profits had been distributed equally. There was no special agreement between the partners as regards their respective rights under the circumstances, and the Court had to decide as to the distribution of the assets in the winding-up of the partnership affairs.

Prior to the date of the decision in *Garner v. Murray* the generally accepted method of adjustment was to treat the deficiency of the firm and Wilkins' irrecoverable debt as partnership losses and write them off against Garner and Murray in the same relative proportions as they had previously participated in profits, thus:—

Capital Account.	£	*Assets.*	£
Garner, Capital Account	£2,500	Cash	1,916
Less half share of £898 ..	449	Murray, half share £898	£449
	2,051	*Less* Capital Account	314
			135
	£2,051		£2,051

Thus under former methods Murray would have paid in £135, and Garner would have taken the £2,051. But in the case under notice Joyce, J., held that the loss sustained by *some* of the partners, because of the default of another partner when adjusting their respective rights *inter se* after all the debts due to outside creditors had been paid, must be distinguished from a loss of the *firm* as a whole, and must not be borne by the non-defaulting partners in ratio to the proportions in which they had previously participated in profits, but rateably according to the amount of capital respectively due from the firm to them, due account being taken of the contributions from each partner in respect of any deficiency of capital.

In other words, after a partner has fulfilled his obligations to outside creditors, and has contributed his own share of capital deficiency (if any), he is not liable on a dissolution under section 44 (*supra*) to make a further contribution to a defaulting partner's deficiency, as paragraph A of section 44 refers to losses of the firm as a whole and not losses of some only of the partners thereof. It will be noted that losses of the *firm as a whole* must be borne by all the partners in certain proportions, but a loss caused by the default of one of the partners *ex necessitate rei* cannot be borne by that partner.

The true adjustment of the rights of Garner and Murray on the basis of the figures set out above would therefore be:—

Capital Accounts.	£	*Assets.*	£	£
Garner	2,500	Cash		1,916
Murray	314	Garner's contribution to his deficiency of Capital, one-third of £635		212
		Murray do.		212
				2,340
		Wilkins, overdrawn	£263	
		One-third of deficiency	211	
				474
	£2,814			£2,814

ADJUSTMENT.

	£		£
Garner:—		Cash	1,916
$\frac{2500}{2814}$ of £2,340=£2,078			
Less Contribution due ..	212		
	1,866		
Murray:—			
$\frac{314}{2814}$ of £2,340=	262		
Less Contribution due ..	212		
	50		
	£1,916		£1,916

It has been suggested that Murray (in this stance) might claim to set off the contributions he from himself and Garner against their spective capital sums, and then divide the 1,916 of cash rateably as to £2,288 and £102 spectively—giving Garner £1,834 and Murray 82. but it is submitted that the true bases of pportionment are the amounts of capital after he contribution of any deficiencies thereof, and ot the amounts of capital which have been minished because the prescribed contribution to e deficiency has not in fact been made.

Following the rule laid down in *Garner v. urray*, if the following were the position on a ssolution where three partners are interested, Z. :—

Capital Account.	£	*Assets.*	£
. Capital	702	Cash..	351
		Y., overdrawn	117
		Z., "	234
	£702		£702

hen X. would take all the cash plus whatever as recoverable from Y. and Z., provided that e contributions of either of the latter partners ould be limited to the amounts set out above spectively—neither being liable for any default the other (indebted) partner.

Remembering (1) that moneys due by the firm partners in respect of advances in excess of eir capital rank in priority to capital when e assets are being administered on a dissolu- on, (2) that partners are liable to contribute eficiencies of capital in order to adjust the ghts of the partners *inter se*, and (3) that any sses arising from the default of any partner in spect of his levy or overdraft must fall upon e other partners in proportion to their capital, e matter of agreement between the partners as their precise amounts of capital ought to ceive attention. The original amounts of pital agreed upon should in all cases appear parately in the books and upon the Balance heets of the firm from time to time. It is often und that losses and excesses of withdrawals ver profits are charged against the Capital ccounts instead of being paid in by the partners, as evidently contemplated by the Act, and as in fact generally provided by the partnership agreement. *Per contra*, any excesses of profits over withdrawals thereof are in practice added to the capital sums. Thus, in many Partnership Accounts the Capital Accounts are a fluctuating quantity, and the original sums agreed upon as capital soon lose their identity. Of course, the partners can, by agreement between themselves, from time to time vary the amounts to be regarded as their respective capitals. They may increase such amounts by paying in further cash, or by transferring part of their shares of profits to Capital Account, or they may reduce the amounts by not paying in their shares of losses or their excess drawings. Possibly a periodical Balance Sheet signed by the partners may amount to a fresh agreement as regards the respective capital sums to be provided from time to time, but it is submitted that as the basis of the adjustment of the rights of the partners *inter se* is the amount of agreed capital, it is important to know what was the amount last agreed upon as such, and it would be an advantage if the Capital Accounts in a partnership Balance Sheet always represented the amounts of *agreed capital*, whatever those amounts might be, and whether they varied or not. Then (1) the amount due to a partner as an advance could be readily distinguished from the sum due to him in respect of capital; (2) the amount (if any) which he was liable to contribute to make up deficiencies of capital would become more apparent; and (3) the basis upon which the rateable distribution of assets and the consequential apportionment of losses occasioned by the default of any partner on a dissolution ought to be effected, would be more satisfactorily ascertained.

Of course, partners can decide in their partnership agreement, or mutually agree at a subsequent date in the clearest terms possible the method of dividing both profits and losses, whether of capital or otherwise, and whether as a going concern or on a dissolution, for the operation of sections 24 and 44 of the Partnership Act 1890 can be excluded by any agreement to the contrary between the partners. But where

no such contrary arrangement has been made, and more particularly where, as is often the case, the articles of partnership expressly state that on a dissolution the provisions of section 44 shall apply, the correct interpretation of that section and the true meaning of the decision in *Garner v. Murray* are of the greatest importance.

The provisions of the Partnership Act 1890, and the rules of equity and common law applicable to partnerships, except so far as they are inconsistent with the express provisions of that Act (see above) shall, subject to the provisions of the Limited Partnerships Act 1907, apply to Limited Partnerships. (Limited Partnerships Act 1907, section 7.)

For the provisions of the last-mentioned Act *see title* Limited Partnership.

The provisions of the Companies (Consolidation) Act 1908 as to winding up of Companies wound up by the Court apply (subject to modification) to the winding up of limited partnerships by the Court. (Companies (Consolidation) Act 1908, section 268.) (*See title* Winding-up.)

(*See* also *titles* Articles of Partnership, Dormant Partner, Firm, Goodwill, Holding out, Joint and Separate Estates, Nominal Partner, Partnership at Will, Postponed Creditors, *Société en Commandite.*)

Partnership at Will.—A partnership determinable at the will of any partner.

The Partnership Act 1890 provides:—

Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners. (Section 26 (1).)

Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidence of a partnership at will. (Section 27 (1).)

The Limited Partnerships Act 1907 provides:—

Subject to any agreement, expressed or implied, between the partners, a limited partner shall not be entitled to dissolve the partnership by notice. (Section 6 (5).)

Part Owners.—*See title* Co-Owners.

Part Payment.—Part payment is one of the alternative requirements of the Sale of Goods Act 1893 (*see that title*), as evidence of a contract for the sale of goods of the value of £10 or upwards. Part payment will (in certain cases) operate as a revival of the Statutes of Limitation. (*See title* Acknowledgment of Debt.)

Party Wall.—Where a wall separating adjoining properties is used in common by the owners, it is presumptive evidence that the wall and the ground on which it stands belong equally to the adjoining owners.

Pass Book.—*See title* Bank Book.

Passive Debt.—One upon which no interest is being paid, and which is not being reduced by payments on account, as distinct from an active debt, which has one or both of the above characteristics.

Passive Trust.—One which does not involve any active duties.

Past Consideration.—*See title* Consideration.

Patent Agent.—The Patents and Designs Act 1907 provides that a person is not entitled to describe himself as a "patent agent" (for obtaining patents in the United Kingdom) whether by advertisement, by description on his place of business, by any document issued by him or otherwise, unless he is registered as a patent agent under that Act or an Act repealed by it. A person who knowingly contravenes this provision is liable to a fine not exceeding £20.

Patent Right.—The exclusive privilege granted by the Crown to the true and first inventor of a new manufacture, or method of making articles according to his invention.

The duration of a patent when granted is 14 years, but every patent ceases on failure of the patentee to make the prescribed payments within

the prescribed times, provided that the comptroller of patents shall, upon the application of the patentee and on receipt of the prescribed additional fee, not exceeding £10, enlarge the time to such an extent as may be applied for, but not exceeding three months. A patentee may petition the High Court for an extension of the term of his patent, but the petition must be presented at least six months before the expiration of the term. If the Court is of opinion that the patentee has been inadequately remunerated by his patent, it may be extended for a further term, but not exceeding seven years, or under exceptional circumstances not exceeding 14 years, or the Court may order the grant of a new patent for such term as may be specified in the order, and containing any restriction, condition, and provisions the Court may think fit.

The fees payable on obtaining patents and on the renewal thereof are:—

On application for provisional protection	£1
On filing complete specification	£3
On the sealing of the patent	£1
On certificate of renewal before the expiration of the fourth year from date of patent in respect of the fifth year ...	£5

with further annual fees, in respect of each year, increasing by £1 annually.

The renewal fees may, however, be paid in annual instalments as prescribed by the Act. (Patents and Designs Act 1907.)

Although a corporate body, such as a registered company, cannot be "the true and first inventor," within the meaning of the Act, the corporation may (in conjunction with the true and first inventor) apply for a patent.

With regard to the treatment of patent rights in the Balance Sheet of a company, *see title* Profits Available for Dividend.

Apart from the question of valuation, an auditor should first require the production of all the necessary documents to show that the patents which are taken credit for in the Balance Sheet are actually in force; and he should further take note of the number of years which the patents have respectively to run, so that he may properly form an opinion as to whether or not sufficient depreciation (if any) has been provided for, and report thereon should he think it necessary.

Pawn (or Pledge).—A transfer of the possession of property (chattels personal corporeal) by one person (the transferor, pledgor or pawnor) to another (the transferee, pledgee or pawnee) to be retained by the latter as security for the payment by the pledgor of a sum of money or the performance by him of any other specified engagement.

In a pledge, a *special* property (only) in the subject-matter passes to the pledgee, the *general* property therein remaining in the pledgor.

An agreement accompanying a pledge of chattels to secure a debt is not a bill of sale and does not require registration. (*Ex parte Hubbard*, 55 L.J. Q.B. 490.) This is because the possession of the subject-matter is not retained by the pledgor.

On the expiration of the period for which the pledge was given, or in default of a fixed period, at any time, the pledgor may "redeem the pledge" and recover possession of the subject-matter of pledge, upon payment or tender of the sum, or on performing the engagement, for which the pledge was given as security. On the other hand, when the date fixed for the payment of the sum of money has arrived, if a power of sale expressly or *impliedly* has been given to the pledgee, he may sell the property and repay himself out of the proceeds.

Where no date for payment has been fixed, the pledgee should first demand payment of his debt, and then, on default, give reasonable notice to the pledgor of his intention to realise his security if he is not paid by a stated date.

The pledgee's remedy against the security is by *sale* only, and any surplus out of the proceeds must be handed over to the pledgor; on the other hand, should there be a deficiency, the pledgee has a right of action for the balance due, for a pledge is only a collateral security.

The rights and liabilities of the pledgee in respect of the subject-matter of the pledge may be summarised thus:—

(1) If expensive to keep, such as a horse or cow, he may use same in a reasonable manner, *e.g.*, he may ride the horse or milk the cow, by way of recompense for the cost of keep.

(2) If the subject-matter would be "the worse for the use" (*e.g.*, a suit of clothes) the pledgee must not use same.

(3) If use is really necessary for the due preservation of the property, then use of same is not only justifiable but indispensable to a proper discharge of the pledgee's duty towards the pledgor.

(4) If the use will neither improve nor in any way prejudice the property, the pledgee may use same.

(5) The pledgee is liable for ordinary neglect whilst he is in possession of the property, but if he detains the property after tender of the amount for which it is security, he becomes *an insurer*, and, as a consequence, will be absolutely responsible for any loss or injury to the property.

(6) Expenses incurred by the pledgee, in respect of the subject-matter of the pledge, must be reimbursed by the pledgor if such expenditure *was necessary*, but to the extent of any expenditure which was *merely useful*, the pledgor is not bound to reimburse, unless such expenditure was incurred by his express or implied authority.

A contract of pledge may be terminated or extinguished:—

(1) By payment or other discharge of the debt, or fulfilment of the engagement, in respect of which the pledge was given.

(2) By extinguishing the debt, thereby extinguishing the right to the pledge.

(3) By accepting a higher or different security in respect of the same debt or engagement, without reserving a right to retain the subject-matter of the pledge.

(4) By the perishing of the property itself.

(5) By any act of the pledgee showing a renunciation, release, or waiver of the pledge or the subject-matter thereof, *e.g.*, deliberately returning the property to the pledgor. (*See titles* Factor, Hypothecation, Lien, Pawnbroker.)

Pawnbroker.—The business of pawnbrokers is regulated by the Pawnbrokers Act 1872, which, however, only applies to loans of money not exceeding £10. As to loans between forty shillings and £10, a special contract may, however, be made with a pawnbroker outside of the Act. The rate of interest which may be taken by a pawnbroker is—on pledges for sums not exceeding ten shillings, one halfpenny for every two shillings (or part) per month; after the first month, less than fourteen days is counted as half a month; fourteen days and not exceeding one month as one month, whilst one halfpenny is payable for the ticket. On pledges for sums exceeding ten shillings, the rate is the same as above, but one penny is payable for the ticket on pledges above forty shillings, one halfpenny per month (or part) for every 2s. 6d. (or part) and one penny for the ticket. These rates must be printed on the tickets.

Pledges are redeemable within one year and seven days from the day of pawning. Pledges of ten shillings or under become the absolute property of the pawnbroker after that date.

Pledges of upwards of ten shillings are redeemable until actual sale, but such sale must be by public auction, and at any time within three years after the auction the holder of the pawnticket may inspect the pawnbroker's sale books, or the "filled in" particulars in the catalogue of the auction, on payment of one penny, and if the proceeds of sale would show any surplus, after deducting the amount of the loan and interest due at the time of sale, the pawnbroker must, on demand, pay such surplus to the holder of the pawnticket, but a deficiency made on the sale of any other pledge by the same pledgor within 12 months before or after such surplus is obtained may be set off against the amount otherwise payable.

The pawnbroker must produce the pledge to the holder of the ticket, who is presumed to be the owner. A pawnbroker must take out a licence, and pay an excise duty of £7 10s. per annum for each pawnbroker's shop kept by him. The licence is only granted on production of a magistrate's certificate. If the pawnbroker trades in plate (without regard to weight) he must pay an additional duty of £5 15s. per annum.

Payment.—*See titles* Appropriation of Payments, Tender, Voucher.

Payment for honour supra protest.—Where a bill has been protested for non-payment, any person may intervene and pay it for the honour of any party liable thereon, or for the honour of the person for whose account it is drawn.

Where two or more persons offer to pay for the honour of different parties, the person whose payment will discharge most parties shall have the preference.

Payment for honour in order to operate as such, and not as a mere voluntary payment, must be attested by a notarial act, which may be appended to the protest.

On payment of the bill, and the notarial expenses incidental to its dishonour, the payer for honour is entitled to receive the bill and the protest, and all parties subsequent to the party for whose honour the bill was paid, are discharged, but the payer for honour is subrogated for and succeeds to the rights and duties of the holder as regards the party for whose honour he has paid, and all parties liable to that party. Where the holder of a bill refuses to receive payment *supra* protest he loses his right of recourse against any party who would have been discharged by such payment. (Bills of Exchange Act 1882, section 68.) (*See title* Acceptance for honour *supra* protest.)

Pecuniary Legacy.—*See title* Legacy.

Penalty.—A sum payable by way of punishment; a sum specified in a contract as being payable in the event of non-performance, the amount being the maximum sum recoverable, but reducible in proportion to the actual damage sustained. A penalty must be distinguished from liquidated damages. (*See that title.*)

Peppercorn Rent.—A nominal rent, stipulated for primarily as a mere acknowledgment of tenure.

Per Capita.—By the number of heads (individuals), as against *per stirpes*, by the number of families. Thus, if a man leaves his property among all his grandsons, and has seven grandsons, one of whom is an only son, and the other six are brethren, then, if the division be *per stirpes*, the "only son" would take one half of the goods and the other half would be divided among the other six grandsons: but if the division be *per capita*, then each of the seven grandsons would take an equal seventh part.

Percentage.—A sum or number either concrete or in the abstract denoting a ratio to *one hundred*.

A percentage may represent an allowance, a discount, a commission, remuneration, or the like.

When commercial or other results are reduced to "percentages" for the purpose of comparison, the latter are really a type of *average* recorded upon a common base.

Where several independent results have been reduced to percentages for comparative purposes, the average of those percentages is not the percentage of the whole of the "results" taken together. In order to obtain the "all round" percentage the individual percentages must be ignored, and the whole of the results (themselves) must be added together, so that the required percentage may be specially computed.

Thus:—

30	is 15 per cent. of		200
40	is 10	,,	400
70			600

The average of 15 and 10 is $12\frac{1}{2}$, but the true percentage of the aggregate result is $11\frac{2}{3}$.

Profits are compared by means of percentages, and they may be either based upon cost or selling

price. The more usual method is to make the calculation upon the selling price, but this is undoubtedly an impure method, mathematically regarded. In taking the sale price as the base, the profit is necessarily included therein—thus the base will *vary* with the profits, although the underlying motive of comparison by means of percentages is to reduce results to a *common* base.

This variation is, moreover, uncontrolled by any principle, being, in the case of a large proportion of profit, entirely disproportionate to the variation caused by a smaller rate of profit. As an instance, 10 per cent. of profit computed upon the cost price is equal to $9\frac{1}{11}$ per cent. when the same result is taken on the selling price, but if 50 per cent. of profit on cost prices be computed upon selling prices it will only show $33\frac{1}{3}$ per cent. Furthermore, as the sale price is composed of the cost price and the profit, the latter cannot exceed the sale price, from which it follows that a profit based upon selling prices cannot exceed 100 per cent., nor even equal 100 per cent., if the goods have cost anything at all. None of these impurities or limitations exist in connection with a cost price percentage. Of course, a given percentage computed upon the cost will always show a certain other percentage if the same result as regards profits is computed upon selling prices, *i.e.*, 10 per cent. based upon cost is at all times equivalent to $9\frac{1}{11}$ per cent. of the selling price: 50 per cent. of cost is always equal to $33\frac{1}{3}$ per cent. of sale price and so on: Therefore, so long as the rate of profit is under 25 per cent., and does not vary greatly, comparisons of results based on selling prices will not be as misleading as they would be otherwise, and may be adopted without great danger, provided the nature of the base upon which they are computed is always borne in mind. It is often urged that a sale price percentage is adopted on the score of convenience, the *cost* of the articles being difficult to ascertain on account of the difference of stocks and other obscuring elements. But the *cost* incurred in respect of the sales effected can be obtained by a simple expedient so soon as the amount of profit has been ascertained. As above stated, the cost and profit combined equal the selling price—there fore, if the amount of profit be deducted from t net sales, the cost of the goods sold must be th result, quite independently of the questions o purchases, differences of stocks, &c.

The following extract will show that the *co price* percentage is not only the true bas mathematically, but is also in accord wit economic principles:—

> "The capitalist, then, may be assumed t
> "make all the *advances* and receive all th
> "*produce*. His profit consists of the exces
> "of the produce over the advances; his *rat*
> "*of profit* is the rate which that excess bear
> "to the *amount advanced*." [John Stuar Mill.]

When considering and comparing percentage it should be remembered that where there is wide divergence of results as between one trans action (or article) and another, the percentag of the whole of the results will not give a accurate idea as regards the *type* of the result obtained, *e.g.*, suppose £110 of sales of certai articles produce £10 profit, and another £240 o sales of other goods produced £40 profit, th resultant percentage from a combination of thes two classes of trading would give the aggregat result, but it would not give an accurate ide of the *type of transactions* as regards profi earned. Basing the percentages upon cos prices it will be seen that the 10 per cent. in on case and the 20 per cent. in the other show 16 per cent. profit on cost in respect of the whol of the sales, which result is not typical of eithe of the individual results referred to. This i inseparable from any system of averages, bu where there are known to be wide divergence of results, percentages are more in accord wit the actual type of transaction if the subject matter is classified before being reduced to th form of percentage.

Perils of the Seas.—The rules contained in the Firs Schedule to the Marine Insurance Act 1906 f the construction of a policy where the contex does not otherwise require, provide that the ter "perils of the seas" refers only to fortuitou accidents or casualties of the seas, and that

...s not include the ordinary action of the winds ...d waves—that is, the term includes casualties ...ch *may* but not consequences which *must* ...ur.

...erils *on* the sea is a much wider term than ...ils *of* the sea.

Permanent Building Society.—*See title* Terminating Building Society.

Permit.—A licence or instrument granted by the officers of excise, certifying that the excise duties on certain goods have been paid, and permitting the removal of the goods from one place to another.

Perpetual Debentures.—*See title* Irredeemable Debentures.

Perpetuity.—Unlimited duration. An annual sum receivable in perpetuity, *e.g.*, rent from a freehold property as distinct from a leasehold. (*See* Accumulation of Income.)

Suppose a person requires 5 per cent. upon an investment in perpetuity (*e.g.*, a freehold estate), of course he could afford to give 20 years' purchase of the net annual value if the property came into possession immediately; but if he had to wait for some years for the expiration of a lease or the death of some person interested, he could not afford to give 20 years' purchase, but only such a sum as would amount at 5 per cent. to the equivalent of 20 years' purchase by the time the property would come into possession.

Thus an estate of the net value of £100 per annum with immediate enjoyment is worth £2,000, then one of the same value with the benefit deferred for six years is only worth £1,492.4. This is ascertainable in two ways:—

The full present value of the estate is ...	£2,000 on the basis of 5 per cent.
But from this must be deducted the present value of the benefit to be enjoyed by another, viz., the present worth of £100 per annum for six years at 5 per cent.	507.6
Leaving as the present value of the estate to the purchaser of the reversion	£1,492.4

(2) As the purchaser is prepared to pay £2,000 six years hence for immediate possession, he will only pay now for the reversion the present value of £2,000 due six years hence, viz.:—£.7462 × 2,000 = £17,492.4.

Per procuration (per pro.).—By procuration; an agency. Bills of exchange may be drawn, accepted or indorsed, by procuration, if the agent has authority for such purpose, but a signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the limits of his authority. (Bills of Exchange Act 1882, section 25.)

An infant cannot (as principal) draw or sign a cheque, for he cannot give his banker a legal discharge, but if a customer authorises a minor to sign cheques on his behalf, such cheques will be duly honoured by the banker.

Person.—The Interpretation Act 1889 provides that "in this Act, and in every Act passed after the "commencement of this Act, the expression "'person' shall, unless the contrary intention "appears, include any body of persons, corporate or unincorporate." (*See title* Fictitious Person.)

The words "a respectable and responsible person" in a lease include a corporation. (*Willmott v. The London Road Car Co., Lim.*, C.A. 1910.)

Personal Accounts are those which show the state of the account between a trader and every person with whom he has had dealings, whether for buying, selling, borrowing, lending, banking, or otherwise. They resolve themselves into two main heads, viz., Debtors and Creditors. (*See titles* Ledger, Sectional Ledgers.)

Personal Ledger.—One used for separately recording the Personal Accounts of a trader.

Personal Property.—Money, goods, leases for years (however long), furniture and other chattels as distinct from real property, which includes freehold houses, lands, &c.

" It is a clear proposition . . . that per-
" sonal property has no locality . . . that
" is, not that personal property has no visible
" locality, but that it is subject to that law
" which governs the person of the owner.
" With respect to the disposition of it, with
" respect to the transmission of it, either by
" succession or the act of the party, it follows
" the law of the person." [Rosslyn.]

Shares in the capital of a company registered under the Companies Acts 1862 to 1908, now the Companies (Consolidation) Act 1908, are personal estate (1908 Act, section 22), but in rare instances shares in corporations such as the New River Company, and the River Avon Navigation, have been held to be real estate. These are, however, corporations of very long standing, the shares of corporations of more recent creation under special Acts of Parliament being deemed personal estate. *Per contra*, where land (or any heritable interest therein) has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner) and also as between the heirs of a deceased partner and his executors or administrators as personal or movable and not real (or heritable) estate. (Partnership Act 1890, section 22.)

Leaseholds, although personal property, are liable (if at all) to succession duty, not legacy duty.

Personal Representatives.—Executors or administrators. (*See titles* Administration, Letters of; Executor, Land Transfer Act, &c.)

Personalty.—*See title* Personal Property.

Per stirpes.—*See title Per capita.*

Per testes.—*See title* Probate.

Petition in Bankruptcy.—*See title* Bankruptcy Petition.

Petitioning Creditor.—A creditor who presents a petition to the Court for a receiving order in respect of the estate of a debtor, or a winding-up order in respect of a company or limited partnership indebted to the petitioner. (*See titles* Bar ruptcy Petition, Petition to wind up a Compan

Petition to wind up a Company.—An applicat to the Court to wind up a company (registe under the Companies (Consolidation) Act 19 must be by petition. The petition may be p sented by the company, or by *any* creditor (ever merely contingent or prospective—see below) or a *duly qualified* contributory, or by all or any such parties, either together or separately. (Co panies (Consolidation) Act 1908, section 137.) the case of a life assurance company, a poli holder also has a right to present a petition.

Where the paid-up capital of the compa does not exceed £10,000, and the registered off is situate within the jurisdiction of a Cour Court having jurisdiction under the Compan (Consolidation) Act 1908, a petition to wind the company may be presented in that Cour Court.

In other cases, the petition must be present in the High Court or (if the company is witl their jurisdiction) the Palatine Courts. (Secti 131.)

Upon every petition to wind up a company, fee stamp of £2 is payable.

CONTRIBUTORY'S PETITION.

A contributory shall not be entitled to pres a petition for winding up a company unless—

(i) Either the number of members is reduc in the case of a private company, bel two, or, in the case of any other co pany, below seven; or

(ii) The shares in respect of which he is contributory, or some of them, either w originally allotted to him or have b held by him, and registered in his nam for at least six months during the eight months before the commencement of winding up, or have devolved on h through the death of a former hol (Section 137.)

Note.—The time during which shares may have been registered in name of the wife of the contribut

either before or after marriage, or a trustee for the wife or contributory, may be treated as part of the six months referred to above.

Under ordinary circumstances a contributory, who has not paid any calls which may have been made in respect of his shares, cannot present a petition to wind up the company, but he might be permitted to do so if he made out a special case and paid his calls into Court, or gave an undertaking to do so. (*Crystal Reef Co.*, 1892, 1 Ch. 408.)

A company may be wound up by the Court if default is made in filing the statutory report or in holding the statutory meeting (section 129), but such a petition 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 (section 137), but if such a petition is presented 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. (Section 0)

The qualifications of a petitioning contributory obtained in section 137 (*supra*) do not apply in the case of default as to the statutory report or statutory meeting.

A clause in the articles of association of a company purporting to forbid or attempting to qualify a shareholder's right to present a petition for winding up is inoperative.

Creditor's Petition.

Any creditor may present a petition, there being no special qualification as regards amount as in the case of bankruptcy. The assignee of a debt may petition as though he had been the original creditor.

Any contingent or prospective creditor shall be a creditor entitled to present a petition. Provided that the Court shall not give a hearing to the petition by such a 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. (Section 137.)

In this connection the case of *In re British Equitable Bond & Mortgage Corporation* (1910) is of interest.

The fact that a debenture-holder has obtained the appointment of a receiver does not *per se* prevent him from applying for a winding-up order. (*Portsmouth Tramways*, 1892, 2 Ch. 362.)

Where a company is being wound up voluntarily or subject to supervision, 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. (Section 137.)

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 creditors, or in the case of an application by a contributory that the rights of the contributories, will be prejudiced by a voluntary winding up. (Section 197.)

But after a voluntary winding up has commenced a compulsory order will not, under ordinary circumstances, be made upon the application of *contributories*, unsupported by creditors. While the fact that a voluntary winding up has actually commenced is a strong reason why the Court should decline to interfere, special circumstances may induce the Court to make a compulsory order. For instance, the resolution to wind up may have been passed fraudulently, or the Court may consider that those who are opposing the order are either directly implicated in charges of fraud or are desirous of screening others who are so implicated. In such cases an order may be made on the petition of a shareholder. (*Haycraft Gold Reduction and Mining Co.*, 1900, 2 Ch. 230.)

A compulsory order to wind up was made in *Re Hermann Lichtenstein & Co., Lim.* (1907,

23 T.L.R. 424), upon the petition of a creditor. The company was already in voluntary liquidation, and the creditor did not show that he would be prejudiced by the voluntary winding up, but he made out a case for inquiry, and an order was made.

The Court would not formerly make an order to wind up a company which, at the date of the presentation of a petition therefor, had already been *dissolved* by voluntary liquidation, but it is probable that in future an order will be made, in a proper case, on an application by petition, where the dissolution has been declared void under section 223 of the Companies (Consolidation) Act 1908, which provides that 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 by any person who appears to the Court to be interested, make an order, upon such terms as it thinks fit, declaring the dissolution to have been void, *and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.*

" The section (14 of 1890, now 137 (2) of " 1908) includes every case where the powers " of the voluntary liquidator are proved, in the " opinion of the Court, to be insufficient for " the purposes of winding-up, in so far as the " interests of creditors or contributories are " concerned. If, in short, the Official " Receiver, after a compulsory winding-up " order, would possess any power which the " voluntary liquidator cannot exercise, and " which is shown to be necessary in order " that there may be an efficient winding-up in " the interests of creditors or contributories, " then the section applies." (*Re Jubilee Sites Syndicate*, 1899.)

Every petition must be advertised seven clear days before the hearing, (1) once in the *London Gazette*, and (2) once at least in a London daily paper (in the case of a London company), or a local newspaper circulating in the district where the registered office of the company is situate. (Winding-up Rules 1909, Rule 27.)

If the petitioner or his solicitor does not, within the time prescribed or within such extended time as the Registrar may allow, duly advertise the petition in the manner prescribed, 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. (Rule 27.)

A creditor who has presented a petition to wind up a company is not bound to bring the petition to a hearing, but 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. (Rule 36.)

Except where the petition is presented by the company, every petition shall be served upon the company at the registered office of the company, or if there is no registered office, at its principal or last-known principal place of business, by leaving a copy with any member, officer, or servant of the company there if such place and person can be found, otherwise by leaving a copy at such registered office or principal place of business or by serving the petition on such member or members of the Company as the Court may direct. (Rule 28.)

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. (Section 129.)

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 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) . . . . . .

(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. (Section 130.)

Note.—Clause (iv) effects an important change, for hitherto the Courts have held that inability to pay debts meant debts actually due—that is, debts which can be demanded to be paid instantly. (*Re European Life Assurance Society*, 39 L.T. Ch. 136; L.R. 9 Eq. 122.)

On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally, 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.

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. (Section 141.)

Petition to wind up a Limited Partnership.—In the event of the dissolution of a limited partnership, its affairs shall be wound up by the general partners *unless* the Court otherwise orders. (Limited Partnerships Act, section 6 (3).) Applications to the Court to wind up a limited partnership shall be by petition under the Companies (Consolidation) Act 1908, and the provisions thereof and rules and fees prescribed thereunder shall apply, with the following substitutions:—

"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."

(Companies (Consolidation) Act 1908, section 268; and the Limited Partnership (Winding-up) Rules 1909.)

The rules just cited also provide:—

That the word "member" used in section 268 of the Companies (Consolidation) Act 1908 shall mean a general partner only and shall not include a limited partner.

That 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.

(*See title* Petition to Wind up a Company.)

Petty Cash.—Money set aside by a cashier, or placed by him under the control of another person, to be available for petty expenditure.

A system of making small payments through a Petty Cash Account (1) relieves the general cashier of such duties, and (2) curtails the number of entries in respect of such payments in the General Cash Book.

The limit of the amount payable by a petty cashier or through the Petty Cash Account, must necessarily vary according to the circumstances of each case, but a limit of £2 for any one payment is an ordinary one. The system adopted may be either (1) the "imprest" or (2) one which involves periodical advances of round sums (say £10) as and when required, leaving a balance (generally) in the Petty Cash Book at the date of closing the books. The imprest system (*see that title*) is the better one to adopt.

Plant.—Fixtures, tools, machinery, and other apparatus which are necessary to carry on a trade or business. (*See title* Loose Plant and Tools.)

Pledge.—*See title* Pawn.

Plene administravit.—(He has fully administered.) A defence by an executor or administrator to the effect that all the assets which have come to his hands have been fully administered.

Policies, Valuation of.—*See titles* Assurance Companies Act, Life Assurance Companies.

Policy.—An instrument expressing the undertaking on the part of the insurers, in consideration of a premium received, to bear and take upon themselves certain specified risks or perils, as in the case of fire, marine and accident insurance, or to pay a specified sum on the happening of a certain event, such as life assurance. (*See title* Valued Policy.)

Marine Insurance.—Policies may be assigned either before or after loss, and the assignee thereof may sue thereon, in his own name. (Marine Insurance Act 1906.)

Life Assurance.—Policies may be assigned, and on due notice of the date and purport of the assignment being given to the assurance company, the assignee has a right to sue at law for any moneys due under the policy. The assignment may be either indorsed on the policy or made by a separate instrument, and the assurance company, on request, shall, on payment of a fee not exceeding 5s., deliver an acknowledgment of the receipt of notice of the assignment, which shall be conclusive evidence thereof. The date upon which notice is received by the assurance company regulates the priority of all claims. (Policies of Assurance Act 1867.)

In the extremely rare cases where a policy is *expressed* to be non-assignable the beneficial rights of an assignee may be enforced in equity but not at law.

Fire Insurance.—Policies are, as a rule, not assignable. It is generally provided that they are only assignable by indorsement with the consent of the insurers. In practice, however, unless there is some special reason therefor there is little difficulty about the indorsement of the benefit of a fire insurance policy. It has been held that after a fire has occurred, and the liability of the insurers has accrued, the assured may transfer his right to recover the amount.

Poll.—A poll has been defined as an appeal to the whole constituency, "taken in order to ascer- "tain the sense of the general body of persons "qualified to vote, and to give others besides "those who are present when the poll is "demanded power to come in and exercise their "right of voting, and in order to ascertain "whether the voters have the qualification which "is required in order to entitle them to exercise "the privilege of voting." [Cotton, L.J.]

Although the common law mode of ascertaining the sense of a meeting of persons is by *show of hands*, there is also a common law right of demanding a poll, but the regulations of the particular body (*e.g.*, creditors, members, &c.) may exclude or restrict this right.

Company.—Unless the articles of association otherwise provide, a poll may be demanded upon any question put before a meeting of the members, but, unless the demand is made in strict accordance with the articles of association,

the chairman may not grant it. Generally, the articles provide that a poll can only be demanded by a stated number of members at the least, and holding in the aggregate a stated number of shares, or a certain proportion of the capital of the company. The articles, as a rule, further provide for the method of taking the poll, the appointment of scrutineers, &c.

The provisions of Table A to the Companies (Consolidation) Act 1908 as regards a poll are as follow:—

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.

On a poll votes may be given either personally or by proxy.

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. . .

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.

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.

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.

The foregoing will only apply to such companies as have adopted Table A. Variations from these provisions can be made by the company's articles either as originally framed or as amended by special resolution. But the following is by section 69 of the Consolidation Act made applicable to all companies under the Act:—

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.

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.

———

Thus the articles of association may fix the number of persons necessary to demand a poll, whether for an ordinary, extraordinary, or special resolution, and in the case of an ordinary resolution such number may be large or small and may involve stated shareholding qualifications in addition; but with regard to extraordinary and special resolutions, the number of persons fixed by the articles must not exceed five, and no share qualification can be imposed beyond that necessary for membership, namely, the holding of one share. (*See titles* Proxy, Vote.)

Portage Bill.—A statement prepared by the master of a ship at the expiration of each voyage (or at such other times as circumstances may require), showing:—

(1) Names of the crew.
(2) Respective ratings of the crew.
(3) Dates they joined the ship.
(4) Agreed rates of wages.
(5) Advances made.
(6) Allotments paid.
(7) Date or dates crew discharged from ship.
(8) Total wages due.
(9) Balance wages due (after deducting advances, allotments, &c.).
(10) Particulars of wages forfeited (deserters); and
(11) (Sometimes) detailed particulars of the receipts and payments of the master on behalf of the owners of the ship, together with a concise summary of the same.

Port Charges.—The sum payable for the dock or harbour accommodation afforded to a vessel.

Port of Registry.—With the exception of coasting vessels not exceeding 15 tons burden, and certain fishing boats, every British ship must be registered. Generally, the chief officer of Customs acts as the Registrar at the respective ports, and the port at which the ship is registered is deemed the port to which she belongs, and is called her "Port of Registry."

The Register contains the name and dimensions of the ship, the names of the builders and year of building, the names and addresses of the owners, and (generally) particulars of any mortgage on the vessel. Any person may inspect the Register on payment of a fee of one shilling for each ship the records of which are examined, and auditors of ship-owning companies often avail themselves of such an inspection to verify the title to, and incumbrances upon, the particular company's vessels.

Possessory Lien.—*See title* Lien.

Post-dated Cheque.—A bill of exchange is not invalid by reason only that it is post-dated. (Bills of Exchange Act 1882, section 13.) For many purposes a post-dated cheque is equivalent to a bill payable at a fixed future date, but the practice of issuing such cheques (in effect) amounts to a breach of the stamp laws, and the drawer thereby renders himself liable to a penalty; but so long as the holder does not enforce the cheque until after the date contained in the instrument and it bears a penny stamp (as a cheque), the Courts will admit it in evidence. The death of a drawer of a post-dated cheque before its maturity would cause some inconvenience, for a banker's authority to pay is revoked by *notice* of the drawer's death. It has been held that where a partner or agent has authority to draw and issue cheques, but not bills, he has no authority to draw and issue post-dated cheques.

Post Entry.—When a bill of sight (or prime entry) has been given to the Custom House in respect of goods, and it is discovered, after weighing and examining the goods, that the descriptions and quantities are incorrect, a post-entry must be made giving the correct particulars.

This must not be confounded with the term "post-entries" applied to certain entries in bookkeeping.

(*See titles* Bill of Entry, Entry.)

Post-nuptial Settlement.—A settlement made after marriage, which is deemed voluntary unless made in pursuance of a written undertaking entered into before and in consideration of marriage.

(*See title* Fraudulent Conveyances, &c.)

Post-obit Bond.—A bond for the payment by the obligor of a sum of money to the obligee upon the death of some other person, the other person being usually one from whom the obligor expects to derive some property.

Postponed Creditors.—In the administration of the estate of a bankrupt the creditors may be roughly classified into (*a*) preferential, (*b*) secured (fully or partly), (*c*) general or unsecured, and (*d*) postponed, the last-named being those who are disentitled to rank against the estate until all other creditors for valuable consideration in money or money's worth have been satisfied. The following are the chief instances of this class of creditors:—

(1) A lender of money to a person or firm under a contract in writing that he shall receive a rate of interest varying with the profits, or shall receive a share of the profits of the business.

Note.—The requirement that such a contract must be in writing is to afford proof that the lender is really not liable as a *partner*. If the contract is *not* in writing the lender would still be a postponed creditor, and would have to prove that he was not a partner in some other way. (*Re Fort*, 1897.)

The Limited Partnerships Act 1907 has not altered the law in this connection, but is of interest. (*See title* Limited Partnership.)

(2) A seller of the goodwill of a business in consideration of a share of the profits (to the extent of any unpaid share of the profits).

(3) Any money or other estate of a wife lent or entrusted by her to her husband for the *purpose of trade* or business carried on by him or otherwise, is treated as assets of her husband's estate in the event of his bankruptcy, and the wife is treated as a postponed creditor for the amount.

Note.—It has been held that this postponement does not apply to a loan to a *firm* of which the husband is a member only (*Re Tuff and Nottingham*, 19 Q.B.D. 88), nor to a loan to the husband for purposes other than his trade or business. (*Ex parte Tidswell*, 4 Mor. 219.) In the administration by the Court of the estate of a deceased insolvent the widow's claim for money lent to her husband (the deceased) for the purpose of his trade or business was held to be postponed to the claims of other creditors by virtue of section 3 of the Married Women's Property Act 1882, and section 10 of the Judicature Act 1875. (*In re Leng*, 1895, 1 Ch. 652.)

This decision was applicable only to the widow's right to dividend.

Where a widow was executrix of her husband's estate and had assets in hand, it was held that she was entitled to exercise her power of retainer in respect of her "postponed" claim for money lent. (*Re Ambler*, 1905, 1 Ch. 697.)

The claims of creditors in respect of interest *exceeding* 5 per cent., when a greater rate has been reserved, are also postponed to the ordinary claims in administering a bankrupt's estate, subject to the right of a partly secured creditor to allocate his security to the interest and prove for the principal.

Semble a creditor having a claim which would under ordinary circumstances be "postponed" is not debarred from availing himself of a set-off if he has one, nor are his rights as a mortgagee affected if the claim be secured by a mortgage. (*Ex parte Sheil*, 1877, and *Badeley v. Consolidated Bank*, 1888, 3 Ch.D. 238.) Nor are the rights of a creditor who holds security for a postponed claim affected. Although a postponed claim in respect of *excess interest* is restricted as regards dividend it is not affected as regards the right of proof. (*Ex parte Jones; re Herbert*, 9 Mor. 253.) This is not the case, however, with regard to the other classes of postponed claims enumerated above, such not being provable even for the purpose of voting until the other creditors have been satisfied. (*Ex parte Taylor; re Grason*, 1879, 12 Ch.D. 366; and *Re Genese; ex parte District Bank of London* (1885, 16 Q.B.D. 700.)

(*See title* Interest in respect of Proof of Debt.)

Power of Attorney.—Where a power of attorney is given for valuable consideration and, in the instrument creating the power, is expressed to be irrevocable, then, in favour of the purchaser, the power shall not be revoked at any time, either by anything done by the donor of the power, or by the death, marriage, lunacy, or bankruptcy of the donor of the power, and the purchaser shall not at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee, or of the death, marriage, lunacy, or bankruptcy of the donor of the power.

If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed term not exceeding one year from the date of the instrument, then, in favour of a purchaser, the power shall be absolutely irrevocable during such fixed term, and any act done within such term by the donee in pursuance of the power shall be as valid absolutely as if done by the donor; and neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice either during or after that fixed time, of anything done by the donor during that fixed time without the concurrence of the donee, or of the death, marriage, lunacy, or bankruptcy of the donor within that fixed time.

" Purchaser " includes a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or other person, who for valuable consideration takes or deals for property. (Conveyancing Act 1882, sections 1, 8 and 9.)

Precept.—In its application to accounts, a mandate from a responsible person, or body of persons, authorising or requiring specific payments or other acts.

Pre-emption.—A right of pre-emption confers the power of purchasing something before others.

Preference (Bankruptcy).—*See title* Fraudulent Preference.

Preference (Executor).—In paying the debts of the testator an executor may, amongst creditors of equal degree, pay one creditor in preference to another; and even where an action has been commenced by a creditor, the executor may, before judgment has been obtained, and with notice of the action, voluntarily pay another creditor of equal degree. (*See title* Hinde Palmer's Act.)

The right of *retainer* is not affected by a decree for administration, but the right of preference ceases in such an event; but a decree for administration will not be made merely to prevent the executor exercising his rights in this respect.

The executor may pay statute-barred debts even though the personal estate is insufficient for all (*i.e.*, he may even prefer such debts), but he cannot pay or prefer any debt which is unenforceable because of the provisions (as to form of contract) of the Statute of Frauds, the Sale of Goods Act, or otherwise, nor can he pay a debt which is statute-barred if the Court has actually adjudged the debt irrecoverable on that account.

As in the case of retainer, an administrator will be deprived of the right of preference by the terms of his bond requiring him to pay the debts *pro ratâ*.

Preference Stock and Shares.—Stock (or shares) entitling the holder thereof to preferential rights as regards dividend and/or capital, or otherwise.

Accounts.—Holders of preference shares in companies *registered on and after 1st July 1908* 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. But this provision does not apply to a private company. (Companies (Consolidation) Act 1908, section 114.)

Dividend.—The preferential rights as to dividend may be either cumulative, or non-cumulative, according to the conditions upon which the stock, &c., was issued.

If *cumulative*, the holder is entitled to a stated rate per cent. per annum out of the profits of the company, or other corporate body, and in the event of the profits of any particular year, or years, being insufficient to pay the full preference dividend, such deficiency, or accumulated deficiency, is payable out of the profits of subsequent years, or the undistributed profits of past years.

With regard to the apportionment as between capital and income of arrears of cumulative preference dividend when ultimately paid, *see title* Apportionment.

If *non-cumulative*, the holder is entitled to a stated rate per annum, but such dividend is payable out of, and entirely dependent upon, the profits of each particular year, so that in the event of a deficiency in any one year, it is not payable out of the profits of any other year.

Where one class of shares is entitled to a dividend at a fixed rate in preference to another class, the dividend is, *primâ facie*, cumulative—therefore, where it is intended that the dividend should be non-cumulative the regulations should expressly prohibit the right, in the event of a deficiency in any one year, to resort to the profits of subsequent years, or the undistributed profits of past years—that is to say, the holders in such a case cannot receive more than the stated rate of dividend in any one year, but will receive less if the profits of a particular year do not allow of the stated rate being paid, and will have no right to receive any such shortage out of the profits of

future years or the undistributed profits of past years.

Preference dividends are payable and should always be paid, subject to deduction of income-tax, at the current rate. (*See title* Free of Income-tax.)

Capital.—Preference stock, &c., may also (and generally does) confer a preferential right, in the event of the company being wound up, to repayment of capital, and, further, after the repayment of the *whole* of the paid-up capital of the company (*i.e.*, preference and ordinary), the holders of the preference stock, &c., *may* be entitled to a proportion of the surplus assets after such repayment; or they may be specially restricted to the repayment of their paid-up capital without any rights as regards any surplus assets. But (1) unless expressly provided, preference stock, &c., does not confer a priority in respect of capital in the event of the company being wound up, and (2) unless otherwise provided, after all the paid-up capital has been repaid, preference stock, &c., is entitled to rank *pari passu* with ordinary shares for participation in the surplus. (*See title* Surplus Assets.)

Voting.—The holders of preference stock, &c., may have rights as to voting and attending meetings equal to those of the holders of ordinary stock, &c., but it is usual to restrict the rights of preference shareholders or stockholders in this connection to such matters as are considered directly to affect their rights and interests, *e.g.*, a right to attend and vote at a meeting when a proposition for the issue of debentures or the granting of any other charge upon the company's assets or any other question directly affecting their interests is to be considered.

Sometimes the rights of the preference stockholders are contained in the memorandum of association of a company registered under the Companies Acts, in which event such rights are rendered immutable, but in other cases the clauses referring thereto are relegated to the articles, so that they may be altered (if thought expedient) by special resolution.

The question as to whether a company registered under the Companies Acts could issue preference shares although the memorandum of association did not *contemplate* such a course, was decided by the Court of Appeal in *Andrews v. Gas Meter Co.* (1897), as follows:—

(1) Section 12 of the Act of 1862 (now section 41 of 1908) confers a power to *increase* the capital, whether such a power is contained in the memorandum or not.

(2) The terms of the increase of capital and the rights of members *may* be dealt with in the memorandum.

(3) If such terms and rights are not dealt with in the memorandum they may (*and more properly so*) be dealt with in the articles of association, either as originally framed or as altered from time to time by special resolution.

(4) Therefore where the memorandum and articles are both *silent* upon the point, the issue of preference shares may be effected by (*a*) the alteration of the articles of association by special resolution to meet the circumstances of the case, and (*b*) an increase of the capital in the terms of the articles (as amended) in pursuance of section 41 of the 1908 Act.

It must be particularly noted, however, that where the memorandum contains provisions as to the issue of preference shares and the rights of existing and (possible) future members, such provisions are immutable, and the articles, *even as originally framed*, will not override the memorandum.

Sir F. B. Palmer states that rights which are once *unconditionally* attached by the memorandum to a particular class of shares cannot be altered or infringed. (*Ashbury v. Watson*, 30 C.D. 376.) But if the rights are not *unconditionally* attached, that is, if though specified in the memorandum they are coupled with a clause in the memorandum providing for alteration, such a specification in the memorandum does not take effect as an unalterable condition. (*Welsbach, &c., Co.*, 1904, 1 Ch. 87.)

Preferential Creditors.—Those whose debts are directed to be paid in priority to the claims of others in the administration of the estates of (*a*) a debtor in bankruptcy, (*b*) a deceased insolvent, or (*c*) a company being wound up, as provided for by

(1) The Preferential Payments in Bankruptcy Act 1888.

(2) The Companies (Consolidation) Act 1908, section 209.

(3) The various statutes, the provisions of which are reserved by the 1888 Act; and

(4) The Workmen's Compensation Act 1906.

(*Note.*—Section 209 of the Companies (Consolidation) Act 1908 also applies to limited partnerships wound up by order of the Court.

A landlord has a right of distress, subject to certain conditions and restrictions, but such right where he has not exercised it does not make him either a secured creditor or a preferential creditor.

Claims for gas and water supplied prior to the receiving order or the commencement of the winding-up do not come within the terms of section 1 (1) (*a*) of the Act of 1888, or of section 209 of the Companies (Consolidation) Act 1908, and are not payable in full except in cases where the authorities have power to recover the amount due in the same way as a landlord can recover rent in arrear—that is, by way of distress *without legal process*, in which event the claim may be paid (in full) provided the property available for distress is of sufficient value.

An apprentice or articled clerk of a bankrupt may also have a preferential claim by way of compensation for breach of agreement. (*See titles* Articled Clerk, Preferential Payments in Bankruptcy and in Winding-up.)

Preferential Payments in Bankruptcy and in Winding-up, &c.—In the distribution of the property of a bankrupt (Preferential Payments Act 1888), and in the distribution of the assets of *any company* being wound up under the Companies (Consolidation) Act 1908 (section 209), there shall be paid in priority to all other debts:—

(*a*) All parochial or other local rates *due at the prescribed date* (see note to paragraph (*d*)) and having become due and payable within twelve months *next before* that date, and all assessed taxes, land tax, property tax, or income-tax assessed on the bankrupt or company, up to the fifth of April next *before* that date, *and not exceeding in the whole one year's assessment.*

Note.—See regulations below.

(*b*) All wages or salary of any clerk or servant in respect of services *rendered* to the bankrupt or company *during four months before* the prescribed date (see note to paragraph (*d*)), but not exceeding fifty pounds; and

(*c*) All wages of any workman or labourer not exceeding twenty-five pounds, whether payable for time or piece work, in respect of *services rendered during two months* before the prescribed date (see note to paragraph (*d*)); provided that, where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to such prescribed date.

(*d*) The amount of compensation due to any workman, the liability wherefor accrued before the prescribed date (see note below), provided that the amount shall not exceed in any individual case one hundred pounds, and provided also that the bankrupt or company has not entered into a contract of insurance the benefits of which contract are by the Workmen's Compensation Act 1906 specially reserved to the workman. (Workmen's Compensation Act 1906, section 5 (3) and (5).)

Note.—The "prescribed date" is, in bankruptcy, the date of the receiving order, and the prescribed date in company liquidation is (1) 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 (2) in any other case the date of the commencement of the winding-up.

So far as the assets of a company available or payment of general creditors are insufficient o meet them, the foregoing debts shall have riority over the claims of holders of debentures nder any *floating* charge created by the comany, and shall be paid accordingly out of any roperty comprised in or subject to that charge.

It will be observed that rates due are included " debts," although the relation of creditor and ebtor does not arise between rating authorities nd ratepayers.

Section 107 of the Companies (Consolidaon) Act 1908 provides for the payment of rates, c., due when a receiver has been appointed on ehalf of debenture-holders:—

(1) Where . . . . 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 . . . are . . . 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 . . . in priority to any claim for principal or interest in respect of the debentures.

. . . . . .

(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.

Where the winding-up is by or subject to the pervision of the Court any distress or execution t in force against the estate or effects of the mpany after the commencement of the nding up is void to all intents. (Section 211.) quidators, creditors, or contributories may pply to the Court to determine any question arising in any winding up; and proceedings against the company can be restrained until an execution is completed by sale, although an express application to prevent realisation of an execution or distress is necessary in a purely voluntary winding up. (*Westbury & Sons v. Twigg & Co.*, 1892, 1 Q.B. 77.)

The appointment of a receiver or liquidator does not operate as a change of occupancy of a company unless where appointed by the Court with order for the company to give up possession. Those officials manage the business of a company which continues to occupy premises until dissolved.

As a rule debentures give the holders an equitable charge on the goods of a company. This does not prevent rating authorities from recovering rates from the company, although they have to take out a summons for leave to distrain on goods of a company in liquidation under supervision of the Court. The property in goods subject to a floating charge remains with the company. It may be where debenture-holders are secured by a trust deed that the goods are thereby conveyed to trustees and leave to distrain cannot be given, but usually goods of a company are not covered by a trust deed. (*In re Marriage, Neave & Co.*, 1896, 2 Ch. 663; *In re Adolphe Crosby, Lim.*, 1910, O.C. XVI, 50.) In a voluntary winding up, subject to supervision, the Court allows distress for rates if the liquidator has beneficial occupancy of the premises of a company within the meaning of the Rating Acts. Thus where he did not carry on the business of the company and did not intend to sell it as a going concern, but employed a caretaker to hold possession and to protect the property from trespass, he was held to be a beneficial occupant, his object being to get purchasers of the stock and use the premises for storage of plant. (*In re Blazer Fire Lighter Co.*, 1895, 1 Ch. 402.)

Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts must be discharged forthwith, so far as the property of the bankrupt or the assets of the company are sufficient to meet them; and they are to rank

equally between themselves and be paid in full unless the property is, or assets are, insufficient to meet them, in which case they must abate in equal proportions between themselves. (1888 Act, section 1, subsections 2 and 3, and Companies (Consolidation) Act 1908, section 209.)

In the event of the landlord or other person distraining or having distrained on any goods or effects of a bankrupt or a company being wound up, within *three months* next before the date of the receiving order or winding-up order respectively, the debts to which priority is given by the Act (as above stated) constitute 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 such payment is made. (1888 Act, section 1, subsection 4, and Companies (Consolidation) Act 1908, section 209.)

Note.—Prior to the passing of the Companies (Consolidation) Act 1908 the provisions as to preferential payments in both bankruptcy and winding-up procedure were dealt with together in the Act of 1888. And it was suggested that as subsection 4 of section 1 of that Act referred to a winding-up order in the case of a company (although other subsections of the Act referred to the *commencement* of a winding up), the provisions as to a landlord having to surrender the proceeds of distress under the foregoing circumstances could not apply in a voluntary winding up, inasmuch as no winding-up order is made in such a case. Whether this is so or not, the Companies (Consolidation) Act 1908, section 209, leaves the matter in the same uncertain state.

The provisions of section 1 of the Act of 1888 apply to the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order. (1888 Act, section 1, subsection 6.)

Where a servant was paid salary and commission and had been paid his salary but not his commission, he was held entitled to be paid preferentially such commission as he had earned during the four months before the commencement of the bankruptcy, such sum being within the prescribed limit as regards amount. (*In re Klein; ex parte Goodwin*, 22 T.L.R. 664.)

It has been held that the managing director of a company is not a clerk or servant within the meaning of the Act (*Re Newspaper Proprietary Syndicate, Lim.*, 1900, 2 Ch. 349), and cannot claim to be paid preferentially any balance of remuneration which may be due to him; but he may rank as a creditor, for a director does not claim his remuneration in his character of a member (*New British Iron Co.*, 1898, 1 Ch. 324), and he may apportion his claim to the date of winding up.

The Acts of 1888 and 1908 *do not affect, alter, or prejudice* the following provisions, viz.:—

(1) Partnership Act (of 1890) and Married Women's Property Acts as to postponement of certain claims. (*See title* Postponed Creditors.)

(2) Bankruptcy Act 1883 (section 125), as to priority given to the payment of funeral and testamentary expenses, and (section 41) as to payment to an apprentice or articled clerk as compensation for breach of agreement.

(3) Friendly Societies Act (now of 1896), which provides that: "Upon the death or "bankruptcy of any officer of a registered "society or branch, having in his possession, *by virtue of his office*, any money "or property belonging to the society "or branch, or if any execution or other "process . . . is issued against any "such officer, then his heirs, executors or "administrators, or his trustee in bankruptcy, or the sheriff or other person "executing the process . . . shall "upon demand in writing of the trustees "of the society or branch, or of any two "of them, or of any person authorised "by . . . pay the money or deliver over "the property to the trustees of the "society or branch, in preference to any "other debt or claim against the estate of "the officer."

Note.—The words "*by virtue of his office*" have been strictly construed. In one case a secretary had collected moneys which the treasurer ought strictly to have collected, and on the secretary's death the above provision was held not to apply. If the claim is within the section, the society is entitled to be paid out of the bankrupt's estate, although the money so owing is not in the possession of the bankrupt, and cannot be specifically traced. (*Re Miller*, 1893.)

(4) Savings Bank Act 1891, as to priority of debts due to a savings bank from any of its officers.

(5) Stannaries Act 1887, as to the priority of miners' wages in the winding up of mining companies.

Note.—But the compensation aforesaid if payable to a miner or the dependants of a miner has the same priority as is conferred on such miners' wages. (Workmen's Compensation Act 1906, section 5, subsection (4).)

It must be noted that the Acts deal only with he *distributable* property of a bankrupt or ssets of a company, as the case may be, that is o say, the assets remaining after "the retention of such sums as may be necessary for the costs of administration or otherwise," so that, part from the special provisions of the Comanies (Consolidation) Act 1908, sections 107 and 09 (applicable only to such companies as may ave issued debentures secured by a *floating* harge), the rights of *secured creditors* are not rejudiced; nor is the priority of payment of the osts of liquidation in any way affected. (*See tle* Priority of Payments [Costs].)

But the exceptions referred to (viz., those comanies which have issued debentures secured by floating charge) create an anomaly in this espect, for by placing the preferential claims efore the claims of the debenture-holders, the ct places the preferential creditors in a better osition than that they would occupy if there were no debentures—that is to say, they have priority to the costs of the liquidation where there are debentures secured by a floating charge, and rank after such costs where there are no such debentures.

The following regulations as to assessed taxes have been approved by the Board of Trade and Inland Revenue authorities. Although recorded here in their application to bankruptcy procedure, they are also applicable *mutatis mutandis* to the winding-up of companies, including the substitution of section 209 of the Companies (Consolidation) Act 1908 for section 1 of the Preferential Payments in Bankruptcy Act 1888:—

(1) Where a receiving order is made *on or after the 1st December* in the year of assessment, or the Official Receiver or trustee *remains in possession* of the premises, in respect of which King's taxes are assessed, under a receiving order made prior to 1st December, until the 1st January next following the date of the receiving order, 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 debtor up to the 5th April next *following* the date of the receiving order, in the same manner as if such taxes had become due and payable at the date of the receiving order, and such proof shall rank for dividend.

Note.—Proofs of debt for King's taxes are exempt from stamp duty.

(2) Where a receiving 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 trustee for income-tax (Schedule "A"), inhabited house duty and land tax for the year ended 5th April next following the date of the receiving order, unless the Official Receiver or trustee *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 trustee 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 debtor. These taxes for the year ending 5th April *next following* the date of the receiving order should, therefore, be dealt with on the footing of " secured " debts and be paid by the Official Receiver or trustee 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 debtor's estate on which the collector might levy*, and notice of any such claim should be given to the Official Receiver by the collector forthwith upon the making of the receiving 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*.

(5) In like manner any income-tax (Schedule "A") and land tax assessed on the debtor up to the 5th April next *before* the date of the receiving 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 1, subsection 1 (*a*) of the Preferential Payments in Bankruptcy Act 1888, and as *ranking for dividend* for any part thereof not so payable in full.

(6) Where income-tax is outstanding under Schedule " B," " D," or " E," the Inland Revenue authorities will, on receipt of an affidavit by the debtor, with a certificate by the Official Receiver or trustee, setting out that the debtor has made no income taxable under such schedule, forego all claim to payment of the tax, whether the same is payable in full under section 1, subsection 1 (*a*), of the Act of 1888, or otherwise, but the waiver of claim under this regulation *shall not embrace rents, royalties, interest of money, or annuities, from which deductions have been made on account of income-tax*. In cases where the debtor's attendance cannot be obtained by reason of his illness, absconding, or other cause, the certificate of the Official Receiver or trustee may be accepted as sufficient evidence without any affidavit by the debtor, but the reason for no such affidavit being furnished is to be stated.

Note.—Liquidators and trustees should carefully inquire whether any such deductions of income-tax have been made either by the company or bankrupt (as the case may be) just prior to the liquidation or bankruptcy, and if made the amount of tax thereon should be provided for before the estate is distributed. In practice claims are often made by the surveyors after the dividend has been paid by the liquidator, but his duty remains even if there be no assets, and he may be held personally responsible for the tax as for any other claim which he has neglected to pay. (*Pulsford v. Devenish*, 1903.) (*See title* Misfeasance.)

Where a parochial or other local rate is levied, payable by instalments, any of which fall due at a date subsequent to the date of the receiving order, only such instalments as were actually

due at the date of the receiving order are payable in full under the terms of the Preferential Payments in Bankruptcy Act 1888 or the Companies (Consolidation) Act 1908. Rates or instalments of rates are only payable for the period during which the premises in respect of which the claim is made are in the actual occupation of the debtor or the trustee. Claims for gas and water supplied prior to the receiving order do not come within the terms of the Preferential Payments in Bankruptcy Act 1888 or the Companies (Consolidation) Act 1908, and are not payable in full, except in cases where the authorities have power to recover the amount due in the same way as a landlord can recover rent in arrear—that is, by way of distress *without legal process*, in which event the claim may be paid provided the property available for distress is of sufficient value.

Note.—Where a general *rate* is compulsorily levied for water irrespective of the quantity used by each consumer the amount due therefor may be a rate and entitled to priority. *A fortiori* where a water rate is levied whether water be used or not, and a water rent is charged in addition where a water supply is taken.

Tithes are not payable in full under the Preferential Payments in Bankruptcy Act 1888 or the Companies (Consolidation) Act 1908, and should only be so paid where, after the prescribed notice, there is property of the debtor upon which distress can be levied. Not more than two years' tithes are recoverable by distress. (Board of Trade Regulations.)

(*See titles* Articled Clerk, Distress, Preferential Creditors, Secured Creditor.)

Limited Partnership.—Where a limited partnership is wound up by the Court the provisions of the Companies (Consolidation) Act 1908 (and therefore the provisions as to preferential payments) apply. (Limited Partnerships Act 1907, section 6 (4).) (*See title* Winding-up.)

Preferred Ordinary Stock.—*See title* Deferred Ordinary Stock.

Preliminary Expenses.—The expenditure in connection with the promotion, formation, establishment, and registration of a company.

The expenses comprise (1) the cost of preparing and printing the memorandum and articles of association; (2) the preparing, printing, issuing, and advertising of the prospectus; (3) the charges of solicitors, accountants, valuers, and others properly employed in connection with the formation and registration of the company; (4) the fees and stamp duties payable in respect of the registration of the company and the sale contracts, transfers, assignments, and conveyances in connection with the acquisition of the various properties; (5) brokerages on the "placing" of shares and, where *intra vires*, the commission payable in respect of the issue of the capital or debentures or both; (6) the cost of share registers, seal, and all such special expenditure which the formation of the company has necessitated, provided it will *not be of annual occurrence.*

Although this class of expenditure is inevitable, and is not capital expenditure in the strictest sense, yet it would be obviously unfair to charge the whole amount to the Revenue Account for the first period (year or otherwise) of the company's existence.

The expenditure is therefore temporarily capitalised, and written off over a period of years, varying according to circumstances. The majority of companies charge Revenue Account with one-fourth or one-fifth per annum for the first four or five years respectively, whilst in extreme cases the instalments extend over ten years. There is not, however, any statutory obligation to write off the preliminary expenses out of revenue.

Where the articles of association provide for the treatment of this item an auditor may safely follow the directions there laid down.

As the practice of writing off such expenditure over a period of years is generally recognised, the auditor may safely allow it to be temporarily capitalised, provided the item is separately stated in the Balance Sheet.

In this connection the provisions of sections 26 and 90 of the Companies (Consolidation) Act 1908 are of interest, viz.:—That 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, shall be stated in the annual summary made next after the payment of the commission or the allowance of the discount, *and the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every Balance Sheet until the whole amount has been written off.*

The income-tax authorities will not allow a charge under this head as a deduction from profits assessable under Schedule D.

Where the expenses are paid by the vendor, or where founders' or other shares are allotted to the promoters in consideration of their paying the preliminary expenses, the item does not, of course, directly affect the company. At the same time, as the share capital is *pro tanto* increased, the equivalent must appear as part of the assets, either as "goodwill" or in the form of an increased price for the properties acquired. (*See title* Premiums on Shares.)

The amount or estimated amount of preliminary expenses must be stated in every prospectus of a company or intended company issued prior to the expiration of one year from the date at which the company is entitled to commence business (Companies (Consolidation) Act 1908, section 81), and in the report to be issued to the shareholders of a company other than a private company as defined by section 121 of the Act with the notice summoning the statutory meeting, an account or estimate of the preliminary expenses of the company must be set out. (Section 65.)

Every company (other than private companies as defined by the Act) which does *not* issue a prospectus on or with reference to its formation, must, before the first allotment of either shares or debentures, file a "statement in lieu of prospectus" containing *inter alia* particulars of the estimated amount of the preliminary expenses. (Companies (Consolidation) Act 1908, section 82.)

A person voluntarily paid the registration fees of a company, but it was held by the Court of Appeal in *Re National Motor Mail Coach Co., Lim.* (1908, 2 Ch. 515) that it did not create an obligation to repay on the part of the company. Kennedy, L.J., in the course of his judgment, said he could not differentiate between "a payment made without request in the case of a statutory obligation (*e.g.*, to pay such fees) and a similar payment under any other obligation, and it was certainly not the law that a person can recover money paid by him without request because the person on whose behalf it was paid was under a legal obligation to pay. An express promise to repay made by the company after it came into existence would no doubt be binding on the company though the promise was for a past consideration." (*See title* Consideration.) But as a company cannot come into existence until the preliminary fees are paid, and cannot request anything to be done on its behalf until it comes into existence, every company could, according to this decision, successfully repudiate liability for the money paid to bring it into existence. This obviously requires rectifying by statute.

Premises.—Propositions assumed or proved; houses and/or lands; the commencement of a deed, which sets forth the parties and the particular subject-matter.

Premiums on Debentures.—This term may be used in two connections, namely:—

(1) Where debentures are *issued* at a premium, *i.e.*, the company *receives* from the subscriber for the debentures more than the nominal value, and

(2) Where they are *redeemable* at a premium, *i.e.*, the company must on redemption *pay* to the subscriber more than the nominal value.

In the first instance there is a *present* profit to the company and in the second a *future* loss.

As regards the treatment of these transactions in account, it is suggested by some authorities that premiums received on debentures may properly be looked upon as a revenue profit. It is clear that there is a difference between premiums received on shares and premiums received on debentures, the former being a "profit" obtained by the shareholders at their own expense or that of part of their own body, and the latter being a "profit" derived from a distinct body. But if the regulations of the company restrict dividends to "profits arising out of the business of the company" it is clearly improper to credit premiums on debentures to revenue. Whether legal or not, it is suggested that such a practice would be economically unsound, although there is not the same objection to the premiums being applied in reduction of the cost of issuing the debentures as there is to the policy of applying premiums on *shares* in reduction of preliminary expenses. Thus the premiums may be written off "Expenses of Debentures Issue" Account, and the balance (if any) should be credited to reserve.

Where the debentures are issued at a premium and repayable at par, the nominal amount of the debentures will appear as a liability in the Balance Sheet and the balance of the premiums (if any) still standing in the books will be stated as a reserve.

As regards debentures redeemable at a premium, the proper course is to make provision out of profits over the term of the debentures for the payment thereof in due course. Usually the nominal amount only of the debentures is stated in the Balance Sheet, together with a memorandum of the amount and date at which they are to be redeemed ultimately. The best way of dealing with repayment of debentures is by means of a proper Sinking Fund (*see* that *title*), and where this is done the sinking fund should, of course, make provision for the redemption of the premiums as well as the nominal amount of the debentures. (*See titles* Debenture, Redeemable Debentures.)

Premiums on Shares.—When shares are issued at a premium, either at the formation of a company or otherwise, the amounts representing such premiums should (strictly) be treated as receipts on capital account, for it is undesirable that they should be taken credit for in the Revenue Account, and distributed in dividends. Should the directors, however, insist upon distributing the premiums in dividends, the auditor of the company cannot object, if the company's regulations do not prohibit such a course. The auditor should nevertheless see that the accounts are framed in such a manner as clearly to disclose the transaction, for dividends from such a source are not from profits earned in the ordinary course of the company's business.

It is a matter for the consideration of possible applicants for shares which are being issued at a premium as to whether such premiums can, by the regulations of the company, be distributed in dividends in future years, or whether either by the special terms of the issue of the shares or by the regulations of the company such premiums are to be treated as capital receipts and reserved accordingly.

An accountancy writer suggests that the premiums may "with great propriety be applied "towards the liquidation of an unrealisable "account on the credit side of the Balance Sheet, "such as that of preliminary expenses."

It is submitted that the legality of such a course depends upon the articles of association, for it is little removed from the practice of directly crediting revenue with the amounts of the premiums, for "preliminary expenses" are temporarily capitalised because (according to the same author) "it would press unfairly upon the "Revenue Account of the first year were the "total amount thus expended charged against "it; therefore it is usual for the articles of "association of a limited company to contain a "clause empowering the directors to charge "only a proportion, varying from one-tenth to "one-fifth, against each year's Revenue "Account . . . until the account be thus "gradually extinguished."

It is apparent that the practice of utilising the premiums on shares or any other fund in the

reduction of an item which in the ordinary course would have been written off out of revenue (even though spread over a period of years) is ultimately tantamount to the passing of such premiums or fund to the credit of revenue.

(*See title* Premiums on Debentures.)

Presentment for Acceptance.—(1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument. (2) Where a bill expressly stipulates that it shall be presented for acceptance, or (3) where it is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

With the exception of the three above-mentioned cases presentment for acceptance is not necessary in order to render liable any party to the bill. (Bills of Exchange Act 1882, section 39.)

Where presentment for acceptance is optional, bills are nevertheless presented for acceptance, so that (1) the drawee may be secured as a party to the bill, which he does not become until he "accepts" it, or (2) in case of refusal to accept by the drawee the holder may have an immediate right of recourse against antecedent parties. Unless presentment for acceptance is excused (see below) a bill payable after sight, when negotiated, must either be presented for acceptance or negotiated by the holder within a reasonable time, otherwise the drawer and all indorsers prior to the holder are discharged. (Section 40.)

A bill is duly presented for acceptance when presented in accordance with the following rules:—

(1) The presentment must be made by or on behalf of the holder to the drawee or his agent at a reasonable hour, on a business day, before the bill is overdue.

(2) Where there are two or more drawees who are not partners, presentment must be made to them all unless one has authority to accept for all.

(3) Where the drawee is dead, presentment *may* be made to his personal representative. If the drawee is bankrupt, presentment *may* be made to him or his trustee.

(4) Presentment may be made through the Post Office, where an agreement or usage allows it.

Presentment is excused:—

(1) Where the drawee is dead or bankrupt, or is a fictitious person, or one not having capacity to contract.

(2) Where, after exercise of reasonable diligence, such presentment cannot be effected.

(3) Where, although presentment has been irregular, acceptance has been refused on other grounds.

In the above cases the holder may treat the bill as dishonoured by non-acceptance.

The fact that a holder has reason to believe that a bill on presentment will be dishonoured does not excuse its presentment. (Section 41.) (*See title* Acceptance.)

Presentment for Payment.—Unless presentment is dispensed with, as referred to subsequently, a bill of exchange must be duly presented for payment. If it be not so presented, the drawer and indorsers are discharged. (Bills of Exchange Act, 1882, section 45.)

But when a bill is accepted *generally* presentment for payment is not necessary in order to render the acceptor liable. (Section 52 (1).)

A bill is duly presented for payment when presented in accordance with the following rules:—

When not payable on demand, presentment must be made on the day the bill falls due. (*See title* Days of Grace.)

When payable on demand, presentment must be made within a reasonable time after issue to make the drawer liable, and within a reasonable time after indorsement to make the indorser liable.

Presentment must be made by the holder or his agent at a reasonable hour on a business day, at the proper place, to the payer or his agent.

The proper place for presentment is:—

(1) The place stated in the bill, or

(2) The address of the drawee or acceptor, as stated in the bill.

If no reference is made thereto in the bill, then

(3) The drawee's or acceptor's business place or residence, if known, otherwise the last known address of the payer.

Where a bill is presented at the proper place, and (after the exercise of reasonable diligence) no person authorised to pay or to refuse payment can be found there, no further presentment is necessary.

Where a bill is drawn upon or accepted by two or more persons who are not partners, and no *place* of payment is specified, presentment must be made to them all.

Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and if with the exercise of reasonable diligence he can be found.

Presentment may be effected through the Post Office where authorised by agreement or usage. (Section 45.)

Where the holder of a bill presents it for payment he must exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder must forthwith deliver it up to the party paying it. (Section 52.)

Delay in making presentment for payment is excused when caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence.

Presentment for payment is dispensed with:—

(1) Where after the exercise of reasonable diligence presentment cannot be effected. The fact that the holder has reason to believe that the bill will be dishonoured on presentment does not dispense with the necessity for presentment.

(2) Where the drawee is a fictitious person.

Note.—The fact that the drawee is a person not having capacity to contract does not of itself excuse presentment for payment.

(3) As regards the *drawer*, where the drawee or acceptor is not bound as between himself and the drawer to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(4) As regards an *indorser*, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(5) By waiver of presentment, express or implied, and before or after the time for presentment.

Note.—Waiver of notice of dishonour does not of itself include a waiver of presentment for payment. (Section 46.)

A promissory note payable on demand, which has been indorsed, must be presented for payment within a reasonable time after the indorsement. If it be not so presented the *indorser* is discharged. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case. (Section 86.)

(As to cheques *see title* Unpresented Cheques.)

Presents.—A written instrument is referred to in the instrument itself by the phrase "*these presents.*"

Present Worth.—As applied to a sum of money payable at a future date, this term expresses the amount which, if improved at a stated rate of interest per annum *thereon* during the period intervening between the present and future dates, will equal the proposed sum as and when it becomes due. The term may be applied to (1) a fixed sum, (2) equal payments recurring at

regular or irregular dates, or (3) unequal payments recurring at regular or irregular dates.

The difference between the proposed sum or sums and the present worth thereof is termed the "discount." The rate of interest applied may be either compound or simple, and (in the former case) the rests may be made annually, half-yearly, or otherwise.

The present worth forms the basis of comparison between various amounts payable at different times—thus, supposing a person were desirous of surrendering a particular reversion for an immediate life annuity of a proposed amount, the present worth of each benefit would be ascertained in order to determine whether the proposition was acceptable or not.

The present worth of £1 due x years hence at y per cent. per annum if deducted from £1 gives the present worth of an annuity for x years of y per cent. interest on £1. (*See titles* Discount, Interest.)

Primage.—This was originally a small payment made by the merchant to the master of a ship for his care and attention to the goods shipped, but in this connection the term is now practically obsolete. It was also called "hat money."

The term is now used to express a certain percentage on the freight payable by the merchant to the shipowner. For instance, the freight may be quoted as 15s. per ton with 5 per cent. primage, which would make the freight in reality 15s. 9d. per ton.

Sometimes it is arranged that upon a shipper giving (and carrying out) an undertaking to ship all goods to certain ports by the ships of one company or fleet, a certain percentage of the freights paid by him to the company during the year or other period will be returned to him. This is called "returned primage" or "rebate freight."

Prime Cost.—The original or *direct* cost of an article, as distinct from the "cost of production," which term includes all expenditure incurred in manufacture, whether direct or indirect.

(*See title* Manufacturers' Accounts.)

Prime Entry.—*See title* Bill of Entry.

Principal.—*See title* Agent.

Priority of Payments (Costs, &c.).—

BANKRUPTCY.

The assets in every matter remaining *after payment of the actual expenses incurred in realising* any of the assets of the debtor shall, subject to any order of the Court, be liable to the following payments, which shall be made in the following order of *priority*, viz.:—

(1) The actual expenses incurred by the Official Receiver in protecting the property or assets of the debtor, or any part thereof, and any expenses or outlay incurred by him or by his authority in carrying on the business of the debtor.

(2) The fees, percentages, and charges payable under Table B of the scale of fees; and any other fees payable to, or costs charges, and expenses incurred or authorised by, the Official Receiver.

(3) The fee which under the scale of fees for the time being in force is required to be affixed to the copy of the Cash Book when forwarded for audit.

(4) The deposit or deposits lodged by the petitioning creditor.

(5) The deposit or deposits lodged on any application for the appointment of an interim receiver.

(6) The remuneration of the special manager (if any).

(7) The taxed costs of the petitioner.

Note.—The taxed costs of the petitioner's solicitor must be paid, irrespective of any question of set-off against the petitioner.

(8) The remuneration and charges of the person (if any) appointed to assist the debtor in the preparation of his statement of affairs.

Note.—An arrangement must be made with the Official Receiver, as in the case of winding-up procedure (*infra*).

(9) Any *allowance made to the debtor* by the Official Receiver.

(10) The taxed charges of any shorthand writer appointed by the Court.

Note.—Where a shorthand writer is appointed at the instance of the Official Receiver to take notes of the examination of the debtor at his public examination, the cost of such notes shall be deemed to be an expense incurred or authorised by the Official Receiver, and be paid in priority accordingly.

(11) The trustee's necessary disbursements other than actual expenses of realisation heretofore provided for.

(12) The costs of any person properly employed by the trustee with the sanction of the committee of inspection.

Note.—These payments are subject to the regulations as to taxation (*infra*).

(13) Any *allowance made to the debtor* by the trustee with the sanction of the committee of inspection.

(14) The remuneration of the trustee.

Note.—This is not a taxable charge. (Bankruptcy Act 1883, section 73.)

(15) The actual out-of-pocket expenses *necessarily* incurred by the committee of inspection, subject to the sanction of the Board of Trade.

(Rule 125 of 1886.)

All bills and charges of solicitors, managers, accountants, auctioneers, brokers, and other persons. not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made.

Every person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and if he fails to do so within seven days after receipt of the request, or such further time as the Court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate. (1883 Act, section 73.)

Before taxing the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an Official Receiver or trustee, the taxing officer shall require a certificate in writing, signed by the Official Receiver or trustee, as the case may be, to be produced to him, setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of a bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the employment. (Rule 117.)

Company Liquidation.

Voluntary Liquidation.—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. (Companies (Consolidation) Act 1908, section 196.)

Note.—There is no prescribed order of priority *inter se* as in the case of bankruptcy and winding up by the Court.

Winding up by the Court.—The assets of a company which is being wound up *remaining after payment of the fees and actual expenses incurred in realising and getting in the assets* shall, subject to any order of the Court, be liable to the following payments, which shall be made in the following order of *priority*, viz.:—

(1) The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court.

Note.—If the petitioner is a shareholder, and subsequently becomes liable as a contributory in respect of calls, he is entitled to his costs, free from any set-off in respect of such calls.

(2) The remuneration of the special manager (if any).

(3) The costs and expenses of any person who makes, or concurs in making, the company's statement of affairs.

Note.—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 or 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 (Winding-up Rules 1909, Rule 54.)

(4) 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.

(5) The liquidator's necessary disbursements, other than the *actual expenses of realisation* heretofore provided for.

(6) The costs of any person properly employed by the liquidator with the sanction of the committee of inspection.

Note.—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 in connection with the preparation of the statement of affairs and sanctioned by the Official Receiver 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 being wound up by the Court, without proof that same have been considered and allowed by the Registrar. This rule does not apply to costs in connection with legal proceedings taken by or against a company which i being wound up by the Court, which ar ordered by the Court in which such pro ceedings are pending to be paid by th company or the liquidator. (Rule 187.)

(7) The remuneration of the liquidator.

(8) The actual out-of-pocket expenses *neces sarily* incurred by the committee of inspec tion, subject to the approval of the Boar of Trade. (*See title* Committee o Inspection.)

(Rule 187.)

It will be noted that the order of priority i bankruptcy is *mutatis mutandis* the same a that in winding-up procedure, with the followin exceptions:—

(1) The *additional* provisions for an allowanc to the debtor by the Official Receiv and/or trustee, and

(2) The *reversal* of the priority as betwee the remuneration of the special manage and the costs of the petitioner.

The priority of the costs of administration i bankruptcy and company liquidation is no affected by the provisions of the Preferenti Payments Act 1888 or the Companies (Consolid tion) Act 1908, the preferential claims therei provided for being payable out of the asse remaining after the retention of the necessar sums for administering the respective estates except in the case of a company having issue debentures, secured by a floating charge. He the Companies (Consolidation) Act 1908, sectio 209, creates an anomaly, placing the preferenti claims against a company which has issue debentures secured by a floating charge befo the claims of such debenture-holders, and, as consequence, conferring upon them a priori over the costs of winding up.

Deed of Arrangement.

The order of priority in which the paymen in pursuance of a deed of arrangement are to l made is generally provided for in the deed itsel and generally the rules in bankruptcy procedu are adopted.

LIMITED PARTNERSHIP.

Where a limited partnership is wound up by the Court the provisions of the Companies (Consolidation) Act 1908 (and therefore the provisions as to priority of payments) apply. (Limited Partnerships Act, section 6 (4).)

(*See titles* Preferential Creditors, Preferential Payments in Bankruptcy and Winding up.)

Private Company.—Prior to the passing of the Companies Act 1907 no statutory definition existed of a "private company," although the Companies Act 1900 had introduced certain distinctions between companies which issued a prospectus and those which did not. The effect of these distinctions was that in practice the first-named class of company were considered "public" companies and the latter "private" companies.

The following remarks by Sir F. B. Palmer are of interest, although they were made prior to the passing of the 1900 Act, and must be read subject to the provisions of the Consolidation Act 1908:—

"No satisfactory—that is exhaustive—definition of a private company can be given; the term is too elastic, but some leading characteristics may be indicated. One is that the private company is started and worked without appealing to the public for capital. A company which appeals to the public by prospectus, circular, or otherwise, is not classed as a private company. . . . Another characteristic is that it is composed of a very limited number of members, perhaps 7, 8, or 9. . . . And not only are the members few in the case of a private company, but the great bulk of the shares are usually in the hands of only some of those few members. . . . A further characteristic is that the right to transfer shares is, in the case of most private companies, closely fettered, and that the continuing members are commonly given a preferential right to purchase the shares of an outgoing member. . . . The private character of such a company may at any time be terminated by the public being let in and allowed to take shares, either by allotment or transfer."

For the purposes of the Companies (Consolidation) Act 1908 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.

Note.—To qualify as a private company the articles must provide for all the foregoing and the restriction of the right to transfer shares must apply to all the shares of the company, and not be limited to a particular class, *e.g.*, to ordinary shares only.

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.

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. (Section 121.)

All companies, other than those coming within the foregoing definition, are public companies, and may be subdivided as follows:—

(*a*) Those which issue a prospectus (*i.e.*, an invitation to the public to subscribe for shares or debentures) on or with reference to their formation.

(*b*) Those which do not issue such a prospectus.

As to what amounts to "an invitation to the public," Farwell, J., has said, "An offer is not "the less made to the public because it is sent "to (existing) shareholders or debenture-"holders as well as to other persons, or because "it is not advertised in the public newspapers," and it would seem that a general invitation for subscriptions, however limited the circle to which it is addressed, is an invitation to the public, so long as any of the persons directly approached are not already members of the company.

The minimum number of persons which it is necessary to be associated in order to form a private company is two, as against seven in a public company. (Section 2.)

Several restrictions are imposed upon public companies which do not apply to those formed "privately." The following are the four chief restrictions connected with the formation:—

(1) The filing with the Registrar of Joint Stock Companies of a prospectus or a statement in lieu of prospectus (as the case may be) containing specific information.

(2) The filing with the same official, by directors named in the articles of association and/or prospectus or statement in lieu of prospectus, of their consent to act as directors, and also of their undertaking to take and pay for their qualification shares (if any).

(3) The filing on application for registration of the memorandum and articles of a list of the persons who have consented to act as directors.

(4) The prohibition of proceeding to allotment, unless the "minimum subscription" has been received.

To ensure compliance with these provisions a "public" company, before commencing any business or exercising any borrowing powers, is required to obtain (in addition to the Certificate of Incorporation necessary for all joint stock companies), "a certificate that the company is entitled to commence business."

To effect registration of a company without compliance with the formalities above referred to, the articles of association must contain th provisions required by section 121 of the 1908 A (see above).

Where it is desired to register a privat company as defined by section 121 of th Act, it will be necessary to register specia articles, for Table A does not comply w the requirements of that section. The restri tion of the right to transfer partly paid-u shares and shares on which the co pan has a lien, &c. (clause 20), is not co sidered sufficient restriction of "the right t transfer," for the Registrar contends that th restriction must apply to all shares. Clause 3 to 40 inclusive as to share warrants must be deleted, as they nullify the provisions of tion 121, and clause 5 cannot apply to a priva company. (*See titles* Articles of Associatio Table A.)

In addition to the exemptions set out affecting the formation of a company, priva companies are also exempt from the followi provisions:—

(1) The inclusion in the annual summary an audited Balance Sheet. (Companie (Consolidation) Act 1908, section 26.)

(2) The forwarding and filing of the statut report. (Section 65.)

(3) The right of preference shareholders a debenture-holders to receive and inspe Balance Sheets and reports. (Section 114.

A private company may pay commissions o the issue of shares in the company, provided (1 the payment of the commission is authorised b the articles; (2) the commission paid or agre to be paid does not exceed the amount or rate authorised; and (3) not being (of course) a issue of shares to the public, the amount or r per cent. of the commission paid or agreed t paid is disclosed in a statement in the prescribe form signed in like manner as a statement in lie of prospectus and filed with the Registrar Companies, and, where a circular or notice, n being a prospectus, inviting subscription for th shares is issued, also disclosed in that circular notice. (Section 89.)

(*See title* One-Man Company.)

Private Ledger.—A Ledger reserved for the use and inspection of the partners or other proprietors of a business. It usually contains particulars as to the capital in the business, the Profit and Loss Account, and other private matters (varying according to circumstances). In this Ledger the final adjustments of the accounts may possibly appear, whilst the successive Balance Sheets are almost invariably entered therein, though, of course, in the form of a memorandum only.

Private Ledger Account.—An Account in the General Ledger or one of the General Ledgers (where such are not self-balancing) showing the balance of the items in the Private Ledger, so that the chief bookkeeper may balance the General Ledgers without recourse to the Private Ledger. The principle involved is somewhat similar to that upon which Controlling Accounts are constructed. (*See title* Sectional Ledgers.)

Probate.—The official proof of a will; the copy of the will under the seal of the Probate Court.

Formerly, only those instruments (1) which contained a testamentary disposition of personal property, or (2) whereby realty was disposed of and the testator had appointed an executor, were admitted to probate, but since the Land Transfer Act 1897, probate may be granted in respect of real estate. (*See title* Land Transfer Act.)

A will disposing *only* of property in a foreign country is not entitled to probate, whilst the Court may, and occasionally does, admit part of an instrument to probate, and may refuse probate as to the remainder.

The person named as executor, and he only, can prove a will; he cannot transfer his right to any other person not named executor in the will.

The named executor is not bound to accept the office. He may renounce, but having renounced, the Court has power to permit him to retract his renunciation if considered desirable in the interests of the estate. (*Re Stiles*, 1897, 1 Ch. L.R. 61.)

A renunciation must, however, be made before any executorial act has been performed or before the person has otherwise shown that he has elected to act.

A will may be proved in common form or *per testes* (solemn form). The common form is used for ordinary and undisputed cases, the executor merely presenting the will with the deposition that same is "the true, whole, and last will and "testament of the deceased," whereupon the Court annex the seal.

When the will is proved in solemn form, or in form of law, the parties interested are cited to be present, when the will is produced and the witnesses are sworn, examined, and their depositions published. In case of sufficient proof the Court then pronounces for the validity of the will. An executor having proved the will in solemn form is not compellable to prove it any more, but if probate has been granted in common form he may be compelled to prove it again in solemn form.

"The right of an executor is derived from "the will and not from the probate; he has his "right *immediately* on the death of the testator, "and the right draws after it a constructive "possession; probate is a mere ceremony, evi- "dence of his right, and is of the same effect as "if the will had been proved immediately after "the death of the testator, by reason of the rela- "tion (back) of the probate. The property of "the deceased vests therefore in his executor "from the time of his death, the law knowing no "interval between the testator's death and the "vesting of the right in his representative, *i.e.*, "his executor."

The jurisdiction of granting probate of wills is exercised in the Probate Court, having a Principal Registry at Somerset House and District Registries for the various parts of England and Wales. A District Registrar has full power to grant probate of a will provided the deceased had his permanent place of abode within the particular district at the time of his death. The wills of persons who at the time of their death resided either in London or a district not having a District Registry *must* be proved at Somerset House, whilst the wills of those who have resided in the districts having Registries may be proved

either at the respective Registries or at Somerset House.

The executor will require to make two affidavits, the one being the "oath of the executor" in the prescribed form, and the other the Inland Revenue statement for the purpose of assessing the estate duty payable. (*See titles* Administration (Letters of), Estate Duty, Executor, Will.)

Probate Duty.—The stamp duty payable in respect of the personal estate and effects for which probate or letters of administration were (or may be) granted in the case of persons dying *before* 2nd August 1894.

Estate duty is payable in respect of the property of persons dying after 1st August 1894, and probate duty is not levied in such cases.

Profit.—

Economic.—"Profits must not be confounded "with the produce of industry primarily "received by the capitalist. They really con- "sist of the produce or its value remaining to "those who employ their capital in an industrial "undertaking after all their necessary payments "have been deducted, and after the capital "wasted and used in the undertaking has been "replaced. If the produce derived from an "undertaking, after defraying the necessary out- "lay, be insufficient to replace the capital "exhausted, a loss has been incurred. If the "produce is merely sufficient to replace the "capital exhausted, there is no surplus—there is "no loss, but there is no profit, and the "greater the surplus is the greater the profit." [McCulloch.]

"Capital is consumed in producing; capital is "wealth, and there must be restoration of such "wealth as is not destroyed by enjoyment, but "in creating other wealth. If that new wealth "were not forthcoming there could be no motive "to apply any wealth to capital. Profit, which "is reward, cannot begin till the replacement of "the things consumed has been completed." [Bonamy Price.]

How ascertained:—

(1) *Single Account System.*—The "Single Account System" and "Double Account System" must be carefully distinguished from the terms single entry and double entry. (*See titles* Bookkeeping, Double Account System, Single Account System.)

While the double account system of ascertaining profits is based upon the assumption that Capital Account and Revenue Account must be deemed *distinct* for that purpose, the advocates of the single account system aver that such a distinction has no foundation in principle, and that the true profits can only be ascertained by a Balance Sheet showing the true financial position of the company—not (Sir F. B. Palmer says) "a Capital Account showing, as a matter "of history, how the capital contributed has been "applied in the past, but a living account show- "ing the *true financial position* of the compa- "at the date." The single account method is applicable either to a company or an ordinary partnership. If the total of the items on the credit or "assets" side of the Balance Sheet exceeds the (paid-up) capital and liabilities of the concern, and any necessary "reserve," then such excess is considered profit. Of course, in addition to the Balance Sheet, reference may be made to a Profit and Loss Account, compiled from the complementary figures supplied by the *double entry* system of bookkeeping. Thus, the profit of a concern, as ascertained by the single account system, is the excess of the assets over the liabilities (including capital), whilst the profit for a particular period (assuming there has been no distribution of profit or further contribution of capital meanwhile) is the difference between the excesses as at the commencement and end of the period respectively. If the transactions of the concern are recorded upon the single account system and by *single entry*, the true (economic) profit for a particular period may be ascertained but if the accounts are kept, not only upon the single account system, but by *double entry*, then not only is the true (economic) profit for a particular period ascertained, but the Balance Sheet is supported by a Profit and Loss Account showing the constituent parts contributing to the result.

The single account system, based as it is upon a Balance Sheet showing the true financial

position of a concern at any given date, necessarily recognises the principle of charging revenue with the exhausted values of wasting assets and treating only as assets in the Balance Sheet that which is considered as the unexhausted portion of the cost price.

(2) *Double Account System.*—Lord Justice Buckley, in his work on the Companies Acts, advocates the double account system, as follows:—

"The language of Table A of 1862, Art. 73, was 'out of the profits arising from the business of the company.' The present article (97) is wider. There may be profits arising not from the business, but from other sources. If a company acquires assets, and with them carries on business, every increment of value, whether by way of appreciation of the assets or by way of profit earned in employing them, is in some sense profit. The corporation is so much the richer, whether the additional wealth arises from appreciation of assets or by fruit produced by their employment.

"And correlatively every depreciation of the assets and every loss incurred by their employment is a loss.

"There is nothing in the general law to forbid the distribution in dividend of profit whencesoever arising. Whether it shall be divided or not is for the regulations to determine. The word 'profit' in the present article is general. How the Profit and Loss Account under Article 96 shall be made out may be largely for the company to determine.

"If the fund for payment of dividend be under the articles the 'profits arising from the business,' it is not with every profit or loss that we are concerned, but with a particular sort of profit or loss. The relevant profit being 'the profit arising from the business of the company,' the inquiry arises what is the business (for which we must look to the memorandum of association) and what are the profits of the business?

"The profits of the business are the credit balance of a Profit and Loss Account properly prepared, having regard to the definition of the business in the memorandum of association. They are the excess of revenue receipts over expenses properly chargeable to Revenue Account. As to what expenses are properly chargeable to capital and what to revenue, it is necessarily impossible to lay down any general rule. In many cases it may be for the shareholders to determine this for themselves, provided the determination be honest and within legal limits.

"If the company employ a contractor to erect buildings for a price payable on completion he will charge not merely cost of construction, but also interest thereon until the date of payment, and no doubt also a commercial profit. If the company erects for itself buildings which cannot be reproductive until completion, the author ventures to think that the company may charge to Capital Account not the cost only, but the interest thereon. Fry, J., however, in *Alexandra Palace Co.*, considered the argument untenable. Warrington, J., has recently held the contrary (*Hinds v. Buenos Ayres Co.*, 1906, 2 Ch. 654), but does not in the judgment deal with the decision in *Alexandra Palace Co.*

"For the purpose of ascertaining profit available for dividend Capital Account and Revenue Account are to be treated as separate accounts. The credit balance of Revenue Account is applicable for dividend. Under some forms of articles appreciation of capital, or what may be called credit balance of Capital Account, may also be applicable for dividend. But if there has been loss on Revenue Account, not compensated by appreciation on Capital Account, there is not under any form of articles profit available for dividend until that loss has been made good. The articles may, however, allow declaration and payment of dividend without bringing into Revenue Account or providing for loss on Capital Account.

"To illustrate what is meant by examples. Suppose that a tramway or railway company lays its line when materials and labour are both dear, that both subsequently fall, and that the same line could be laid for half the money, and as an asset (independent of deterioration from wear) would cost for con-

" struction only half what it did cost. In such " a case the company has sustained a loss in the " sense that it is in the altered circumstances the " owner of an asset worth to construct or to " sell only half the sum at which it stands in " the Balance Sheet. Or suppose that a com- " pany has sunk £250,000 in establishing a news- " paper which could not be sold for £10,000, or " has sunk £900,000 in investments, and that " they have depreciated by £250,000, it has in " the like sense in each case sustained a loss. " Yet if the company's object was not in these " respective cases to traffic in tramways, or " newspapers, or securities, but to own them, " and to make a profit by their ownership and " working as distinguished from their sale, then " the loss is a loss on Capital Account, leaving " Profit and Loss Account unaffected, and the " credit of Profit and Loss Account may be " divided in dividend.

" In some cases the distinction here pointed to " has been conveniently expressed by the use of " the terms ' fixed capital ' and ' circulating " capital.' The capital of the company at any " particular moment is represented, of course, " not by the money originally subscribed, but by " the property bought with it and owned at that " moment by the company. The author would " define ' fixed capital ' as property acquired and " intended for retention and employment with a " view to a profit as distinguished from ' circu- " lating capital,' meaning property acquired or " produced with a view to resale or sale at a " profit. The appreciation or depreciation of fixed " capital need not (or perhaps more accurately " need not in every company (*Bond v. Barrow* " *Steel Co.*, 1902, 1 Ch. 353, 366)), but that of "circulating capital must be the subject of entry " in the Profit and Loss Account."

" Directly the principle is established that for " purposes of dividend Capital Account and " Revenue Account are to be kept distinct, the " difficulty which would otherwise arise from " bringing into account appreciation and depre- " ciation of fixed capital disappears, and subject " to the difficulty, which must be encountered, of " discriminating between revenue charges and " capital charges a safe and intelligible principle " is reached. The creditors of the company are " entitled to have the Capital Account fairly and " properly kept; but they are not entitled to " have losses of capital on Capital Account made " good out of revenue. It is no doubt true that, " before arriving at revenue at all, there are pay- " ments which must, in the absence of a power " in the memorandum to invest the capital in a " wasting property, be made good to capital, on " account of capital wasted or lost in earning the " revenue. For instance, in the common case of " leaseholds, which are a wasting property, the " whole of the rental may not properly be " income; in the case of colliery properties, the " difference between the price at which the coal " is sold and the cost of working and raising it " may not all be income, for there must also be " a deduction made in favour of capital repre- " senting the diminished value of the mine by " reason of its containing so many less tons of " coal; in the case of a tramway company you " may not have arrived at net profit before you " have set apart a sum to make good deteriora- " tion. But when all proper allowances have thus " been made in favour of capital, the balance " is revenue applicable for payment of dividend."

(3) The third system is that propounded by the Court of Appeal in *Lee v. Neuchâte Co.*, thus:—

> When the revenue of the company fo a particular period exceeds the outgoing for that period, such excess is deeme profit and available for dividend notwith standing the fact that the revenue i question was derived from a wastin asset (*e.g.*, a mine or quarry) which wi in course of time be entirely exhausted.

(4) The fourth system was also propounde by the Court of Appeal in *Verner General and Commercial Trust*, thus:—

> The net revenue of a company for particular period is to be deemed avai able for dividend, provided that loss depreciation of *circulating* capital has bee charged against the account in ascertai ing the net revenue, but loss or depreci

tion of *fixed* capital need not be so charged.

" It has been already said that divi- " dends presuppose profits of some sort " and this is unquestionably true. But " the word *profits* is by no means free " from ambiguity. The law is much " more accurately expressed by saying " that dividends *cannot be paid out of* " *capital* than by saying that they *can* " *only be* paid out of profits. The last " expression leads to the inference that " the capital must always be kept up " and be represented by assets which, " if sold, would produce it, *and this is* " *more than is required by law.* Perhaps " the shortest way of expressing the dis- " tinction, which I am endeavouring to " explain, is to say that *fixed capital* " may be sunk and lost, and yet that " the excess of current receipts over " current payments may be divided; but " that *floating or circulating capital* " must be kept up, as otherwise it will " enter into and form part of such " excess; in which case to divide such " excess, *without deducting the capital* " *which forms part of it*, will be con- " trary to law." [Lindley, L.J.]

In *Re The Spanish Prospecting Co., Lim.* (C.A., 1910), the appellants were to receive a certain monthly salary from the respondent company, subject to the provision that they should not be entitled to draw such salary, except only out of profits, if any, arising from the business of the company which may from time to time be available for such purpose, but such salary shall nevertheless be cumulative, and accordingly any arrears thereof shall be payable out of any succeeding profits as aforesaid."

The company, whose business included the purchase and sale of stocks and shares, acquired certain debentures, but for some time no value was attributed to them in the company's Balance Sheet. The company went into voluntary liquidation. At the commencement of the winding-up there was a debit balance on Profit and Loss Account. The debentures were sold by the liquidator shortly after his appointment. Held, that the realisation of the debentures was not new business carried on by the liquidator, and that the entire proceeds from the sale must be treated as profits arising from the company's business out of which the appellants were entitled to be paid.

(*See titles* Gross Profit, Income Tax, Investigation, Life Assurance Companies, Manufacturers' Accounts, Profits available for Dividend, Realised Profits, &c. &c.)

Profit and Loss Account.—Considered in a general sense this account shows the net profit or loss (as the case may be) of a particular undertaking for a given period. It is compiled from the various accounts which record the revenue items (such as sales, purchases, expenses), and provides that " confirmatory scheme, peculiar to double entry bookkeeping "; for whilst the system of single entry will show the result of a period's trading by a comparison of the past and present financial positions, as shown by the respective Balance Sheets, the system of double entry affords a supplementary account—the Profit and Loss Account—which (1) confirms the result shown by the Balance Sheet, and (2) shows the constituent parts contributing to such result.

At the present time, however, it is usual and advisable to subdivide the account showing how the result of a period's trading has been attained, the subdivision varying according to circumstances.

Ordinarily the gross profit is ascertained by means of a Trading Account, and the balance (the gross profit) is then carried to a Profit and Loss Account. Against this balance all the expenses connected with the business are charged, so that the net profit or loss may be arrived at.

In the case of an incorporated company the net profit or loss is carried to the Revenue Account, against which are charged the reserves made (if any), the dividends (if any) paid to the shareholders, &c.

Strictly, a Profit and Loss Account should only be charged with such items as are attributable to the earning of the balance eventually shown—that is to say, items which are really an *appropriation* of profit and not a *charge against* same should not be dealt with until the actual profit is ascertained and (1) brought down as a balance in the Profit and Loss Account, or (2) transferred to a separate Revenue Account (in the case of a company) or Appropriation Account (in the case of a partnership).

(*See titles* Departmental Accounts, Gross Profit, Income Tax, Investigation, Life Assurance Companies, Manufacturers' Accounts.)

Profits available for Dividend.—At the outset, it should be pointed out that there is not necessarily any relationship between profits which may be legally divided as dividend and that quantity which economists or accountants would consider profit.

It is clear, from the point of view of the economist, that the distribution by way of dividend of the whole of the profits of a concern regardless of the fact that a part of the original capital has been exhausted and has not been replaced, amounts to a payment out of capital.

But, although the law prohibits the misapplication of the capital of a company, and regards the payment of a dividend out of capital as a misapplication of that fund, yet there is no general law to the effect that no dividend shall be distributed unless the original capital is kept intact and undiminished; thus, it is more correct to say that dividends cannot be paid out of the capital of a company than it is to say that they can only be paid out of profits. The Companies (Consolidation) Act 1908, section 91, authorises (subject to certain restrictions therein laid down) the payment of *interest* on share capital during construction of works or buildings or the provision of plant. (*See title* Interest during Construction of Works.) The payment of a *dividend*, however, presupposes profit of some kind, such as realised profits, estimated profits, the excess of current income over current expenditure, or the excess of assets over the liabilities and paid-up capital.

The precise method of ascertaining the profits divisible, and the basic principles involved, depend upon the regulations of the company, or any effective resolutions passed from time to time.

The Companies Act does not say what expenses are to be charged to Capital Account and what to Revenue Account, such matters being left to the shareholders. It has been very judiciously and properly left to the commercial world to settle how the accounts are to be kept. Because of the practical impossibility of framing a set of general rules to govern all cases, each concern is allowed to regulate its own affairs in this respect, provided that the regulations or resolutions of the company conform to the rule that dividends cannot be paid out of capital. The difficulty arises in deciding what amounts to a payment out of capital, not from an economic, but from a legal point of view. A company may be formed with a special regulation based upon economic principles to the effect that no dividend shall be paid unless the value of the original capital be maintained, but in the absence of such a special provision there is no general law to that effect.

In the *Neuchâtel* case (C.A. 1889, 41 Ch.D. 1) the company was allowed to distribute the excess of income over expenditure without first making provision thereout for the depreciation of the company's property, which was admittedly of a wasting nature. But in this instance the articles of association expressly provided that it should not be necessary for the directors to provide for the waste of the assets before the declaration of a dividend.

Thus, a dividend may not legally be regarded as a payment out of capital if the capital be sunk in property of a wasting nature (*e.g.*, a mine or a quarry), even though the dividend be paid out of the excess income derived from the working of such wasting property, if the constitution of the company contemplates a distribution of such income without providing a fund thereout to replace the inevitable waste.

This principle was extended in the case of *Verner v. General Trust* (1894) to investments by

ay of stocks, shares, &c. Here the articles of ssociation did not require lost capital to be made ood before dividends could be declared, but ere, in fact, so framed as to permit the com- any to sink its capital in the purchase of stocks nd other securities (even though speculative), nd to pay dividends out of whatever interest or ividends such stocks or securities might yield, lthough some of the investments might have onsiderably depreciated in value, and part of the *uasi*-fixed capital as a consequence might be lost eyond recovery. It was held that the payment f a dividend under such circumstances did not mount to a payment out of capital.

The general law does not require the main- enance of fixed capital as a condition precedent o the payment of a dividend. Thus fixed capital may be sunk and partly lost, yet the excess of current receipts over current payments may be distributed in dividend; but floating or circulating capital (*e.g.*, stock-in-trade and book debts) must be maintained, otherwise it will enter into and form part of the excess of current receipts over current payments. To divide such excess without deducting any capital which may form part of it would be contrary to law.

With stronger reason, where the current expenses exceed the current gains, and there are no reserved profits of past years available, there can be no distribution as dividend. Obviously, in a distribution under such circumstances, it would be capital that was being paid away in dividend, amounting thereby to a misapplication of such capital, and where capital is misapplied, the directors, or other officers implicated, may be compelled to make good the amount.

Premiums derived from an issue of share capital are generally treated as a receipt on Capital Account and held in reserve; for although not carrying a right to dividend, and thus not capital in the strict sense, they are not profits earned in the ordinary course of carrying on a business. Where the articles of association expressly restrict the dividend fund to profits of the latter class, premiums are certainly not available for dividend.

As already stated, there is no necessary relationship between the amount representing the true economic profit of a concern and that amount which, by reason of the regulations of the company or the peculiar nature of its operations, may become legally divisible as dividend without infringing the rule that dividends cannot be paid out of capital. But it must be borne in mind that the legal decisions, which for reasons varying with each case have allowed companies to deviate from sound financial principles, are what are called permissive decisions. They do not require, or necessarily recommend, the adoption of the principles they propound—they merely permit companies to conform to their own regulations on financial matters, provided such conformity does not involve a breach of the rule that the capital must not be distributed by way of dividend; and subject to any special regulation to the contrary, they construe this latter rule to the following effect:—

(1) To distribute the excess revenue without providing thereout for the depreciation of *fixed* capital would not amount to a distribution out of capital to the extent of such depreciation.

(2) To distribute the excess of revenue without maintaining the *circulating* capital would amount to a distribution of capital to the extent of any deficiency of same, for as the circulating capital is deemed to merge in the revenue, unless the full amount of such deficiency is deducted therefrom, capital would, in effect, *pro tanto* form part of the so-called excess of revenue distributed.

(3) To distribute a dividend when the current payments exceed the current gains and when there is no accumulation of past profits, will amount to a payment out of capital.

The return of capital which may be involved in a distribution of profits which have been ascertained without regard to depreciation is perhaps not objectionable in itself so long as creditors are not prejudiced thereby, and so long as the shareholders are made fully aware of the

circumstances; but the evil lies in the distribution of moneys as *profit* without identifying (*a*) the proportion which is really profit, and (*b*) the extent to which the distribution is undeniably a return of capital.

Fortunately, the permissive decisions of the Courts are not generally adopted, and in very many instances the regulations of the company expressly require a proper provision out of revenue for the inevitable depreciation of the company's property. The endeavour of those responsible for the finances of most concerns is to maintain the capital upon a reliable basis by providing for all known shrinkage of assets, whether by way of depreciation, or wear and tear, and whether of fixed or circulating capital, so that, so far as possible, having regard to the risks involved in commercial undertakings, shareholders may be assured that they are receiving as dividend only such moneys as represent the true economic profit, and that, as a consequence, the amount of paid-up capital is fairly represented amongst the assets.

However commendable these endeavours may be, they are factors in a counsel of perfection which is very difficult to apply in actual practice, many complicated questions having to be decided upon their particular merits in the case of each company.

The following extracts from three different judgments of Lindley, L.J. (now Lord Lindley), are typical of the legal views on this question:—

"It is true that if the working expenses "exceed the current gains, profits cannot be "divided, and that if in such a case capital is "divided and paid away as dividend the capital "is misapplied, and the directors implicated in "the misapplication may be compelled to make "good the amount misapplied." (Lindley, L.J., *Lee v. Neuchâtel Company*, 1889.)

"The excess of current receipts over current "payments may be divided, but floating or "circulating capital must be kept up, as other-"wise it will enter into and form part of such "excess, in which case to divide such excess, "without deducting the capital which forms "part of it, will be contrary to law." (Lindley, L.J., *Verner v. General Trust*, 1894.)

"It is not possible for the Court to say that "the law prohibits a limited company, even a "limited banking company, from paying divi-"dends unless its paid-up capital is intact. "Suppose a heavy unexpected loss is sustained, "it must be met if there are assets to meet it "with. The capital, even uncalled capital, must, "if necessary, be applied to meet it. . . . "There is no law which, in the case supposed, "prevents the payment of all future dividends "until all the capital so expended is made good." (Lindley, M.R., *In re The National Bank of Wales*, 1899.)

There is also a valuable collection of judicial dicta bearing upon this question in the Appendix to a paper by Mr. A. A. James, F.C.A. (See *Accountant*, 1901, p. 1131.)

The foregoing deals with the question of profits available for dividend from the point of view of the shareholders of a company as a whole, but there are sometimes difficult questions to decide as between different classes of shareholders. For instance, where the holders of ordinary shares are entitled to a certain rate of dividend out of the profits from time to time available for dividend, and the holders of founders' shares are entitled to a certain proportion of the profits in excess of such rate of dividend, the profits available for dividend have been held to mean the profits after making all proper deductions. So that if the regulations of the company empower the directors before declaring any dividend to set aside out of the profits of the company such sums as they may think proper as a reserve fund or a fund for repairs or contingencies they may do so, although the effect may be to leave sufficient profits to pay a substantial dividend on the ordinary shares, but no "surplus" to pay a dividend on the founders' shares. (*Fisher v. Black and White Publishing Company*, C.A. 1901, 1 Ch. 174.) (*See titles* Capital, Depreciation, Profit, Profits prior to Incorporation.)

Profits prior to Incorporation.—Obviously a company cannot earn profits until after it has come into *existence* (*i.e.*, after incorporation), or until

fter it is entitled to ".commence business" see *infra*) and has employed its *own capital nd resources* in the earning thereof, so that accrued profits" acquired by a company by urchase are part of its capital assets, and to pay dividend thereout would be a payment out of pital.

An existing business is taken over by a company as from the *date of incorporation*, or from he date it is entitled to "commence business," s the case may be, and not from any prior date om which "accrued profits" are supposed to be equired; therefore, in such a case, the *assets* hich represent those profits are taken over by he company without any specific price being aid for them.

If a company acquires a business on the *basis f a Balance Sheet* as at a date (say) three onths previous to incorporation (a more correct escription of the transaction) and the purchase oney has been fixed at £20,000, then, if profits ave accrued during the intervening three months the amount of £1,500, the actual amount of he assets acquired at the date of incorporation ill be £21,500, but, as the purchase money (cost the company) is £20,000, it is clear that if the ccrued profits to the date of incorporation be eated as *profits of the company*, the assets ust necessarily be taken in the accounts at a value" in excess of *actual cost*.

If an amount for goodwill is included in the urchase, the assets representing accrued profits hould operate as a reduction of the cost of such oodwill; if no goodwill is being paid for, the extra assets" should either stand as a surplus, r be utilised in reduction of the cost of fixed ssets, plant, and the like, for the "throwing in f accrued profits" has the effect of discounting he price of the assets purchased. Where a alance Sheet has not been prepared as at the ate of incorporation the amount of accrued rofits may be assessed by apportionment, ccording to the turnover or according to the eriod covered or otherwise, *or* by way of interest t an agreed rate.

Companies (other than private companies as efined by section 121 of the Companies (Consolidation) Act 1908) cannot commence business until they have obtained their "second" certificate entitling them to do so. (Section 87.) It is submitted that the date to which apportionment of the profits should be made in the case of such companies is the date of such certificate and not the date of incorporation, for obviously a company (though actually incorporated) which is prohibited by statute from commencing business until a certain date cannot commence to earn profits until that date, just as another company not so prohibited cannot commence to earn profits until it comes into legal existence.

It has been suggested that a convenient method of dealing with the "capitalised profits" is to utilise them in reduction of such temporary assets as "Preliminary Expenses." But it is submitted that under ordinary circumstances this practice would be almost equivalent to treating the accrued profits as being available for dividend, for (although under no legal obligation to do so) every well-regulated company endeavours to eliminate the "preliminary expenses" from the Balance Sheet in about four years (often less). Thus the reduction of such an asset by means of the accrued profits is merely a pretence of capitalising the latter, for such profits would ultimately revert to the dividend fund, in so far as they tend to *reduce* the amounts which, under ordinary circumstances, it would have been necessary to appropriate out of profits in order to write off the temporary asset.

Sir F. B. Palmer suggests, as a solution of this difficulty, that provision should be made in the sale contract to the effect that the accrued profits be retained by the vendor, thus:—

> "There shall be excepted from the sale the "profits of the business made between (say) "the 30th August last and the date hereof, "and the profits of the business for the year "ending the 30th August next shall be ascer- "tained in due course, and the vendors shall, "in satisfaction of the said excepted profits, "accept a sum bearing the same ratio to the "year's profits as the period aforesaid bears "to the year."

Of course, there is nothing to prevent the vendor, when profits are so excepted, from (subsequently to the agreement) assigning the same to the company by way of donation, on the footing that they are to be placed to the credit of the first year's Profit and Loss Account, or to reserve, and this has sometimes been done.

Where a private concern is being transferred by the partners to a registered company, upon the basis of a Balance Sheet as at (say) four months previous to incorporation, it is a matter for consideration (1) whether the "accrued profits" should be reserved to the vendors to cover *drawings during the correlative period*, or (2) whether the vendors should be called upon to repay such drawings—an inconvenient method if little or no cash forms part of the purchase money. If the profits for the period are exempted from the sale, or if interest on purchase money in lieu of profits is reserved, any drawings would, of course, be set off against the profits or interest. In any case these are matters which ought to be placed fairly before the vendors when the amount and *nature* of the purchase price are being considered.

Although not strictly within the title of this article, it should be stated that the same principle of apportionment would apply in the event of a *loss* incurred prior to the date of incorporation, as in the case of a profit. It will but rarely happen that a business which has been transferred to a limited company will show a loss for the first few months subsequent to the date of transfer, but should such be the case the loss prior to incorporation (as apportioned) would tend to reduce the assets acquired for the price paid, just as accrued profits tend to increase them. The directors of a limited company must not capitalise losses after incorporation; *per contra* they would not be bound to charge the Revenue Account with losses incurred prior to the date the company came into (legal) existence, and in practice the course would be to treat such a loss as additional cost of goodwill.

Promissory Note.—An unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer. (Bills of Exchange Act 1882 section 83.)

Generally speaking, the provisions of the Bills of Exchange Act 1882 apply to promissory notes the maker of the note being deemed to correspond with the acceptor of a bill, and the first indorser of a note being deemed to correspond with the drawer of a bill accepted payable to the drawer's order.

The following distinctions between bills and notes may be pointed out:—

Presentment for acceptance, acceptance, acceptance *supra* protest, and bills in a set, are all matters inapplicable to notes.

A foreign *note* need not be protested on dishonour, whilst a dishonoured foreign *bill* must be. (Section 89.)

A bill of exchange payable on demand requires only a penny stamp, whatever the amount, while a promissory note requires an *ad valorem* stamp, whether payable on demand or otherwise.

Promoter.—A person who carries out certain operations or formalities whereby a private Act of Parliament is passed or a joint-stock company is incorporated. Whether a person is or is not a promoter of a joint-stock company is a question of fact depending upon the circumstances of each case, but solicitors and others acting *merely* in their professional capacity as agents of promoters are not deemed promoters.

Some of the various acts which will tend to make a person a promoter are:—

(1) The framing of a scheme for the formation of the proposed company.

(2) The preparing, obtaining subscribers to and registering of the memorandum and articles of association.

(3) The assisting in the framing of the prospectus.

(4) The procuring of directors.

A vendor of property to the proposed company may be and usually is a promoter of the company.

For the purposes of section 84 of the Companies (Consolidation) Act 1908 a promoter is defined as one who is a party to the preparation of the prospectus or, in the case of an untrue statement being contained therein, of the portion of the prospectus containing the untrue statement, but the expression "promoter" does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

Promoters stand in a fiduciary relationship towards the company they promote, therefore:—

(1) They cannot make a profit at the expense of the company without the knowledge and consent of the company; any secret profits may be recovered by the company.

(2) They must have a valid contract with the vendors (if any) *before* commencing to promote the company, or they may be called upon to surrender any subsequent profit, on the basis that the original contract was made on behalf of the company.

(3) They should provide an independent executive to *act for the company*.

With regard to the disclosure of any profit being made by a promoter out of the company, Lindley, M.R., in *Re Olympia, Lim.*, 1898, said:—"To inform a person of a fact is one thing; to give him the means of finding it out, if he will take trouble enough, is another thing. A promoter of a company whose duty it is to disclose what profits he has made does not perform the duty by making a statement not disclosing the facts, but containing something which, if followed up by further investigation, will enable the inquirer to ascertain that profits have been made, and what they have amounted to."

To amount to a proper disclosure the prospectus should contain such a statement as would enable the ordinary business man to become aware *from the prospectus* that a profit is being made out of the company.

No general rule can be laid down as to when the projector of a company becomes a promoter. It is a question of the true inference to be drawn from the facts. But once promotership is established, the promoter can only divest himself of accountability for a profit by a full and fair disclosure. The mere fact that a contract for purchase by a company cannot be rescinded does not preclude the company from obtaining from the vendor, if he be a promoter, and still less if he be a director, a secret profit made by him at its expense. (*Gluckstein v. Barnes*, House of Lords, 1900.)

(*See title* Prospectus.)

Proof in respect of Bills of Exchange.—

BANKRUPTCY.

As a general rule, the holder of a bill of exchange or promissory note may prove for the full amount thereof against the estates of all parties liable thereon until he receives 20s. in the £, but if he has received a dividend, or a dividend has been declared from any one estate, *before proof* has been made on another estate, then such dividend must be deducted from the value of the bill, and proof be made for the balance only, against such estates in respect of which proofs have not already been lodged.

The above rule has been long established, being based upon four decisions given between 1722 (*Ex parte Ryswicke*) and 1750 (*Ex parte Wildman*). In the latter case, Hardwicke, L.C., said:—

> "Although the obligee may have *several* "*obligors*, he can only have *one satisfaction*— "the same in bills of exchange—actions lay "against the drawer and all the indorsers, but "there is to be only one satisfaction."

The holder cannot receive more than 20s. in the £, and he must produce his bill or note (unless the Court dispense with such production) for the indorsement thereon by the trustee, of the amount of each dividend as and when he receives same, but where the bill has been lost, the person who was the holder may nevertheless prove in respect thereof, and the loss of the instrument shall not be set up, provided satisfactory indemnity be given against the claims of any other person in respect of the instrument in question. (Bankruptcy Rules, Rule 233, and Bills of Exchange Act 1882, section 70.)

A holder of two bills of exchange proving in the bankruptcy of the last indorser of both cannot set off a surplus over 20s. in the £ in respect of one bill (which would have been obtained by reason of his having also proved against the estates of prior indorsers) as against a deficiency on the other bill, but both bills must for the purposes of proof be treated as constituting two distinct transactions, and the surplus as to one bill must be brought into account without regard to the deficiency on the other bill. (*In re Morris*, 1899.)

Rule in Ex parte Waring.—Where the estates of both the drawer and the acceptor of a bill are insolvent, and are being judicially administered—or are under a *forced* administration—and securities have been specifically appropriated to meet the bill at maturity, and have been lodged for that purpose by the drawer with the acceptor, then the billholder, although not party or privy to the appropriation, is entitled to have the specific securities applied in or towards payment of the bill. If such proceeds do not fully satisfy the holder's claim in respect of the bill he may prove for the balance against *both estates*, subject to his receiving not more than 20s. in the £. If the securities are more than sufficient to satisfy the holder's claim the surplus belongs to the estate of the drawer.

The above rule of administration was laid down by Lord Eldon in 1815, and in *Ex parte Dever* (1885), Cotton, L.J., thus refers to it:—

> "The Court finds in the hands of the bankrupt certain property which has been remitted to him by another person (who has also become bankrupt) to secure him against a liability which he has undertaken upon bills drawn on him by that person. The property cannot be applied in paying the *general* creditors of the acceptor, because it was in his hands impressed with a *trust*, nor can it go to pay the general creditors of the drawer, because he was not entitled to have it back *without meeting* the acceptances. The Court thereupon applies the property in such a way as will carry out, as far as possible, the equities between the two estates (viz., in paying the acceptances to cover which the property was deposited.)"

In *Banner v. Johnston* (1871), Lord Cairns said:—

> "It has always been most carefully said that the right of the billholder under *Ex parte Waring* is not a right founded on contract; it does not spring out of the contract, but it springs out of the *necessities* connected with the administration of two insolvent estates."

Cross-Accommodation Acceptances. — Where mutual accommodation has been afforded by two firms or individuals who both become bankrupt, proof is not allowed in respect of the balance of the dishonoured *bills*, but only for the balance of *cash* between the parties, on an account being taken of the sums they have respectively paid in respect of the transactions. (*Ex parte Walker*, 1798.) Should there be a surplus, however, on the estate which is found ultimately liable as between the two, such surplus would be applicable towards payment of the bills.

Where, however, there has been an exchange of specific (accommodation) acceptances, the bills are not treated as accommodation bills as regards proof in bankruptcy; for as the acceptance of the one party has been held to be consideration for the acceptance of the other, the right of proof is on the *bills* themselves, and is not in respect of the *cash* actually paid for the accommodation of the bankrupt. The question as to whether there has been a *specific* exchange is one of fact, but it is not necessary that the amounts or dates of the bills be identical, nor that the acceptances so exchanged should be the acceptances of the parties themselves. (*Rolfe v. Caslon*, 1795; *Buckler v. Buttivant*, 1802.)

Any variation in the dates of payment would however, afford evidence as to whether the parties had or had not transferred the bills in consideration of each other, but *semble* an agreement by each party to pay his *own* acceptances is conclusive evidence that the bills were transferred in consideration of each other. (*Cowley v. Dunlop*, 1798.) Although each party (having agreed, in the case of a specific exchange of bills, to pay his own acceptances) may prove upon the

ills and not upon the cash actually paid for ccommodation, it must be noted that a party annot prove in the bankruptcy of the drawer for ny payment he may have made on his own cceptance—for there is no implied indemnity gainst cross-accommodation acceptances under uch circumstances. Each party relied upon the emedy on the bill he took in exchange for his wn, and (in the words of Lord Ellenborough) the party as acceptor has no remedy against the drawer for the payment of his own acceptance, because *he did not accept in consideration of a promise of indemnity*, but in consideration of an agreement, or rather of an actual and executed delivery of other acceptances."

Where an "exchange of paper" has taken lace, and the parties are not all insolvent, a olvent party cannot prove in respect of the bills e holds until he has paid off, taken up, or otherise satisfied the holders of his own paper.

Accommodation Bill.—The party accommoated has (ordinarily) no right of proof on the ll against the estate of the accommodation rty, but a *bonâ fide* holder for value may prove respect thereof.

When a bill which has been accepted for the ccommodation of the drawer is deposited by him security for a debt *less* than the amount of the ll, the holder is entitled to prove in the bankptcy of the acceptor for the *full* amount of the ll, although he cannot receive dividends in cess of the debt due to him by the drawer. (*Ex parte Newton*, 1880.)

A discounter may prove for the full amount of matured bill (*i.e.*, without deducting the disunt), and a *bonâ fide* holder who has purased a bill for less than the amount of it may prove. A purchaser of bills is also allowed prove in respect of same, even when acquired er the bankruptcy, if at the time of the bankptcy such bills were in the hands of persons o would have been entitled to prove. And hough an assignment of a bill cannot be made er the assignee has notice of an act of bankptcy in order to give him a right of set-off as against the trustee in bankruptcy, yet if a person is himself liable upon a bill and is *compelled* to take it up, he will have a right of set-off in respect of the bill as against any claim the trustee may have against him.

Unmatured Acceptance.—The holder may prove (subject to rebate of interest at the rate of five per cent. per annum) against the estate of the acceptor, or against the estate of the drawer or an indorser, even before dishonour.

Note.—In both bankruptcy and winding-up procedure the rebate of interest is now in respect of the period between the date of the *declaration of dividend* and the time when the debt would have become payable according to the terms upon which it was contracted. Prior to 1904 the rebate in winding-up procedure was in respect of the whole period between the date of the *winding-up order* and the date when the debt would, in the ordinary course, have become payable.

A creditor shall not *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 debtor, and against whom a receiving order has not been made, *as 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. (Bankruptcy Act 1883, 1st Schedule, Rule 11.)

A bill of exchange, promissory note, or other negotiable instrument, in respect of which a creditor seeks to prove, must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, chairman of the meeting, or trustee, as the case may be, before the proof in respect thereof can be admitted *either for voting* or dividend (Rule 221), and (as already stated) unless the Court, for any special reason, dispense with production, every bill or note upon which proof has been made must be exhibited to the trustee before the payment of a dividend thereon, so that the amount of the dividend paid may be indorsed thereon. (Rule 233.)

COMPANY LIQUIDATION.

The above bankruptcy procedure is, *mutatis mutandis*, applicable to the winding-up of insolvent companies (Companies (Consolidation) Act 1908, section 207), and the procedure in company winding-up is applicable to limited partnerships wound up by order of the Court. (*Ibid*, section 268.) (*See titles* Debts provable in Bankruptcy, Debts provable in Winding-up, Interest in respect of Proof of Debt, Proof of Debt, Winding-up.)

Proof of Debt.—Evidence or testimony of the existence of a debt or liability. In bankruptcy and compulsory winding-up procedure every creditor must, at his own expense, prove his debt. This may be done by delivering or sending through the post in a prepaid letter to the Official Receiver, trustee, or liquidator, as the case may be, an affidavit verifying the debt. The affidavit may be made by the creditor himself or by some person authorised by or on behalf of the creditor, but such person must state his authority and means of knowledge. The affidavit should contain, or refer to, a statement of account showing particulars of the debt, and should specify vouchers, if any, by which the same can be substantiated. These vouchers can be called for at any time should it be considered necessary, and the consideration for a debt can always be inquired into, even when it is a judgment debt.

If any creditor in any bankruptcy wilfully and with intent to defraud makes any false claim, declaration, or statement of account which is untrue in any material particular, he shall be guilty of a misdemeanour, punishable with imprisonment not exceeding one year. (Debtors' Act 1869, section 14.)

Any person adjudged bankrupt is deemed guilty of a misdemeanour, and on conviction thereof is liable to be imprisoned for any time not exceeding two years if, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of one month to inform the trustee thereof. (*Ibid*, section 11, subsection 7.)

Every proof of debt (in bankruptcy or winding-up by the Court) for a sum exceeding £2 must have a shilling stamp (of the proper denomination) affixed thereto, provided that proofs of debt for workmen's wages (*infra*) and for King's taxes are exempt from stamp duty.

Where there are numerous claims for wages by workmen and others employed by the debtor or company, as the case may be, it is sufficient if *one proof* is made for all such claims either by the debtor, a foreman, or some other person (according to circumstances) acting on behalf of all such workmen or others. The proof must be in the prescribed form; and in the schedule provided the names of all the workmen and others must be set forth, together with the amounts severally due to them; and any such proof shall have the same effect as if *separate* proofs had been made by each of the said workmen and others.

A creditor who has lodged a proof is entitled to inspect the proofs of other creditors.

A creditor must deduct from his debt all trade discounts, but he need not deduct any discount not exceeding 5 per centum on the net amount of his claim which he may have agreed to allow for payment in cash.

For the purpose of their duties in respect of proofs, a trustee, liquidator, Official Receiver and certain officials in the various Bankruptcy Courts (*e.g.*, Registrar's clerk), may administer oaths and take affidavits, for which there appears to be no fee chargeable.

In bankruptcy and winding-up procedure, the formalities with regard to proofs are in most cases similar. Proofs must be dealt with within 28 days after lodgment, either by admission or rejection in whole or part, or by further evidence being required in support of them; if rejected, the grounds therefor must be stated in writing and the creditor has 21 days within which to appeal to the Court. Where a proof is admitted, notice of dividend is sufficient notice to the creditor of such admission. When a proof has been rejected on its merits, the creditor cannot withdraw it and present another in the same form; but where the proof has not been adjudicated upon, or where it has been

jected on a point of form, the creditor may ithdraw it and tender a fresh proof. (*Re erhurst*, 1891.) If the proofs are lodged in sponse to a notice of intention to declare a vidend, a trustee must deal with the proof thin seven days of the latest day upon which oofs could have been lodged, whilst a liquidator s 14 days wherein he may deal with a proof der the same circumstances. But, although a uidator has seven days *longer* than a trustee which to deal with a proof lodged in sponse to notice of dividend, yet, should be rejected, a creditor's right to appeal ainst rejection is limited to seven days der both bankruptcy and winding-up procedure. Stated briefly, if creditors, under either ocedure, lodge their proofs promptly, there are days allowed for dealing with same and 21 ys afterwards to consider the question of an peal should a proof be rejected. If a proof is t lodged promptly but is left until the last oment, as it were, when the dividend is about be declared, such proof must be dealt with hin seven days in bankruptcy, and 14 days in nding-up procedure; and further, so that other editors may not be prejudiced by delay, if any such " late " proofs are rejected, the alleged editor must appeal promptly—*i.e.*, within seven ys in both bankruptcy and winding-up. chedules to Bankruptcy Act 1883 and Bankptcy Rules and Winding-up Rules respecely.) The Court has, however, *power to tend all these periods*, should circumstances quire it. (Bankruptcy Rules 227 and 228, and inding-up Rules 112 and 113.)

It may be stated that an Official Receiver, hether as a trustee or liquidator, does not pear to be limited as to the time within which shall deal with proofs, save that here also the case of " late " proofs—lodged in response notice of intention to declare a dividend—the e is limited, viz., to 14 days in either bankptcy or winding-up.

Section 169 of the Companies (Consolidation) t 1908 provides that the Court may fix a time times within which creditors of a comny being wound up by the Court are to prove ir debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved, and by section 193 this may, if the Court approves, be applied to a company being wound up voluntarily.

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 not be less than 14 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. (Rule 102.)

A trustee or liquidator, as the case may be, must, on the first day of every month, file a certified list of proofs, if any, received by him during the preceding month, distinguishing between those admitted, those rejected, and those standing over for further consideration, and in the case of those admitted and rejected, the proofs themselves must be filed.

On a declaration of dividend a list of proofs certified by the Registrar (if the proceedings are in a County Court) must be sent to the Board of Trade, and this operates as an authority for the cheques to be drawn for such dividend. Proofs which have been improperly admitted may be either *expunged* or *reduced* by the Court, on the application of the trustee, liquidator, a creditor, a contributory, or the bankrupt, as the case may be. Where a creditor has already lodged a proof which has been admitted and filed, and seeks to prove for a larger sum, he may lodge an additional proof for the difference, and in a proper case the trustee may without the intervention of the Court admit and file the same.

A person whose debt has been proved and admitted is not a mere creditor. The claim ceases to give a right of action for debt, such right being replaced by one entitling the creditor to have all the assets of the estate applied, as and when realised (but subject to preferential claims), *pro ratâ* for the benefit of all the creditors who have proved their debts, and whose proofs have been admitted. In one sense a right of proof is wider than a right of action, for while an action can only be brought to recover a debt actually due, a right of proof extends to future and contingent debts. (*See titles* Competitive Proof, Debts Provable in Bankruptcy, Interest in respect of Proof of Debt, Preferential Payments in Bankruptcy and Winding-up, Proof in respect of Bills of Exchange, Secured Creditor.)

LIMITED PARTNERSHIP.

Where a limited partnership is wound up by the Court the provisions of the Companies (Consolidation) Act 1908 (and therefore the provisions as to proof of debt) apply. (Limited Partnerships Act, section 6 (4).)

Property.—The right which a person has in lands, goods, or chattels, which right may be absolute, qualified, or possessory. Property in realty is acquired by entry, conveyance, descent, or devise; and in personalty, generally by gift, bequest, bargain, or purchase.

For the purposes of the Bankruptcy Acts, "property" "includes money, goods, things "in action, land, and every description of "property, whether real or personal, and "whether situate in England or elsewhere; also "obligations, easements, and every description "of estate, interest, and profit, present or "future, vested or contingent, arising out of, or "incident to, property, as above defined." (1883 Act, section 168.)

Property Accounts.—*See title* Real Accounts.

Property Passing on the Death.—Within the meaning of the Finance Act 1894 this expression includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death." (*See title* Estate Duty.)

Property Tax.—Although equally applicable to other schedules of the income-tax, this term is more generally restricted to Schedule A, *i.e.*, that charged in respect of the ownership of lands and buildings. (*See title* Income Tax.)

Prospectus.—The Companies (Consolidation) Act 1908, section 285, defines the expression "prospectus" as meaning "any prospectus, notice, "circular, advertisement, or other invitation "offering to the public for subscription or "purchase any shares or debentures of a com-"pany." Those who issue a prospectus holding out to the public the great advantages which will accrue to persons who will take shares in a proposed undertaking, and inviting them to take shares on the faith of their representations therein contained, are bound to state everything with strict and scrupulous accuracy, and not only to abstain from stating as fact that which is not so, but to omit no one fact within their knowledge the existence of which might in any degree affect the nature or extent or quality of the privileges and advantages which the prospectus holds out as inducements to take shares. (Kindersley, V.C. (1861).)

Sir F. B. Palmer, referring to the above, says:—

> This "golden rule" is, perhaps, somewhat of a "counsel of perfection"; at all events, it has been qualified by subsequent decisions.

The main legal requirements of a prospectus are:—

(1) There must be no misrepresentation of a material fact, or omission of any material fact, and the wording should not be deceptive, misleading, or ambiguous.

(2) The provisions of the Companies (Consolidation) Act 1908 (see below) must be complied with.

n the event of non-compliance with the above, a allottee of shares may be entitled according t circumstances either to:—

1) *Repudiate* allotment and obtain rescission of the contract to take shares; or

2) *Claim damages* or compensation from the directors, promoters, or other persons responsible for the issue of the prospectus, either

(*a*) in an action for deceit, or

(*b*) under the Companies (Consolidation) Act 1908, or

3) *Prosecute* the directors, managers, or public officers responsible for the issue of the prospectus, under section 84 of the Larceny Act 1861, or under section 281 of the Companies (Consolidation) Act 1908.

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1) *Rescission.*—To obtain rescission an ttee must prove:—

1) That the prospectus was issued by the company or its responsible agents.

2) That the prospectus contained a material misrepresentation or a material omission; and

3) That he (the allottee) was in consequence, or upon the faith *of such*, actually induced, in whole or in part, to subscribe for the shares.

the allottee having proved (*a*) and (*b*) e, contends that he was induced to take the es because of the misrepresentation or omis- complained of, the company, in order to in the contract with the allottee, must prove such was not the case, *e.g.*:—

1) Because he had subscribed for the shares before he saw the prospectus.

2) Because he really subscribed in pursuance of an arrangement with the promoters.

3) Because it is improbable that a man with the experience of the allottee would be misled by the particular matter complained of, &c. &c.

nly a shareholder who has applied for s in a company in response to a prospectus titled to *rescission* on the grounds of misrepresentation in the prospectus; a person who has purchased shares from another shareholder cannot ask for rescission, although he has read the prospectus and purchased his shares on the faith of it, unless some direct connection can be shown between the *company* and himself in the communication of the prospectus (*Peek v. Gurney*, 1873, 6 H.L. 377), or unless it can be shown that the prospectus was intended by the company to be the means of inducing people to purchase its shares on the market. (*Andrews v. Mockford*, 1896, 1 Q.B. 372.)

A contract to take shares, &c., when induced by misrepresentation of facts, or omission to state facts, under such circumstances that the shareholder has a right to repudiation and rescission of the contract, is voidable, not void; the shareholder may adopt or avoid the contract at his option, and such contract is good until avoided. But this right to avoid must be exercised promptly, for

"If a man claims to rescind his contract to "take shares in a company on the ground "that he has been induced to enter into it by "misrepresentation, he must rescind it *as soon "as he learns the fact*, or else he forfeits all "claim to relief." [James, L.J.]

"The Court would be most careful to see "in the case of a company going on and "trading, in which the rights of the share- "holders and others varied from day to day, "that a person, coming to complain of mis- "representations and coming to avoid a void- "able contract, came within the shortest limit "of time which was *fairly possible* in such a "case." [Cairns, L.C.]

The right to rescission may also be lost if a shareholder by his conduct shows an intention to adopt the contract, for if, *after ascertaining the facts* which give him the right to rescind, he attempts to sell the shares or pays calls thereon, receives a dividend, or attends and votes at a meeting of the company, he would be deemed to have affirmed the contract.

In particular a shareholder cannot exercise his right to rescind after the commencement of a winding-up, as the rights of third parties (the company's creditors) will have intervened, but if

the " shareholder " has taken the proper course and obtained a rescission of the contract to take the shares before a winding-up has been commenced, he cannot be placed upon the " B " list of contributories (*i.e.*, as a past member, if the winding-up commences within a year after rescission), for the contract is avoided *ab initio*, and the position of the " shareholder " is as though the contract had never been made.

" Although it is the undoubted duty of this " Court to relieve persons who have been " deceived by false representations, it is equally " the duty of the Court to be careful that, in " its anxiety to correct frauds, it does not " enable persons (who have joined others in " speculations) to convert their speculations " into certainties at the expense of those with " whom they have joined." [Turner, L.J.]

An allotment of shares made by a company to an applicant in contravention of the provisions of section 85 of the Companies (Consolidation) Act 1908 as to minimum subscription and certain other requirements affecting the allotment of shares 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. (Section 86 (1) of the Companies (Consolidation) Act 1908.)

(2 (*a*)) *Deceit.*—To sustain an action for deceit the plaintiff must prove:—

(1) That the defendant issued or was responsible for the issue of the prospectus.

(2) That it contained a *misrepresentation* of a material fact.

(3) That the plaintiff was induced to subscribe for shares as a consequence of the misrepresentation.

(4) That the misrepresentation was made *fraudulently;* and

(5) *That the plaintiff has suffered damage.*

Misrepresentation. — " Mere non-disclosure of material facts, however " morally censurable, however that non-disclosure might be a ground in a proper " proceeding, at a proper time, *for setting* " *aside an allotment* or purchase of shares " would, in my opinion, form no ground " for an action in the nature of an action " for misrepresentation; there must, in my " opinion, be some active mis-statement " of fact, or, at all events, such a partial " and fragmentary statement of fact, as " that the withholding of that which is " not stated, makes that which is stated " absolutely false." [Lord Cairns.]

Fraud.—The representation complained of must be shown to have been *false to the knowledge* of the defendant, or it must be shown that it was made recklessly by him, not caring whether it was true or false. In order to establish fraud it must at least be shown that the defendant did not in fact believe the statement to be true.

Although the remedy provided by the Companies (Consolidation) Act 1908 may be more efficient than an action for deceit, there may be many cases where this remedy is not available for the Act of 1908 only applies to prospectuses or notices inviting persons to subscribe for shares in or debentures or debenture stock of a company registered under that Act. (*See* heading Liability for Statements in a Prospectus, *infra.*)

An action under the Companies Act would be an action of (statutory) debt, but an action of deceit is one of tort. The distinction is important, for a right of action under the Companies Act would, on the death or bankruptcy of a person entitled thereto, pass to his personal representative or trustee, as the case may be; so if a person *liable* under the Act died, his representatives would be liable in the due course of administration of the estate of the deceased and to the extent thereof. If a person *liable* under the Act became bankrupt the liability would appear to be provable in the bankruptcy unless incurred by fraud, in which case it might be excluded from proof; but the bankrupt's discharge would not release him from a non-provable debt.

A right of action of tort for fraudulent misrepresentation whereby a person has lost money

ill also pass to the personal representatives or ustee in bankruptcy, as the case may be, but e effect of the death or bankruptcy of a person *ible* in respect of fraudulent misrepresentation ust be distinguished from the effect upon an tion under the Companies Act.

Death.—The maxim *Actio personalis moritur m personâ* (*see that title*) applies to an action deceit, but the representatives of the person ho would have been liable had he lived may vertheless be liable "to the extent to which the estate of the deceased benefited by the misrepresentation."

Bankruptcy.—A claim for damages for fraudut misrepresentation is not provable in bankptcy (unless judgment be obtained therefor fore the date of the receiving order), but the nkrupt's discharge will not release him from y such liability.

A right of action of deceit is barred unless bought within six years from the time when the ght of action arose, but if the party deceived es not immediately discover the fraud and had reasonable means of ascertaining the truth fore he actually did so, then the Statutes of mitation will not commence to run against n until the time of such discovery.

The foregoing is a summary of the position nerally in regard to the liabilities attaching to sc connected with the issue of prospectuses.

The general provisions of the Companies onsolidation) Act 1908 with regard to prospectuses are as follow:—

Provisions as to Filing.

Every prospectus issued by or on behalf of a mpany or in relation to any intended company ll be dated, and that date shall, unless the ntrary be proved, be taken as the date of blication of the prospectus.

Note.—A prospectus can be issued and filed or to the registration of an intended company, t the *name* of the company could not be taken definitely settled until the certificate of incorration was obtained.

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.

The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

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 issue of the prospectus until a copy thereof is so filed. (Section 80.)

Specific Requirements as Regards Particulars to be Contained in Prospectus.

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—

(*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

[*Note.*—A prospectus offering debentures only is within this section (see section 285), but under such circumstances this sub-clause could not be complied with, because the minimum subscription applies to offers of shares only. (See section 85.)]

(*e*) 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 party 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 the 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 connection 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 to voting at meetings of the company conferred by the several classes of shares respectively.

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.

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.

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.

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.

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 (*b*) (above) 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.

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.

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.

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. (Section 81.)

Statement in Lieu of Prospectus.

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 the Act. (*See title* Statement in Lieu of Prospectus.)

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. (Section 82.)

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. (Section 83.)

Liability for Statements in a Prospectus.

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, 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 report 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.

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.

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.

Every person who by reason of his being a rector, or named as a director or as having greed to become a director, or of his having ithorised the issue of the prospectus, becomes ible to make any payment under this section ay recover contribution, as in cases of con- act, from any other person who, if sued parately, would have been liable to make the me payment, unless the person who has come so liable was, and that other person was ot, guilty of fraudulent misrepresentation.

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. (Section 84.)

A person shall not be capable of being ppointed director of a company by the articles, nd shall not be named as a director or proposed rector of a company in any prospectus issued by on behalf of the company, or in any statement in lieu of prospectus filed by or on behalf a company, unless, before the registration of e articles or the publication of the prospectus, the filing of the statement in lieu of prospectus, as the case may be, he has by himself by his agent authorised in writing:—

(*a*) Signed and filed with the Registrar of Companies a consent in writing to act as such director; and

(*b*) 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).

On the application for registration of the emorandum 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.

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. (Section 72.)

Every company incorporated outside the United Kingdom having a place of business within the United Kingdom and using the word "limited" as part of its name, shall, in every prospectus inviting subscriptions for its shares or debentures in the United Kingdom, state the country in which the company is incorporated. (Section 274.)

Failure to comply with this requirement entails certain penalties.

As already stated, the expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the *public* for subscription or purchase (*note*, not actually inducing the public to subscribe for or purchase) any shares or debentures of a company. (Section 285.)

———

Apart from these statutory requirements the information contained in a prospectus must of necessity vary according to circumstances. There will, however, be a general statement as to the capital and the terms of issue, and the following matters, if applicable, are usually dealt with or referred to in a prospectus:—

(1) Object of formation of a company.

(2) Where a business is acquired—(*a*) its nature, and (*b*) the reason for conversion (*e.g.*, co-operation with the customers; more capital required in order to extend the business; an amalgamation, &c.).

(3) Prospects of the company.

(4) Valuations of properties to be acquired.

(5) Accountants' certificate as to profits.

(6) Statement (by directors) showing probable dividend capacity of the company, having regard to the certified profits and the capital, &c., proposed to be issued.

(7) Statement (where applicable) that preferential allotments will be made to customers of the business to obtain their co-operation.

(8) Statement (where applicable) that no debentures have been issued and that none will be issued except with the sanction of the preference shareholders (if any), or if any debentures or specific mortgages are outstanding a statement as to the extent of such.

(9) Recital (where applicable) as to the limitation of the rights of preference shareholders, as to (1) attending at general meetings, and (2) voting thereat.

Note.—Public companies registered after 1st July 1908 must confer on preference shareholders and debenture-holders the same rights as regards receiving and inspecting the Balance Sheets, auditors' reports, and other reports as are possessed by holders of ordinary shares. (Companies (Consolidation) Act 1908, section 114.)

(10) General regulations as to applications for shares, &c.

(11) Recital where contracts and memorandum and articles of association of the company may be inspected and prospectuses obtained.

Note.—In any case particulars of the contracts, the whole of the memorandum, and certain of the clauses in the articles of association *must* be set out in the prospectus. (See above.)

(12) Statement (where applicable) that application will be made in due course for a Stock Exchange quotation or a special settlement.

Protected Transactions.—Subject to the provisions of the Bankruptcy Acts with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in the Bankruptcy Acts shall invalidate in the case of a bankruptcy:—

(*a*) Any payment by the bankrupt to any of his creditors;

(*b*) Any payment or delivery to the bankrupt;

(*c*) Any conveyance or assignment by the bankrupt for *valuable consideration;*

(*d*) Any contract, dealing, or transaction by or with the bankrupt for *valuable consideration.*

Provided that *both* the following conditions are complied with, viz.:—

(1) The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order, and

(2) The person (*other than the debtor*) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has *not at the time* of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time. (Bankruptcy Act 1883, section 49.)

Note.—The onus of proving *want of notice* lies upon the person who claims the protection of the section, and not upon the trustee in bankruptcy.

(*See titles* Debts Provable in Bankruptcy, Execution Creditor, Fraudulent Conveyances and Settlements, Fraudulent Preference.)

Protest.—A solemn declaration, generally one of dissent.

A writing drawn up by the master of a ship certified by a consul or a magistrate, reciting the circumstances under which disaster has occurred to the ship or cargo, or any other circumstances calculated to affect the liability of the shipowner or charterer.

A notarial certificate prepared by a notary testing the dishonour by non-acceptance or on-payment of a bill of exchange. The protest based upon the noting and must contain:—

(1) An exact copy of the bill.

(2) A statement of the parties for whom and against whom the bill is protested.

(3) The date and place of protest.

(4) A statement that acceptance or payment was demanded, with the terms of the answer (if any).

(5) A reservation of rights against all parties liable.

(6) The subscription and seal of the notary.

Although ordinarily a protest is made by a otary public, it may be made by any respectable habitant in the presence of two witnesses when e services of a notary cannot be obtained at the ace of dishonour.

A protest must be stamped. The stamp may e an adhesive one and must be of the same nount as that on the bill when the latter is ss than one shilling, and in all other cases the amp upon the protest is one shilling. Protest dispensed with by any circumstances which ould dispense with notice of dishonour. It is ot necessary to protest a bill of exchange in rder to render the acceptor liable thereon (1882 ct, section 52 (3)), nor is it necessary to pro- st an inland bill in order to preserve the course against the drawer or indorser. (Sec- on 51 (1).) (*See titles* Extension of Protest, otice of Dishonour, Noting a Bill of Exchange.)

Provable Debts.—*See* Debts Provable in Bankruptcy, Debts Provable in Winding-up.

Paying the Balances.—A term applied to the pecific appropriation of one or more items on e debit side of a Ledger Account against one more items of an equivalent amount on the edit side of such account, so that the account ay be "closed," or the balance may be proved" to the extent that its constituent ements may be ascertained. This operation facilitated by the practice of lettering each ish payment in an account, and placing such distinguishing letter against the item or items to which such payment corresponds.

Provisional Liquidator.—Where a petition has been presented to the Court for a winding-up order against a company, the Official Receiver or any other fit person *may be appointed* provisional liquidator of the company (on the application of a creditor, contributory, or the company (Winding-up Rules 1909, Rule 31)) at any time after the presentation of such petition, and before a winding-up order has been made; but upon a winding-up order being made the Official Receiver (by virtue of his office) *becomes* the provisional liquidator of the company, and continues to act as such until he or another person becomes liquidator and is capable of acting as such. (Companies (Consolidation) Act 1908, section 149.) (*See titles* Liquidator, Official Receiver.)

Proxy.—A person appointed to vote at a meeting for another person who would have been entitled to vote personally. The proxy may be entitled to vote according to his own discretion, or to the instructions of his appointor, dependent upon the terms of the appointment. As there appears to be no common law right to vote by proxy, special power so to do should be given by the regulations controlling the particular meeting.

A single person cannot hold a "meeting," even though he may have been appointed proxy for a number of persons.

Company.—The articles of association generally confer power upon members to vote personally or by proxy, and provide that the appointment of proxies shall be in writing under the hand of the appointor (attested by one or more witnesses), and that the form of proxy shall be deposited at the registered offices of the company a stated time before the meeting at which it is to be used.

The form of proxy in Table A (Companies (Consolidation) Act 1908) does not provide for the attestation of the signature of the appointor. The forms in special articles may also dispense with this requirement.

The articles of association generally provide that no person can be appointed as a proxy

unless he is himself a member of the company, but section 68 of the Companies (Consolidation) Act 1908 provides that *any company* which is a member of another company may, by resolution of the directors, authorise *any person* to act as its representative at any meeting of that other company.

On a show of hands no vote can be given by a *member* on behalf of another member represented by proxy—the proxy can only vote on a poll being taken. (*Ernest v. Loma Gold Mines*, 1897, 1 Ch. 1.)

But the representative of a company appointed under section 68 of the Companies (Consolidation) Act 1908 (above) is entitled to exercise the *same powers* on behalf of the company which he represents as if he were an individual shareholder.

A proxy may be appointed either by a shareholder or his attorney, if the regulations of the company permit, but the attorney cannot personally act as the proxy unless he has executed a proxy in his own favour, but if it is necessary under the regulations that the proxy be a member of the company the attorney must appoint as proxy some other person who is a member.

An instrument of proxy, for the sole purpose of appointing a proxy to vote at any *one* meeting (whether the number of persons named in the instrument be one or more) is charged with the duty of one penny, which may be denoted by either an impressed or an adhesive stamp, but the instrument must be stamped before execution. Any other instrument of proxy is liable to a duty of 10s., *e.g.*, a proxy to vote " at any meeting or " meetings which may be held during the next " six months." It is usual to insert the names of two or three persons as proxy (in the alternative), so that any one of them may act, for it might not be possible for one particular person to attend the meeting; but where the proxy is intended for one meeting only, and the duty of one penny is paid, the instrument of proxy must specify the date upon which the meeting, at which it is intended to be used, is to be held, and such proxy is to be available only at the meeting so specified, or any adjournment of such meeting.

The appointment of a proxy may be revoked *at any time*, but if a proxy gives a vote before either he or the company receives *notice* of revocation the vote so given will be valid.

Sometimes forms of proxy are issued by the directors of a company when calling a meeting of the members, but the propriety of issuing stamped forms and paying for same out of the company's funds has been questioned, and, in an early case, Kay, J., held that it was *ultra vires* for directors to expend the money of the company in sending out proxy forms with the names of the *directors* filled in as proxies. Notwithstanding this decision, such a practice was not unusual, and in 1906 the Court of Appeal, in *Peel v. London and North-Western Railway Company*, overruled the decision of Kay, J., and held that so long as the directors honestly believed the policy they were asking shareholders to support was for the benefit of the company, the expense of issuing stamped proxies and stamped envelopes for their return was chargeable against the funds as an expense fairly and reasonably incidental to the business of the company.

Company Liquidation and Bankruptcy.—The following regulations as to proxies (stated in terms applicable to winding-up) are, *mutatis mutandis*, identical under both winding-up and bankruptcy procedure:—

A creditor or a contributory may vote either in person or by proxy.

Every instrument of proxy shall be in the prescribed form, and shall be issued by an Official Receiver, or by the liquidator of the company, 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 of Judicature in England.

The authorised agent of a corporation may fill up blanks and sign for the corporation, thus:—

" For the..... Company,
"A.B. (duly authorised under the seal of the company)."

A proxy given by a creditor (or contributory) may be filled up and signed by any person having a general authority in writing to sign for such creditor. Such person shall sign:—

"A.B. (duly authorised by a general authority in writing to sign on behalf of . . . .)"

The Official Receiver or liquidator may require the "authority to sign" to be produced for his inspection.]

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 of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

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.

A creditor or contributory can only give a general proxy to his manager or clerk, or some other person in his regular employment, or to the Official Receiver. Where the Official Receiver is not appointed, the instrument of proxy must state the relation in which the person to act thereunder stands to the creditor or contributory.

Note.—In bankruptcy, the committee of inspection may consist of creditors, or the holders of *general proxies* or general powers of attorney from such creditors, but in winding up by the Court the committee may be constituted only by creditors or contributories, or persons holding general powers of attorney from such creditors or contributories.

A creditor or a contributory may appoint the Official Receiver to act (in manner prescribed) as his general or special proxy.

No person shall be appointed a general or special proxy who is a minor.

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 the appointment of liquidator, *except by the direction of a meeting of creditors or contributories*, the Court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection, or of the creditors or contributories, to the contrary.

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.

(Bankruptcy Act 1883, 1st Schedule; Companies (Winding-up) Rules 1909, Rules 139 to 149.)

Stamp Duty.— The Bankruptcy Act 1883 (section 144) provides *inter alia* that a proxy relating solely to any proceeding under any bankruptcy is exempt from stamp duty, and by the Finance Act 1895 this exemption is extended to companies being wound up by order of the Court.

As already stated, all the above provisions are practically identical in both winding-up and bankruptcy procedure, but in the following respects the regulations as to proxies in winding-up and bankruptcy procedure respectively are distinguishable, viz.:—

Time for Lodging Proxies.—Winding-up.—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 any 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. (Rule 147.)

Bankruptcy.—A proxy shall not be used unless it is lodged with the Official Receiver, or trustee, not later than four o'clock on the day before the meeting, or adjourned meeting, at which it is to be used. (Rule 245.)

Nature of Authority of Proxy.—Winding-up.—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 any specified meeting or adjournment thereof. (Rule 143.)

Bankruptcy.—A creditor 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 a specific proposal for a composition or scheme of arrangement.

(*b*) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection.

(*c*) On all questions relating to any matter, other than those above referred to, arising at any specified meeting or adjournment thereof. (1890 Act, section 22.)

Limited Partnership.—Where a limited partnership is wound up by the Court, the provisions of the Companies (Consolidation) Act 1908 (and therefore the provisions as to proxies) apply. (Limited Partnerships Act 1907, section 6 (4).)

Public Company.—*See title* Private Company.

Public Examination.—

BANKRUPTCY.

Where a receiving order is made against a debtor (whether adjudication follow or not) the Court appoints a day for a public sitting for the examination of the debtor. The debtor must attend thereat, and submit to an examination as to his conduct, dealings, and property. The examination is to be held as soon as conveniently may be after the expiration of the time for the submission by the debtor of his statement of affairs.

Any creditor who has tendered a proof of debt (or his representative authorised in writing) may question the debtor concerning his affairs and the causes of his failure. The Official Receiver and the trustee (if appointed) may also take part in the examination, whilst the Court may put such questions to the debtor as it may think expedient. The debtor is examined upon oath, and he must answer all such questions as the Court may put or allow to be put to him, and he cannot refuse to answer any such questions on the ground that his answers may tend to incriminate him. Such notes of the examination as the Court thinks proper are to be taken down in writing, and are to be read over either to or by the debtor and signed by him, and may thereafter be used in evidence against him, but the notes cannot be used as evidence in connection with proceedings in the same bankruptcy against parties other than the debtor. Any creditor may inspect the notes of the examination at all reasonable times. The Court may adjourn the examination from time to time, but when the Court is of opinion that the affairs of the debtor have been sufficiently investigated it will, by order, declare that his examination is concluded; but such order must not be made until after the day appointed for the first meeting of creditors. (1883 Act, section 17; 1890 Act, section 2; *Reg. v. Scott*, 1856; *Re Brunner*, 1887; &c.)

The Court has power to reopen the public examination of a bankrupt, but will only do so in cases where there appears to be good reason for making further investigation into the bankrupt's affairs.

Although, as a rule, every debtor against whom a *receiving order* has been made must submit to a public examination, there are exceptions, viz.:—

(1) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the Official Receiver that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad. (1883 Act, section 105.)

(2) Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such examination or directing that the debtor be examined on such terms, in such manner, and at such place as to the Court seems expedient. (1890 Act, section 2.)

(3) Where the Court has under *exceptional* circumstances rescinded the receiving order before the debtor has undergone his public examination.

COMPANY LIQUIDATION.

Where a winding-up order has been made and the statement of affairs has been lodged with the Official Receiver, that official must make a *preliminary report* to the Court stating:—

(*a*) The amount of capital issued, subscribed, and paid up;

(*b*) The estimated amount of assets and liabilities; and

(*c*) If the company has failed, the causes of the failure; and

(*d*) 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 reports stating:—

(*a*) The manner in which the company was formed.

(*b*) Whether, in his opinion, any fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer, and

(*c*) Any other matters which, in his opinion, it is desirable to bring to the notice of the Court. (Companies (Consolidation) Act 1908, section 148.)

Although the Board of Trade for some time thought otherwise (and acted thereon), it was held by the House of Lords (*Ex parte Barnes*, 1896) that a public examination cannot be ordered as a result of the Official Receiver's preliminary report, but only upon his making a further report containing an allegation of fraud against some specified person or persons. It was further held that even when a public examination is ordered, only those individuals against whom fraud has been alleged can be examined. In a proper case, therefore, the Court, after considering the further report of the Official Receiver, will direct that a certain person (or persons) be publicly examined, and will appoint a day for that purpose.

The responsibility for any further report rests exclusively with the Official Receiver. It is his duty to collect and consider the facts upon which a judgment can be formed by him, as to whether or not any such report shall be made. If he decides to make a report, it is his duty to communicate the draft report, and the facts upon which it is founded, to the Board of Trade, in order that the Board may make such observations and suggestions as may occur to them with a view to ensure that the Court is placed in possession of all the material facts and circumstances of the case. The observations and suggestions will be made in writing upon the draft report, which draft should be retained by the Official Receiver. If the Official Receiver does not propose to make a further report under the section, he shall forthwith furnish to the Board a statement of his reasons for thinking a report unnecessary, and shall send a copy of the statement to the Registrar acting in the winding-up of companies.

Upon the Board of Trade communicating their observations to the Official Receiver, whether upon the draft report or upon the statement of

reasons for thinking a report unnecessary, it becomes his duty to give careful consideration to them, and thereupon to determine, on his personal responsibility alone, whether the report shall be presented or not, and, if presented, the terms in which it shall be expressed, and the opinions which it shall record. (Board of Trade instructions.)

Public Officer.—Banking companies formed prior to 1844, and not registered under the Companies Act, have certain privileges, one of which is the right of suing and being sued in the name of a public officer. These companies (partnerships strictly) have to make an annual return to the Stamp Office, and amongst other things the return must contain the names and addresses of two or more persons (members of the partnership) resident in England, together with their titles of office, who have been appointed the public officers of the company.

Public Trustee.—

Establishment of Office and Security.—The Public Trustee Act 1906, which came into operation on the 1st January 1908, provides *inter alia* for the establishment of the office of a public trustee, and imposes upon the Consolidated Fund of the United Kingdom the liability to make good all sums required to discharge any liability which the public trustee if he were a private trustee would be personally liable to discharge. (Sections 1 and 7.)

The public trustee is a corporation sole under that name.

Appointment and Fees.—The public trustee is appointed by the Lord Chancellor, and may retain out of the trust property any expenses which might be retained or paid out of the trust property if he were a private trustee. The trust property will also bear such fees as the Treasury with the sanction of the Lord Chancellor may fix, and such fees are to be paid to the Treasury direct.

The fees are to be arranged from time to time so as to produce an annual amount sufficient to discharge the salaries and other expenses incidental to the working of the Act (including such sum as the Treasury may from time to time determine to be required to insure the Consolidation Fund against loss under this Act) and no more.

The incidence of these fees and expenses as between capital and income is to be determined by the public trustee. (See heading *Fees Chargeable, infra.*)

Capacities in which he may act.—The public trustee is authorised, if duly appointed, to act in any of the following capacities:—

(1) Executor or executor and trustee of a will.

(2) Trustee or custodian trustee of a settlement (including a will).

(3) Administrator under a will or on an intestacy.

(4) Administrator of estates of small value.

(5) Judicial trustee.

(6) Administrator of the property of a convict under the Forfeiture Act 1870; and

(7) Investigator and auditor of Trust Accounts.

Application to Act.—An application to the Public Trustee to act as trustee or custodian trustee may be made—

(*a*) Where appointment made by testator—by any trustee or beneficiary.

(*b*) In case of intestate's estate—by any person apparently beneficially interested.

(*c*) In any case—by any person having power to make the appointment. (*See headings* Custodian Trustee, Ordinary Trustee.) (Rule 10 (1).)

General Privileges and Duties.—The Public Trustee has, in addition to certain privileges conferred upon him by the Act, all the same powers, duties, and liabilities, and is entitled to the same rights and immunities, and is subject to the same control and orders of the Court, as a private trustee acting in the same capacity.

The Public Trustee must not decline to accept any trust on the ground *only* of the small value of the trust property. On the other hand, he must not accept any trust (*a*) which involves the management or carrying on of any business

pt under the special provisions referred to
er heading "Carrying on of a business"
ra) or (b) under a deed of arrangement for
benefit of creditors, or (c) for the administra-
of any estate known or believed by him to
insolvent, or (d) made solely by way of
rity for money, or (e) exclusively for
gious or charitable purposes. (Section 2, and
es 7 and 8.)

Wills.—The Public Trustee may be appointed
er alone or jointly with any other person or
sons as executor, or as trustee, or as executor
trustee of a will, and either as ordinary
stee or as custodian trustee.

Administration of Small Estates.—Any person
who in the opinion of the Public Trustee would
entitled to apply to the Court for an order for
administration by the Court of an estate,
gross capital value whereof is proved to the
sfaction of the Public Trustee to be less than
thousand pounds, may apply to the Public
stee to administer the estate, and, where any
h application is made, and it appears to the
blic Trustee that the persons beneficially
tled are persons of small means, the Public
stee shall administer the estate, unless he sees
d reason for refusing to do so. (Section
1).)

n the Public Trustee undertaking by declara-
in writing signed and sealed by him to
inister the estate, the trust property other
n stock shall by virtue of the Act vest in him,
the right to transfer or call for the transfer
ny stock shall also vest in him. As from
h vesting any trustee entitled under the trust
administer the estate shall be discharged
m all liability attaching to the administration
pt in respect of past acts. (Section 3 (2).)

Where proceedings have been instituted in any
rt for the administration of an estate the
rt *may* order that the estate shall be
inistered by the Public Trustee. (Section
5).)

ustodian Trustee.—

) The Public Trustee, or

) Any banking or insurance or guarantee or trust company or friendly society, and any such body corporate established for charitable or philanthropic purposes as may be approved by the Public Trustee and the Treasury

may be appointed custodian trustee, either

(*a*) By the Court;

(*b*) By the testator or settlor, when creating a trust by will or settlement; or

(*c*) By the person having power to appoint new trustees (in the case of an *existing* trust). He may be appointed even although the full number of trustees exist and none is desirous of retiring.

The trust property in such a case shall be transferred to the custodian trustee as if he were sole trustee, but the management of the trust property shall remain vested in the other trustees referred to in the Act as managing trustees. (Section 4.)

The duties of a custodian trustee are restricted to *preserving* the trust property in the sense of ensuring that it is not made away with. On appointment all securities and documents of title relating to the trust which would otherwise have remained in the custody of the ordinary trustees are to be transferred to the Public Trustee. But the management of the trust property as distinct from the custody of the securities, &c., remains in the hands of private trustees who are accordingly termed in the Act the "managing trustees." On them devolves the responsibility of selecting investments and generally managing the trust property.

Note.—The approval of the Public Trustee and the Treasury to a body corporate may be withdrawn at any time, and the Public Trustee may require payment by any applicant for his approval of a fee not exceeding ten guineas.

It shall be the duty of any person appointed by a testator to be co-trustee with the public trustee, and not renouncing or disclaiming the

trust to give to the public trustee notice in writing of such appointment as soon as practicable after the same has come to his knowledge. (Rule 10 (2).)

Ordinary Trustee.—The Public Trustee may be appointed to be trustee of any trust either as an original, new, or additional trustee. He may be appointed either alone or jointly with any person or body of persons in the same cases and in the same manner and by the same persons or Court as if he were a private trustee, with this proviso, that, though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee. (Section 5.)

Executor or Administrator.—Any executor who has obtained probate or any administrator who has obtained letters of administration and notwithstanding he has acted in the administration of the deceased's estate may, with the sanction of the Court, transfer such estate to the Public Trustee for administration either solely or jointly with the continuing executors or administrators. (Section 6 (2).) The fact that an executor or administrator has acted in the administration of the deceased's estate is no bar to such transfer.

The Public Trustee is equally entitled with any other person to letters of administration of the estate of a deceased person, but he is not to be preferred to the widower, widow, or next-of-kin unless for good cause shown. (Section 6 (1).)

Existing Settlements.—Apart from special provisions in the trust instrument the Public Trustee can only be appointed as trustee of an *existing* settlement where there is a vacancy on the body of the trustees.

The following are instances of how vacancies may arise; the trustees originally appointed may be:—

(*a*) Reduced in number by death, or

(*b*) Rendered ineffective as a body (*e.g.*, by absence abroad or illness), or

(*c*) Desirous (one or all) of retiring from the trust.

Thereupon the Public Trustee may be appointed to fill the vacancy, and, if desired, one or more private persons may be appointed as well, in addition to the trustees (if any) who continue to act. The persons entitled to make the appointment are the person or persons having power to do so under the settlement, or, if there are no such persons, then, the continuing or surviving trustees or the executors or administrators of a last surviving trustee.

The Public Trustee may, however, also be appointed as an *additional* trustee, even where the full number of trustees exist and none is desirous of retiring. In this case, however, the appointment must (in the absence of an express provision in the trust instrument) be made by the Court.

Employment of Solicitors, Bankers, Accountants, &c.—The Public Trustee may employ for the purposes of any trust such solicitors, bankers, accountants, and brokers, or other persons as he may consider necessary. In determining the persons to be so employed in relation to any trust the Public Trustee shall have regard to the interests of the trust, but subject to this shall whenever practicable, take into consideration the wishes of the creator of the trust, and of the other trustees (if any) and of the beneficiaries either expressed or as implied by the practice of the creator of the trust, or in the previous management of the trust. (Section 11 (2).)

Investigation and Audit of Trust Accounts.—Apart from the Public Trustee Act, the only means by which an audit of Trust Accounts can be obtained from trustees declining to furnish satisfactory accounts is by application to the Court. The Act enables those interested to obtain an audit without any such application, and the auditor on completion of his audit must forward to the parties interested and to every trustee a copy of the accounts and of his report upon them. Unless the Court otherwise orders, the condition and accounts of *any* trust shall upon application being made and notice thereof being given (*a*) if the applicant is a beneficiary, to every

tstee, and (*b*) if the applicant is a trustee, t each co-trustee, and also to the person entitled t the receipt of the income of the trust property, b investigated and audited by such solicitor or p blic accountant as may be agreed upon by the a plicant and the trustees, provided that (except w h the leave of the Court) such an investiga- ti n or audit shall not be required within twelve n nths after any such previous investigation or a dit, and that a trustee or beneficiary shall not b so appointed to make an investigation or a dit. (Section 13 (1) and Rule 37.)

f within three months from the date of the r eipt of the notice no solicitor or public account- a shall have been appointed by the applicant a l the trustees, to conduct the investigation and a dit, the applicant may apply to the Public Tustee who may act himself or appoint " some p son " as auditor. (Rule 38.)

The person making the investigation or audit (reinafter called the auditor) shall have a right o access to the books, accounts, and vouchers o the trustees, and to any securities and docu- nts of title held by them on account of the t st, and may require from them such informa- n and explanation as may be necessary for the p formance of his duties, and upon the com- l tion of the investigation and audit shall f ward to the applicant and to every trustee a c py of the accounts together with a report t reon, and a certificate signed by him to the e ct that the accounts exhibit a true view of the s te of affairs of the trust, and that he has had t securities of the Trust Fund investments pro- c ed to and verified by him or (as the case may b) that such accounts are deficient in such r pects as may be specified in such certificate. (ction 13 (2).)

Every beneficiary under the trust shall, subject t the rules under this Act, be entitled at all r sonable times to inspect and take copies of t accounts, report, and certificates, and at his o n expense to be furnished with copies thereof o extracts therefrom. (Section 13 (3).)

The auditor may be removed by order of the Court, and if any auditor is removed, or resigns, or dies, or becomes bankrupt or incapable of acting before the investigation and audit is completed, a new auditor may be appointed in his place in a like manner as the original auditor. (Section 13 (4).)

The remuneration of the auditor and the other expenses of the investigation and audit shall be such as may be agreed on by the trustees and the person entitled to the receipt of the income of the trust property and the auditor, or (in default of such agreement) determined by the Public Trustee, who shall, in determining the same, have regard to the estimated value of the trust property, the time occupied or likely to be occupied by the investigation and audit, and the other circumstances of the case, and shall, unless the Public Trustee otherwise directs, be borne by the estate, and in the event of the Public Trustee so directing he may order that such expenses be borne by the applicant or by the trustees personally, or partly by them and partly by the applicant. (Section 13 (5) and Rule 39.)

The fee chargeable by the Public Trustee in respect of the trouble involved in arranging for an audit or fixing the remuneration of the auditor will be not less than five shillings nor more than five pounds. This does not include the auditor's fee. (Fees Order 1907.)

If any person having the custody of any documents to which the auditor has a right of access under this section fails or refuses to allow him to have access thereto, or in anywise obstructs the investigation or audit, the auditor may apply to the Court, and thereupon the Court shall make such order as it thinks just. (Section 13 (6).)

If any person in any statement of accounts, report, or certificate required for the purposes of this section wilfully makes a statement false in any material particular, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, and on summary conviction to imprisonment for a term not exceeding six months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment. (Section 13 (8).)

Carrying on of a Business.—Where a trust involves the carrying on of a business, a distinction is drawn between the Public Trustee acting as ordinary trustee and as custodian trustee. As a general rule—that is to say, except with the consent of the Treasury—the Public Trustee may not agree to act as ordinary trustee in such a case; but this rule does not apply where he is asked to accept a trust which, though it involves the carrying on of a business for the moment, has, as its ultimate object, the sale, disposition, or winding-up of such business. In trusts of this nature, and where the circumstances are exceptional, the Public Trustee may act as ordinary trustee, provided that he is satisfied that the business can be carried on without risk or loss, but, except with the consent of the Treasury, such business must not be carried on for a longer period than eighteen months. (Section 2 (4) and Rule 8 (2).)

The rules confer a wider discretion on the Public Trustee in the case where he is asked to act merely as custodian trustee. Here the length of time for which the business is to be carried on is immaterial, and subject to the conditions mentioned below he has full power to act as custodian trustee of a trust of this character.

The conditions are these:—

(1) That he is not to act in the management or carrying on of such business.

(2) That he is not to hold any property of such a nature as will expose the holder thereof to any liability, except under exceptional circumstances, and when he is satisfied that he is fully indemnified or secured against loss. (Rule 8 (1).)

Investments.—The Public Trustee may invest or retain invested money belonging to any trust or estate and coming to his hands *in any investment authorised by the trust instrument* or (save as otherwise provided by that instrument) authorised by law for the investment of trust funds, and may (save as so provided) retain any investment existing at the date of the commencement of the trust or (where the trust arises on an intestacy) at the date of the death of the intestate; provided that he is not to invest in or hold any investment in such manner as to expose him to liability as the holder thereof, unless he is satisfied that he is fully indemnified or secured against loss.

Appeal to Court.—Any person aggrieved by any Act, or omission, or decision of the Public Trustee in relation to any trust, may apply to the Court, and the Court may make such order in the matter as the Court thinks just.

State Guarantee.—The Consolidated Fund of the United Kingdom is to be liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge, except where the liability is one to which neither the Public Trustee nor any of his officers has in any way contributed, and which neither he nor any of his officers could, by the exercise of reasonable diligence, have averted, in which case neither is the Public Trustee, nor is the Consolidated Fund, to be subject to any liability.

Fees Chargeable:—

There are three classes of fees:—

(1) Capital Fee.

(2) Income Fee.

(3) Investment Fee.

The capital fee varies according to the nature of the trust; the income fee and the investment fee are the same in all kinds of trusts, including executorships and administratorships.

The fees, as a rule, become due at the following times:—

Capital Fee.—Half on acceptance of the trust, the remainder gradually as the capital is diminished.

Income Fee.—This fee is payable annually out of the income.

Investment Fee.—This fee is payable on the making of an investment.

The Public Trustee may, however, with the proval of the Treasury, agree to any other ode of payment of any of these fees which, in e circumstances, appears to him to be reason- le. He may also agree to accept a lump sum settlement of the amount due or to become due respect of capital or income fees.

Per.—A person who attends a sale by auction r the purpose of bidding on behalf of the owner the subject-matter of sale, and thus raising the ice as against other bidders. Such a practice illegal unless a right to bid on behalf of the ner has been reserved—whether in respect of nds (30 & 31 Vict. c. 48) or goods (Sale of oods Act 1893). (*See title* Auction.)

Purchase Book.—A record of the purchases made a trader, generally compiled from the invoices ndered by the various creditors. The book is metimes called the Bought Book, the Invoice ook, or the Creditors' Journal. The general heme of such a book is to provide for consecu- e numbers to all invoices, the dates of the pur- ases, the creditors' names, and full (or con- nsed) particulars of each purchase. (*See title* uard Book.)

It is necessary in some businesses to analyse e purchases by means of columns, as between e various classes of goods or according to partments, as the case may be. (*See title* partmental Accounts.)

In large concerns, where the transactions are merous, it is found necessary to record the rchases in sections, to allow of the independent lancing of the Ledgers and to render it possible subdivide the clerical labour. The purchases e then kept in separate books, with Ledgers to rrespond, either in alphabetical, departmental, geographical classes, according to circum- nces. (*See titles* Journal, Sectional Ledgers.)

Purchases Account.—*See title* Goods Account.

Purser.—A person having the management of a ost Book mining company: also a person ployed on board a vessel carrying passengers, ., in the capacity of treasurer and secretary, including the keeping of the accounts of provisions received and consumed, copying manifests, &c.

Put and Call Option.—*See title* Options.

Q

Qualification Shares.—*See title* Directors.

Qualified Acceptance.—*See title* Acceptance.

Qualified Indorsement.—*See title* Indorsement.

Quantum meruit.—*See title* Agent.

Quarter Days.—

England.—Lady-day, 25th March; Midsummer, 24th June; Michaelmas, 29th September; Christmas, 25th December.

Scotland.—Candlemas, 2nd February; "Whit-sunday," 15th May; Lammas, 1st August; Martinmas, 11th November.

Quasi.—When this word is placed before a noun the combined effect of the two words is that although the thing signified does not precisely comply with the definition of the noun (alone) it has much the same qualities and is otherwise approximate thereto.

Quasi-Partner.—One who advances money on loan to a person or firm, receiving interest varying with the profits, or a fixed proportion of same by way of interest. On proof that he is not a partner, either by the production of a written agreement defining his rights in respect of the loan or by any other means, he is treated as a postponed creditor in the case of the bankruptcy of the borrower, being liable for nothing beyond the amount already advanced, but entitled to repayment only after all other creditors have been satisfied.

The Limited Partnerships Act 1907 does not alter the status of a quasi-partner, and it is not necessary for him to register under the Act in order to limit his liability.

The term is also applied to persons who are not in the relation of partners to each other, although they are co-owners of property which is employed for their common benefit. (*See titles* Limited Partnership, Postponed Creditors, *Société en Commandite*.)

Quinquennial Valuation.—At intervals of five years the Inland Revenue Authorities require a return of the rentals and other particulars of property assessable to "property tax" (or income-tax under Schedule A), so that they may review, and if necessary revise, the assessment thereof. (*See title* Income Tax.)

As to quinquennial valuations for assurance companies *see title* Assurance Companies Act 1909.

Quittance.—(Acquittance.) A release.

Quorum.—(Of whom.) The number of members of an administrative body whose presence is necessary to give validity to the acts of such body.

Company.—The number required to constitute a quorum at meetings of the members or directors respectively of a joint-stock company is usually prescribed by the company's regulations.

Table A to the Companies (Consolidation) Act 1908 (where adopted) provides (1) that the directors may themselves determine the quorum necessary for the transaction of business at a directors' meeting; unless the quorum is so fixed it shall (when the number of directors exceeds three) be three, and (2) that the number of members necessary for the transaction of business at a general meeting of the members shall be three members personally present.

Where a company is registered with its own regulations, to the exclusion of Table A, the quorum for a general meeting of the company is generally fixed low (such as three or four members in the case of a small company), whilst the necessary quorum may in general be constituted by members "present" either in person or by proxy; but a *single person* cannot hold a "meeting," even though he may have been appointed proxy for a number of persons.

Where, however, the *whole* of a particular class of shares were held by one person, his assent to a modification of the conditions under which such shares were issued was deemed sufficient compliance with the company's regulations to the effect that assent to the proposed modifications could only be validly given by a specified majority at a "*meeting*" of the holders of such shares. (*East v. Bennett Bros., Lim.*, 1910.)

The common law rule is that two members form a quorum in the absence of any regulations thereon; but it has been held that where the articles of association of a company do not prescribe the number of directors necessary to form a quorum, the number who usually act in conducting the business of the company will be a quorum.

It is submitted that, in calculating the number of directors present at a meeting at which business with the company is transacted in which one (or more) director is personally interested such director (or directors) must be deemed to be "not present" for the purposes of a quorum.

The fact that some of the directors of a company have acted irregularly in transacting business on behalf of the company when a quorum was not present will not be allowed to prejudice third parties who have acted without notice of the irregularity, for although all persons having dealings with a company are fixed with notice of its memorandum and articles as regards *external* affairs, they are not presumed to have knowledge of its "indoor management."

In any case, anything alleged to have been done on behalf of a company at a meeting of directors, where a quorum was not present, may if otherwise *intra vires*, be subsequently ratified and confirmed at a duly constituted meeting of directors, and when so ratified the act will be valid *ab initio*.

Company Liquidation (Compulsory).—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 co

tributories if the number does not exceed three. (Winding-up Rules 1909, Rule 132.)

Bankruptcy.—A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat at least three creditors, or all the creditors if their number does not exceed three. (1883 Act, 1st Schedule, Rule 23.)

R

Rack Rent.—The full annual value of a property; the uttermost rent.

Railway Commissioners.—Commissioners, three in number, appointed under the Railway Regulation Acts, to hear and determine certain complaints in connection with railway matters.

Rate of Exchange.—The price of the money of one country stated in the money of another country, or the price at which bills of exchange on one country are sold in another country.

The settlements in connection with the foreign trade of this country are largely effected by means of bills of exchange drawn and negotiated abroad and duly accepted and paid in London. As the person who draws and negotiates the bill must fix the rate of exchange thereon for the purpose of negotiating same, it follows that the rates of exchange between this country and most other countries is largely controlled by those constituting the money markets abroad.

The fluctuations of the rates of exchange in different countries are regulated (*inter alia*) by the following considerations:—

(1) The relative value of money.

(2) The relative indebtedness, caused by the influences of trade fluctuations.

(3) Stock Exchange transactions when (internationally) on a large scale.

(4) Political matters.

(*See title* Par of Exchange.)

Where a bill of exchange is drawn in another country and is payable in this country after a certain length of time—three months usually—the price of the bill at the time of purchase or negotiation is fixed by the long rate of exchange, called the "long exchange." It is made up in London by taking (1) sight rate of exchange, plus (2) interest for the period at the foreign rate, (3) the foreign bill stamp, and (4) some slight allowance for financial risk pending maturity of the bill. It is made up abroad by deducting (1) the interest at the London rate, (2) the English bill stamp, &c.

The Stamp Act 1891 provides that where an instrument is chargeable with *ad valorem* duty in respect of any money in any foreign or colonial currency, such duty shall be calculated on the value of such money in British currency, according to the current rate of exchange at the *date of the instrument.* (Section 6.)

The Bills of Exchange Act 1882 provides that where a bill is drawn out of, but payable in, the United Kingdom, and the *sum payable* is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts, at the place of payment, on the *day the bill is payable.* (Section 72.)

With regard to the treatment of foreign currencies in books of account:—

(1) Fixed assets and liabilities may be taken at the figure they actually cost or represent in sterling—that is to say, at the rate of exchange of the day the *assets* were *acquired* or the *liabilities* were *incurred* (subject, of course, to provision for depreciation where necessary, this being a matter for separate consideration).

(2) Floating assets and liabilities should be taken at the rate of exchange as at the *date of balancing* the books.

(3) Revenue items can be taken either

(*a*) at the average rate for the period in question,

(*b*) at a normal rate throughout the period in question, or

(*c*) where the number of transactions is limited, at the rate of exchange on the day of each transaction.

A convenient practice, so far as the Head Office Books are concerned, is to have the Branch Office Account ruled with double columns for the particular currency and sterling respectively.

In the currency columns the figures supplied by the branch are inserted, and a periodical agreement of the balance shown by the Branch Trial Balance may then be ascertained from the difference between the debit and credit currency columns.

These currency figures may then be converted to sterling according to one of the methods indicated above.

All or any differences arising from the necessary adjustments of exchange are placed to the debit or credit of "Difference in Exchange" Account, for the adjustment may result in either a loss or a profit.

The balance of this account, as at the date of "closing" the books, must be transferred to Profit and Loss Account for the period under review or Suspense Account. Where a profit is shown as a result of a favourable movement in the rate, which might "recede," it would be unwise—in fact improper—to utilise such a "temporary" profit for dividend purposes.

Ratification.—Confirmation. (*See titles* Acceptance of a Bill, Agent, Infant, Prospectus.)

Ratio.—The relation or proportion which one thing, such as a quantity, bears to another.

Percentages and averages are special methods of dealing with ratio.

Although the respective shares of partners in the partnership profits are usually referred to according to their fractional parts of the *whole*, yet in some cases it is necessary to deal with them according to their relation to *one another*, such as on the admission or retirement of a partner.

Suppose A., B., and C. share profits as to $\frac{2}{5}$, $\frac{3}{10}$, and $\frac{3}{10}$ respectively, and D. is admitted on the basis of receiving $\frac{1}{6}$ of the total profits, th original partners retaining the same ratio of prof as compared one with another. In such a ca they would divide $\frac{5}{6}$ of the total profits in th same proportions as they previously divided t whole.

Thus A. would take $\frac{2}{5}$ of $\frac{5}{6}$ .. .. equals
B. ,, ,, $\frac{3}{10}$,, $\frac{5}{6}$ .. .. ,
C. ,, ,, ,, ,, ,, ... ,,
D. ,, ,, the agreed proportion

But this result can be obtained from the ratio thus, suppose A., B., and C. divide profits to $\frac{2}{7}$, $\frac{5}{14}$, $\frac{5}{14}$ respectively, and C. retires, A. a B. agreeing to continue as before. In such case they would divide the *whole*, as they h previously divided $\frac{9}{14}$; their new proportions c quickly be ascertained when the *ratio* of th previous shares is known, without recourse fractions. A. previously took $\frac{4}{14}$ whilst B. to $\frac{5}{14}$, the ratio therefore is as 4 is to 5; thus takes $\frac{4}{9}$ and B. $\frac{5}{9}$ of the *whole* profits under th new arrangement. (*See title* Goodwill (as regar accounts).)

Raw Material.—The unadapted materials employ in the production of the commodities of a pa ticular trade. The manufactured or partly man factured articles of one trade may be the ra materials of another. Raw material for stoc taking and "Balance Sheet" purposes should valued at prime cost, plus all subsequent dir charges for freight, duty, handling, inspectio &c.

Real Account.—The term is used to designate t various classes of account which represent t capital employed in a business, such as lan buildings, machinery, plant, patents, stock ships, shares, consignments, bills receivable, bo debts, &c. They are sometimes called Prope Accounts. Book debts are the balances of P sonal Accounts, but they are none the less R Accounts. (*See title* Nominal Accounts.)

Real Action.—An action brought for the speci recovery of lands.

Re Estate.—Lands (including the buildings reon). whether of freehold or copyhold tenure; t not leaseholds, however long the term. For venue purposes, however, leaseholds are liable at all) to succession duty, not legacy duty. ee *titles* Land Transfer Act 1897, Personal operty.)

Reisation Account.—A statement showing the sult of winding up an estate or business; an count in the Ledger specially opened for the rpose of adjusting the accounts of a concern hen about to be transferred as a going concern, wound up, as the case may be.

Relsation (Costs of).—*See title* Priority of Payents (Costs, &c.)

Reised Profits.—Profits actually realised or the sult of completed transactions involving legal bility, which it is expected will ultimately be ly discharged.

One of the articles of association of the xford Building Society provided that "no dividends shall be payable except out of the *realised profits* arising from the business of the company."

The business of the society consisted of lending money to builders on mortgage at a large te of interest, the principal and interest being payable in instalments over a period of years. he directors, upon the estimates made by their rveyor (who was also their secretary), took edit in the Balance Sheets of the society for "*present value* of the repayments on ortgages held by the company," and the estiates were based upon the assumption that every curity was ample to provide for principal, terest and costs. The directors thereupon eated the surplus so ascertained as being profit ailable for dividend, and paid dividends for ne years accordingly.

It was held (in 1886) that the word *realised* ust have its ordinary commercial meaning, hich, if not equivalent to "reduced to actual cash in hand," must at least mean "rendered tangible for the purpose of division."

The directors were held jointly and severally ble for the dividends improperly paid during each year of their respective directorships. (*See title* Profit.)

Real Par.—*See title* Par of Exchange.

Real Property.—*See title* Real Estate.

Real Representative.—*See title* Land Transfer Act 1897.

Realty.—*See title* Real Estate.

Rebate.—An allowance; a deduction; discount.

Rebate on Bills Discounted.—When a banker closes his books at the end of his financial period, he has, as a rule, a number of unmatured "discounted bills" on hand. The whole of the interest (or discount) charged on the respective bills cannot, therefore, be taken to credit in the Profit and Loss Account for the period under review, as provision must be made for interest on the various bills until they respectively mature. This provision is termed "rebate on bills discounted."

Receipt.—The Stamp Act 1891 imposes a stamp duty of one penny upon every receipt given for or upon the payment of money amounting to £2 or upwards, with the following exceptions, viz.:—

(1) Receipt given for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for.

(2) Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.

(3) Receipt given for or upon the payment of any Parliamentary taxes or duties, or of money to or for the use of His Majesty.

(4) Receipt given by an officer of a public department of the State for money paid by way of imprest or advance, or in adjustment of an account, where he derives no personal benefit therefrom.

(5) . . . . . .

(6) Receipt given by any officer, seaman, marine, or soldier, or his representatives for or on account of any wages, pay, or pension due from the Admiralty or Army Pay Office.

(7) Receipt given for any principal money or interest due on an Exchequer bill.

(8) Exemption No. 8 read "Receipt written "upon a bill of exchange or promissory "note duly stamped," . . . but this was repealed as from 1st July 1895 by section 9 of the Finance Act 1895, which is as follows:—Exemption numbered (8) under the head "Receipt" in the First Schedule to the Stamp Act 1891 is hereby repealed; and the duty shall be charged as if the exemption had not been contained in that schedule, provided that neither the name of a banker (whether accompanied by words of receipt or not) written in the ordinary course of his business as a banker upon a bill of exchange or promissory note duly stamped, nor the name of the payee written upon a draft or order, *if payable to order*, shall constitute a receipt chargeable with stamp duty. (*See title* Cheque.)

(9) Receipt given upon any bill or note of the Bank of England or the Bank of Ireland.

(10) Receipt given for the consideration money for the purchase of any share in any of the Government or Parliamentary stocks or funds or in the stocks and funds of the Secretary of State in Council of India, or of the Bank of England, or of the Bank of Ireland, or for any dividend paid on any share of the said stocks or funds respectively.

(11) Receipt *indorsed or otherwise written upon* or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured or therein mentioned.

(12) Receipt given for any allowance by way of drawback or otherwise upon the exportation of any goods or merchandise from the United Kingdom.

(13) Receipt given for the return of any duty of customs upon a certificate of over-entry.

In addition to the foregoing exemptions

(1) The Bankruptcy Act 1883, as regards bankruptcy proceedings;

(2) The Finance Act 1895, as regards the compulsory liquidation of companies;

(3) The Building Societies Act 1874; and

(4) The Friendly Societies Act 1895, as regards the *internal affairs* of the respective societies;

(5) The Act of Will. IV, 4 & 5 c. 76, as regards Poor Law Authorities,

provide for the exemption from stamp duty of certain receipts and other documents.

Institutions which devote their funds wholly to charitable purposes are practically exempt from stamp duty in respect of receipts for donations and subscriptions to their funds, for if a receipt therefor be given unstamped (as is usual) the Commissioners do not enforce the penalty.

But although for many years the Commissioners did not claim stamp duty upon the indorsements of briefs by barristers by way of acknowledging receipt of their fees, the Commissioners obtained a declaration of the Court in 1906 that such indorsements were "Receipts" and liable to stamp duty when the amount was £2 or upwards.

The Act of 1891 provides:—

For the purposes of this Act the expression "receipt" includes any note, memorandum or writing, whereby any money amounting to two pounds or upwards, or any bill of exchange (which term includes a cheque) or promissory note for money amounting to two pounds or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of two pounds or upwards, is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person. (Section 101.)

The duty upon a receipt may be denoted by adhesive stamp, provided that the person by whom the receipt is given cancels the stamp by writing on or across the same his name or initials, or the name or initials of his firm, together with the true date of his so writing, or *otherwise effectively cancels* the stamp and so renders it incapable of being used for any other purpose, provided it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time. (Section 8.)

A receipt given without being stamped may be stamped with an impressed stamp upon the terms following, that is to say:—

(1) Within 14 days after it has been given, on payment of the duty and a penalty of five pounds;

(2) After 14 days, but within one month, after it has been given, on payment of the duty and a penalty of ten pounds;

and shall not in any other case be stamped with an impressed stamp. (Section 102.)

If any person

(1) Gives a receipt liable to duty and not duly stamped, or

(2) In any case where a receipt would be liable to duty refuses to give a receipt duly stamped, or

(3) Upon a payment to the amount of two pounds or upwards gives a receipt for a sum not amounting to two pounds, or separates or divides the amount paid *with intent* to evade the duty,

he shall incur a fine of ten pounds. (Section 103.)

Note.—"The only means known to the law of compelling a person to give a receipt is provided by this section, which applies to receipts *liable to duty*. Information must be given to the Commissioners, who usually insist upon the giving of a stamped receipt as a condition of compromise of proceedings. The obligation to provide the receipt stamp is virtually thrown upon the person to whom the payment is made." [Alpe.]

It is no longer necessary that, in order to complete the offence of refusing to give a stamped receipt, the debtor should present a stamped form of receipt to the payee, but to constitute an offence under the section the payee "must refuse to give a stamped receipt to the person entitled to take it, and a mere neglect or omission to comply with a request to send a stamped receipt by post is not considered a refusal for the purposes of the section."

In *Cole v. Blake* (King's Bench, 1793), Lord Kenyon said:—"It has *already* been determined that a party tendering money could not in general demand a receipt for the money." (*See titles* Acquittance, Voucher.)

Receipt Book.—An auditor should usually examine the Receipt Book (counterfoils) and compare same with the respective entries upon the debit or "Receipts" side of the Cash Book.

Even the best form of counterfoil receipt book is not always a real preventative of fraud, but a duplicate carbon book may be found very useful. The books should be numbered consecutively and a register thereof kept. (*See title* Register of Receipt Books.) This system is specially applicable to cases where the receipt (and consequently the carbon duplicate beneath) can be prepared by one clerk and initialled by another—a common example being shop cash takings.

The existence of a Receipt Book, as forming part of the system of accounting, has, in any case, its moral effect, and it can hardly be disputed that a Cash Book is better vouched by being compared with counterfoil receipts, than under circumstances where there is no Receipt Book and the loose practice of "receipting invoices" is adopted.

Some concerns, for the sake of uniformity, issue their own form of receipt with all remittances, but there is an objection to this practice, as it would be an easy matter under these circumstances for a dishonest clerk to present a "receipt" for money alleged to have been paid by him, whereas the form of *official receipt* of the intended payee would not have been so easily procured.

Receipts and Payments.—A statement of cash actually received and paid, either in detail or in a summarised form. Such a statement is not necessarily an account of the *earnings* of a business or other concern for the period to which it relates, for the following reasons:—

(1) Items of a "capital" nature (receipts or payments or both) may be included, and

(2) The outstanding assets and liabilities (if any) at the commencement and end of the period are disregarded.

A reconciliation between the "income and expenditure" and the "receipts and payments" of a particular period may be effected by the preparation of a separate account of the receipts and payments affecting the "capital" transactions and an adjustment of the outstandings referred to.

Although the income and expenditure of a period, in an account showing same (really a Ledger Account), are set out on the credit and debit sides respectively, a statement of receipts and payments (as becomes a Cash Account) is exhibited in the reverse form, viz., receipts on the debit side and payments on the credit side. (*See title* Income and Expenditure.)

Receiver.—Receivers are appointed in two ways. They may be appointed (1) under a deed, *e.g.*, a mortgage or a debenture deed; (2) by the Court. (*Note.*—Where there is a deed which contains no power of appointment of a receiver, and does not incorporate the provisions of the Conveyancing Act (see *infra*), the aid of the Court must be invoked, so that in such a case so far as the authority, &c., of the receiver are concerned, the deed is practically non-existent.)

The nature of the office, powers, and authority of the former class, however, and that of those of the latter are totally different. The receiver in the one case deriving all his authority and very existence from the deed, cannot go beyond the powers thereby conferred; in the other, being an officer of the Court, he acts under its directions and supervision. Accordingly, the principles which regulate the proceedings of the latter class of receivers have only a partial application, by way of analogy, to those of a receiver appointed by deed. As an illustration of this difference may be mentioned the exercise of the power of distress. A receiver appointed by deed, in order that he may exercise this power, even in the name of his appointor, must have an express and specific authority given him for that purpose, whereas a receiver appointed by the Court may, as a rule, exercise such power on his own authority, without first applying to the Court for a particular order for that purpose, unless, indeed, the rent in question is in arrear for more than a year, or the legal title is doubtful.

Receivers appointed by the Court.—It is proposed to deal first with receivers appointed by the Court.

A receiver is an indifferent person between the parties to a suit appointed by the Court to receive the rents and profits of real estate, or to get in and collect personal estate, or other things in question, pending the suit, where it does not seem reasonable to the Court that either party should do so, or where a party is incompetent to do so, *e.g.*, an infant. In other words the Court appoints a receiver on the principle of preserving property, pending litigation which is to decide the rights of the litigants who are parties thereto.

Where the assets subject to a floating charge are in jeopardy the Court has power to appoint a receiver, although the moneys secured by the charge are not due, and then, the security having crystallised by the appointment of a receiver, to make an order for realisation. (*In re Carshalton Park Estate, Lim.; Turnell v. Company*, 1908.)

Under section 25, subsection 8, of the Judicature Act of 1873, and order 50, rule 6, of the Rules of the Supreme Court, a receiver may be appointed by the Court in all cases in which it appears to the Court to be just or convenient that such order should be made, and any such order may be made conditionally or upon such terms and conditions as the Court thinks just. The Court has a discretion in the matter, but a liberal construction should be placed on the words "just and convenient."

Save in the cases of lunatics and infants, the Court will not appoint a receiver unless a suit or action is impending.

Generally speaking, a receiver should be a person wholly disinterested in the subject-matter of the suit. Accordingly, one of the parties to the cause will not be appointed without the assent of the other party, or parties, unless a very special case is made out (*e.g.*, see *Stubbs and Another v. Chamberlayne*, 1910) or unless he undertakes to act without remuneration. A person should be appointed consistently with those professional life so much time as is necessary for the management of the estate can be spared, and if a probable ground is laid that the requisite attention cannot be given, though it may not form an absolute disqualification, it must be taken into consideration in making the appointment. Those whose duty it is to check and watch over the receiver are also unsuitable for the appointment. It is not, therefore, customary to appoint a trustee, save in special cases where the appointment would be peculiarly beneficial to the estate, and no one else can be found who would act with the same benefit. Even in such a case, however, a trustee will not be appointed unless he agrees to act without remuneration.

For the same reason, viz., that it is his duty to watch over and check the receiver, the solicitor in the cause will not be appointed, though there is no objection to a solicitor as such.

Another point of objection is that the person sought to be appointed is clothed with certain privileges which exempt him from the ordinary remedies it may become proper to enforce. Accordingly, a Peer or Member of Parliament will not be appointed, though Lord Eldon declined to say that a Member of Parliament was absolutely disqualified.

Where an order is made for winding up a company compulsorily or subject to supervision—at all events, when that order is made upon a petition of a date anterior to the appointment of the receiver appointed at the instance of debenture-holders—if nothing else appears, *primâ facie*, the Court, in order to prevent two persons performing the same duties, and to save expense, will appoint one person receiver and liquidator, that person being the liquidator. The rule is discretionary only, and may easily be displaced. If it appears that the whole, or practically the whole, of the assets belong to the secured creditors or debenture-holders, and thus there is really nothing for the liquidator to do, the Court will not displace the receiver. Nor will it do so where the assets of the company are of such a nature that it is not probable that they will be realised in the best way for the debenture-holders, *e.g.*, if there is something in the nature of the securities to be realised, and the moneys to be collected, which requires negotiations, and bargainings, and compromises. By section 162 of the Companies (Consolidation) Act 1908 it is provided that where an application is made to the Court to appoint a receiver on the behalf of the debenture-holders or other creditors of a company which is being wound up by the Court the Official Receiver may be so appointed.

Any person who obtains an order for the appointment of a receiver or manager of the property of a company must within seven days from the date of the order give notice to the Registrar of Joint Stock Companies, who is to enter the fact on the Register of Mortgages and Charges. Penalty for non-compliance with this provision—a fine not exceeding £5 per day. (Companies (Consolidation) Act 1908, section 94.)

A person to be appointed receiver must, unless otherwise ordered, first give security, to be allowed by the Judge to whose Court the action is attached; duly account for what he shall receive on account of the *rents and profits* for the receipt of which he is appointed, at such periods as the Judge shall appoint; and account for and pay the same as the Court shall direct, or, as the case may be, be answerable for what he shall receive in respect of the *personal estate*, for the getting in and collecting of which he is appointed, and account and pay the same as the Court shall direct. The security required is usually the recognisances of the receiver, with two sureties, for double the annual rental of the property. Where the receiver has to get in capital sums the security is generally fixed at the

full (or something above the full) amount which is ordered or expected to be received.

Guarantee societies are frequently accepted as securities, and where such a society is offered as security a bond of the receiver and the society is accepted in place of the recognisances or bond required in other cases.

The partners in trade of the receiver, persons in partnership together, and the solicitor in the cause, are not usually accepted as securities for a receiver.

The securities must be living within the jurisdiction, even when the person appointed receiver is resident abroad, and is to collect assets there.

Additional security may be required when the property over which the receiver is appointed has since increased in value.

The Court will not generally dispense with security, even by consent of the parties interested, when asked to appoint a receiver, but if the parties being competent so to do consent *to appoint a receiver of their authority*, the Court will allow him to act without giving security.

When no salary is given to the receiver, it is not unusual to dispense with security. So, too, when the receiver will only have to incur expenditure, or where he does not enter into possession or receive anything, and undertakes not to act without leave of the Court.

Until security has been given the appointment is not complete, although on its being given the order will relate back to the day of its date. The receiver may, however, be authorised to act before he has given security.

A receiver is personally bound as receiver from the time he begins to act as such, and to receive moneys due to the estate, and though, as against third parties, he cannot set up his title as receiver where he has not completed his security or taken possession, yet he is none the less under the liability of a receiver. Should a surety procure his discharge during the continuance of the receivership, the receiver must enter into a fresh recognisance with new sureties; and where a surety becomes bankrupt the receiver is usually required to enter into a fresh recognisance with two or more solvent sureties.

The sureties are, as a general rule, liable *to the extent of the sum secured by the recognisance* for everything for which, by the condition of the recognisance, the receiver himself is liable, and also for everything which is the necessary consequence of his default, including interest, costs, and expenses incurred in legal proceedings against the receiver, and in removing him, and in the appointment of a new one.

In special circumstances, however, the Court will not enforce such liability in all its strictness.

Sureties are liable from the date of the receiver's beginning to act as such, and not merely from the date of the bond or recognisance.

It has been held that where a receiver of "rents and profits" of real estate had (1) insured some of the farm buildings in his own name, and received and misapplied the insurance money; (2) received and not accounted for dividends on Consols in Court representing proceeds of sales of real estate; (3) received under an order of the Court money representing personal estate, to be spent in repairs, which he had misappropriated, the sureties were properly charged in respect of these three items.

A receiver is generally continued until the decree, but he may, under certain circumstances be discharged at an earlier period, *e.g.*, should the object of his appointment be fully effected, as where he is appointed to get in debts due out of the rents and profits of an estate, and such debts are discharged; or where he has been appointed at the instance of an annuitant whose annuity is in arrear, and all such arrears are paid off. Where, however, a receiver is appointed for infants, the object for which he is appointed is not considered as being fully effected until all the infants attain their majority, and he will not, before that happens, be discharged even as to the share of one of such infants who has attained the age of twenty-one. Should, too, the receiver's continuance in office become unnecessary, as where the plaintiff's claim is admitted and satisfied, or, where having been appointed by

ason of the refusal of the executors to act nder a will, on such executors subsequently nsenting to act, he may be discharged.

The existence, too, of any of the following ill render the receiver liable to removal:— regularity in carrying in and want of clearness the statement of his accounts; neglectful and rtial conduct; great dereliction of duty, pecially failure to have regard to, and to carry t, the orders of the Court in reference to his nual accounts.

But where nothing is charged against the ceiver in regard to the manner of conducting mself in the office of receiver, or to the way which he passes his accounts, the mere fact his being an illiterate person will not induce e Court to remove him.

Bankruptcy of the receiver is another ground r his removal.

It may also be a ground for discharge that the ceiver has changed his residence to an incon- nient distance from the estate over which he s appointed, or that a substitute can be tained at a less salary.

A receiver, being appointed for the benefit of parties interested, will not be discharged rely on the application of the party at whose stance he was appointed.

Nor where a receiver has been appointed and s given security, will he be discharged upon his n application, without showing some reason- le cause why he should put the parties to the pense of a change. Reasonable cause was con- ered to exist where the receiver showed that was suffering from bodily and mental irmity, and that such infirmity was heightened the anxiety occasioned by acting as receiver. application to the Court is generally necessary the discharge of a receiver, but where the ate expires over which the receiver has been pointed, as, *e.g.*, where a tenant-for-life, over ose estate a receiver has been appointed, dies, remainderman has a right *immediately*, on death of the tenant-for-life, to enter into session, without making any application to Court to discharge the receiver.

A receiver, unless he consents to act without remuneration, is entitled, unless the Court otherwise orders, to a proper salary or allowance. Such remuneration may take the form of—

(*a*) A percentage upon the sums collected and received, or

(*b*) A lump sum of money.

Formerly it was customary, where the remuneration took the form of a percentage, to allow 5 per cent. on the collection of rents of freehold and leasehold estates, and a rate varying from $2\frac{1}{2}$ to $1\frac{1}{4}$ per cent. in other cases.

Now, however, 3 per cent. is very commonly given, but there is no fixed scale, nor is the scale followed in the case of liquidators any guide. The rate will depend very much on the circumstances of each case, 5 per cent. being still allowed in cases of difficulty (*e.g.*, where the sums to be got in are very small, or the payments very frequent), and in rare cases so high a rate as 10 per cent. On the other hand, should there be very great facility in receiving the sums to be collected, less than the ordinary rate may be given. (But *see* provisions of the Conveyancing Act, quoted *infra*.)

As has been already stated, a trustee, if appointed receiver, is generally required to act without remuneration, but there is no inflexible rule to this effect, the Court having a discretion in the matter.

The amount of the receiver's salary or allowance is usually not fixed until the passing of the first account. The Court is bound to see that the receiver is paid his remuneration, without regard to the sufficiency of the estate to meet the claims upon it. In addition to his salary, a receiver may be entitled to an allowance for extraordinary trouble and expenses incurred by him in the discharge of his duties and on account of the estate, but as the Court will take care that all which the receiver is bound to do for his salary is done, in order to be so entitled he must either have acted under express orders or be in a position to show that benefit has resulted to the estate from his (extra) exertions and expenditure. A receiver, however, may not make interest for his own benefit in respect of moneys received by him, between the time when they come into his

hands and the time when he passes his accounts. And, although his recognisance only requires him to pass his accounts yearly, he may at any time apply to the Court to pay in moneys in hand; and if, in the interval between passing his accounts, he receives any sums of such an amount as to make it worth while to lay them out, he ought to apply for an order to have them paid into Court, that they may be there made productive for the benefit of the estate.

Should a receiver neglect to leave and pass his accounts, and to pay over the balance thereof at the times fixed for this purpose, the Judge before whom he is to account may, from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed.

Liability for Credit Incurred.—As regards the responsibility for credit incurred of a receiver appointed by the Court, he should in all cases obtain the sanction of the Court. Without such sanction the amount may be disallowed. Where he makes an advance himself for a proper purpose and has not previously obtained the sanction of the Court, the payment may be subsequently ratified, but he will not be allowed any interest, whereas if he obtains leave he will be allowed interest at 5 per cent. Assuming the sanction to have been duly obtained, even then the receiver and not the company is responsible, although, of course, he is entitled to be indemnified out of the assets so far as they are sufficient. (*Burt v. Bull*, 1895.)

While he may give a charge upon the assets (after obtaining the proper sanction), he should expressly negative personal liability. (*National Bank of England v. Basden*, 1905.) On the other hand, in a recent case, *Re A. Boynton, Lim.* (1910), it was decided that although the deed did not expressly exclude the personal liability of the receiver and manager, yet upon the construction of the deed the bank was content to rely upon their security and upon that alone. The assets eventually proved insufficient to pay in full the costs of the plaintiff in the debenture-holders' action, the remuneration of the receiver and manager and the amount advanced by the bank. It was decided that the costs of the plaintiff and the remuneration of the receiver and manager had priority over the claim by the bank for the sum advanced. (See also *Glamor Copper Mines, Lim.*, 1906.)

In *Re Rylands Glass & Engineering Co., Lim.* (L.T. Vol. 118, p. 87), it was decided that where a receiver, appointed by the Court to supersede a receiver appointed by parties, uses goods for the purposes of the business which have been *ordered by his predecessor*, the creditor who has supplied the goods is entitled to be paid in priority to the debenture-holders.

The appointment of a receiver operates as a discharge of the clerks and other officials, and if a clerk is dismissed by the receiver without notice, it is an illegal dismissal so far as the *company* is concerned, the default in not complying with the terms of the debentures being the wrong imputed to the company. The clerk can, therefore, bring an action against the company—not the receiver—for wages in lieu of notice. (*Reid v. Explosives Co.*, 19 Q.B.D. 264.)

Upon appointment as receiver and manager, particularly where the appointment is likely to be continued for a lengthy period, an inventory should be taken forthwith of the furniture, fittings, fixtures, machinery, and plant, and a valuation made of the stock-in-trade. In any case upon appointment immediate steps should be taken to obtain possession of all documents of title, leases, agreements, and insurance policies, and proper inquiries should be instituted into the sufficiency of the insurances, whether in respect of fire, accident, burglary, or otherwise, according to the circumstances of the particular business. (*See* suggestions under heading Receivers appointed by Parties, *infra*.)

Equitable Execution.—Where the only property of a judgment debtor is such that it cannot be taken in execution under the ordinary process of the Court, a receiver may be appointed by the Court by way of equitable execution. The most usual instances are:—

(1) A share of a partner in the property and profits of a partnership.

(2) An interest in an estate, such as the reversionary interest under a will.

An appointment of the character first mentioned must be distinguished from a receiver of the partnership assets in the event of dissolution. The procedure is governed by section 23 of the Partnership Act 1890, as follows:—

(1) After the commencement of the Partnership Act 1890 a writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2) The High Court or a Judge thereof, or the Chancery Court of the County Palatine of Lancaster, or a County Court may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

(4) This section shall apply in the case of a Cost Book company as if the company were a partnership within the meaning of this Act.

Note.—A receiver appointed under the above section has no right to interfere in the management of the business, and the other partners may *at their option* dissolve the partnership.

As in the case of an assignee under an assignment by a partner of his share in the partnership, a receiver is ordinarily bound to accept the account of the profits agreed to by the other partners, for it was held in *Brown Janson v. Hutchinson* (1895) that the discretion given by the Partnership Act (section 23) to direct accounts should only be exercised under special circumstances, *e.g.*, with a view to a dissolution; so that, although a receiver of a partner's share may not be entitled to an account during the continuance of the partnership, he would on a dissolution be entitled to a full account of the realisation of the assets.

(*See titles* Equitable Execution, Partnership (Assignment of Share).)

Accounts.—The following regulations as to the accounts of receivers appointed *by the Court* should be noted:—

When a receiver is appointed with a direction that he shall pass accounts, the Court or Judge shall fix the days upon which he shall (annually, or at longer or shorter periods) leave and pass such accounts, and also the days upon which he shall 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. And with respect to any such receiver as shall neglect to leave and pass his accounts and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the Judge before whom any such receiver is to account may from time to time, when his subsequent accounts are produced to be examined and passed disallow the salary therein claimed by such receiver, and may also, if he thinks fit, charge him with interest at the rate of £5 per cent. per annum upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver. (O. 50, r. 18.)

Receivers' accounts shall be in the form prescribed (see below), with such variations as circumstances may require. (R. 19.)

Every receiver shall leave in the chambers of the Judge to whom the cause or matter is assigned, his account, together with an affidavit

verifying the same, in the prescribed form, with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such account. (R. 20.)

The form prescribed for receivers' accounts is that of an account of receipts and payments. In the case of real estate the form must be ruled so as to provide columns for the following items:—

(*a*) *Receipts.*—

No. of item. (*Note.*—The order in which the properties are entered in the first account should be followed in all subsequent accounts.)

Date when received. (*Note.*—One year's rent, although paid half-yearly, quarterly, or monthly, should be entered in *one item*; the date of the latest receipt being entered in this column.)

Tenants' names.

Description of premises.

Annual rent.

Arrears due at ——.

Amount due at ——.

Amount received.

Arrears remaining due.

Observations.

(*b*) *Payments and Allowances.*—

No. of item.

Date of payment or allowance.

Names of persons to whom paid or allowed.

For what purpose paid or allowed.

Amount.

Note.—"In the *first* account of rents the "receiver must state in the column for observa- "tions *how each tenant holds;* and every "alteration should be noticed in subsequent "accounts: in this column he should also enter "any remarks he may think proper to make as "to (1) arrears of rent, (2) state of repairs "or otherwise."

In the case of personal estate the form is as below—

(*a*) *Receipts.*—

No. of item.
Date when received.
Names of persons from whom received.
On what account received.
Amount received.

(*b*) *Payments and Allowances.*—

No. of item.
Date when paid or allowed.
Names of persons to whom paid or allowed.
For what purpose paid or allowed.
Amount paid or allowed.

The accounts in each case must be accompanied by summaries showing the balances due from the receiver on account of real estate and personal estate respectively.

The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit, and be left in the Judge's chambers, or with the official or other referee, as the case may be. (O. 33, r. 4.)

All accounts, copies and papers left at chambers shall be written upon foolscap paper, bookwise, unless the nature of the document renders it impracticable. (O. 66, r. 2.)

Every alteration in an account verified by affidavit to be left at chambers shall be marked with the initials of the commissioner or officer before whom the affidavit is sworn, and such alterations shall not be made by erasure. (O. 38, r. 22.)

A certificate of the chief clerk stating the result of a receiver's account shall from time to time be taken. (O. 50, r. 22.)

"Upon passing his accounts the receiver "brings in his bill of costs, which is taxed "and the amount allowed included in his "disbursements.

"The account is vouched by the production "of the proper vouchers, such as receipts "these are initialled by the proper officer of the "Court as evidence of their production and "allowance.

" Vouchers will be admitted as evidence of " payment of the sums specified, and credit " given to the accounting party in the account, " unless the other side shows some reasonable " ground for impeaching the vouchers, but if " any party objects the affidavit or oral evi- " dence of the person receiving the money may " be required, or proof given of his signature " to the voucher.

" Vouchers must be duly stamped, otherwise " they will be rejected; sums under 40s. may " be substantiated by the oath of the account- " ing party, but he must mention in his " account to whom, for what, and when the " amounts were paid.

" When the account is passed . . . the " chief clerk's certificate is made stating the " amount due from the receiver and the day " on which it is to be paid into Court.

" Any large sum in the receiver's hands " should be paid into Court forthwith without " waiting to pass his accounts; otherwise he " may be charged with interest upon sums " retained by him."

Note.—Small items of the same class, such as petty disbursements in managing a business, should be summarised for each month, or, if large, for each week, and the Petty Cash Book should be produced on passing the accounts. Weekly or monthly salaries and weekly wages should be summarised in like manner, and Salaries and Wages Books produced. When the accounts are heavy it is advisable to obtain directions at chambers as to their form and contents before preparing them.

(*See titles* Interim Receiver, Official Receiver.)

Receivers Appointed by Parties.—In connection with mortgages *made by deed*, provided nothing to the contrary is contained therein, the Conveyancing Act 1881 confers upon a mortgagee the powers (*inter alia*) to sell and to appoint a receiver (section 19), and further provides:—

Section 20.—A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

(1) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or

(2) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

(3) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

Section 24.—(1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

Note.—A mortgagee appointing a receiver or manager of the property of a *company* under any powers contained in any instrument must give notice to the Registrar within seven days of the appointment. A penalty is incurred on default. (Companies (Consolidation) Act 1908, section 94.)

(2) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3) The receiver shall have power to demand and recover all the *income* of the property of which he is appointed receiver by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same.

(4) A person paying money to the receiver shall not be concerned to inquire whether any

case has happened to authorise the receiver to act.

(5) The receiver may be removed, and a new receiver may be appointed from time to time by the mortgagee by writing under his hand.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified then at the rate of five per centum on that gross amount, or *at such higher rate* as the Court thinks fit to allow, on application made by him for that purpose.

Note.—The effect of this provision is that if no rate is fixed upon appointment there is a possibility of a receiver obtaining *more*, but apparently there is no prescribed procedure by which a receiver may be *compelled* to take *less* than five per cent.

(7) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8) The receiver shall apply all money received by him as follows (namely):—

(*a*) In discharge of all rents, taxes, rates, and outgoings whatsoever affecting the mortgaged property; and

(*b*) In keeping down all annual sums or other payments and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(*c*) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(*d*) In payment of the interest accruing due in respect of any principal money due under the mortgage;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

The duties of a receiver appointed under the Act of 1881 to receive the rents and profits of lands and buildings may be summarised thus:—

(*a*) He should ascertain the exact state of the rent roll to date.

(*b*) He should advise all tenants of his appointment and that future rents must be paid to him.

(*c*) He should ascertain what (if any) rates and similar liabilities are unpaid.

(*d*) He should ascertain that adequate fire insurances are in force and the premiums duly paid.

Note.—Probably this will be the case but if not the receiver should obtain directions in writing from the mortgagee.

(*e*) He is receiver of the *income* only.

(*f*) He may not sell the property, but may concur with the mortgagee in selling it. Consequently, if a sale is effected the conveyance must be executed by the mortgagee, as the receiver has not a title to pass to the buyer.

(*g*) He must apply the income in the priorities set out above.

(*h*) He is entitled to remuneration at the rate (not exceeding 5 per cent. on his gross receipts) fixed in his appointment; if no rate is fixed, then at 5 per cent., or at such *higher rate* as the Court may fix on application for the purpose.

Note.—As already stated, the Conveyancing Act gives power to appoint a receiver of the income merely. It is the mortgagee who has the power of sale, not the receiver. If the mortgagee concurs with the receiver in selling he may presumably appoint the receiver to be his agent for the purposes of sale, and the receiver may in that capacity receive the

capital proceeds of same, but it is suggested that the inclusion of such moneys is not contemplated by the statute as part of the gross receipts upon which the receiver is entitled to ask for his "5 per cent. or higher rate." The mortgagee might authorise him to retain payment as agent, but he does not receive these moneys *quâ* receiver.

(*i*) Probably when the property is sold periodical payments will be duly apportioned, but before paying over any balance of income or closing his final accounts the receiver should be quite certain that he has discharged every liability incurred, such as income-tax under Schedule A, rates, &c.

Mortgage of Book Debts.—Book debts due and become due are sometimes mortgaged by way security for advances, and in such cases the wers contained in the Act of 1881 are usually cluded in the deed. In case of book debts signed by way of mortgage by a trader it is cessary that the assignee (*i.e.*, the lender) or receiver should give notice of the assignment the persons who are said to be indebted to the signor (*i.e.*, the borrower) before notice of the mmission of an available act of bankruptcy by latter. Otherwise the debts would be within order and disposition of the debtor (*i.e.*, the signor), and pass to a subsequent trustee in nkruptcy, under section 44 of the Bankruptcy t 1883.

A receiver of book debts (and this applies to her cases, such as a debenture giving a charge book debts, &c.) should carefully preserve all mmunications from debtors asking for time, omising payment, and the like. In the event legal proceedings being rendered necessary er, these documents will materially assist the licitor in proving the debts. When a proected effort has been made to collect all debts—e time and labour necessary will vary with the rticular requirements of each case—and the st of the debts have been collected, then it is ually desirable to sell the residue to a professional debt collector. These gentlemen will usually give a very fair price for debts which the ordinary accountant would find difficult to collect, and they attach considerable importance to the production of letters, &c., just referred to.

Dissolution of Partnership.—Partners desiring to dissolve partnership may, by agreement, appoint a receiver in writing. A receiver so appointed should act in consultation with the partners, and obtain the benefit of their collective advice and views. In the event of any disagreement on a matter of importance, it is suggested that he might serve the dissenting partner with notice of his intention to adopt his proposed course, and require the dissenting partner, if he still objects to same, to take legal action to restrain the receiver from so doing within a period prescribed in the notice. Such important notices should be served by registered letter.

Receiver of the Assets of a Company.—A simple debenture (*see title* Debenture) is merely an acknowledgment of indebtedness, but the great majority of debentures issued by present day companies are what are termed "mortgage debentures," giving a charge upon all or part of the company's undertaking, and conferring upon a majority of the debenture-holders the power to appoint a receiver of the property charged by the debenture, upon the happening of certain events, which events of necessity relate to the failure by the company to fulfil its obligations.

The usual form of debenture provides that a receiver so appointed shall have all the powers conferred by the Conveyancing and Law of Property Act 1881, already referred to, but, *in addition*, the debenture usually gives power to a receiver so appointed to take possession of the premises charged, and to carry on therewith the business of the company, to appoint and employ managers, servants and agents, and to fix and pay their remuneration, and to sell, call in, collect and convert into money all the premises (*i.e.*, the property of every kind covered by the debenture), or any part thereof.

Where the debenture-holders are numerous it is not uncommon for a trust deed to be prepared

appointing trustees for the whole of the debenture-holders, and conferring upon these trustees the power to appoint a receiver, &c. This is, however, a mere delegation of the debenture-holder's power, and, provided the right of appointment of a receiver is conferred by the debenture, the trustees have the same right of appointment under their hand as if the debenture were issued to a single individual.

General Suggestions.—Assuming that a receiver is appointed for debenture-holders possessing a mortgage charge upon the whole of the undertaking of a company and conferring wide powers as to management, sale, &c., the receiver should forthwith:—

(1) Satisfy himself that the prescribed notice of his appointment under section 94 of the Companies (Consolidation) Act 1908 is sent within seven days to the Registrar of Joint Stock Companies.

Note.—Doubtless the debenture-holder's solicitor will attend to this point.

(2) The receiver should proceed to the offices of the company and formally take possession.

(3) If there are numerous branches it may be sufficient if he visits the most important and either sends a competent clerk to the remainder or serves notice upon the managers by registered letter.

(4) On taking possession he will formally notify the officials of his appointment, explaining to them that the appointment of a receiver automatically acts as a discharge of all the company's servants.

Note.—Wages and salaries accrued due (within the statutory limitations as to time and amount) are payable preferentially, but claims for excess amounts and claims in lieu of notice are those of ordinary unsecured creditors against the company.

(5) If there is no business to be carried on he may find it advisable to place a caretaker in charge of each branch.

(6) If it is necessary to carry on the business he should re-engage such of the officials as may be usefully retained, but the re-engagement should be on a short term basis, say from week to week or month to month.

(7) He should ask to see the books and accounts, and from them obtain particulars of all assets.

(8) He should examine the register of members, with a view to ascertaining whether there is any existing uncalled capital.

(9) He should obtain a list of book debts, and advise all debtors that payment must be made to him and that his discharge will alone be considered binding.

(10) If there is difficulty in obtaining possession of books, or if the books are incomplete, a detailed notice in the local papers to all debtors of the company is recommended.

(11) The receiver should inspect the works (if any), and obtain an inventory of the plant and machinery, &c.

(12) It will be found useful to examine, for comparative purposes, any inventory which may have been taken when the original loan was advanced.

(13) An inventory of the stock-in-trade should be prepared.

(14) Receipts for gas, electric light, and similar deposits should be obtained, and the gas and other authorities notified of the appointment.

(15) Sometimes it is difficult to obtain these receipts, and a prompt notification to the authorities of the receiver's claim is recommended in these instances.

(16) The receiver should notify the company's bankers of his appointment, and obtain a transfer to an account in his own name, as receiver, of any balance in hand.

(17) He should see that the premises are fully insured against fire and burglary, obtain possession of the policies, and notify the insurance companies of his appointment.

(18) If it is necessary to carry on the business he should also satisfy himself that proper insurances are in force for workmen's compensation, boiler accidents, and accidents to vehicles and notify the insurance companies.

(19) He should arrange to terminate all undesirable tenancies, or in any case minimise the possibility of claims arising against the assets in respect of same.

(20) He should ascertain the nature and particulars of any pending contracts, and endeavour to arrange for the completion of such as are clearly profitable to the estate.

In particular, it will usually be found of advantage to convert partly manufactured stock into the finished article, as it will thereby command a more ready sale.

(21) He should make a careful note of all undertakings given as to payment of rent, rates, gas, electric light, &c.

Note.—One of the most difficult problems the receiver, who is also a manager, has often to deal with in practice is the course to be adopted in regard to arrears of gas, electric light, &c. The receiver often finds that there are substantial sums owing for arrears of this nature, and sometimes, although he is prepared to pay for future supplies in full, the authorities will cut off supplies unless arrears are first paid.

The position may be affected by reason of the Special Act of the gas or electric light authorities, but generally speaking the authorities are within their rights in adopting this course, the receiver being not a new tenant, but merely a custodian of the property of which he takes possession. (*Paterson v. Gas Light & Coke Co.*, 1896, and *Ilsey v. London Electric Supply Corporation*, 1912, *Cannon Brewery Co. v. Gas Light & Coke Co.*, House of Lords, 1904.) (But *see The Metropolitan Water Board v. Brooks*, 1910.)

The question of payment or non-payment of these arrears thus becomes an important factor in deciding whether the business shall be continued or not.

(22) In cases where rent has already been paid in advance, or where the continuance of dead charges cannot be avoided, it is often desirable to run the business for a time at least, some return being thus obtained by way of reduction of the unavoidable outlay, even if there is not a real net profit on the trading.

(23) The receiver should arrange that all invoices for goods supplied by him should show clearly the fact that payment is to be made to him alone.

(24) He should keep his accounts properly up to date, and so make use of his technical knowledge as to be able to submit a reliable Trading Account when necessary.

(25) He should only incur such credit as is absolutely necessary for carrying on the business, and this subject to the general considerations as to the responsibility of a receiver for liabilities incurred.

(26) He should take steps to call up any uncalled capital comprised in the charge. In *Re Westminster Syndicate, Lim.* (1908), the Court approved the practice of allowing the receiver to use the name of the liquidator, upon giving him a proper indemnity, for the purpose of recovering the calls made by him.

(27) Where action has been brought by the company and moneys recoverable thereunder would be an asset coming to the hands of the receiver, and the company has subsequently gone into liquidation, the receiver is entitled to require the liquidator to be joined as a plaintiff in the action, provided he guarantees the liquidator's costs.

(28) Attention should, of course, be devoted to questions of income-tax. The receiver must pay over to the Inland Revenue any income-tax collected by him by way of deduction, either from interest paid to debenture-holders or otherwise.

Further, it should be remembered that if the business is working at a loss, or is not working at all, then the receiver has a right to set off against any tax collected by deduction under Schedule D, income-tax paid under Schedule A.

Liability for Credit Incurred.—In dealing with the question of liability for credit obtained, there are two chief considerations—namely, authority to incur it, and probability of repayment.

Dealing first with the case of a receiver appointed by debenture-holders possessing a fixed mortgage charge, or by their trustee in pursuance of the wide powers already indicated, he will find

that he has sufficient authority in his debenture for all normal expenditure. Assuming this authority, then, the only other question which can arise is insufficiency of assets. If he contracts as receiver merely, the liability will fall upon his principal—namely, the mortgagor—in other words, "the company." (*See Gosling v. Gaskell*, 1897, A.C.) This is so long as the company is not in liquidation, but Sir F. B. Palmer suggests that if the company goes into liquidation the receiver in possession is in all probability personally liable. The learned author thinks that the receiver who possesses powers to carry on the business has probably power to *continue* after a winding-up order, but that he, and not the company, then becomes liable for credit incurred.

Summarising this point as regards a receiver appointed under powers contained in a mortgage by deed (which includes most debentures), provided the deed is not expressly at variance with the Conveyancing and Law of Property Act 1881, it may be said that:—

(1) He is entitled to incur credit for the proper conduct of the receivership.

(2) So long as the company is not in liquidation, neither he nor the person appointing him will be responsible in the event of an insufficiency of assets.

(3) Thus the only right of the creditor is against the company whose agent the receiver is said to be, and this right is, of course, worthless to the creditor, because the company has no assets.

(4) If the company is in or goes into liquidation during the appointment, the receiver should be careful not to incur any further credit, because in the event of an insufficiency of assets he *may* be personally liable.

(5) If, on the other hand, he is appointed by debenture-holders under an express power which does not state that he is agent for the company (and does not by reason of the nature of the charge come within the provisions of the Conveyancing and Law of Property Act), then he is agent for the persons who appoint him. (*Re Vimbos, Lim.*)

An example of this is a *floating charge merely*.

So that, in the event of an insufficiency of assets, persons who had given credit to the receiver would have a right of recourse against his principals.

Sale of the Undertaking.—If at any time the company through its recognised officials approaches the receiver and tenders him the full amount of his clients' principal, interest, costs and advances, he will, of course, be prepared on behalf of his clients to give up possession. Failing this, he will advertise the business, communicating with all likely buyers, &c., and, failing any other method of disposal, may have to resort to auction.

Before accepting any offer for sale as a going concern which is less than the debenture-holders' full claim, he will do well to obtain their express sanction. Whether the offer is more or less than the debenture-holders' claim he will also do well to communicate with the company and obtain their views upon the price. It usually happens that the company's idea of value is very much different from the price obtainable, and, therefore, it is a common practice to serve the company with notice of the offer which has just been made, and to inform them that unless they can bring forward an improved proposal within a specified period the offer will be accepted. This notice is served not because the company has any real right thereto, but as a matter of extra protection for the receiver.

Remuneration.—The deed usually contains a provision that the debenture-holders, or their representatives, shall have a right of fixing the receiver's remuneration, and 5 per cent. on the gross receipts is a common rate. Failing any express provision in the debenture deed, the provisions of the Conveyancing and Law of Property Act 1881, already mentioned, would generally apply.

Disposition of Funds.—Where the debentures give a floating charge the proceeds are distributable in the following order:—

(1) In satisfaction of preferential payments for wages, rates, &c.

(2) In payment of costs and expenses of the receivership, including the remuneration of the receiver.

(3) In payment for goods supplied, &c., to the receiver for the purpose of carrying on the business.

(4) In payment of the debenture-holders' principal and interest.

(5) Balance to the company, or, if the company is in liquidation, then to the liquidator, the first call on him being for costs of the winding up.

(Note the advantage which this gives to the preferential creditors. Where there are debentures giving a floating charge the preferential claims rank before even the receiver's disbursements, but if there are no such debentures they come *after* the costs of winding up.)

(Note, on the other hand, debentures which obtain a floating charge on most of the undertaking also usually comply with the requirements of a fixed mortgage by deed in other respects, so that the foregoing table is usually applicable.)

Statutory Notices.—As regards appointment, see note *supra*. 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 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. Maximum penalty for non-compliance, £50. (Companies (Consolidation) Act 1908, section 95.)

There is not any registration fee payable on filing the abstract of receipts and payments referred to above.

Receiving Order.—An order made by the Court, either on the petition of a debtor or one or more of his creditors, whereby the Official Receiver is constituted receiver of the property of the debtor. After the making of such an order no person to whom the debtor may be indebted in respect of any debt *provable in the bankruptcy* shall have any remedy against the property or person of the debtor in respect of the debt, or commence any legal proceedings without leave of the Court. The Court *may* also stay any legal proceedings which are pending against the property or person of the debtor at any time after the presentation of the petition, or may allow them to continue on such terms as it may think just. (Bankruptcy Act 1883, sections 9 and 10.)

Where application is made (under the Debtors Act 1869) by a judgment creditor to a Court having bankruptcy jurisdiction, for the committal of a judgment debtor, the Court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee (£5), make a receiving order against the debtor. The deposit for costs is also necessary as in the case of a bankruptcy petition. (Bankruptcy Act 1883, section 103.)

A judgment creditor for *any amount* may obtain a receiving order in this way, although his debt would have been insufficient to have enabled him to present a petition. There is a further distinction between a receiving order made in response to a petition and one made in lieu of an order of committal under the Debtors Act. In the former case the *debtor* must be domiciled in England, or within one year before the date of the presentation of the petition he must have ordinarily resided or had a dwelling-house or place of business in England, but these requirements have been held to apply only to petitions, so that where an application is made to commit a judgment debtor who is a foreigner (properly before the Court) a receiving order can be made in lieu thereof.

Where an application to commit is made to a County Court, and it appears to the Court that the total liabilities of the judgment debtor do not exceed £50, the Court may, if it thinks that an order for committal ought not to be made, make an administration order in lieu of making a receiving order. (Rule 358.)

A receiving order does not divest a debtor of his property, but merely protects it until either a scheme or composition has been arranged and sanctioned or until the debtor is adjudged bankrupt. Adjudication is generally resolved upon by the creditors at their first meeting, and thereupon the Court adjudges the debtor bankrupt, and his property then becomes divisible amongst his creditors, and *vests* in a trustee.

A receiving order made against a firm operates as if it were a receiving order made against each of the persons who at the date of the order is a partner in that firm. (Rule 262.)

The making of a receiving order does not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it had the receiving order not been made. (Bankruptcy Act 1883, section 9.)

Although it does not follow that on the making of a receiving order the debtor will be adjudged bankrupt, he is, nevertheless, liable (under ordinary circumstances) to undergo his public examination.

The Court has a discretionary power to rescind a receiving order, but it may decline to do so even where all the creditors support the application if the Official Receiver is dissatisfied with the debtor's conduct, and expresses a desire that the debtor be further examined. (*See titles* Adjudication, Bankruptcy Petition, Infant, Lunatic, Married Woman.)

Recognisances are contracts made with the Crown in its judicial capacity. [Pollock.]

They take the form of acknowledgments in writing before a Judge, or other proper authority, to keep the peace, to appear at the assizes, or the like.

Although classed as contracts, recognisances are not strictly so, in so far as they are promises made to the Sovereign, with whom (as such) the subject cannot contract.

Reconciliation Account.—An artificial account (generally in summary form) raised for the express purpose of substantiating the result of another account, or a number of accounts, by an agreement of results. (*See title* Bank Book.)

Reconstruction (of a Joint Stock Company).—This procedure is resorted to when it is necessary to take some action which, under existing conditions, would be *ultra vires* of the company, such as the issue of preference shares when prohibited by the memorandum, the adoption of objects beyond the scope of the memorandum, the modification of the rights of a given class of shareholders, or the reduction of capital without complying with the requirements of the Companies Act.

Almost invariably the memorandum of association confers a special power to sell the whole undertaking for *shares* in another company, while the articles permit of the division in specie of the assets of the company in a winding-up, so that in such a case the company may (1) enter into the contract of sale, and (2) pass a resolution to wind up voluntarily in order to divide the shares, &c., received as consideration for such sale.

Where there are no such powers in the company's regulations, a reconstruction may be effected by (1) voluntary liquidation, and (2) the sanction of the company by *special* resolution given to the liquidator to sell the undertaking to another *company* (as defined by the Companies (Consolidation) Act 1908, section 285 (*Thomas v. United Butter Cies, &c.*, 1909), thus excluding foreign companies), and to receive as compensation or part compensation for such sale (in lieu of cash) shares, policies, &c., in such other company for the purpose of distribution amongst the members of the company being wound up. Any such sale made by the liquidator in pursuance of the above is binding on the members of the company being wound up, provided that if any member of the company being wound up (*who has not voted in favour* of the special resolution passed by the company of which he was a member at *either* of the meetings held for passing the same) expresses his dissent from any such special resolution in *writing* addressed to the liquidator, and left at the registered offices of the company within seven days after the confirmation of the resolution, such dissentient member may require the

liquidator either (*a*) to abstain from carrying the resolution into effect, or (*b*) to purchase the interest of such dissentient member at a price to be determined either *by agreement* or arbitration, such purchase money to be paid before the company is dissolved and to be raised by the liquidator in such manner as may be determined by special resolution. The resolution empowering the liquidator to sell will not be invalid by reason that it was passed before, or concurrently with, any resolution for winding up the company or for appointing liquidators, and in practice where reconstruction is contemplated, the special resolutions (*a*) to wind up, (*b*) appointing a liquidator, and (*c*) authorising such liquidator to sell the undertaking for shares, are all passed at the same meeting or meetings, thus simplifying the procedure. The special resolution may confer upon the liquidator a general authority to sell, or an authority in respect of a particular agreement. Where such a resolution has been passed authorising the liquidator to sell, and an order is made *within a year* for winding up by or subject to the supervision of the Court, such resolution shall not be valid unless it is sanctioned by the Court. (*See* Companies (Consolidation) Act 1908, section 192.)

Thus, although the special resolution may be duly passed by the requisite majority, application may be made to the Court at any time within a year to set aside the sale.

The articles of association of a company may purport to confer certain rights in favour of "dissentient members" in lieu of those contained in the Companies Act, but so far as regards the method of ascertaining the price to be paid to a dissentient member in respect of his shares, the decision *In re F. B. Gould, &c.* (Court of Appeal, May 1899), will considerably affect the validity of such substituted "rights." It will be noted that section 192 provides that the price is to be determined by *agreement*, or, in the event of dispute, by arbitration. Where it has been desired to avoid arbitration, the articles of association have provided (in the words of the clause in question in *Gould's* case) "that the purchase money to be paid for the interest of any dissentient member shall be such sum of money as "the liquidator *can obtain by selling* the shares, "stock, or other property to which such dissentient member would have been entitled upon "the completion of the sale or arrangement, had "he not expressed his dissent." This was, however, held not to exclude the right to arbitration, for although the articles of association may amount to an agreement between the company and the members in some respects, the requirement of the Act in order to avoid arbitration was construed by the Court of Appeal to be an agreement between the *liquidator* and the dissentient member. Lindley, M.R., said, "To say that it "meant a clause binding *en bloc* all members, "assenting or dissenting, would be an unwarrantable suggestion."

But whatever method be adopted in compensating a dissentient member, he cannot impeach the sale. On the other hand, a dissentient member, whether he takes the necessary steps to protect himself or not, is under no obligation to accept any shares or other interest in the purchasing company. If a member has not voted in favour of the resolution to sell the undertaking he may surrender his interest and be compensated in pursuance of the Act, provided he takes the necessary steps. If he neglects to comply with the formalities with regard to dissent, he must either assent or forfeit his interest.

But a scheme which imposes upon a member of a company the alternative of accepting liability for a larger sum than the liability on his shares or of being dispossessed of his *status* as a shareholder upon terms which he is not bound to accept is contrary to the Companies (Consolidation) Act 1908 and *ultra vires*. (*Bisgood v. Henderson's Transvaal Estates, Lim.*, C.A. 1908.)

The voluntary winding up of a company (although perfectly solvent) for the purposes of reconstruction or amalgamation will cause a forfeiture of a lease which provides for re-entry if the lessees being a company shall enter into liquidation whether compulsory or voluntary. Such a proviso is "a condition for forfeiture on

the bankruptcy of the lessee," within section 14, subsection 6, of the Conveyancing Act 1881. (*Fryer v. Ewart*, 1902, App. Cas. 187.)

Reconstructions will of necessity involve the closing of the books of the old company and the opening of fresh books for the new concern. Ordinarily the accountancy work necessary will be similar to that involved in a liquidation and acquirement of a new business respectively, but it may be helpful to suggest that as regards the new company (1) where the purchase-price exceeds the book values of the general assets acquired, the difference should be debited to Goodwill Account; and (2) where the book values of the assets exceed the purchase price, the difference should be credited to a *special* Reserve Account. (*See titles* Amalgamation, Arrangements (Joint Stock Companies), Profits Prior to Incorporation.)

Record Book.—The book required to be kept by a liquidator (in compulsory liquidation) or a trustee (in bankruptcy) recording all minutes, all proceedings had, and resolutions passed, at any meetings of creditors and/or contributories (as the case may be), or of the committee of inspection, and all such matters as may be necessary to give a correct view of the administration of the company's or the bankrupt's affairs (as the case may be). The liquidator or trustee is not bound to insert in the Record Book particulars of any document of a confidential nature, such as the opinion of counsel upon any matter affecting the interests of the creditors and/or contributories, nor need he exhibit such document to any person other than a member of the committee of inspection or (in company liquidation) the Official Receiver or the Board of Trade. (Bankruptcy Rule 285; Winding-up Rules 1909, Rule 166.) The debtor has no right to inspect the Record Book. (*In re Solomons*, 1904.)

The chairman of every meeting 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. (Bankruptcy Act 1883, 1st Schedule, Rule 25; Winding-up Rules 1909, Rule 138.)

The Record Book in both winding-up and bankruptcy procedure must be submitted (with the Cash Book) to the committee of inspection for the purpose of audit not less than once every three months, and when the accounts of the liquidator or trustee are being submitted to the Board of Trade for audit, the Record Book must also be submitted. (*See title* Minutes and Minute Book.)

Reddendum.—The clause in a lease which reserves the rent to be paid; it commences with "yielding and paying" or some equivalent words.

Redeemable Debentures, &c.—Debentures and bonds are generally issued payable (1) at the expiration of a fixed term, or (2) on being drawn for redemption, or (3) on notice being given to "pay off." (*See titles* Debenture, Irredeemable Debentures.)

As the terms of issue may be at par, at a premium or at a discount, so the conditions as to payment may be subject to agreement. It is not unusual to make the debentures payable at the end of a fixed number of years at par, or earlier on the company giving the holder six months' notice to pay off, provided that in the latter case the company pay a premium at an agreed rate.

Debentures are sometimes issued payable in series, *e.g.*, an issue of £100,000 payable in four series of £25,000 each at the expiration of three, six, nine, and twelve years respectively.

Accounts.—When debentures are issued at a discount the full nominal amount should appear amongst the liabilities forthwith, the difference between that amount and the cash actually received being treated temporarily as an asset, say, "Cost of Issue of Debentures," which "asset" 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." (Companies (Consolidation) Act 1908, section 90.) This item should be written off as soon as possible, but provided the articles of association do not forbid such a course, such charge against revenue may

spread over the period for which the debentures have been issued.

If debentures are issued at par and redeemable at a *fixed* date at a premium, it would be sufficient to include the " issue price " among the liabilities, and gradually provide out of revenue the premium required at the redemption date. It is advisable, however, where this is done, that the narration of the debentures and the redemption fund in the Balance Sheet should state the fact that the debentures are redeemable at a premium, so that there can be no misunderstanding as to the *ultimate* liability.

Where debentures are issued at a premium and are redeemable at par or at a less premium than that in the issue price, the surplus should be carried to reserve; but if there is nothing in the articles of association of a company prohibiting such a course the auditor of the company cannot object to the premium being carried to Revenue Account for dividend purposes if the directors expressly desire to do so. The auditor should, however, require the directors to inform the shareholders from what source their dividends are being derived, and in the event of the directors declining to give such information, he should consider the advisability of drawing attention to the fact in his report.

Mode of Redemption.—Debentures may be redeemed in different ways, of which three are important, viz.:—

(1) Out of revenue:—

(*a*) By way of regular contributions to a sinking fund.

(*b*) By irregular contributions to a redemption fund, according to the revenue available.

(2) Out of the proceeds of the sale of capital assets no longer required by the company.

(3) Out of the proceeds of a " re-issue " of debentures, or an increase of share capital.

Note.—A re-issue of debentures may be made at a lower rate of interest so that the existing debentures may be paid off out of the proceeds and an annual saving be effected to the extent of the reduced interest payable.

In *Rowell's* case (1897, 2 Q.B. 194) it was decided that where debentures were issued redeemable at a fixed future time at a premium, the *ad valorem* stamp duty of 2s. 6d. per £100 (by scale) was payable upon the *redemption value*, but in a later case (*Knight's Deep, Lim. v. Commissioners of Inland Revenue*, 1900, 1 Q.B. 217) the Court, while expressing approval of the decision in *Rowell's* case, held that where a premium was payable only if the company exercised an *option* (which it possessed) to redeem the debentures at an earlier date than that named, the *ad valorem* duty was only payable on the nominal value of the debentures.

Where loans (whether acknowledged in the form of bonds or otherwise) are repayable under the terms of issue in equal instalments over a number of years (such instalments comprising part principal and interest at the agreed rate upon the unpaid portion of the loan for the time being) it should be noted that income-tax should be deducted by the payer from that portion only of each instalment which represents interest.

It was decided in *Re Tasker & Sons, Lim.* (1905, 1 Ch. 283), that once a debenture is paid off by the company which has granted it, the debt and the security therefor are extinguished, and such debenture cannot be re-issued.

This decision stands so far as the particular company is concerned, as do all other decisions of a Court of competent jurisdiction pronounced before the 7th day of March 1907 in this connection. Section 15 of the Companies Act 1907, which section came into force on the 28th August 1907, and is now re-enacted in section 104 of the Companies (Consolidation) Act 1908, applies to all companies with the above-mentioned exceptions, and provides as follows:—

> Where either before or after the passing of this Act a company has redeemed any debentures previously issued, the company, unless the articles of association of the company 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.

Where debentures have been transferred to a nominee of the company to keep the debentures alive a subsequent transfer from that nominee is a re-issue within the terms of the section. Debentures deposited to secure advances from time to time on current account or otherwise are not 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.

The re-issue of a debenture under this section must be treated as the issue of a new debenture for purposes of stamp duty, but not for the purpose of any provision limiting the amount or number of debentures to be issued. Provided that a person lending money without negligence 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 duty or any penalty, 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.

Yield of a Redeemable Security.—Suppose it were required to find the yield per cent. of six redeemable bonds under the following conditions:

(I) (*a*) Purchased at a premium and redeemable at par.

(*b*) Purchased at par and redeemable at a discount.

(*c*) Purchased at a premium and redeemable at a discount.

(II) (*a*) Purchased at a discount and redeemable at par.

(*b*) Purchased at par and redeemable at a premium.

(*c*) Purchased at a discount and redeemable at a premium.

In Class I a portion of the income should be set aside on receipt to provide for loss of capital on redemption; whilst in Class II a portion of the income is (in effect) retained by the payer of the interest and surrendered in a lump sum on redemption.

This being so, an important point arises. What rate of interest must be allowed on (or can be earned by) the income reserved in Class I; and, on the other hand, what rate must be charged on the income retained in Class II.? On such comparatively small items an ordinary rate of interest is not attainable, but if a rate of 1 per cent. per half-year be allowed or charged, as the case may be, it will greatly facilitate the explanation of the principles involved; and with this same idea all questions as to income-tax, broker's commission, stamps, &c., are excluded from consideration.

It is intended to set, and solve, a distinct problem embodying the conditions of each of the six purchases enumerated above; and, finally, to frame a single rule embracing the methods employed in all the solutions.

(I) (*a*) *Bond purchased at a premium and redeemable at par.*

Let it be a bond for £100, paying 4 per cent per annum, payable half-yearly, purchased for £116 and redeemable at par—21 years hence.

Then £100 bond produces £2. { per half-year.

which a portion has to be t aside to provide £16 (the ss on capital) in 42 half-ars at 1 per cent. per half-ar (the agreed rate), viz. ... .3084

et income per half-year on £116 outlay £1.6916

Hence, the yield per cent. per *half-year* is $\frac{200}{116}$ of £1.6916 equals) £1 9s. 2d.

Note.—It is obvious that when income is ceived half-yearly the effective rate per *annum* ghtly exceeds twice the rate per *half-year*, for terest on the first half-year's income needs to considered.

(I) (*b*) *Bond purchased at par redeemable at discount.*

Let it be a bond for £100, paying 6 per cent. r annum, payable half-yearly, purchased at par d redeemable at £94—18 years hence.

Then, £100 bond produces £3. { per half-year,

which a portion has to be t aside to provide £6 (loss capital) in 36 half-years at per cent. per half-year (the greed rate), viz. ... ... .1393

et income per half-year on £100 outlay £2.8607

Hence the yield per cent. per *half-year* is 2 17s. 2d.

(I) (*c*) *Bond purchased at a premium and deemable at a discount.*

Let it be a bond for £100, paying 7 per cent. r annum, payable half-yearly, purchased for 107 and redeemable at £97—16 years hence.

Then, £100 bond produces £3·5 { per half-year.

which a portion has to be t aside to provide £10 (loss capital) in 32 half-years at per cent. per half-year (the greed rate), viz. ... ... .266

et income per half-year on £107 outlay £3.234

Hence, the yield per cent. per *half-year* is ($\frac{100}{107}$ of £3 234 equals) £3 os. 5d.

(II) (*a*) *Bond purchased at a discount and redeemable at par.*

Let it be a bond for £100, paying 3 per cent. per annum, payable half-yearly, purchased for £92 and redeemable at par—20 years hence.

Then, £100 bond produces £1.5 { per half-year,

and, in addition, such a sum as will in 40 half-years at 1 per cent. per half-year (the agreed rate) amount to £8 (the gain on capital), viz. ... ... .1636

Total proceeds per half-year on £92 outlay £1.6636

Hence, the yield per cent. per *half-year* is ($\frac{100}{92}$ of £1.6636 equals) £1 16s. 2d.

(II) (*b*) *Bond purchased at par and redeemable at a premium.*

Let it be a bond for £100, paying 5 per cent. per annum, payable half-yearly, purchased at par and redeemable at £108—16 years hence.

Then, £100 bond produces £2.5 { per half-year,

and, in addition, such a sum as will in 32 half-years at 1 per cent. per half-year (the agreed rate) amount to £8 (the gain on capital), viz. ... ... .2133

Total proceeds per half-year on £100 outlay £2.7133

Hence, the yield per cent. per *half-year* is £2 14s. 3d.

(II) (*c*) *Bond purchased at a discount and redeemable at a premium.*

Let it be a bond for £100, paying 4 per cent. per annum, payable half-yearly, purchased at £96 and redeemable at £105—17 years hence.

Then, £100 bond produces	£2.	per half-year.
and, in addition, such a sum as will in 34 half-years at 1 per cent. per half-year (the agreed rate) amount to £9 (the gain on capital), viz.	.2235	
Total proceeds per half-year on £96 outlay	£2.2235	

Hence, the yield per cent. per *half-year* is ($\frac{100}{96}$ of £2.2235 equals) £2 6s. 4d.

Having solved a set problem under each of the six types of purchase, the following rule will be found applicable to each one; the rate per cent. to be charged on short, or allowed on surplus, income, as the case may be, being agreed upon.

Rule.—Find what *amount*, set aside yearly or half-yearly, as the case may be, would accumulate between the dates of purchase and redemption at a given rate of interest to the difference between the purchase money and the redemption value of each £100 bond, and

(*a*) If the redemption value be *less* than the purchase money *deduct* the amount (ascertained as aforesaid) from the income, for the year or half-year, as the case may be, received on each £100 bond.

(*b*) If the redemption value be *greater* than the purchase money *add* the amount (ascertained as aforesaid) to the income, for the year or half-year, as the case may be, received on each £100 bond.

If the purchase be made at par the result is (at once) the yield per cent. for the particular period, but if the purchase be made either at a premium or a discount, the yield *per cent.* must be obtained by proportion.

Redirection (of debtor's letters, &c.)—Where a receiving order is made against a debtor, the Court, on the application of the *Official Receiver or trustee*, may from time to time order that for such time, not exceeding *three months*, as the Court thinks fit, post letters addressed to the debtor at any place or places mentioned in the order for redirection shall be redirected, sent, or delivered by the Postmaster-General, or the officers acting under him, to the Official Receiver, or the trustee, or otherwise as the Court directs, and the same shall be done accordingly. (Bankruptcy Act 1883, section 26.)

Re-draft.—A second bill of exchange, whereby the holder of a dishonoured bill recoups himself against antecedent parties. It is sometimes called a cross bill.

(*See titles* Re-exchange, Referee in case of need.)

Reduction of Capital.—*See title* Memorandum of Association.

Re-exchange.—Where a bill has been dishonoured abroad the holder may recover from the drawer or an indorser, and either of the latter who has been compelled to pay the bill may recover from any party liable to him the amount of re-exchange with interest thereon until time of payment. (Bills of Exchange Act 1882, section 57 (2).)

Re-exchange means the loss resulting from the dishonour of a bill in a country other than that in which it was drawn or indorsed, as the case may be. The re-exchange is determined by ascertaining the sum for which a sight draft (drawn at the time and place of dishonour at the existing rate of exchange on the place where the party sought to be charged resides) must be drawn in order to realise at the place of dishonour the amount of the dishonoured bill and the expenses consequent on such dishonour. The expenses may include protest, postage, customary commissions on the re-draft, and the price of the stamp.

(*See titles* Rate of Exchange, Re-draft, Referee in case of need.)

Referee.—A person to whom a matter is referred for decision. (*See titles* Arbitrator, Special Referee.)

Referee in case of need.—The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case

f need—that is to say, in case the bill is dis-onoured by non-acceptance or non-payment. uch a person is called the " referee in case of eed," or the " drawee in case of need," or ometimes simply the " case of need."

It is in the *option* of the holder to resort to the case of need " or not as he may think fit. Bills of Exchange Act 1882, section 15.)

Where a dishonoured bill contains a reference n case of need, it must be protested for non-ayment before it is presented for payment to the eferee in case of need. (Section 67.)

The object of inserting a referee in case of need s not only to preserve the good name of the rawer or indorser (as the case may be), but to ave possible expense, for in the event of dis-onour of the bill in the absence of a " case of eed " the holder is entitled, in the case of a oreign bill, to protest same and draw a re-draft t sight for the amount of the re-exchange, with nterest until time of payment. The re-exchange nay include expenses of protest, postages, ustomary commissions on the re-draft, and the rice of the stamp. A referee in case of need who is ready to accept or pay the bill may avoid hese extras and save the honour of the party in uestion. (*See title* Re-exchange.)

Reference.—A submission of a question between parties, to another, or others, by consent for a final decision. (*See title* Arbitration.)

Refer to Drawer.—When a cheque drawn upon a banker is not paid on account of an insufficiency of funds, or some other cause, the cheque is returned to the collecting banker marked R./D. (refer to drawer), so that inquiries may be made.

Registered Capital.—The amount of capital for and in respect of which a company, having its capital divided into shares, is registered. It is also called the nominal capital, or the authorised capital.

There is a registration fee, fixed by scale, payable on the registration of capital, and an *ad valorem* duty of 5s. per £100 is also payable.

If a company is registered with a capital of £100,000 in 10,000 shares of £10 each, and there are 8,000 shares allotted, £6 per share called up, £47,000 actually received, and £3,500 unpaid in respect of calls, and £3 per share reserve capital or reserve liability, the position would be:—

	£
Authorised, nominal or registered capital	100,000
Issued or subscribed capital	80,000
*Unissued capital	20,000
Capital called up	48,000
†Uncalled capital (while a going concern)	8,000
‡Reserve capital	24,000
§Capital actually paid up	44,500
§Amount paid in advance of calls ...	2,500
Calls in arrear	3,500
Shares forfeited	Nil

* No one is liable to contribute this sum as yet, and it may be cancelled by special resolution without the sanction of the Court.

† The holders of the 8,000 shares are liable to contribute this amount as and when required by the directors.

‡ The holders of the 8,000 shares are liable to contribute this amount as and when required by the liquidators in the event of liquidation.

§ Total cash received £47,000.

(*See title* Reserve Liability.)

Registered Contract (in respect of shares).—Section 88 (1) of the Companies (Consolidation) Act 1908 provides that:—

" Whenever a company limited by shares " makes any allotment of its shares, the com-" pany shall within one month thereafter file " with the Registrar of Companies:—

" (*a*) A return of the allotments with full " particulars as to allottees, &c., 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 allot-" ment 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."

This section does not dispense with the necessity of consideration.

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. (Section 88 (2).)

Where the contract provides for an allotment of shares to a person and/or his nominees the Registrar requires a schedule, giving full particulars of the nominated allottees and the number of shares to be allotted to each respectively, to be filed.

Every director, manager, secretary, or other officer of a company knowingly a party to a default in compliance with the provisions of the section is (subject to the power of the Court to grant relief) liable to a fine not exceeding fifty pounds for every day during which the default continues. (Section 88 (3).)

If a contract be by way of sale or for services rendered to the company in consideration of *cash presently payable* by the company, and the party to the contract *afterwards agrees with the company* to take shares in lieu of cash, the contract does not need to be registered, for by the set-off by the company of the cash payable under the contract against the cash due to the company on the shares, such shares are deemed to have been paid for *in cash*. (*Spargo's* case, 8 Ch. 407.) But should the contract be for the allotment of shares as the consideration of a sale, or for services rendered, there is no cash ever payable by the company, and, consequently, there can be no set-off in cash, thus rendering it necessary to register such contract to comply with the above section.

If there be a sum of money due from the *company* to one of its members, for goods or otherwise, and a sum due from such member on his shares, a set-off (whilst the company is a going concern) will be a payment in cash within the meaning of the section.

Where shares had been allotted under a contract which had not, but ought to have been, registered, the holder was considered liable to pay for such shares in cash, for the unregistered contract was not considered an answer to an action for calls. On the other hand, a transfer of such shares to a *bonâ fide* purchaser without notice of the liability, who acted on the faith of the certificate issued by the company and held by the *transferor*, which stated that the shares were paid up to a certain amount (fully paid or otherwise), was held to relieve such transferee from liability to pay the moneys so expressed to have been paid up, for the company was estopped from denying the truth of the representation on the certificate. (*Burkinshaw v. Nichols*, 1878.)

The provisions of section 88 of the Companies (Consolidation) Act 1908 impose penalties (as stated above) upon certain officers of the company where default is made in registering the contract or the prescribed particulars, and Sir F. B. Palmer expresses the opinion that the imposition of these penalties is now the only effect of non-registration, no liability attaching to the holders of the shares in question, whether original allottees or transferees.

Registered Office (of a company).—*See title* Memorandum of Association.

Register of Cash-Sales Books.—Where cash-sales are numerous (for instance, a retail shop), carbon duplicate (or triplicate) books should be kept. (*See title* Till Takings.) These books should be numbered consecutively, say, from 1 to 100 and 101 to 200, and so on, and they should be in charge of a responsible person who should keep a register thereof, containing:—

(1) A list of all books ordered from the printer, *e.g.*, 50 books of 100 each numbered up to 5,000.

(2) Particulars of the date that each book is handed out to the counter-assistant, or other official, the numbers of the slips in the book, the name of the official, and the date it is returned by him.

The person responsible should see that all books are properly returned to him and should examine them carefully upon return. (*See title* Register of Counterfoil Receipt Books.)

Register of Cash-Takings Books.—*See title* Register of Cash-Sales Books.

Register of Counterfoil Receipt Books.—The best form of receipt book is a specially printed form bound in carbon duplicate books, and all invoices, statements, &c., should contain an announcement that only the firm's printed form of receipt will be recognised. The receipts should be bound and numbered consecutively in books of, say, 1 to 100, 101 to 200, and so on, and a register should be kept by a responsible person containing the following particulars, namely:—

(1) List of books received from the printers, with their consecutive numbers.

(2) Date each book is given out to the cashier, collector, or other official; and

(3) Date it is returned.

It is not an uncommon practice for a defaulting official to use an "extra" receipt book for the purpose of concealing frauds, and an auditor who purports to check cash received with counterfoil receipt books should at his examination call for *all* the receipt books, whether in use or not, including all new books which have been received from the printers, and compare them with the register to see that all are properly accounted for.

Register of Credit Note Books.—In businesses where goods are returned inwards in large quantities (*e.g.*, a newspaper office, where returns are daily occurrences), and it is necessary to give credit in consequence to customers for the amounts charged to them in respect thereof, a proper system of credit notes should be adopted. Many businesses use a duplicate carbon book. These books should be numbered consecutively, say, 1 to 100 and 101 to 200, and so on, and kept in the charge of a responsible official, being handed out by him only to persons properly entitled to issue credit notes. A register of the books on the system suggested under the heading "Register of Counterfoil Receipt Books" (*see that title*) is of assistance in keeping a record as to their whereabouts.

Register of Directors or Managers.—Every company registered under the Companies Act must 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.

If any company makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar, as aforesaid, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent company shall be liable to a fine not exceeding five pounds for every day during which such default continues, and every director and manager of the company who knowingly and wilfully authorises or permits such default shall be liable to the like penalty. (Companies (Consolidation) Act 1908, section 75.)

The copy "Annual List and Summary" (*see that title*) sent to the Registrar of Joint Stock Companies must contain (*inter alia*) the names and addresses of the persons who are directors at the date of the summary. (Section 26.)

Register of Members.—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.

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. (Companies (Consolidation) Act 1908, section 25.)

On the issue of a share warrant (transferable by delivery) in respect of any share or shares, the company must strike out of the Register of Members the name of the member entered therein as holding such share or shares as if he had ceased to be a member, and the fact of the issue of the warrant, with the date of issue, and the distinguishing numbers of the shares included in the warrant, are to be entered in the register. (Section 37.)

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. (Section 27.) (But *see title* Distringas.)

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.

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.

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, 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. (Section 30.)

A person inspecting the register has no right to make his own copies or take extracts therefrom. (*In re The Balaghat Gold Mining Co., Lim.*, 1901.) He must request and pay for same. (But *see title* Register and Registration of Mortgages in this connection.)

It was held by the Court of Appeal in *Re Kent Coalfields Syndicate, Lim.* (in liq.) (1898, 1 Q.B. 754), that this right of inspection applies only to a "*going* company." In order to inspect the register after liquidation has supervened, it will be necessary to apply to the Court.

If the name of any person is without sufficient cause entered in or omitted from the register of members of a company, or 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. (Section 32.)

In *Ex parte Cammell* (1894, 2 Ch. 392) Kay L.J., said: "I do not consider the word 'book' " in section 25 of 1862 (now section 25 of 190 " to be essential, and if these sheets had rea " been *treated* as the register until the form " book had been prepared, I should be inclin " to hold that the entry of the name in the " sheets would be a sufficient compliance wi " the Act of Parliament relative to registration

(*See titles* Annual List and Summary, Colon Register, Share Warrants.)

The auditor of a company should compare t total paid-up capital as stated in the register members with the records in the financial boo He is required to give a certificate that accounts are "as shown by the books of company," and it is submitted that his duty

t confined to an inspection of the financial oks *only*.

ster and Registration of Mortgages.—Every ited company shall keep a register of rtgages and enter therein all mortgages and arges specifically affecting property of the com- ny, giving in each case a short description of property mortgaged or charged, the amount the mortgage or charge, and (except the case of securities to bearer) the names of mortgagees or persons entitled thereto.

If any director, manager, or other officer of the mpany knowingly and wilfully authorises or rmits the omission of any entry required to be ade in pursuance of this section, he shall be ble to a fine not exceeding fifty pounds. ompanies (Consolidation) Act 1908, section 0.)

But omission to enter particulars of a rtgage or charge in the *company's* register es not of itself invalidate same, even though be given in favour of a director of the mpany.

A charge created by mere deposit of deeds within the section and needs to be recorded in company's register of mortgages, for it is t a description of the *instrument* creating the rtgage that is required, but a description of *property charged*.

Prior to the passing of the Companies Act 07 members or creditors (only) were entitled inspect the register (free of charge); this forded no protection to an *intending creditor*, t since 1st July 1908, in addition, *any rson* other than a member or (actual) creditor y demand an inspection thereof on payment such fee, not exceeding one shilling for each spection, as may be fixed by the regulations of company. (Companies (Consolidation) Act 08, section 101.)

In addition to this register the company is so required to keep at its registered office a py of every *instrument* creating any mortgage charge requiring registration under the Com- nies Act. (Section 93.) Such copy instru- ent is open to inspection at all reasonable times by the *members* and *creditors* (only) of the company, free of charge. (Section 101.) In the case of an issue of a series of uniform debentures a copy of one of the debentures is sufficient. (Section 93.)

The right to inspect the register of mortgages includes the right to take copies. (*Nelson v. Anglo-American Land Agency*, 1897.) (But *see title* Register of Members in this connection.)

Every register of holders of debentures of a company shall, except when closed in accordance with the articles of the company during such periods (not exceeding in the whole 30 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 such register or any part thereof on payment of 6d. for every 100 words required to be copied.

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 1s. or such less sum as may be prescribed by the company for such copy, or, where the trust deed has not been printed, on payment of 6d. for every 100 words required to be copied.

If inspection is refused, or a copy is refused or not forwarded, the company shall be liable 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 of the company who knowingly authorises or permits such refusal shall incur the like penalty. (Companies (Consolidation) Act 1908, section 102.)

In addition to the register of mortgages to be kept by the company at its registered offices, certain mortgages and charges given by a company must be registered with the Registrar of Joint Stock Companies.

Section 93 of the Companies (Consolidation) Act of 1908 provides that:—

Every mortgage or charge created after the first day of July nineteen hundred and eight by a company registered in England 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,

[*Note.*—An agreement accompanying a pledge of chattels to secure a debt is *not* a bill of sale. (*Ex parte Hubbard*, 17 Q.B.D. 690.)]

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 the Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable.

The foregoing provisions, however, are subject to the following modifications:—

(i) In the case of a charge created out of the United Kingdom comprising solely property situate outside the United Kingdom; a copy of the instrument, verified in the prescribed manner, may be substituted for the instrument itself, and an extension of the period of 21 days, as provided in the section, shall be allowed.

(ii) Where the charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument may be sent for registration notwithstanding that further proceedings may be necessary to make the charge effectual according to the law of the country in which the property is situate.

(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 the section be treated as a mortgage or charge on those book debts.

(iv) The holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.

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 section 93, and shall, on payment of the undermentioned fees, 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.

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.

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 shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omision 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.

The Registrar shall give a certificate under his hand of the registration of any mortgage or charge registered, 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.

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 a certificate of registration of any mortgage or charge so given need not be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

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, 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. (Section 93.)

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, 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 fine not exceeding fifty pounds for every day during which the default continues.

Subject as aforesaid, if any company makes default in complying with any of the requirements 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.

If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the Registrar without a copy of the certificate of registration being indorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds. (Section 99.)

Scale of Fees Payable on Registration:—

Where the amount of the charge does not exceed £200, ten shillings.

Where it exceeds £200, twenty shillings.

In the case of a series of debentures, these fees will be charged on the first debenture, and a further fee of 6d. on each subsequent debenture of the same series.

The register kept by the Registrar is open to inspection by *any person* on payment of one shilling. (Section 93.)

Thus any person may inspect the register kept by the Registrar and the company's register of mortgages; members and creditors *only* may inspect the copy of the instrument registered, kept by the company; and shareholders and registered debenture-holders are entitled to inspect the register of holders of debentures of the company.

The register kept by the Registrar will not contain any record of mortgages and charges other than those expressly included in section 93; for example, equitable mortgages by deposits of share certificates or debentures with bankers, &c., but such other mortgages or charges come under section 100, and should be recorded in the company's register.

The annual summary must specify (*inter alia*) the total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the Registrar of Companies under the Act, or which would have been required so to be registered if created after the first day of July nineteen hundred and eight. (Section 26.)

Although the time within which the mortgage or charge is to be registered with the Registrar is twenty-one days, a Judge of the High Court, on being satisfied that the omission to register a mortgage or charge within such time, 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 t application of the company or any person int ested, and on such terms and conditions as see to the Judge just and expedient, order that t time for registration be extended, or, as the ca may be, that the omission or misstatement rectified. (Section 96.)

The Registrar may, on evidence being give to his satisfaction that the debt for which a registered mortgage or charge was given h been paid or satisfied, order that a memorand of satisfaction be entered on the Register, a shall, if required, furnish the company with copy thereof. (Section 97.)

Note.—Every memorandum of satisfactio filed with the Registrar must now be verified b a statutory declaration.

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 o 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, and the Registrar shall, on payment of the prescribed fee, enter the fact on the register of mortgages and charges.

If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding £5 for every day during which the default continues. (Section 94.)

Section 45 of the Companies Clauses Consolidation Act 1845 provides:—

"A register of mortgages and bonds shall be
" kept by the secretary, and within 14 days
" after the date of any such mortgage or bond
" an entry or memorial, specifying the number
" and date of such mortgage or bond and the
" sums secured thereby, and the names of the
" parties thereto, with their proper additions,
" shall be made in such register; and such
" register may be perused at all reasonable
" times by any of the shareholders, or by any

" mortgagee or bond creditor of the company, " or by any person interested in any such " mortgage or bond, without fee or reward."

The auditor of a company should compare the register of mortgages with the accounts which he is called upon to certify.

Register of Ships.—*See titles* British Ship, Lloyd's Register, Port of Registry.

Register of Transfers.—A book wherein are recorded all transfers of shares, stock, or bonds in the capital of, or part of the loans to a company. The date, names of parties (transferor and transferee), with full address and description of the latter, the particulars of the subject-matter of transfer, and other necessary details are recorded, generally in one line and in the form of a Journal entry, so that the transferor may be debited in the Share Ledger with the amount of capital (or otherwise) which he is transferring, and the transferee may be duly credited therewith.

Registrar of Joint Stock Companies.—The officer appointed by the Board of Trade to carry out the duties and exercise the powers of Registrar as directed by the Companies (Consolidation) Act 1908.

He has also certain duties to perform in connection with limited partnerships.

The following is a summary of the documents which must be filed with the Registrar of Joint Stock Companies by (1) companies, (2) receivers, and (3) those responsible for the conduct of limited partnerships:—

(1) (*a*) Memorandum of association.

(*b*) Articles of association.

(*c*) Declaration of compliance with requisitions of Companies (Consolidation) Act 1908.

(*d*) Statement of nominal capital.

(*e*) Contracts by directors to take up their qualification shares (if any).

*(*f*) Consent of directors to act as such.

*(*g*) List of persons who have consented to be directors.

(*h*) Notice of situation of registered office.

*(*i*) Prospectus or statement in lieu of Prospectus.

*(*j*) Declaration that conditions necessary for issue of certificate to commence business have been complied with.

(*k*) Agreement for issue of shares otherwise than for cash.

(*l*) Particulars of such an agreement where same not reduced to writing.

(*m*) Return of allotments.

(*n*) Return as to mortgages and charges or debentures.

(*o*) Deed containing the charges or one of a series of debentures.

*(*p*) Report for statutory meeting.

(*q*) Copy of any extraordinary or special resolution.

(*r*) Annual list and summary.

*(*s*) Statement in the form of a Balance Sheet.

(*t*) Copy of register of directors.

(*u*) Statement as to commission paid or payable in respect of shares.

(*v*) Memorandum of satisfaction of mortgage or charge, with statutory declaration verifying same.

Note.—The particulars marked thus * are not required in the case of private companies.

(2) (*a*) Notice of appointment of receiver or manager.

(*b*) Notice by receiver or manager on ceasing to act as such.

(*c*) Receiver or manager's abstract of receipts and payments.

(3) (*a*) Application for registration, with particulars as to:—

The firm-name.

The general nature of the business.

The principal place of business.

The full names and addresses of the partners.

The term, if any, for which the partnership is entered into and the date of its commencement, or, if no definite term, the conditions of existence of the partnership.

A statement that the partnership is limited and the description of every limited partner as such.

(*b*) Notice of change in:—

The firm-name.

The general nature of the business.

The principal place of business.

The partners or the name of any partner.

The term or character of the partnership.

(*c*) Statement of capital contributed by each limited partner.

(*d*) Statement of increase of capital contributed by limited partners.

(*e*) Notice that a general partner has become a limited partner.

(*f*) Notice of assignment of a limited partner's share.

Regulations of a Company.—*See title* Articles of Association.

Re-issue of a Bill of Exchange.—Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable. (Bills of Exchange Act 1882, section 37.)

The right of re-issue is (*inter alia*) subject to the following:—

(1) If the acceptor of a bill is or becomes the holder of the bill at or after its maturity in his own right, the bill is *discharged*. (Section 61.)

(2) If a bill is payable to or to the order of a *third party*, and is paid by the drawer the drawer may enforce payment thereof against the acceptor, but he may not re-issue the bill. (Section 59.)

Re-issue of Redeemed Debentures.—*See title* Debenture, Redeemable Debentures, &c.

Relation Back.—The bankruptcy of a debtor whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason only of any act of bankruptcy anterior to the debt of the petitioning creditor. (Bankruptcy Act 1883, section 43.) The *time* is the actual time of day at which the act of bankruptcy is committed. (*Re Bumpus*, 1908, 1 K.B. 330.)

Where a receiving order is made against a judgment debtor in lieu of committal under the Debtors Act 1869, the bankruptcy of the debtor shall be deemed to have relation back to, and to commence at, *the time of the order*, or if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months next *preceding the date of the order*, and the provisions as to the avoidance of fraudulent preferences shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order. (1890 Act, section 20.)

"The title of the trustee related back to the "act of bankruptcy. What does that mean? "The result of the relation back is, that all

'*ubsequent* dealings with the debtor's property 'must be treated as if the bankruptcy had taken 'place at the moment when the act of bank- 'uptcy was committed. Then, he being a 'bankrupt. all the money which he *then had*, 'nd all the money that was owing to him, 'assed to the trustee in the bankruptcy for the 'urpose of being distributed by him amongst 'he bankrupt's creditors." (*In re Pollitt*, 93.) (But *see title* Protected Transactions.)

Re[l]ease.—After breach of a contract, the party [h]ving a right of action thereon may waive such r[i]ht, but the release must be made under seal; o[t]herwise (for want of consideration) it will not [b]e binding upon the party executing it. There is [a] exception to this rule in favour of bills of e[x]change and promissory notes.

Bill of Exchange.—When the holder of a [bill] *at or after its maturity* absolutely and u[n]conditionally renounces his rights against t[h]e acceptor, the bill is discharged. The r[e]nunciation *must be in writing*, unless the bill i[s] delivered up to the acceptor. The liabilities o[f] any party to a bill may in *like manner* be r[e]nounced by the holder *before*, *at*, *or after* its [m]aturity, but nothing in this section shall affect t[h]e rights of a holder in due course, without n[o]tice of renunciation. (Bills of Exchange Act 1[8]82, section 62.) (*See title* Discharge of a Bill o[f] Exchange.)

Executor.—An executor cannot demand a f[i]nal release from a pecuniary legatee, for in r[e]spect of a single transaction, such as the pay[m]ent of a legacy, the executor must be satisfied [w]ith a simple receipt. But where, as invariably i[s] the case, an executorship involves a series of c[o]mplicated transactions—receiving and paying, m[a]king investments and changing same—the e[x]ecutor has a right to demand a release under s[e]al from the residuary legatee.

'He has a right to be clearly discharged, and 'not to be left in a position in which he may be 'exposed to further litigation, because he fairly 'says, 'unless you give me a discharge on the 'face of it protecting me, I cannot safely hand 'over the fund.'" (Kindersley, V.C.)

Trustee (*Bankruptcy*).—When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, 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 person interested, against the release of the trustee, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

Where the release of a trustee is withheld the Court may, on application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

An order of the Board releasing the trustee 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 bankrupt, or otherwise in relation to his conduct as a trustee, 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 trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the Official Receiver shall be the trustee. (Bankruptcy Act, 1883, section 82.)

A trustee, before making application to the Board of Trade for his release, shall give notice of his intention so to do in the form prescribed to all the creditors of the debtor who have proved their debts, and to the debtor, and shall send with such notice a summary of his receipts and payments as trustee in the form prescribed. Provided that where such application is made upon the trustee ceasing to act by reason of a composition having been approved, such notice and summary shall be sent to the debtor only. (Rule 309.)

Upon every application for release by trustees in non-summary cases a stamp fee is payable at the rate of 2s. 6d. on every £100, or fraction of £100, of assets realised and brought to credit.

Where the Board of Trade have granted to a trustee his release, a notice of the order granting such release shall be gazetted. The trustee shall be required to provide the requisite stamp fee (5s.), which may be charged to the estate. (Rule 310.)

The release of a trustee shall not take effect unless and until he has delivered over to the Official Receiver all the books, papers, documents, and accounts which by the Bankruptcy Rules 1886 he is required to deliver over on his release. (Rule 310*a*.)

The following are the actual documents which it is necessary for the trustee to forward to the Board of Trade on making application for his release in addition to those required for the final audit:—

(1) Formal application for release.

(2) Affidavit verifying postage of notices of intention to apply for release (*see* above), with a copy of the notice as an exhibit. A 2s. bankruptcy stamp should be attached to the affidavit.

(3) Certificate by trustee and Committee of Inspection (if any) as to realisation of all reasonably available assets. (*Note.*—If trustee certifies in his formal application that all assets have been realised, this certificate will not be required.)

(4) Form of notice of release for insertion in *Gazette*. A 5s. bankruptcy stamp to be attached.

(5) Order on the Bankruptcy Estates Account to credit to the Board of Trade 2s. 6d. per £100 on the assets realised and brought to credit.

(6) Statement of dividend (or dividends) declared, distinguishing between those claimed and those unclaimed.

(7) Cheques for unclaimed dividends (if any).

(8) Certificate as to disposal of onerous pr perty on form Tr. 14, together with offi copies of all disclaimers executed by t trustee.

Liquidator.—When the liquidator of a c pany, which is being wound up by the Court, h realised all the property of the company, or much thereof as can, in his opinion, be realise without needlessly protracting the liquidatio and has distributed a final dividend, if any, to t creditors, and adjusted the rights of the contrib tories among themselves, and made a fin return, if any, to the contributories, or h resigned, or has been removed from his offic Board of Trade shall, on his application, cause report on his accounts to be prepared, and, o his complying with all the requirements of t Board, shall take into consideration the repo and any objection which may be urged by a creditor, or contributory, or person interest against the release of the liquidator, and sha either grant or withhold the release accordingl subject, nevertheless, to an appeal to the Hig Court. (Companies (Consolidation) Act 190 section 157.)

A liquidator before making application to t Board of Trade for his release shall give noti of his intention so to do to all the creditors wh have proved their debts, and to all the contrib tories, and shall send with the notice a summ of his receipts and payments as liquidato (Winding-up Rules 1909, Rule 197.)

Where the release of a liquidator is withhe the Court may, on the application of any credit or contributory, or person interested, make su order as it thinks just, charging the liquidat with the consequences of any act or default whi he may have done or made contrary to his dut

An order of the Board releasing the liquidat shall discharge him from all liability in respe of any act done or default made by him in t administration of the affairs of the company, otherwise in relation to his conduct as liquidato but any such order may be revoked on proof th it was obtained by fraud or by suppression concealment of any material fact.

Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office. (Section 157.)

Where 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 (5s.), which he may charge against the company's assets. (Rule 197.)

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. (Rule 175.)

The documents which it is necessary for the liquidator to send to the Board of Trade in connection with his application for release in addition to those required for the final audit of his accounts, are very similar to those which a trustee in bankruptcy has to send on making a like application (*see* above). The only material differences are (1) that it is not necessary for the liquidator to send an order to credit the Board of Trade with 2s. 6d. per £100 on the assets realised and brought to credit, for there is no provision for the payment of such a fee in the regulations governing company liquidation; and (2) that the provision as to the certificate as to onerous property does not apply.

Limited Partnership.—The provisions of the Companies (Consolidation) Act 1908 as to winding up of companies by the Court (and therefore presumably the provisions as to release of liquidators) apply to limited partnerships wound up by the Court. (Limited Partnerships Act 1907, section 6.)

Remainderman.—A person entitled to an expectant estate.

Remittance.—Money or its equivalent sent by one person to another, either in specie, or by bill of exchange, cheque, postal order, or otherwise.

Remote Parties.—Parties to a bill of exchange who are not in direct relation to each other. (*See title* Immediate Parties.)

Remuneration.—*See titles* Agent, Arbitrator, Auditor, Deed of Arrangement, Director, Executor, Liquidator, Public Trustee, Receiver, Special Manager, Trustee (in Bankruptcy), Trusts.

Renewal of a Bill.—The giving of a bill in renewal of a former bill, operating as an extension of time for payment of the original.

If the renewal bill be paid in due course or otherwise discharged the original bill is likewise discharged, but if the renewal bill be dishonoured the liabilities of the parties to the *original* bill revive, and they may be sued thereon, provided no *other* circumstance has arisen effecting their discharge. But if a bill be renewed without the assent of any party liable thereon as a surety, he will be discharged.

Rent.—A profit issuing out of lands and tenements, either as compensation for possession, or merely as an acknowledgment of tenure to the lord. Rent is, by the Apportionment Act 1870, to be considered ordinarily as accruing from day to day, and to be apportioned in respect of time accordingly. But where rent is by agreement payable in advance, the Act does not apply. Such rents are not sums accruing, but are deemed to have already accrued due on the first day of each period. (*Ellis v. Rowbotham*, C.A. 1900.)

Rente.—The annual interest payable upon the National Debts of France, Italy, Austria, and certain other Governments. There is a difference in point of form between our British Consols and these foreign Rentes. The National Debt of this country is expressed in the amount of the *principal* sum which is payable to the holder of Consols, whilst the Continental mode does not involve the repayment of any principal sum, but rather the annual payment in perpetuity of a stated amount of Rente.

The market price of Rente fluctuates, and is expressed in percentage values just the same as (say) British Consols.

Rent Roll.—An account of rents and income. The auditor of the accounts of a landed estate should examine the rent roll and compare same with the Terrier (*see that title*), and so satisfy himself that the whole of the income from the properties has been duly accounted for.

The auditor should peruse every lease, and compare the various rents agreed upon with the rent roll, noting also the terms of the respective leases and the dates of expiration where the terms are fixed.

In the case of a periodical audit, all leases granted since the last audit must be similarly inspected, but it is sufficient to refer to the previous audited rent rolls for particulars as to leases previously in force.

The arrears brought forward from the last rent roll should be carefully compared therewith, whilst reductions and allowances should be supported by proper authority. "Voids" and "rent free" premises should be scheduled by the agent, and full particulars or reasons given therefor.

Renunciation.—The act of giving up a right. A person entitled to an allotment of shares in a company may renounce such right, and request the company to allot the shares or part of them to some other person named by him. The renunciation must be in writing, signed by the person renouncing the shares and also by the nominee, who must agree to accept the shares and pay all calls which may be due thereon. This procedure (*inter alia*) effects a saving of the *ad valorem* stamp of 10s. per cent., which would be payable on a transfer of the shares, but the letter of renunciation must bear a 1d. stamp if the nominal amount to which the letter of renunciation relates is less than £5, and a 6d. stamp if the nominal amount is £5 or upwards. An adhesive Postage and Inland Revenue stamp may be used. A separate duty is chargeable in respect of letters of allotment and letters of renunciation, even though they be contained in the same document. (Finance Act 1899, section 9.)

A person named executor of a will m "renounce" probate before he has perform any executorial act or before he has otherwi shown that he has elected to act, but not aft wards. Having renounced, he may, howev retract his renunciation, and be permitted take out probate. (*Re Stiles*, 1897.)

Reorganisation of Capital.—*See title* Memorandu of Association.

Repairs and Renewals.—The expenditure in resp of the repairing and replacing (or renewing) t buildings, plant, machinery, utensils, &c., of concern may either be specifically charg against the Revenue Account for the particul period in which the expenditure is incurred, in *exceptional* cases, the expenditure, if heav may be extended over two or three year charging a proportion (only) for each of su years to Revenue Account, and treating as asset the balance remaining from time to time.

If the accounts are those of a joint stock com pany, the regulations should be examined i order to ascertain that there is no prohibitio against the latter course, though as a rule th regulations expressly provide for the extensio of the expenditure in the manner indicated.

In some concerns it is usual to charge a fixe sum periodically against revenue, carrying sam to the credit of a Repairs and Renewals Account As and when any expenditure is incurred unde this head it is charged against the "fund" s created, and the balance is brought into th Balance Sheet.

The periodical charge should be such a sum a will safely provide against contingencies, so tha at all times a credit balance exists in the accoun after charging all expenditure to date. Unde these circumstances the latter system has tw good features, viz.:—(1) It obviates the neces sity of extending any abnormal expenditure ove periods subsequent to that in which it wa incurred, and (2) it serves to equalise th periodical charge to revenue in this respect.

Repairs and renewals of plant, machinery, &c. must be carefully distinguished from additions thereto.

To repair is to restore as nearly as possible an existing asset; to renew is to discard an existing asset and replace it by another, sometimes identical with, but oftentimes an improvement upon, the asset discarded. As a rule the whole cost of repairs and renewals is chargeable against the revenue, either immediately or in instalments periodically, but upon occasions this may not be a strictly correct proceeding, the cost of certain renewals or replacements being capital expenditure in the special circumstances.

Notwithstanding constant repairs, the cost of which is borne by revenue, an inevitable depreciation takes place, and in many concerns due provision is made for the same, so that the book value of a given machine might, after some years, stand in the accounts for a little more than scrap value. When that machine is ultimately discarded, and a new machine takes its place (whether identical or improved), a renewal or replacement has been effected, but it must be noted that if revenue bears the whole cost of the renewal, capital derives a benefit, at the expense of revenue, of a new machine in lieu of an old one, if such new machine be allowed to stand in the accounts at the "depreciated" value of the discarded machine less the proceeds of its sale, if sold. In such circumstances (1) the ultimate book value of the old machine at the time of renewal should be charged against revenue, (2) the new machine should be treated as an addition, and (3) the cost thereof should be charged to Capital Account.

Income Tax.—In estimating the profits from trade for the assessment of income-tax under schedule D, deductions are allowed for repairs of premises occupied for the purposes of the trade or manufacture, and for supply or repairs of implements, utensils, or articles employed to an amount not exceeding the sum usually expended for such purposes, according to the average of the three preceding years.

In the case of an assessment under Schedule A upon any house or building (except a farmhouse or building included with lands in assessment) the amount of the assessment shall for the purposes of collection be *reduced*:—

(1) Where the owner is occupier or assessable as landlord, or where a tenant is occupier and the landlord has undertaken to bear the cost of repairs—by a sum equal to *one-sixth* part of that amount; and

(2) Where a tenant is occupier and has undertaken to bear the cost of repairs—by such a sum not exceeding *one-sixth* part of that amount as may be necessary to reduce it to the amount of rent payable by him.

As between landlord and tenant, the landlord is bound under a penalty of £50 to allow out of the next payment of rent, after the date of the collector's receipt, the amount of duty paid under Schedule A, provided such amount *does not exceed* the current rate of tax in the £ on the actual rent payable for the year.

Where the gross assessment exceeds the actual rent payable (under case (1) above) this rule deprives the landlord of the benefit of part of the *one-sixth* allowance in respect of repairs.

But should the gross assessment be more than 20 per cent. higher than the actual rent payable, then the landlord loses the whole of the one-sixth allowance and the tenant actually bears a proportion of the property tax.

In addition to the foregoing allowance of one-sixth, an owner *may* under certain circumstances obtain a further allowance. (*See title* Income Tax; heading Schedule A.)

Tenant-for-Life and Remainderman.—Where an estate is vested in trustees in trust for one person for life with remainder over to others, the trustees cannot (unless there are special clauses to the contrary) interfere with the tenant-for-life who neglects to repair. But if the repairs are necessary and are not effected, it is the duty of the trustees to apply to the Court for directions as to repairs and for an order as to how the expenses of such repairs are to be borne. (*See title* Executorship Accounts.)

Replevin.—A personal action to recover the possession of goods wrongfully taken away.

Representation.—*See titles* Fraud, Marine Insurance, Prospectus, &c.

Representation of Credit.—" No action shall be " brought whereby to charge any person upon or " by reason of any representation or assurance " made or given concerning or relating to the " character, conduct, credit, ability, trade or " dealing of any other person to the intent or " purpose that such other person may obtain " *credit, money or goods upon* (*sic*) unless such " representation or assurance be made in writing " signed by the party to be charged therewith." (Lord Tenterden's Act, 9 Geo. IV, c. 14, section 6.)

The words " credit, money or goods upon " should perhaps read " money or goods upon credit," or the word " upon " should read " thereupon."

For an action to lie upon a false representation of credit,

(1) *The representation must:*—
  (*a*) Be in writing; and
  (*b*) Be signed by the party to be charged —the signature of his agent is insufficient. (*Swift v. Jewsbury*, 1874.)

(2) *The party sought to be charged must:*—
  (*a*) Have known the representation to have been false; and
  (*b*) Have made it with the intention of inducing the other party to act upon it.

(3) *The plaintiff must:*—
  (*a*) Have acted upon the representation; and
  (*b*) Have suffered damage thereby.

Reputed Ownership.—The doctrine of reputed ownership dates from 1623, a statute of 21 Jac. I, c. 19, enacting that goods or chattels in the possession, order *and* disposition of a bankrupt, with the consent and permission of the *true* owner, to the effect that the bankrupt was the *reputed* owner thereof, passed to the " commissioners " for the benefit of the creditors seeking relief as fully as any other part of the estate of the bankrupt.

The above remained in force until 1825, a statute of 6 George IV re-enacting the provisions in a slightly altered form, there being a proviso to protect duly registered assignments of ships or shares therein, whilst the words " possession, order *and* disposition " were replaced by " possession, order *or* disposition."

Successive Bankruptcy Acts have retained these provisions, and the Act of 1883, section 44, provides that the property of the bankrupt divisible amongst his creditors shall (*inter alia*) comprise:—

" All goods (1) being at the commencement " of the bankruptcy (2) in the possession, order " or disposition (3) of the bankrupt in his trade " or business (4) with the consent and permis- " sion of the true owner (5) under such " circumstances that he is the reputed owner " thereof. Provided that things in action " (6) other than debts due or growing due to " the bankrupt in the course of his trade or " business (7) shall not be deemed goods within " the meaning of this section."

The various parts of the clause will be dealt with *seriatim*:—

(1) The term " goods " includes all chattels personal, excluding, therefore, leaseholds (which are chattels real) and fixtures attached to the freehold. (*See* Note 4.)

(2) The bankruptcy is deemed to commence at the date of the earliest act of bankruptcy proved against the bankrupt within three months preceding the presentation of the petition, and goods coming into the possession of the bankrupt after such act of bankruptcy have been held not to come within the section; so also goods in the possession of the bankrupt at the date of such act will not pass to the trustee if they are removed before the receiving order is made, provided the owner was unaware of the act of bankruptcy having been committed, and otherwise acted *bonâ fide*. (*See title* Relation Back.)

(3) Possession is not necessarily limited to actual or physical possession.

The goods must be in the *sole* possession and reputed ownership of the bankrupt, therefore goods in the *joint* possession and reputed ownership of the bankrupt and another person (not a bankrupt) are not within the section.

A debt is considered as in the order and disposition of the person who can demand payment of it when due, or direct payment to any other person. (*See* Note 7.)

Although goods are in the actual possession of the bankrupt they may not be within the section, for the Courts will take judicial notice of a custom (if sufficiently proved) so as to exclude the reputation of ownership, and from time to time custom has been proved in a considerable number of cases pertaining to certain trades. But the custom must be a notorious one, so that it is known to practically all who do business with persons dealing in such articles, and who are called upon to consider the question of giving credit—for the object of the section is to protect creditors against the consequences of that false credit which a person may acquire, by being permitted to have the possession, order or disposition of property as though his own which does not really belong to him.

(4) These words replaced " of the bankrupt being a *trader* " which appeared in the Act of 1869. Private goods, as distinct from trade goods, no longer pass to the trustee under the section.

(5) This is essential to bring the goods within the section, and where the true owner has taken every possible course (though unsuccessfully) to obtain possession of the goods they are not deemed to be in the possession of the bankrupt with the *consent* of the true owner.

This has been held to mean that the true owner of the goods must have consented to a state of things from which he must have known, if he had considered the matter, that the inference of ownership by the bankrupt *must* arise. (*See Re William Watson & Co.* (C.A., July 1904), and the cases there quoted.)

As " consent " of the true owner is required there must be an owner capable of consenting, therefore the property of infants is not within the section, nor will property pass to the trustee which, although in the possession of the bankrupt, is so because of a fraud upon the true owner, for it cannot be said that he has given his consent. There must be a true owner distinct from the reputed owner.

Goods in the possession of the bankrupt at the *commencement* of the bankruptcy which were obtained by fraud and recovered by force before the date of the receiving order were held not to pass to the trustee in bankruptcy. (*In re Eastgate*, 1905.)

(6) This proviso excludes shares in railway or other companies, policies of insurance, debentures, bills of exchange, promissory notes and other negotiable securities; but bills and notes may be held as constituting debts growing due in the trade or business, in which event they would be within the section, and the title thereto would pass to the trustee.

(7) Although trade debts are within the section they may be excluded by an absolute assignment, which is, of course, not completed until the various debtors have been duly notified of the assignee's right. The debts are not then in the order or disposition of the assignor, for he cannot demand payment when the debts become due, whilst the assignee can.

In *Tailby v. Official Receiver* (1888) it was held by the House of Lords that even *future* book debts might be assigned so long as they, on coming into existence, answered the description in the assignment and were capable of being identified as the debts, or some of the debts, intended to be assigned.

" Notice to the debtors is the only " possession an assignee can obtain whilst " the debts remain unpaid, and is " sufficient to take them out of the order " and disposition of the assignor." (*Ibid.*)

The doctrine of reputed ownership does not extend to factors who have possession of other men's goods merely as trustees. The Factors

Act 1889 provides that the owner of goods may recover same from his agent (or his trustee in bankruptcy) at any time before the sale or pledge thereof.

The joint and separate estates of partners who have been adjudged bankrupt are separately administered (*see title* Joint and Separate Estates), but where the separate property of one partner was in the reputed ownership of the firm, it was dealt with as part of the joint estate. (*Ex parte Hare*, 1835.)

Under the Bills of Sale Act 1878, section 20, chattels comprised in a duly registered bill of sale were not deemed as being in the possession, order, or disposition of the grantor of the bill, but this section is repealed by the Amending Act of 1882. It has been held, however, that the repeal is limited to bills of sale given as security for the payment of money, so that chattels comprised in an *absolute* bill of sale are still within the excluding section, and in the event of the grantor's bankruptcy would *not* pass to the trustee. (*See title* Hypothecation.)

With regard to a bill of sale given as security for the payment of money, although the chattels comprised are (*inter alia*) liable to seizure by the grantee in the event of the grantor's bankruptcy, yet such right of seizure is only available if the goods are not within the order and disposition of the bankrupt, *e.g.*, goods which are not in the bankrupt's possession by way of his trade or business.

The Merchant Shipping Act 1894 provides that a registered mortgage of a ship, or share therein, takes the subject-matter out of the order and disposition of the mortgagor, and in the event of his bankruptcy, such ship, or share, will be subject to the preferred rights of the mortgagee, provided the mortgage was duly registered before the *commencement* of the bankruptcy.

The Law of Distress Amendment Act 1908 does *not* apply to goods coming within the order or disposition clause.

The true owner of goods which have passed to a trustee in bankruptcy under the " order or disposition " clause may prove against the estate of the bankrupt for the damage he has sustained by reason of his goods not having been returned to him in accordance with the contract of bailment. (*In re Button; ex parte Haviside*, C.A. 1907.)

Company Liquidation.—Although, by section 207 of the Companies (Consolidation) Act 1908 the principles of bankruptcy law with regard to the respective rights of secured and unsecured creditors, debts provable, and the valuation of annuities and future and contingent liabilities, have been made applicable to the winding-up of insolvent companies, such assimilation does not extend to the doctrine of reputed ownership, which applies to bankruptcy procedure only.

Requisitionist.—One who makes a requisition, *e.g.*, a member of a public company who desires the directors to summon a general meeting for some stated purpose. (*See title* General Meetings.)

Requisition Order.—*See title* Stores Account.

Requisitions of Title.—Requests and inquiries respecting the title of lands, &c., made by the solicitor of a proposed purchaser, which the vendor must satisfy and reply to.

Re-Sale.—Section 48 of the Sale of Goods Act 1893 provides (*inter alia*) :—Where the goods (which are the subject of a contract of sale) are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not, within a reasonable time, pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his *breach* of contract.

Where the seller *expressly reserves* a right of re-sale, in case the buyer should make default, and on the buyer making default, re-sells the goods, the original contract of sale is thereby *rescinded*, but without prejudice to any claim the seller may have for damages.

The Factors Act 1889 provides :—

Section 8.—Where a person having sold goods, continues, or is, in possession of the goods, or of

e documents of title to the goods, the delivery transfer by that person, or by a mercantile ent acting for him, of the goods or documents title under any sale, pledge, or other disposi- n thereof, *or under any agreement for sale, dge, or other disposition thereof*, to any rson receiving the same in good faith and thout notice of the previous sale, shall have e same effect as if the person making the livery or transfer were expressly authorised by e owner of the goods to make the same.

Section 9.—Where a person, having bought or reed to buy goods, obtains, with the consent the seller, possession of the goods or the cuments of title to the goods, the delivery or ansfer, by that person or by a mercantile agent ting for him, of the goods or documents of le, under any sale, pledge, or other disposition reof, *or under any agreement for sale, pledge, other disposition thereof*, to any person ceiving the same in good faith and without tice of any lien or other right of the original ller in respect of the goods, shall have the me effect as if the person making the delivery transfer were a mercantile agent in possession the goods or documents of title with the nsent of the owner.

With the exception of the words in italics the ove provisions are also contained in section 25 the Sale of Goods Act 1893, the term "mer- ntile agent" (*see that title*) having the same aning in both Acts.

Re lssion.—The act of rendering void. (*See lles* Allotment, Prospectus [Rescission].)

Re rve Liability.—A limited company may, by ecial resolution, determine that any portion of share capital which has not been already lled up shall not be capable of being called up, cept in the event and for the purpose of the mpany being wound up, and thereupon that rtion of its share capital shall not be capable of ng called up, except in the event and for the rposes aforesaid. (Companies (Consolidation) t 1908, section 59.) A resolution in exercise of s power amounts to an alteration of the memo- dum of association, and it would appear that the alteration cannot be recalled by a subsequent special resolution.

It was held by the Court of Appeal that capital reserved in pursuance of the corresponding section of the Act of 1879 could not be charged by way of security to debenture-holders, even though a company was empowered by its memorandum of association "to borrow money and "issue debentures charged upon the property and "rights of the company both present and future, "including the uncalled capital." In the course of his judgment, Lindley, M.R., said "there "was nothing in the Companies Acts which gave "a company power to dispose of assets which "in the nature of things could not come into "existence until the company was wound up."

It was further stated that the true intent of the section was to provide means whereby a portion of the capital might be preserved for the *general* purposes of winding up, and that the payment of a mortgagee or prior assignee out of such reserved capital was not such a use thereof as was contemplated by the Legislature. (*Mayfair Co.*, 1898.)

Reserves and Reserve Funds.—The multiplicity of terms in use in connection with this subject is unfortunate, and the indefinite character of the nomenclature is confusing and misleading. Amongst the terms used are reserve, reserve account, reserve fund, margin, surplus, and rest. As a consequence, elaborate distinctions have been drawn by the respective adherents purporting to show the meaning of the various expressions in an endeavour to justify their continued employment. Some contend that profits earned but withheld from distribution so that they may be employed in the ordinary way of business of the concern which earned them are capitalised profits and not a reserve; and, further, that the term reserve *fund* should only be used when the sum in question is specifically invested in "outside securities." Others have expressed the opinion that the word reserve is rightly applicable to any of the general resources of a concern, even including a part of the paid-up capital, so long as such resources are in cash or readily realisable securities; but it is more

generally contended that a reserve must necessarily have its origin in profit of some form or other, whether from carrying on the business of the concern in question, from premiums upon the issue of shares or loan capital, or otherwise. It is certainly a fact that in the majority of cases a reserve has its origin in profits, but whether this necessarily implies that a concern which claims to possess a reserve must possess a sum of undistributed profits, or the converse, viz., that possession of undistributed profits is of itself evidence of the existence of a reserve, is a matter of opinion upon which there are different views.

A reserve has been long recognised as the amount by which the assets of a concern exceed the sum of its paid-up capital and liabilities. But such a definition might be more accurately applied to the *surplus* of a concern, leaving the question as to whether such surplus is or is not a real reserve to be decided by an examination of the assets involved. A concern may have a genuine surplus of assets as defined above, and yet be financially embarrassed as the result of an inadequate amount of paid-up capital. On the other hand, the Court has sanctioned a scheme for the reduction of the paid-up capital of a company on the ground that the portion of the capital to be reduced was unrepresented by available assets, although the scheme involved the retention (in whole or part) of a certain Reserve Fund as an element in the finances of the company when reconstituted.

For the purpose of ascertaining the extent of a surplus the assets may be taken at the *bonâ fide* value of a company's property as a going concern. The liabilities are taken upon that basis, and it is only reasonable that the assets should be similarly treated. Whilst creditors are subject to the ordinary " trade usages " of a going concern, and shareholders are not in a position to demand the return of their capital, the assets may fairly be valued at their worth to the particular concern under those circumstances.

Where, from the nature of the business carried on, a concern is subject to the liability of a run upon its funds, as in the case of a banking company, so that the assets might be subjected to sale under forced circumstances, an otherwise genuine surplus might certainly be sacrificed, yet it will not be seriously contended that the principles involved in ascertaining the *amount* of a surplus are unsound upon that account. Such special circumstances must be dealt with when considering the *form* in which the surplus should exist in order to constitute a real reserve. A *surplus* may, therefore, be defined as the amount by which the assets of a concern, taken at such values as are consistent with the particular circumstances and upon the basis of a going concern, exceed the sum of its paid-up capital and liabilities.

So long as the excess of assets over liabilities referred to in the definition is maintained, so long must a surplus be deemed to exist; but the question of its degree of utility must not be confused with the ascertainment of its existence and extent; for while the latter may to a great extent be governed by a general definition, such as that already given, the question as to the *form* in which the surplus should exist, in order that it may attain the highest degree of utility to the particular concern, or, irrespective of its immediate utility, that it may *constitute a real reserve* in the event of contingencies, is one entirely dependent upon the circumstances of each case.

The term reserve appears in the form of Balance Sheet annexed to (the original) Table A of the Companies Act 1862, and is there described as " the amount set aside from profits to meet contingencies." As a definition, however, this narration is incomplete, for it does not deal with the question of what form the reserve should take once it has been created, although the item " investments " which appears on the assets side of the specimen form is suggestive.

The words " set aside from profits " are, however, important, for the fundamental distinction between a real surplus and a mere provision against some estimated loss lies in the fact that a real surplus is something set aside *out of profits*, whilst a provision against some estimated loss is the outcome of a charge which is in fact really necessary before the amount

o true profit can be ascertained. Credit b ances in accounts which have been created b such charges often bear a title of which t word " reserve " forms a part; but they r lly represent a sum which is deemed neces- s y to counteract an over-valuation or probable o r-valuation of some asset or assets.

The following typical instances of what con- stute a real or fictitious surplus respectively will b dealt with simultaneously, so that what is r l and what is not so may be more clearly st ed:—

(*a*) " Reserves " against depreciation of leases, machinery, and other wasting assets.

These do not constitute a surplus so far as depreciation has actually taken place, and are " reserves " against future depreciation to the extent only of any provision made in excess of the decreased value. The provision out of profits against actual depreciation is merely the substitution of " fresh assets " (which might otherwise have been distributed) for that portion of the value of original assets which is deemed to be non-existent by reason of depreciation, wear and tear, obsolescence, lapse of time, or otherwise. Clearly such an act of *substitution* cannot effect an addition or result in a surplus.

The amount representing actual depreciation should not be placed as a separate item upon the liabilities side of the Balance Sheet, but should be deducted from the asset or group of assets to which it refers, thus exhibiting the reduced value of the same, for it is the recognition of such reduced value which prompts the provision in respect of it.

The improper practice of treating such provision as a separate item on the liabilities side of the Balance Sheet has not a little to do with such items being incorrectly described as " reserve."

(*b*) " Reserve " or provision against loss from bad debts.

This is not a surplus to the extent of any known bad debts appearing among the assets. In fact, even where no particular debt can be classed as bad, or considered doubtful, a certain percentage of the total outstanding debts (dependent upon the circumstances of each case) must be regarded under all ordinary circumstances as a necessary provision against loss from bad debts. (*See title* Bad and Doubtful Debts.)

(*c*) Sinking Fund to redeem debentures. Whilst any portion of the expenses of issue is treated as an asset in the Balance Sheet, the sums periodically set aside out of profits to redeem the debentures do not constitute a real surplus to the extent of such portion of the cost of issue. The real extent of such surplus is further affected by the contingent liability to pay a greater price on redemption than was obtained on the issue. (*See title* Redeemable Debentures.)

It cannot be too clearly stated that the principle involved in the foregoing examples (*a*), (*b*), and (*c*) is not applicable only to items which can be earmarked as having some relation to one another. For instance, it has been stated that a provision against bad debts is not a real surplus to the extent of any known bad debts appearing as assets, but assuming there is an excess provision against loss from bad debts, such excess would be affected by the depreciation of any other asset for which provision had not been made, the requirements of the definition of a surplus being the maintenance of the *excess* of the assets (taken as a whole) over the capital and liabilities.

(*d*) Funds of a Life Assurance Company. In " level premium " companies, as distinct from " assessment " companies, the equalisation of the premiums paid by the assured necessitates a payment by a policyholder in earlier years in excess of actual requirements, and in later years the

reverse is the case, for the actual cost of insuring against death for each year gradually increases with the age of the "life." Thus a considerable proportion of the apparent surplus is required to provide against the "short premiums" in the future. Moreover, the amount actually in "reserve" in the commercial sense is not attempted to be shown in the ordinary Balance Sheet of a life assurance company, this being shown in the Valuation Balance Sheet. (*See titles* Assurance Companies Act 1909, Life Assurance Companies.)

(*e*) Reserve of a Fire Insurance Company. This is a real surplus to the extent only that it exceeds all premiums paid in advance, and a proportion, say one-third, of the annual premiums as a provision against unexpired risks. The same applies to a Marine Insurance Company. (*See title* Unexpired Risks.)

The *distinction* between a surplus and a reserve may now be dealt with.

What is a Reserve? What is a Reserve Fund?

It must be emphasised that these questions are not (1) ought a company or other concern to withhold a certain proportion of its profits or surplus instead of distributing the whole in dividends or otherwise; and (2) ought a company, having so reserved profits, to utilise them in its business or invest them in "outside" securities?

These latter questions are purely administrative matters for the management to consider.

It might be deemed improper for a banking company to purchase real estate with its surplus funds, thereby diminishing its more easily realisable securities. On the other hand, it would be considered bad finance for an industrial concern to invest a large sum in Consols at the low rate of interest resulting therefrom, when that money could be more advantageously employed in purchasing goods for the business for cash instead of on credit terms, because the savings from discounts and better prices would considerably exceed the interest on the Consols. But these considerations do not affect the questions "What is a reserve"? and "What is a reserve fund"? Whether a given concern should or should not have a reserve or a reserve fund is a matter for managers, directors, or shareholders to decide according to circumstances. But whether all concerns should describe as a reserve or reserve fund their undivided profits irrespective of the state in which they exist is a matter not only for directors and shareholders, but for creditors—in fact, for the general public.

The mere withholding of distributable profits from shareholders does not of itself create a reserve asset; the assets so withheld, or their equivalent, must already exist in, or else be subsequently placed in, a state of preparedness in order to constitute a true reserve fund.

The reservation of profits which might legally be distributable is one act; the creation of a reserve—an asset held as a hostage for contingencies—is distinctly another.

In the majority of cases the "setting aside" will necessitate a change in the nature of some asset or assets. The change itself has nothing to do with bookkeeping. The bookkeeping record of the *decision to reserve* is admittedly effected by a transfer from Profit and Loss Account, but a reserve cannot be created by Journal entry. This credit balance, or mere arithmetical index to certain assets, is not a reserve. Something varying with circumstances quite distinct from bookkeeping must be carried out in connection with the assets in order to create the reserve.

Assuming, for the sake of clearness, a company without liabilities, excepting to the shareholders, we have in its Balance Sheet assets which constitute (1) the capital as legally defined, and (2) the undivided profits, whether the latter in whole or part be termed reserve, surplus, or balance of Profit and Loss Account.

The classification of the assets, whereby their various *characters* are distinguished, is effected on the "asset side" of the Balance Sheet.

The origin of the assets, so far as regards amount, *i.e.*, whether derived from paid-up

l or from profits earned but undistributed, ed on the other side.

R arding a Reserve, Reserve Fund, Surplus, n, or Rest as an asset, and regarding the balance bearing the particular name merely record of its dimensions, there may be *alia* :—

(A reserve against contingencies.

(A reserve for the purpose of equalising dividends.

(A reserve for the purpose of repairing and maintaining the property of the concern.

(A reserve against the *future* depreciation of capital assets, and

(A reserve for the purpose of providing at some future date working capital in excess of the legal capital upon which dividends are payable.

first three classes above are stated in (the al) Table A annexed to the Companies Act and they were in Table B of the previous They obviously necessitate the maintenance ets representing the reserves in such a form te that they can be applied to those es as and when required.

Gas Works Clauses Act 1847, and the Works Clauses Act of the same year, both sly provide for the investment of the profits ess of the prescribed rate of dividend, for rpose of equalising dividends and meeting ossible extraordinary claims.

use 99 of Table A, annexed to the anies (Consolidation) Act 1908, confers on the directors of a company adopting the to set aside out of the profits of the com- such sums as they may think proper as a e, which sums may, pending their applica- wards the equalisation of dividends or the g of contingencies, be either employed in usiness or separately invested.

e obviously a reserve is taken to be an capable of being invested or employed in usiness pending application in other direc- If it be invested " outside " it is in excess of requirements—if employed within it must be regarded as an " extra "—not permanently employed, otherwise it will not be capable of withdrawal to meet those cases to provide against which the reserve was actually made.

Numerous instances have occurred where companies have possessed so-called reserves (*i.e.*, credit balances bearing that name), but they have none the less become embarrassed, although a really available reserve (*i.e.*, asset) of half the amount of the nominal credit balance bearing that name would have sufficed to carry the concern through its financial difficulties.

Suppose a company raises capital to the extent of £50,000, and borrows £20,000 on debentures; £78,000 is expended in purchasing and developing a given property. The extra money (£8,000) required is raised by means of a " floating " overdraft at the bank. A profit of £1,500 is made during the first year the property has been working. This is not distributed in dividend, because the bank declines to lend for that purpose; yet a Balance Sheet will duly appear as under:—

Capital and Liabilities.		*Property and Assets.*	
Capital	£50,000	Property — at Cost plus Expenses of Development ..	£77,500
Debentures ..	20,000	Office Fittings, &c. ..	500
Bank Overdraft ..	6,500		
Reserve Fund (!) ..	1,500		
	£78,000		£78,000

Assuming the property to be fully worth the value stated, there is certainly a surplus of assets representing undivided profits, which has been applied in the reduction of the indebtedness to the bank, but there is no reserve asset. The concern could not pay a debt of £10 except upon the sufferance of the bank authorities. The company has no reserve fund at all, and has a surplus of £1,500, only upon the basis of the valuation of properties at cost.

The difficulties in connection with a proper comprehension of this subject appear to result mainly from the confusion of distinct issues.

As already stated, the valuation of the assets of a company for the purpose of a Balance Sheet may, to some extent, be the subject matter

of opinion, but once this has been agreed upon the question as to whether a surplus exists or not may be materially governed by a general definition; but the question as to the form in which a surplus should exist in order that it may afford the highest degree of utility—the question as to whether an actual surplus should be a surplus *simpliciter* or a surplus which allows of the maintenance of a reserve asset—must necessarily be dependent upon and vary with the circumstances of each case.

A given concern may have a very large surplus of assets over its paid-up capital and liabilities, and yet have none of that surplus in such a form that it can be relied upon as a reserve asset to meet a contingency. This arises from the fact that the surplus either upon its creation had become, or subsequently became, merged in the general assets of the concern—possibly "locked" assets. The value of these assets, taking the Balance Sheet on the basis of a going concern, might be a reasonable one, and the surplus as a consequence might fairly be deemed to exist, but there is no reserve, no asset to resort to in the event of a contingency.

On the other hand, a company may have a reserve asset in so far as it exists in the form of cash or is invested in easily realisable securities, and yet it has in reality no surplus, because the reserve asset forms part of the original capital, or, having arisen from a surplus, such surplus has since ceased to exist because of a subsequent shrinkage in the value of other assets of the company, whereby the value of its total assets has fallen short of the liabilities and paid-up capital.

A concern may have a reserve asset without possessing a surplus, and it may have a surplus but no reserve; and the mere circumstances that reserves generally originate in undivided profits and disappear because of subsequent shrinkages are not inconsistent with this proposition.

If the assets which represent these undivided profits are absolutely necessary under normal conditions, and become merged immediately in the trading assets of the concern, they assuredly constitute a surplus, but they cannot be relied upon as a reserve. On the other hand, surplus may constitute a reserve, because (1) the form in which it exists, (2) of the natu the contingencies which may arise, and (3) surplus is in *excess of normal requirement* for these reasons under certain circumsta there may be a reserve asset, although the cern in question may not possess a surplu assets over its paid-up capital and liabilities

As already mentioned, the Court has ad this latter view and sanctioned a scheme fo reduction of the paid-up capital of a compan the ground that the portion of the capital reduced was unrepresented by available a although the scheme involved the retentio whole or part of a certain reserve fund a element in the finances of the company reconstituted.

A reserve fund will be affected by the fol ing events or circumstances:—

(1) A shrinkage in the value of the asset w constitutes the fund.

(2) The conversion of the asset to an propriate state, having regard to the natur the contingencies likely to arise.

(3) The variation of the nature of such tingencies, so that assets previously approp as a reserve become inappropriate.

(4) Permanent utilisation (in the ord course of business) of the assets previously stituting the reserve, so that on a contin arising they would not again be available to special requirements.

An asset necessarily employed in carrying the operations of the business so that it ca be released or lost without detriment to the e ing standard of working does not constitu reserve, even though its origin and present e ence may be attributable to a surplus, *i.e.* undivided profits of the past. An asset w can be released, realised, or converted, so th loss or a fresh requirement to an extent exceeding its value may be met without event impairing the degree of effective previously existing, constitutes a reserve.

The essence of a true reserve is that it should be something which is not in use, but is in possession for possible future use.

It appears to be recognised " that if a secret (*i.e.*, undisclosed) surplus is to serve any useful purpose whatever, it is to provide moneys which may be available for any required purpose when the need for such moneys may arise "; and, further, " that such need would in the nature of things almost invariably arise suddenly and unexpectedly. Such reserve, to be of any real use, must therefore be invariably represented by investments in gilt-edged securities." (*The Accountant*, 24th February 1906.)

If a reserve which is held secretly must be represented by an asset capable of sudden realisation and application if it is to be of any real use, there are surely stronger reasons why a reserve openly and professedly held should also be capable of being utilised in any emergency.

Summarising matters, there are (1) the "reserve " which is in reality a charge against profit for depreciation or loss of assets, (2) the "reserve " which is in reality a mere surplus of assets over paid-up capital and liabilities, all the assets of the concern being employed in the business, and (3) the " Reserve " represented by an asset which is not employed in the business, but is available at any time to meet contingencies or to provide further working capital if required. Such an asset is invariably the outcome of a policy of reserving profits, and in such a case the particular concern would have a surplus.

But a reserve asset can be possessed, and in some cases is possessed, by concerns which have no surplus, the asset forming part of the paid-up capital of the company. So a reserve asset, even though originally created out of profits and representing a surplus, can be possessed and will remain a reserve notwithstanding the fact that subsequent losses may have been sustained which are sufficiently large to have absorbed the whole of such surplus, the reserve asset then necessarily forming part of the paid-up capital of the company.

The losses in question would no doubt necessitate the immediate conversion of the reserve asset into cash, stock-in-trade, plant, or other assets required for the ordinary business of the company, but until this was actually done the reserve, though not a surplus, would remain. In fact, the very possibility of its conversion from a state of readiness to a condition of usefulness should establish this self-evident proposition.

It is a matter for consideration as to whether different titles should not be used in respect of the three foregoing sets of circumstances instead of the present indiscriminate use of the terms " Reserve Fund " or even " Reserve."

Secret, Hidden, Internal or Inner Reserve.— This is a form of undisclosed surplus, and may arise in various ways, *e.g.*:—

(1) An excessive provision against depreciation or possible losses from bad debts, or from other alleged causes, the amount of such provision being deducted from the value of the asset in the Balance Sheet.

(2) The maintenance of assets at cost (without remark) which have permanently increased in value, such as lands and buildings and investments in stocks and shares.

(3) The omission of assets from the Balance Sheet, on the plea that " it is so much more to the good," *e.g.*, the omission in a bank Balance Sheet of any amount representing the bank premises, or the inclusion of such an asset at a merely nominal sum, the whole or part, as the case may be, of the proper sum representing the asset having been written off out of the profits of past years.

(4) Making a secret charge against the Revenue Account of a concern and withdrawing a corresponding amount in assets from the Balance Sheet to be held and applied secretly.

These practices cannot be recommended, for it is quite as incorrect in principle to understate a company's position as it is to overstate it; and as an indirect result, at least, a shareholder might be induced to part with his shares at a less price than their real value. Furthermore,

as a Balance Sheet is intended to show the assets of a concern it should show all, so that the auditor or a shareholder may trace any particular item.

The motive prompting the non-disclosure of a part of the profits of a concern so as to create a surplus which is not set out on the Balance Sheet is to provide for future losses or meet expenditure of a special character without disclosing the effect of the same upon the resources of the concern. Under ordinary circumstances a special loss or some extraordinary revenue outlay would reduce the profits for the current period or diminish the disclosed surplus, but by the maintenance of a secret surplus or reserve a concern may sustain and provide against exceptional loss or expenditure without exposing the fact upon the face of its published accounts. Leading accountants, having special knowledge of banking accounts, report approvingly of the practice among the principal banks of the country. It is, however, conceivable that a steady dividend might be declared and paid by a concern for years, despite a declining business, by gradually absorbing a previously existing secret reserve, and thereby the shares might command buyers at possibly enhanced prices, whereas as a matter of fact such shares were annually deteriorating in value.

The Birmingham Small Arms Company passed a special resolution altering their articles of association by inserting provisions that, in addition to providing an ordinary reserve fund, the directors might (without disclosing the fact) set sums aside out of profits to form an internal or secret reserve fund; that the secret fund need not, of course, be shown on the Balance Sheet and no information thereon need be given to the shareholders; that the directors might invest it as they thought fit, and might apply it for any purposes which they considered would advance the interests of the company; and that, while the particulars as to the fund were to be disclosed to the auditors, it should be the auditors' duty not to disclose any information with regard to it to the shareholders or otherwise.

But Buckley, J., held, in *Newton v. Birmingham Small Arms Co.* (1906), that the proposed articles of association would be *ultra vires* and that the proposed restriction upon the auditor's duty was invalid because inconsistent with the (then) provisions of the Companies Act 19 (which prescribed the duty of the auditors as regards their report to the shareholders), if the auditors considered that the true state of the company's affairs was affected by facts known to them relating to the internal or secret reserve fund.

A Balance Sheet cannot properly be certified as a "full and fair Balance Sheet and in accordance with the books of the company" if it does not disclose assets belonging to the company, and an auditor cannot be said to have complied with his statutory duty to make a report upon the accounts and the Balance Sheet if he withholds information obtained in the course of the audit which has an important bearing upon the financial position of the company. Secret reserves, though in principle indefensible, may under special circumstances, with a board of directors acting *bonâ fide*, prove both useful and commendable, but in the hands of an unscrupulous board, secret reserves might be manipulated to the serious prejudice of shareholders and public alike.

(*See titles* Rest, Sinking Fund.)

Residual Products.—The residue of materials which have been used for the production of primary commodities, *e.g.*, the residual products arising from the manufacture of gas, are coke, breeze, tar and ammoniacal liquor. The proceeds of sale or value of residual products operate to reduce the cost of the raw materials consumed in the production of the primary commodity or commodities.

Residual Value.—The ultimate selling value of particular property when worn out or superseded. It is also referred to as the "break-up value" or "scrap value." (*See title* Depreciation.)

Residuary Account.—An account whereby the amount of the residue (or the net balance subject to legacy duty or succession duty) of the

estate of a deceased person is ascertained, enabling the necessary legacy (and in some cases succession) duty to be paid.

The account must be rendered by the legal personal representative of the deceased, and must be prepared in accordance with the following notes, which are extracted from the official form of account (known as Form No. 3) which must be used for the purpose of returning particulars of the estate so that legacy duty may be paid thereon :—

(i) Money and property converted into money at the actual amounts received, and property held by the executors or administrators not converted into money at the values as at the date of retainer (*i.e.*, bringing in the Residuary Account.)

Note.—All personal estate, including income accrued to date of death should be included here, and also, where mixed up with the personal estate, all moneys arising from the sale, mortgage, or other disposition of all *real* estate directed by the will to be sold, &c.

(ii) *Deduct payments* made out of the *estate*, viz. :—

(*a*) Probate or administration.

(*b*) Funeral expenses.

(*c*) Executorship or administration expenses.

(*d*) Debts due by deceased at death (supported by schedules signed by the executor or administrator).

(*e*) Pecuniary legacies (supported by statement annexed).

(*f*) Securities purchased, &c.

(iii) *Add* interest, dividends, rents, &c., since the death.

Note.—All rents, dividends, interest, and profits arising from the personal estate of the deceased or from the real estate directed by will to be sold, &c., subsequently to the time of the death, and all accretions thereon down to the time of retainer, must be considered as part of the estate, and be accounted for accordingly.

The Apportionment Act 1870 applies and an apportioned part of income accruing due to the date of the retainer where necessary should be included. It should be noted that the stocks and shares (if any) still held by the executors or administrators included in the first part of the account, will probably have been valued cum div., and no apportionment will therefore be necessary in respect of the dividends accruing due thereon.

(iv) *Deduct* payments out of *interest*, &c., *e.g.* :—

(*a*) Interest on mortgages, &c., due from the estate.

(*b*) Interest on pecuniary legacies.

(*c*) Payments on account of annuities.

(v) *Deduct* :—

(*a*) Debts still due from the estate.

(*b*) Amounts retained to pay outstanding legacies.

The balance thus arrived at is the net residue, and by deducting any portion of such residue not liable to duty the residue on which duty is chargeable is obtained.

Residuary Devisee.—The person named in a will to take over all the real property remaining after satisfying the other devisees. A residuary devise will include all specific devises which have failed, unless a contrary intention appear in the will.

Residuary Legatee.—The person to whom the surplus of the personal estate (remaining after payment of all debts and particular legacies) is bequeathed by the testator. This is sometimes termed the residuary bequest.

The Act of 1 William IV, chap. 40, provides " that when any person shall die, having by his " or her will or any codicil or codicils thereto " appointed any person or persons to be his or " her executor or executors, such executor or

" executors shall be deemed by Courts of Equity " to be a trustee or trustees for the person or " persons (if any) who would be entitled to the " estate under the Statute of Distributions in " respect of *any residue not expressly disposed* " *of*, unless it shall appear by the will or any " codicil thereto that the person or persons so " appointed executor or executors was or were " intended to take such residue beneficially.

" Provided also that nothing herein contained " shall affect or prejudice any right to which " any executor, if this Act had not been passed, " would have been entitled, in cases where there " is not any person who would be entitled to " the testator's estate under the Statute of " Distributions in respect of any residue not " expressly disposed of."

In the event of there being no next-of-kin, the executor will be deemed a trustee for the Crown for such portion only of the undisposed-of residue as would not (even before the Act) have belonged to the executor beneficially.

Residue.—The surplus of a deceased person's estate remaining, after discharging all the liabilities attached thereto. (*See titles* Residuary Account, Residuary Legatee.)

Resolution.—A decision; a declaration passed by a body of persons in meeting assembled.

Bankruptcy Acts 1883 and 1890.

(1) Resolution means " ordinary resolution."

(2) *Ordinary Resolution.*—A resolution passed by a majority in *value* of the creditors present, personally or by proxy, at a meeting of creditors, and voting on the resolution. (1883 Act, section 168.)

Note.—A single creditor may constitute the " majority " necessary to pass an ordinary resolution. But the Official Receiver or Trustee or some other creditor or creditors must also be present. One person cannot hold a meeting by himself.

(3) *Special Resolution.*—A resolution passed by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors, and voting on the resolution. (*Ibid.*)

Note.—A special resolution is required:

(*a*) To appoint a trustee other than the Official Receiver in summary cases. (Section 121.)

(*b*) When it is desired to make an allowance to a bankrupt out of his property, in some form *other* than in money, in support of himself and his family or in consideration of his services in connection with the winding-up of his estate. (Rule 296.)

(*c*) When the creditors desire the Official Receiver to remove the special manager. (Rule 331.)

(4) *Resolution to approve of a Composition or Scheme of Arrangement.*—A resolution passed by a majority in number and three-fourths in value of all the creditors who have *proved* their debts. Any creditor who has proved his debt may assent to or dissent from the proposed resolution by a letter in the prescribed form, addressed to the Official Receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting. (1890 Act, section 3.) For the purpose of determining whether this resolution has been passed by the necessary majority, creditors who have proved their debts and whose proofs are admitted, but do not vote on the debtor's proposed scheme, are counted as having voted *against* it.

Companies (Consolidation) Act 1908.

The various forms of resolution provided by this Act for companies governed thereby are:—

(*A*) *Ordinary Resolution.*—A resolution passed by a (simple) majority of such members of the company for the time being entitled, according to the regulations of the company, to vote, as may be present at any general meeting in person or by proxy—in cases where by such regulations proxies are allowed.

(*B*) *Extraordinary Resolution.*—A resolution passed by a majority of not less than three-

fou|hs of such members entitled to vote as are pre|nt in person or by proxy (where proxies are|llowed) at a general meeting of which notice spe|ying the intention to propose the resolu-ti|hs an extraordinary resolution has been duly giv|.

A any meeting at which an extraordinary res|ution is submitted to be passed, a declaration|f the chairman that the resolution is carried sh|, unless a poll is demanded, be conclusive evi|nce of the fact without proof of the number o|portion of the votes recorded in favour of or |st the resolution. (But *see* heading Special Re|ution, *infra*.) A poll may be demanded, if d|nded by three persons for the time being en|ed according to the articles to vote, unless th|rticles of the company require a demand by s|number of such persons, not in any case ex|ding five, as may be specified in the articles. Ta|e A to the Act requires a demand by at least t|r members.

Wen 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 (section 69) (and in default of any regulations in the articles as to voting, every member shall have one vote). (Section 67.)

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. (Section 69.)

A copy of every extraordinary resolution shall within fifteen days from the passing of the resolution be printed and forwarded to the Registrar of Companies, who shall record the same.

If a company makes default in printing or forwarding a copy of an extraordinary resolution to the Registrar the company and every director and manager knowingly and wilfully authorising or permitting such default shall each be liable to a fine not exceeding two pounds for every day during which the default continues. (Section 70.)

The principal matters for which an extraordinary resolution is necessary are:—

(1) To wind up voluntarily other than by special resolution, where the company cannot by reason of its liabilities continue its business. (Section 182.)

(2) To delegate to the company's creditors the power of appointing liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, in the case of a company about to be or in course of being wound up voluntarily. (Section 190.)

(3) To sanction any arrangement entered into between a company about to be or in the course of being wound up voluntarily and its creditors, so as to bind the company. (Section 191.)

(4) To sanction the liquidator in a voluntary winding-up to pay any class of creditors in full, make compromises and arrangements with creditors, compromise calls, debts, claims, &c. &c. (Section 214.)

(5) To give directions as to the disposal of the books and papers of a company in voluntary liquidation about to be dissolved, and of the liquidator thereof. (Section 222.)

(6) To exercise or sanction any powers which the company's regulations require to be exercised or sanctioned by extraordinary resolution.

An extraordinary resolution to wind up voluntarily must be gazetted. (Section 185.)

(*C*) *Special Resolution*.—A resolution—

(*a*) Passed in manner required for the passing of an extraordinary resolution (*see* above), 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. (Section 69.)

In default of any regulations as to summoning general meetings seven days' notice in writing must be given (*see title* General Meetings), but the regulations may and sometimes

do provide for a shorter notice. The interval of not less than fourteen days and not more than one month which must elapse between the first and the confirmatory meetings *cannot* be altered by the regulations.

It is desirable and usual to state in the notice calling the first meeting that, in the event of the proposed resolution being passed by the requisite majority, it will be submitted for confirmation at a second meeting to be subsequently convened.

Notice of any meeting shall for the purposes of section 69 (*supra*) be deemed to be duly given and the meeting to be duly held, when the notice is given and the meeting held in manner prescribed by the articles. (Section 69.)

If the articles so provide, the two meetings necessary may be convened by one and the same notice, and it is no objection that the notice only convenes the second meeting contingently on the resolution being passed by the requisite majority at the first meeting (*In re The North of England Steamship Company*, C.A. 1905), although previous to this decision it was considered necessary to issue separate notices.

An imperfect notice cannot be aided by disclosure at the meeting, for the rights of absentees must be regarded; but under certain circumstances a slight alteration in the wording of the original " resolution " as set out in the notice may be made at the first meeting. This, however, cannot be done at the subsequent or confirmatory meeting, the notice convening which must contain the terms of the resolution as amended and passed, and there is no power of subsequent modification, so that the second meeting must either confirm or reject the resolution.

A special resolution is deemed to have been passed as at the date of the confirmatory meeting.

At any meeting at which 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 (but *see infra*). 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. (Section 69.) Table A to the Act requires a demand by at least three members.

When a poll is demanded in accordance with the 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 (section 69), and, in default of any regulations in the articles as to voting, every member shall have one vote. (Section 67.)

There is apparently nothing in section 69 to prevent the articles providing that every member shall have one vote for every share held by him, and that all questions whatsoever arising at general meetings of the company shall be decided according to the number of votes to which the members present are respectively entitled, and not by show of hands, thus rendering a demand for a poll unnecessary.

The chairman's declaration that a special resolution has been passed is not conclusive if it shows on the face of it that the statutory majority has not been obtained. (*Re Carlton (New) Mines*, 1902, 2 Ch. 498.)

A copy of every special resolution shall within fifteen days from the confirmation of the resolution be printed and forwarded to the Registrar of Companies, who shall record the same.

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.

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.

If a company makes default in printing or forwarding a copy of a special resolution to the

egistrar it shall be liable to a fine not exceeding o pounds for every day during which the fault continues.

If a company makes default in embodying in or nexing to a copy of its articles or in forwarding in print to a member when required by this ction a copy of a special resolution, it shall be ble to a fine not exceeding one pound for ch copy in respect of which default is made.

Every director and manager of a company who owingly and wilfully authorises or permits any fault by the company in complying with the quirements of this section shall be liable to the e penalty as is imposed by this section on the mpany for that default. (Section 70.)

A special resolution to wind up voluntarily ust be gazetted. (Section 185.)

The principal matters for which a special resotion is necessary are to obtain a company's sent:—

(1) To alter its articles of association;

(2) To reduce its capital;

(3) To reserve part of the uncalled capital for the purposes of winding up;

(4) To alter its objects;

(5) To alter its name;

(6) To be wound up by the Court;

(7) To be wound up voluntarily (except where unable to pay its debts, when an extraordinary resolution will suffice);

(8) To sanction a liquidator to sell the undertaking to another company for shares, policies, &c.;

(9) In the case of a private company, to "turn itself" into a public company where possible;

10) To appoint inspectors to investigate its affairs.

Where a special resolution is passed to authoe a liquidator to sell the undertaking to other company for shares, policies, &c. (*see* p. 8, *supra*), in pursuance of section 192 of the mpanies (Consolidation) Act 1908, and an der is made *within a year* for winding up the mpany by or subject to the supervision of the urt, the special resolution shall not be valid unless sanctioned by the Court. (*See title* Reconstruction.)

(*D*) *Resolution necessary to interfere with special privileges attached to shares.*—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. In this connection see the case of *East v. Bennett* (1910).

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. (Section 45.)

(*E*) *Resolution to sanction a compromise or arrangement.*—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.

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.

In this section the expression " company " means any company liable to be wound up under this Act. (Section 120.)

(*See title* Arrangements (Joint Stock Companies).)

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. (Winding-up Rules 1909, Rule 128.) (*See titles* Proxy, Vote, Voting Letter.)

Res perit domino.—The loss falls on the owner. The Sale of Goods Act 1893 (section 20) provides that, *unless otherwise agreed*, goods which have been sold remain at the seller's risk until the *property* therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk, *whether delivery has been made or not*, provided:—

(1) That where delivery has been delayed through the fault of *either buyer or seller*, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

(2) That nothing in this section shall affect the duties or liabilities of either seller or buyer as a *bailee* of the goods of the other party.

Respondentia.—*See title* Bottomry Bond.

Rest.—This term in the weekly return of the Bank of England signifies the balance of assets over liabilities including proprietors' capital, and consists of the undivided profits of the bank, and is to that extent a reserve against such contingencies as may arise.

The term is also used to denote a " break " in a current account by striking the balance thereof, particularly in connection with accounts involving interest. If the conditions of an account were (say) 5 per cent. in annual rests, the result would be that every year the amount of interest would be inserted in the account, and be henceforth treated as principal, *i.e.*, compound interest would ensue. So, if the conditions as to interest were half-yearly rests, the interest would be " capitalised " half-yearly, and so on. (*See title* Interest.)

Restraint of Princes.—Forcible interference by the Government of a State or country by taking possession of a ship and its cargo by arrest, blockade or embargo.

The rules contained in the first schedule to the Marine Insurance Act 1906 for the construction of a policy where the context does not otherwise require, provide that the term " arrests, &c., of kings, princes, and people," refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

Restraint of Trade.—A contract in general restraint of trade—that is, that a party shall not carry on a particular trade at all—is void on the ground of public policy, but contracts in partial restraint of trade—that is, limited to a particular time or a particular area—are good, if otherwise *reasonable*.

There must be consideration for the restraint even though the contract be under seal. The reason for this exception to the rule as to deeds arises from the fact that consideration is looked upon as an element of the *reasonableness* of the transaction.

In the case *Re Nordenfeldt* (1894) an agreement for total restraint was upheld; but the

circumstances there were exceptional, and this decision does not affect the general rule.

Where a contract contains a covenant in restraint of trade (and is good in law) the rights under the covenant pass to an assignee of the contract who has purchased the goodwill of the business for the protection of which the restraint was originally imposed. (*Welstead v. Hadley*, 1894.)

But an important point in this connection was decided by the House of Lords (confirming the judgment of the Court of Appeal) in the matter of the *General Bill Posting Co. v. Atkinson* (1908). Here the manager was entitled under a written agreement to twelve months' notice of intention to terminate his engagement, and in that agreement he had covenanted not to accept a similar position with "opposition" concerns or set up in business himself within a radius of 5 miles within two years after his engagement with the company should terminate. He was dismissed *without notice* for alleged misconduct, but succeeded in an action for damages for wrongful dismissal. He then committed a breach of the restraint clause in his agreement, and his late employers attempted either to obtain damages or an injunction, but failed. Lord Robertson said:—"It seems to me that the covenant not to "set up business is not only germane to but "ancillary to the contract of service, and that "once the contract of service is *rescinded* the "other falls with it." Lord Collins said:—"The true question is whether the acts and "conduct of the party (the employer) evince an "intention no longer to be bound by the con-"tract. I think the Court of Appeal had ample "grounds for drawing this inference from the "conduct of the employers here in dismissing "the employee in *deliberate disregard of the* "*terms* of the contract, and that the latter was "thereupon justified in rescinding the contract "and treating himself as absolved from the "further performance of it on his part."

(See also *Measures Bros. (Lim.) v. Measures*, 1910.)

(*See title* Goodwill.)

Restraint on Anticipation.—Where property is settled on a married woman, it is usual to impose a restraint on her power of dealing with her interest therein, *e.g.*, by way of mortgage, charge, or assignment, or of anticipating receipt of income. Where such a limitation is imposed, the woman can only receive the income as it becomes due, and cannot deprive herself of it. Should her husband die this restraint ceases, and she can deal with the income absolutely; but the restraint will revive should she marry again. The Court has now power, even where a woman is restrained from anticipation, to make a judgment or order binding her interest in any separate property, if the woman *consents* thereto, and the Court is satisfied that it will be to her benefit to do so.

Restrictive Indorsement.—*See title* Indorsement.

Retainer.—An executor, in the event of his being a creditor of the testator, may retain the amount of his own debt out of the testator's *legal* assets in priority to any other debt of the testator of *equal degree*. (*See title* Hinde Palmer's Act.) This privilege is afforded to the executor because he cannot commence an action against himself as representative of the deceased to recover his debt, and as it is the rule that a creditor who sues for his debt obtains priority of payment, it follows that as the executor could not sue, he would either be paid last, or (if the estate were insolvent) lose his debt altogether, unless he were allowed to retain it.

The right of retainer is merely a form of payment, and where a creditor executor has *properly* retained his debt, he is not deemed, as regards other creditors, to have assets still in his hands to the extent of such debt. (*Re Fludyer*, 1898.)

It must be noted that there can be no retainer except out of *legal* assets, and that the right can be exercised only as against creditors of equal degree with the executor. The right of retainer has not been extended by the Land Transfer Act 1897 (*q.v.*), although real estate of the deceased (except copyholds) is now a legal asset. The right of retainer may be exercised notwithstanding a decree for administration or for the pay-

ment of the assets into Court, for neither of these, *per se*, abrogates the powers of the executor. The right may, however, be defeated by that which would necessarily supersede his functions, such as the appointment of a receiver of the estate, which can only take place where the executor consents or where he is under a personal disability or guilty of gross misconduct. But a receiver will not be appointed merely to defeat the executor's right of retainer. A creditor of a testator obtained a judgment against an executrix *de bonis testatoris*, and the executrix not having pleaded *plene administravit* and not having claimed a right of retainer in respect of a debt due by the testator to her, the creditor obtained an order for the administration of the estate. The assets of the estate proved insufficient to pay all the debts of the testator, and the executrix then claimed to be entitled to exercise her right of retainer in respect of her debt, but it was held that it was too late to do so. (*Crawter v. Marvin*, 1905.) "The rule of the Court in cases of retainer is, "unless the party can show a legal right to "retain we never give it to him; if he can show "a legal right we never take it from him." [Verney, M.R.]

Where an order is made under section 125 of the Bankruptcy Act 1883 for the administration in bankruptcy of the estate of a person dying insolvent the right of retainer is unaffected even in respect of a claim otherwise "postponed."

(*See title* Postponed Creditors.)

In *Re Rhoades* (1899, 2 Q.B. 347) where the executrix in ignorance of her right of retainer had gone so far as to pay over to the Official Receiver the whole of the funds in her hands, which exceeded the amount of her debt and had actually lodged a proof in respect of her claim, it was held that she was entitled to withdraw her proof and recover the full amount of her debt from the Official Receiver. In the course of his judgment, Lindley, M.R., said:—

"An executor has no right to retain against "creditors of a higher degree than himself, but "his right to retain is a right to withdraw from "the assets in his hands distributable amongst "himself and other creditors of equal degree "enough to pay himself in full. His right to "retain does not extend to assets which he has "not got in and which are not in his possession, "nor to equitable assets; but no question as to "these arises here. His right extends both in "law and in equity to all legal assets which he "has in his hands, and there is nothing in "section 125 to deprive him of this right."

The position may therefore be summarised thus:—The executor has a right of retainer for his debt out of *legal* assets which are in his possession, and having by possession acquired his right of retainer, bankruptcy or administration by the Court will not deprive him of it; but as regards assets (even though legal) which are not yet in his possession, he cannot exercise his right of retainer, and if in the meantime an order for administration or an order under the Bankruptcy Act has been made, the right to retain as against such outstanding assets will apparently be defeated. The position is, of course, further controlled by the limitation of the right to retain as against creditors of equal degree.

An executor can retain in respect of a debt due to the firm of which he is a partner, or to joint creditors of whom he is one.

If there are two executors and both are creditors of equal degree, one executor cannot retain his debt to the prejudice of his co-executor, for, if the estate be insufficient, they must abate rateably.

An executor may retain his debt, even though it is statute barred, but not where the Court has already declared the debt irrecoverable. Nor can a debt be retained which is unenforceable because of the Statute of Frauds or the Sale of Goods Act.

The theory of the doctrine of retainer applies to an administrator (who happens also to be a creditor) equally with an executor; but, in practice, letters of administration are only granted to a creditor upon his undertaking to pay all debts *pro ratâ*. (*See title* Preference [Executor].)

Retired Bill (of Exchange).—To retire a bill or note is to withdraw it from circulation. This is done by any one of the parties thereto paying

e holder and retaining the bill or note until aturity. If the bill or note is " retired " by the ceptor or maker (or other person primarily ble) *at or after the maturity* of the instru- ent, it is discharged, and all remedies *on the ll* are extinguished; but if the party who ires the bill is not primarily liable thereon, he lds with all his remedies intact. Sometimes a l is retired for the purpose of cancellation, but re generally to enable the person primarily ble to substitute another in its place payable some later date (interest being added for the commodation) because he cannot meet the bill retired at the original due date.

Returned Primage.—*See title* Primage.

Return of Allotments.—*See title* Allotment.

Returns Book.—This is a term of general applica- n, being used in connection with returned es, returned purchases, returned sacks, empties," &c.

An auditor should require all unusual allow- ces of substantial amount (which have been ssed through the " Returns " Book to the dit of customers' accounts) to be vouched in me manner, either (1) by the written acknow- lgment of the particular customers, or (2) by initials of the principal or some responsible icial being affixed to the entries in the Allow- ce Book. Defalcations are sometimes success- lly effected by (1) non-accounting for moneys tually paid by customers, and (2) " adjusting " accounts in question by passing to the credit the customers unauthorised " allowances " to extent of the moneys not accounted for.

Revenue.—Income. In its widest sense a Revenue count deals with all earnings, profits, and her income, on the one hand, and all charges ainst such income, on the other. In most ding concerns it is necessary to classify the venue, and the Revenue Account is subdivided cordingly, *e.g.*, Manufacturing Account, ading Account, and Profit and Loss Account .v.). In its application to a joint stock com- ny the term " Revenue Account " is often plied to the record of the sums available for dividend and the amount so distributed. (*See titles* Departmental Accounts, Gross Profit, Profit and Loss Account, Income, Manufacturers' Accounts, Profit, Profits available for Dividend.)

Reversion.—The remaining portion of an estate, after a grant (short of the whole of the estate) has been made to another person by the owner.

Reversionary Interest.—That which is to be enjoyed at some future time, when an *intermediate* interest has been determined.

The following illustration shows, so far as the arithmetic is concerned, the methods of valuing the reversion to a perpetuity:—

Suppose a person requires 5 per cent. upon an investment in perpetuity (*e.g.*, a freehold estate), of course he could afford to give 20 years' purchase of the net annual value if the property came into possession immediately; but if he had to wait for some years, for the expiration of a lease, or the death of some person interested, he could not afford to give 20 years' purchase, but only such a sum as would amount at 5 per cent. to the equivalent of 20 years' purchase by the time the property would come into possession.

If an estate of the net value of £100 per annum with immediate enjoyment is worth £2,000, then one of the same value with the benefit deferred for six years is only worth £1,492.4. This is ascertainable in two ways:—

(1) The full present value of the estate on the basis of 5 per cent. is £2,000.0
But from this must be deducted the present value of the benefit to be enjoyed by another, viz.: The present worth of £100 per annum for six years at 5 per cent. £507.6
Leaving as the present value of the estate to the purchaser of the reversion £1,492.4

(2) As the purchaser is prepared to pay £2,000 six years hence for immediate possession he will only pay now for the reversion the present value of £2,000 due six years hence, viz.:—£.7462 × 2,000 = £1,492.4.

The value of the reversion to a lease may now be computed. Suppose (1) a leasehold for an unexpired period of 40 years of the net annual value of £100; (2) 5 per cent. to be required upon outlay and 3 per cent. only is to be credited to the sinking fund contributions to repay the purchase money; and (3) a 19 years' lease has been granted to some other person: what is the present value of the reversion to the 21 years, *i.e.*, to commence 19 years hence?

When the property comes into possession it must yield 5 per cent. per annum plus the necessary sinking fund contribution on a 3 per cent. basis. The annual sinking fund contribution for redemption of £1 in 21 years at 3 per cent. is £.03487178, and, the required interest being £.05, the lease must return £.08487178 per annum for every £1 invested, and as it returns £100 per annum the purchase price for an *immediate enjoyment* is $£\frac{100}{.08487178} = £1178.248$.

But this is *not the present value* of the reversion, but the value 19 years hence. The present value of £1 due 19 years hence at 5 per cent. is £.39573, so that the present value of the 21 years' reversion is £1,178.248 × .39573 = £466.276, which means that the purchaser can wait 19 years, adding 5 per cent. compound interest to the purchase-money. Then he will have £1,178.248 at stake. The income from the lease will give him 5 per cent. per annum upon the £1,178.248 for the following 21 years, and provide a sinking fund which, at 3 per cent., will repay the £1,178.248 on the expiration of the lease.

Reversion Duty.—On the determination of any lease of land there shall be charged, levied, and paid, subject to the provisions of this Act, on the value of the benefit accruing to the lessor by reason of the determination of the lease a duty, called reversion duty, at the rate of one pound for every complete ten pounds of that value.

For the purposes of this section the value of the benefit accruing to the lessor shall be deemed to be the amount (if any) by which the total value (as defined for the purpose of the general provisions of this Act relating to valuation) of the land at the time the lease determines, subject to the deduction of any part of the total value which is attributable to any works executed or expenditure of a capital nature incurred by the lessor during the term of the lease and of all compensation payable by such lessor at the determination of the lease, exceeds the total value of the land at the time of the original grant of the lease, to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property), but, where the lessor is himself entitled only to a leasehold interest, the value of the benefit as so ascertained shall be reduced in proportion to the amount by which the value of his interest is less than the value of the fee simple.

Where, in the case of a reversion to a lease purchased before the thirtieth day of April nineteen hundred and nine, the lease on which the reversion is expectant determines within forty years of the date of the purchase, no reversion duty shall be charged under this Act on the determination of the lease: Provided that this exemption shall not apply where the lease is determined within forty years by agreement between the lessor and the lessee, whether express or implied, not contained in the lease itself, unless the lease would, apart from any such agreement, have determined within that period.

No reversion duty shall be charged on the determination of the lease of any land which is at the time of the determination agricultural land, nor on the determination of a lease, the original term of which did not exceed twenty-one years, nor shall reversion duty be charged where the interest of the lessor expectant on the determination of a lease is a leasehold interest which does not exceed that number of years.

Where a lease of any land is determined efore the expiration of the term of the lease y agreement between the lessor and the lessee, hether express or implied, and a fresh lease of he land is then granted to the lessee the term f which extends at least twenty-one years eyond the date on which the original lease ould have expired, the Commissioners shall ake an allowance in respect of the reversion uty payable of 2½ per cent. of the duty for every ear of the original term of the lease which is nexpired when the lease is determined, and any m so allowed shall be treated as having been id:

Provided that the allowance shall not exceed per cent. of the whole duty payable.

Where on any occasion on which increment alue duty is due in respect of any increment alue it is proved to the satisfaction of the Commissioners that reversion duty has been paid in spect of any benefit accruing to a lessor, or rt of such a benefit, which is identical with the crement value, such sums as the Commissioners termine to have been paid in respect of the nefit or part of the benefit shall be treated as ing also a payment on account of increment alue duty; and where on any occasion on which version duty is due in respect of any benefit ccruing to a lessor, it is shown to the satisfaction the Commissioners that increment value duty s been paid on any increment value which is entical with that benefit or any part of that nefit, such sums as the Commissioners deterine to have been paid in respect of that value all be treated as being also a payment on count of the reversion duty in respect of that nefit or part of a benefit.

Where a reversion has been mortgaged before e thirtieth day of April nineteen hundred and ne, and the mortgagee has foreclosed before e lease on which the reversion is expectant termines, the mortgagee shall not be liable to y reversion duty in excess of the amount by hich the total value of the land at the time of e determination of the lease exceeds the nount payable under the mortgage at the date the foreclosure.

Reversion duty shall be recoverable from any lessor to whom any benefit accrues from the determination of a lease as a debt due to His Majesty, but shall rank *pari passu* with all other debts due from such lessor.

Every lessor shall (subject to penalties in case of default) on the determination of a lease on the determination of which reversion duty is payable under this section, deliver an account to the Commissioners setting forth the particulars of the land and the estimated value of the benefit accruing to the lessor by the determination of the lease.

Section 17 of the Customs and Inland Revenue Act 1885 (which relates to the power to assess duty according to accounts rendered, and to obtain other accounts) shall apply with respect to any account delivered under this section (with the exception of any provisions relating to appeals). (Finance (1909-10) Act 1910, sections 13, 14, and 15.) (*See title* Increment Value Duty.)

No reversion duty shall be charged on the determination of a mining lease, except as a duty payable annually under this Act. (*Ibid*, section 22.) (*See title* Mineral Rights Duty.)

Rating authorities are exempt from payment of reversion duty. (*Ibid*, section 35.)

Where in pursuance of any public, general, or local Act any capital sum or any instalment of a capital sum has been paid to any rating authority in respect of the increased or enhanced value of any land due to any improvements made, or other action taken by the authority, the amount of that capital sum or instalment shall be deducted from the value of the benefit accruing to the lessor for the purposes of reversion duty. (*Ibid*, section 36.)

No reversion duty shall be charged in respect of land or any interest in land held by or on behalf of any governing body constituted for charitable purposes (as defined by the Act) while the land is occupied and used by such a body for the purposes of that body. (*Ibid*, section 37.)

Reversion duty shall not be charged in respect of any land whilst it is held by a statutory com-

pany (*i.e.*, any railway or similar company authorised under any special Act of Parliament for the purposes of the undertaking) and cannot be appropriated by the company except to those purposes. (*Ibid*, section 38.)

Revival of the Statutes (of Limitation).—*See title* Acknowledgment of Debt.

Rigging the Market.—*See title* Making a Market.

Rotation.—The articles of association of a company registered under the Companies Act 1862 or Companies (Consolidation) Act 1908 generally provide for the retirement annually of one or more of the directors by rotation. The vacancy so created is filled at the general meeting of the company, but the retiring director is invariably eligible for re-election. The procedure and regulations as to (1) retirement, (2) re-election, (3) how many directors shall retire, and (4) how the retiring directors shall be determined, depend upon the terms of the articles of association of each company. Table A, both in its original form and as revised, contains provisions as to "rotation" for companies adopting that table as their regulations.

Royalty.—A payment to a patentee of an agreed amount on every article made or sold (as the case may be), or to an author on every copy of his book published or sold.

In connection with mines, a royalty is a payment made by the lessee to the lessor, or surface owner, for the privilege of "getting" the mineral, whether coal or otherwise.

The amount of the royalty may be arrived at by charging either:—

(1) A fixed sum per ton raised; or

(2) A fixed sum per acre worked; or

(3) A sum varying with the price of the mineral—that is, a sliding scale.

Generally, however, the lessee is required to pay a minimum rent of a certain amount per annum, merging in a royalty, whether the mineral raised during the period justifies it or not; in fact, such amount would be payable if the mine were not worked at all. This minimum rent is also termed annual rent, fixed rent, dead rent, certain rent, head rent, and sleeping rent.

The difference between the amount of royalty actually due as based on the output of mineral and the amount of minimum rent payable is, if the royalty be the lesser amount, called "short workings" or "shorts," and is treated as a temporary asset, where (as is usually the case) the lessee is allowed to recoup himself of his payments in respect of "short workings" out of future royalties which may be in excess of the minimum rent. This right when conferred in a lease is often referred to as the "average clause." Generally there is a limited period as regards the right to recoup, but sometimes there is no limit as regards time, and in certain instances the right is even carried forward into new leases. It may happen, however, that although there is power to recoup the short workings out of subsequent "excess royalties," the lessee may be unable to fulfil the conditions which entitle him so to recoup himself—that is to say, he may be unable, on account of peculiar or unforeseen circumstances, to raise sufficient mineral to "overtake" the burden of the annual dead rent.

This being so, it is inadvisable to charge a Short Workings Account with the payments in that connection (thus relieving revenue to such extent) *unless*:—

(1) The lessee has full power to recoup himself of same out of subsequent royalties in excess of the dead rent; and

(2) There is every probability, as viewed from the length of lease and all other circumstances, that the lessee will be in a position to *avail* himself of such power.

Although an average clause confers a right to recoup "short workings" out of *future* "over workings," it does not permit of the application of the over workings of *past* years towards subsequent short workings, because of the operation of the minimum or dead rent clause.

A lessee, on paying any royalty, is entitled to deduct income-tax therefrom, he being accountable to the Revenue for the tax on the royalty

owner's income in pursuance of the principle whereby the authorities collect—wherever possible—tax upon income at its source.

Where during any year or a number of years the dead rent exceeds the royalty (or where the dead rent is paid although the mines are not being worked) and income-tax is deducted from the actual payments made to the landlord, such tax being duly accounted for to the Revenue authorities, the lessee, notwithstanding this latter fact, must pay tax upon all sums recouped (in respect of short workings) out of royalties in excess of the dead rent in future years. Clearly, the Revenue receives tax twice over in respect of the short workings so recouped, but it was so decided in the case of the *Broughton Co.* (1884), the *ratio decidendi* being that although the short workings had already borne tax such tax had not been paid by the lessee, but by the lessor; the lessee was therefore held liable to pay tax upon such portions of the short workings as were recovered, because they were deemed to represent part of the profits of the undertaking for the respective periods when such recovery was made.

Running Account.—*See title* Account Current.

S

Salary.—The compensation payable for services rendered, which are, as a rule, not mechanical, but rather administrative. The amount is generally fixed at so much for the year, and payable either quarterly, monthly, or otherwise.

It is not usual to call a weekly payment for services a salary, such being generally termed a wage, and the *periods* in respect of which the payments are made appear to satisfy practical requirements in making the necessary distinction between a wage and a salary, but some authorities would appear to distinguish the two classes by the *amounts* paid, whilst others look to the *nature* of the services rendered, for the distinguishing feature.

Salaries may be either productive or unproductive, according to circumstances, and their treatment in the accounts of a concern depends upon this distinction, which, when determined, necessitates their being dealt with similarly to productive and unproductive wages respectively.

In the absence of agreement to the contrary, partners are not allowed any remuneration for their services in connection with the business of the partnership, but in any case such a charge is not permitted in ascertaining the profits of the business for the purpose of assessing the amount of income-tax payable.

The salary of a bankrupt, or any part thereof, may be attached by direction of the Court.

The salary of a clerk or servant for services rendered within four months before the receiving order or winding-up order or commencement of the winding-up, as the case may be, but not exceeding £50, ranks as a preferential claim; this applies *mutatis mutandis* to the administration of the estate of a deceased insolvent. (*See titles* Preferential Payments in Bankruptcy and Winding-up, Wages.)

Sale Contract.—Although this term is applicable to every agreement (of whatever nature) for the sale of property, accountants are principally concerned with that form of sale contract which constitutes the agreement whereby a registered company acquires a business or undertaking from a person termed the "vendor" (*see* that *title*). Where the property is acquired on behalf of the proposed company prior to the date of incorporation, the sale in the first instance is sometimes made to a trustee for the proposed company, and this agreement is referred to in the memorandum and articles of association, power being taken therein for the company to adopt and carry into effect such contract so soon as the company comes into existence and is otherwise in a position to do so. This adoption is generally effected by a short supplemental agreement to which the vendor, the trustee, and the company are parties.

Where the consideration, or any part thereof, consists of shares, the sale contract, or, if the contract has not been reduced to writing, the prescribed particulars thereof, must be filed with the Registrar of Joint Stock Companies within

one month after the allotment of the shares. (*See title* Allotment.)

Apparently the contract may be in writing or verbal. In the latter case, however, should the consideration consist of shares, it will be necessary to prepare a statement containing the prescribed particulars for filing purposes. (*See* above.)

The usual form of written sale contract provides for :—

(1) The sale to the company of

(*a*) the goodwill and trade-marks of the business;

(*b*) land and buildings (or vendor may merely lease to company);

(*c*) plant and machinery;

(*d*) stock-in-trade, implements and utensils;

(*e*) book and other debts, with securities attaching thereto (or the vendor may retain the book debts, the company undertaking to collect same on his account without making a charge therefor);

(*f*) benefit of pending contracts;

(*g*) cash at bank and in hand (or vendor may retain same to his own use);

(*h*) all other property to which the vendor may be entitled in connection with the business.

(2) The amount and nature of the consideration to be paid for the sale, which may be either wholly or partly cash, debentures, founders' shares, preference shares, ordinary shares, and/or deferred shares.

Part of the consideration may be the satisfaction by the company of the liabilities of the vendor in connection with the business.

(3) Particulars of the title and encumbrances (if any) of the properties to be acquired.

(4) Date fixed for completion of purchase a interest payable by company on the ca portion of consideration in event of defau

(5) Vendor to carry on the business on beh of the company until completion of t contract from the date of the agreem for sale or some other fixed date.

Note.—As a company cannot ea profits for dividend purposes until co pliance has been made with the statut requirements, it is necessary to apport the profits earned during the first trad period in cases where a company tak over a business as from a date prior to th at which it is entitled to comme business. (*See title* Profits prior Incorporation.)

(6) Stipulations as to books of account, fi insurance, by whom preliminary expens are to be paid, &c. &c.

In practice, the accountant will only required by the solicitor to prepare the necessa figures for insertion in the written agreement, the statement of the prescribed particulars (wh necessary), prior to the completion thereof, b subsequently he may be interested therein in least two capacities—firstly, to prepare a Balan Sheet for submission with the agreement to Revenue authorities for payment of stam duties; and secondly, in his capacity as auditor the company, for verification of the entries in books recording the purchase transactions, a possibly he may be called upon to act arbitrator in connection with disputes or diffe ences which may have taken place between t parties thereto, particularly where some unfor seen question of account has arisen which h not been expressly provided for.

The statement of account for submission to t Revenue authorities should be prepared and t items arranged so as to distinguish the asse upon which *ad valorem* duty is payable fro those which are duty free, *e.g.*:—

	£	s	d
Liabilities taken over by company	206	9	6
Balance, being Vendor's Purchase-money	3,300	0	0
Total consideration	£3,506	9	6
Loose Plant and Tools £232 6 3			
Stock-in-trade 1,060 2 6			
Cash at Bankers (Current Account) .. 370 7 0			
Cash in hand 37 4 3			
	1,700	0	0
Note.—The above are deemed to pass by delivery and are accordingly free from Stamp Duty, but cash at bankers on Deposit Account is chargeable with *ad valorem* duty of £1 per cent.*			
Freehold Land and Buildings	1,300	0	0
Note.—As this property will have to be "conveyed" it will be chargeable on conveyance with *ad valorem* duty of £1 per cent.*			
Book Debts £369 7 3			
Lease and Goodwill 137 2 3			
	506	9	6
Note.—The above must be assigned and are subject to an *ad valorem* duty of £1 per cent.*			
	£3,506	9	6

*See Section 73 of Finance (1909-10) Act, 1910.

Section 59 of the Stamp Act 1891 provides for payment of duty on the "consideration" (subject to certain exempted items), and section 57 provides that if, as a further consideration, the purchaser undertakes to pay the liabilities of the business owing as at the date of transfer, the amount of such liabilities must be ascertained and deemed part of the consideration. This may be stated somewhat differently, for in the statement as drawn above the liabilities, plus the vendor's consideration, equal the assets, and the duty is payable on those *assets* which are not deemed to pass by delivery.

Note.—If encumbered freeholds are included in the sale, *ad valorem* duty must be paid upon the full value of the property (that is to say, inclusive of the mortgage and the accrued interest thereon) not upon the value of the equity only. If the sale is to take effect from a date past, and the purchaser undertakes to pay liabilities incurred after that date only, such liabilities are not to be included in the consideration.

Where a company, other than a private company as defined by section 121 of the Companies (Consolidation) Act 1908, is formed for the purpose of acquiring a business and its property, the sale contract must (*inter alia*) be disclosed in the prospectus or statement in lieu of prospectus, as the case may be, as regards the date and the parties thereto, and a reasonable time and place must be stated at which such contract, or a copy thereof, may be inspected by intending applicants for shares or debentures. (1908 Act, section 81 (1) (*k*).)

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. (1908 Act, section 83.)

Sale Note.—*See title* Bought Note.

Sale of Goods Act 1893. (*Abridged.*)—

Part I.—Formation of Contract.

(A) Contract of Sale.

1.—(1) A contract of sale of goods is a contract whereby the seller transfers, or agrees to transfer, the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where, under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled, subject to which the property in the goods is to be transferred.

2.—Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Provided that where necessaries are sold and *delivered* to an infant, or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries (here) mean goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery.

(*B*) *Formalities of the Contract.*

3.—Subject to the provisions of the Act (*see* section 4), a contract of sale may be made in writing (either with or without seal) or by word of mouth, or partly in writing, and partly by word of mouth, or may be implied from the conduct of the parties. Provided that nothing herein shall affect the law relating to corporations. (*See title* Seal.)

4.—(1) A contract for the sale of any goods of the *value* of ten pounds or upwards *shall not be enforceable* by action unless the buyer shall accept part of the goods so sold, *and* actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf. (*See title* Void and Voidable.)

Note.—A *parol* sale of goods might, according to the common law, have been in *every* instance effected either by an agreement to be completed *in præsenti coupled* with tender of the price or part of it, or tender of the goods or part of them.

A note or memorandum under this section is exempt from stamp duty.

(2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not, at the time of such contract, be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

(3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not.

(*C*) *Subject Matter of Contract.*

5.—(1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called "future goods."

(2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

6.—Where there is a contract for the sale of specific goods, and the goods, without the knowledge of the seller, have perished at the time when the contract is made, the contract is void.

7.—Where there is an agreement to sell specific goods, and, subsequently, the goods without any fault on the part of the seller or buyer, perish before the risk passes to the buyer the agreement is thereby avoided.

(*D*) *The Price.*

8.—(1) The price in a contract of sale may be fixed by the contract, or *may be left* to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact depende on the circumstances of each particular cas

Note.—Where the terms of a contract requi to be in writing, the consideration shoul appear, but there are exceptions (1) in the c of a contract of sale where the price has been fixed by the parties as above, and (2) the case of a contract of guarantee. (*S title* Frauds, Statute of.)

9.—(1) Where there is an agreement to sel goods on the terms that the price is to be fix by the valuation of a third party, and such third party cannot or does not make such valuatio the agreement is avoided; provided that if the goods or any part thereof have been deliver to and appropriated by the buyer, he must pa a reasonable price therefor.

(2) Where such third party is prevented fro making the valuation by the fault of the sell or buyer, the party not in fault may maintain a action for damages against the party in fault.

(E) *Conditions and Warranties.*

.—In a contract of sale, unless the circumces of the contract are such as to show a rent intention, there is—

) An implied condition on the part of the r that in the case of a sale he has a right to the goods, and that in the case of an agreet to sell he will have a right to sell the goods he time when the property is to pass:

) An implied warranty that the buyer shall and enjoy quiet possession of the goods:

) An implied warranty that the goods shall free from any charge or encumbrance in ur of any third party, not declared or known he buyer before or at the time when the ract is made. (*See also titles* Condition and ranty.)

) *Sale by Sample.* (*See title* Sample (Sale)

Part II.—Effects of Contract.

Transfer of Property as between Seller and Buyer.

.—Where there is a contract for the sale of scertained goods no property in the goods is sferred to the buyer unless and until the ds are ascertained.

.—(1) Where there is a contract for the sale pecific or ascertained goods the property in n is transferred to the buyer at such time as parties to the contract intend it to be sferred.

) For the purpose of ascertaining the intenof the parties regard shall be had to the s of the contract, the conduct of the parties, the circumstances of the case.

.—Unless a different intention appears, the wing are rules for ascertaining the intention he parties as to the time at which the proy in the goods is to pass to the buyer.

ule 1.—Where there is an unconditional con for the sale of specific goods in a deliverstate, the property in the goods passes to the r when the contract is made, and it is aterial whether the time of payment or the of delivery or both be postponed.

Note.—Goods are in a deliverable state when the buyer would, under the contract, be bound to take delivery of them.

Rule 2.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has *notice* thereof.

Rule 3.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has *notice* thereof.

Rule 4.—When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer:—

(*a*) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction.

(*b*) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time; and if no time has been fixed for the return of the goods, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5.—(1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description, and in a deliverable state, are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to

the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

19.—(1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *primâ facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

20.—Unless otherwise agreed the goods remain at the seller's risk until the property therein is transferred to the buyer; but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not.

Provided that where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

(*B*) *Transfer of Title.*

21.—(1) Subject to the provisions of the Bills of Lading Act, the Factors Act, and this Act (as regards sales in market overt and re-sales under certain circumstances), where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

22.—(1) Where goods are sold in market overt according to the usage of the market, the buyer acquires a good title to the goods provided he buys them in good faith and without notice of any defect or want of title on the part of the seller. (*See title* Market Overt.)

(2) Nothing in this section shall affect the law relating to the sale of horses. (*See title* Horses.)

23.—When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

24.—(1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen re-vests in the person who was the owner of the goods or his personal representative, notwithstanding any intermediate dealing with them whether by sale in *market overt or otherwise.*

(2) Where goods have been obtained by fraud or other wrongful means *not amounting to larceny*, the property in such goods shall not re-vest in the person who was the owner of the goods or his personal representative by reason only of the conviction of the offender.

(*See titles* Bill of Lading, Factor, Market Overt, and Re-sale.)

Part III.—Performance of Contract.

27.—It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale.

28.—Unless otherwise agreed delivery of the goods and payment of the price are concurrent conditions—that is to say, the seller must be

ea and willing to give possession of the goods e buyer in exchange for the price, and the bu must be ready and willing to pay the price change for possession of the goods.

—(1) Whether it is for the buyer to take ossession of the goods or for the seller to send h to the buyer is a question depending in each as on the contract, express or implied, between the parties. Apart from any such contract, ex ss or implied, the place of delivery is the l r's place of business, if he have one, and if his residence.

ovided that if the contract be for the sale of sp ific goods, which to the knowledge of the p es when the contract is made are in some th place, then that place is the place of l ery.

) Where under the contract of sale the seller s und to send the goods to the buyer, but no ti for sending them is fixed, the seller is bound t nd them within a reasonable time.

) Where the goods at the time of sale are in he possession of a third person there is no de ery by seller to buyer unless and until such thi person acknowledges to the buyer that he ho s the goods on his behalf; provided that no ing in this section shall affect the operation f he issue or transfer of any document of title to oods.

) Demand or tender of delivery may be re ed as ineffectual unless made at a reason- ab hour. What is a reasonable hour is a qu tion of fact.

) Unless otherwise agreed the expenses of an incidental to putting the goods into a de erable state must be borne by the seller.

.—(1) Where the seller delivers to the buyer a uantity of goods less than he contracted to s the buyer may reject them, but if the buyer ac pts the goods so delivered he must pay for th n at the contract rate.

) Where the seller delivers to the buyer a uantity of goods larger than he contracted to se the buyer may accept the goods included in th contract and reject the rest, or he may reject th whole. If the buyer accepts the whole of the goods so delivered, he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

31.—(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be paid for separately, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of, or pay for, one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach, giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

32.—(1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, is, *primâ facie*, deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier, on behalf of the buyer, as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in

which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit; and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

33.—Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

34.—(1) Where goods are delivered to the buyer which he has not previously examined he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

35.—The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

36.—Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

37.—When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of t buyer to take delivery amounts to a repudiat of the contract.

Part IV.—Rights of Unpaid Seller against t Goods.

38.—(1) The seller of goods is deemed to an " unpaid seller " within the meaning of Act:—

(*a*) When the whole of the price has not b paid or tendered;

(*b*) When a bill of exchange or other neg able instrument has been received as c ditional payment, and the condition which it was received has not b fulfilled by reason of the dishonour of t instrument or otherwise.

(2) In this part of the Act the term " seller includes any person who is in the position of seller, as, for instance, an agent of the seller whom the bill of lading has been indorsed, or consignor or agent who has himself paid, or directly responsible for, the price.

39.—(1) Subject to the provisions of the Bi of Lading Act, the Factors Act, and this Ac notwithstanding that the property in the go may have passed to the buyer, the unpaid sel of the goods, as such, has by implication of law

(*a*) A lien on the goods or right to retain the for the price while he is in possession them;

(*b*) In case of the insolvency of the buyer, right of stopping the goods *in transi* after he has parted with the possession them;

(*c*) A right of re-sale as limited by this Act.

(2) Where the property in goods has n passed to the buyer, the unpaid seller has, addition to his other remedies, a right of *with holding delivery* similar to and co-extensive wit his rights of lien and stoppage *in transitu* when the property has passed to the buyer.

(*See titles* Lien (Unpaid Seller), Re-sal Stoppage *in transitu*.)

art V.— Actions for Breach of the Contract.

(A) Remedies of the Seller.

49.—(1) Where under a contract of sale the roperty in the goods has passed to the buyer, nd the buyer wrongfully neglects or refuses to ay for the goods, according to the terms of the ontract, the seller may maintain an action which includes set-off) against him for the price the goods.

(2) Where under a contract of sale the price payable on a day certain irrespective of elivery, and the buyer wrongfully neglects or fuses to pay such price, the seller may maintain action for the price, although the property in e goods has not passed, and the goods have ot been appropriated to the contract.

50.—(1) Where the buyer wrongfully neglects refuses to accept and pay for the goods, the ller may maintain an action against him for mages for non-acceptance.

(2) The measure of damages is the estimated ss directly and naturally resulting, in the dinary course of events, from the buyer's each of contract.

(3) Where there is an available market for the oods in question, the measure of damages is *imâ facie* to be ascertained by the difference tween the contract price and the market or rrent price at the time or times when the oods ought to have been accepted, or if no time as fixed for acceptance, then at the time of the fusal to accept.

(B) Remedies of the Buyer.

51.—(1) Where the seller wrongfully neglects refuses to deliver the goods to the buyer the yer may maintain an action against the seller r damages for non-delivery.

(2) The measure of damages is the estimated ss directly and naturally resulting, in the dinary course of events, from the seller's each of contract.

(3) Where there is an available market for the oods in question, the measure of damages is *imâ facie* to be ascertained by the difference tween the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

52.—In any action for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its judgment, direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as to the Court may seem just, and the application by the plaintiff may be made at any time before judgment.

53.—(1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may

(*a*) Set up against the seller the breach of warranty in diminution or extinction of the price; or

(*b*) Maintain an action against the seller for damages for the breach of warranty.

(2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(3) In the case of breach of warranty of quality, such loss is, *primâ facie*, the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

54.—Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law

interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

Part VI.—Supplementary.

55.—Where any right, duty, or liability would arise under a contract of sale by *implication of law*, it may be negatived or varied by express agreement, or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

" The effect of the section is to declare that " the preceding portions of the Act are not " absolute rules of law, but presumptions as " to the elements in a contract of sale which " may be negatived by the express or implied " terms of the particular contract as inter- " preted by the ordinary canons of construc- " tion. The construction of the contract is for " the Court, unless there is something peculiar " in the words by reason of the nature of the " trade or business to which it relates."

[Lely & Craies.]

61.—(1) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act contained.

(2) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress, or coercion, mistake, or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(3) Nothing in this Act or in any repeal effected thereby shall affect the enactments relating to bills of sale, or any enactment relating to the sale of goods which is not expressly repealed by this Act.

(4) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.

62.—(1) Unless the context or subject-matter otherwise requires, the term " goods " for the purposes of this Act includes all chattels personal, *with the exception* of things in action (legal or equitable), money, negotiable instruments, and securities for money (such as shares in public companies). The term also includes emblements (*i.e.*, such vegetable products as yield an artificial annual profit produced by labour—*fructus industriales*) and things attached to or forming part of the land *which are agreed to be severed* before sale or under the contract of sale (*e.g.*, timber).

(*See titles* Acceptance and Receipt, Auction, Condition, Factor, Lien (Unpaid Seller), Market Overt, Re-sale, Sample (sale by), Stoppage *in transitu*, Warranty.)

Sale or Return.—Goods are often sent by manufacturers, wholesale dealers, and others to retailers or other persons in a position to display same for sale, upon the terms that the consignee shall only be liable to purchase same if and when he effects a sale. In the event of his being unable to dispose of them he has a right to return them to the sender.

Rule 4 of section 18 of the Sale of Goods Act 1893 provides that when goods are delivered to the buyer on approval or " on sale or return," or other similar terms, the property therein passes to the buyer:—

(*a*) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction.

(*b*) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time; and if no time has been fixed for the return of the goods, on the expiration of a reasonable time.

What is a reasonable time is a question of fact.

Bankruptcy.—Goods on sale or return at the commencement of the bankruptcy in the possession, order, or disposition of a bankrupt in his trade or business *may* pass to the trustee under

s tion 44 of the Bankruptcy Act 1883, but this c tingency will not arise where there is a n orious custom as to disposal of goods on sale o return in the particular bankrupt's trade. (*c title* Reputed Ownership.)

)eed of Assignment.—Goods on sale or return w l *not* pass to a trustee under a deed of a ignment, subject, however, to the provisions of R le 4 of section 18 of the Sale of Goods Act (*pra*), as the assignee cannot acquire any b ter title thereto than his assignor.

As to treatment in accounts of goods on sale o return, *see title* Investigation, *heading* Stock-in-Trade.

Sal Account.—*See title* Goods Account.

Sal ge.—Compensation made to those who have b their exertions saved a ship or goods from the p ils of the seas, fire, pirates, or enemies. Al o, that which is so saved, or that which is a ndoned by the insured to the underwriter, the f ner claiming for a constructive total loss, w ilst the benefits and responsibilities con- n ted with the subject-matter of insurance vest i the underwriters on receipt of notice of a ndonment.

Sal ge Loss.—One ascertained by taking the f erence between the net amount of salvage and original value of the property.

Sal r.—A person who renders assistance to a ship i distress, thereby becoming entitled to reward o salvage.

Sample (Sale by).—A contract of sale is a contract of sale by sample where there is a term in the c tract, express or implied, to that effect.

In the case of a contract for sale by sample in a ition to the implications of law in the case of an ordinary contract of sale, as regards (1) t e, (2) quiet possession, and (3) freedom from d isclosed incumbrances:—

(*a*) There is an implied condition that the bulk shall correspond with the sample in quality.

(*b*) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

(*c*) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

Where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description; *and if the sale be by sample*, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. (Sale of Goods Act 1893, section 13.)

Where goods were purchased by sample but upon the express terms "cash against documents on arrival of the goods," the buyer was held not to be entitled to compare the bulk with the sample before paying the price; but the right to reject if the goods are afterwards found not to correspond with the sample is not impaired by the fact that payment has been made. (*Polenghi v. Dried Milk Company*, 1904.)

Sans recours.—*See title* Indorsement.

Satisfaction.—*See title* Accord and Satisfaction.

Savings Banks.—The Trustee Savings Banks Act 1863 provides (*inter alia*) that no savings bank shall have the benefit of the Act unless, in the rules and regulations for the management thereof, it shall be expressly provided (*inter alia*):—

(1) That the depositor's Pass Book shall be compared with the Ledger (*a*) on every transaction of repayment, and (*b*) on its first production at the bank after each 20th day of November.

(2) That every depositor in a savings bank established under this Act shall, once at least in every year, cause his Deposit Book to be produced at the office of the said savings bank, for the purpose of being examined.

(3) That a public accountant or one or more auditors be appointed by the trustees and managers, but not out of their own body,

to examine the books of the bank, and to report in writing to the board or committee of management the result of such audit not less than once in every half-year; also to examine an extracted list of the depositors' balances, made up every year to the 20th day of November, and to certify as to the correct amount of the liabilities and assets of the bank.

(4) That a book containing such extracted list of every depositor's balance, omitting the name but giving the distinctive number and separate amount of each, and showing the aggregate number and amount of the whole, checked and certified by such public accountant or auditors, be open at any time during the hours of public business for the inspection of every depositor as respects his own account, to examine his own Deposit Book therewith, and the general results of the same.

The Savings Banks Act 1891 provides (*inter alia*) :—

(1) There shall be established an Inspection Committee of trustee savings banks.

(2) The Inspection Committee may appoint persons to inspect the books and accounts of trustee savings banks, and to examine and ascertain and report to the Committee from time to time, with respect to each bank, whether the bank has complied with the requirements of the Acts and rules relating to the bank as to the security to be taken from officers, the accounts of the bank, and the conduct of its business, and whether any portion of the expenditure is excessive or unnecessary; and every trustee savings bank shall give all due facilities for enabling any such inspection or examination to be made.

(3) The trustees of every trustee savings bank shall, on the requisition of the Committee, supply the Committee with a copy of the Pass Book in use in the bank, of the annual general statement of the accounts of the bank, and of the rules of the bank, and of any amendments thereof.

(4) If, in the opinion of the Committee, the rules of any such bank are insufficient for the purpose of maintaining an efficient audit, the bank shall, with all convenient speed, make such additional rules as may, in the opinion of the Committee, be required for the purpose.

(5) If a bank do not, within a time specified by the Committee from the date of being required to make any such rules, comply with the requirement, the Committee may make such rules, and shall submit the rules so made to the Registrar of Friendly Societies, to be certified by him; and, when so certified, they shall be binding on the trustees.

The following is an extract from the circular letter relating to the books of account issued to the trustees of savings banks by the Inspection Committee in April 1894:—

The *Cash Book* will summarise all the transactions which are now shown in the Depositors' Cash Receipt Books (or sheets) and Depositors' Cash Payment Books (or sheets). It will show how all the moneys received by the treasurer and the actuary have been disposed of, and the balances of this book at any time will be the amount in the hands of the treasurer, and the cash at the savings bank (if any) for which the actuary may be responsible. At the end of each month a balance should be struck and compared by a trustee or manager or the auditor, with the balance shown in the treasurer's Pass Book. Probably there will be no necessity for keeping a Petty Cash Book, though this can be done if thought desirable.

The *Journal* will be used entirely for transfer entries. These often require an explanation more or less lengthy, which can be conveniently given in the Journal, but for which the form of Ledger generally in use is not adapted.

It is not intended that the examples given should be followed in any hard and fast manner, but they will probably illustrate the treatment of most of, if not all, the transac-

ions which take place in a savings bank. It will be noticed that only one example of each kind of Journal entry has been given; for instance, only one transfer from the Post Office Savings Bank. As there may be several of these transfers, a similar entry will have to be made from time to time, as advices are received from the National Debt Commissioners. In the case of banks where the entries are sufficiently numerous to require special Day Books ruled for the purpose of recording, in a convenient form, transfers, dividends, and any other kinds of special transactions, the totals of such subsidiary books at the 20th of each month need only be journalised. Each bank possessing a complete set of books balanced on the double entry system will, doubtless, continue to use the forms which experience has found to be more suitable to its own particular circumstances; but the system of accounts which is here recommended will be found generally convenient for banks that have not yet adopted a General Ledger, as by means of it the various transactions of the bank are grouped in such a way as to enable its financial position to be easily ascertained and checked.

The Journal entries which deal with "Depositors' Account" will have to be posted twice, once to the "Depositors' Account" in the General Ledger, and again to the individual depositors' accounts which they affect in the Depositors' Ledgers. Entries in the Journal of this nature ought, therefore, to have two references inserted.

The *Ledger* contains all the accounts which are required for making up the Annual Statement, and also a Profit and Loss Account, which is not asked for by the National Debt Commissioners. This Profit and Loss Account will differ from the subsidiary statement which appears at the bottom of the Annual Statement (account for proving the surplus remaining on the General Account) in that it makes proper allowance for expenses due but not paid, and for depreciation (if any) of buildings and furniture.

The "Depositors' Account" is simply a summary of all the Depositors' Ledgers. Everything which is posted into these Ledgers in detail to the individual accounts will be posted in total to this account, so that, at any moment, the liability of the bank to depositors (subject to current interest due to them) can be ascertained from it by striking a balance. It will also have the advantage of acting as a check on the correctness of the postings into the Depositors' Ledgers, and on the results contained in those Check or Section Ledger Sheets used in certain banks. The liability to depositors at the end of the year will be ascertained independently by means of it, as the balance at 20th November should agree with the total balances of the Deposit Ledgers shown by the lists of extracted balances, after making any necessary adjustment for outstanding transfer certificates at that date.

The account with the National Debt Commissioners is now kept by some banks in a separate book, whereas, under the suggestions now made, it will find a place as a separate account in the General Ledger.

If, however, it is still thought that it is more convenient to have it separately, then there is no reason why it should not remain so.

The Profit and Loss Account will be made up at the end of the year by transferring to it the balances of all the Expense Accounts, and such Receipt Accounts as interest, dividends, &c. . . .

Where payments for expenses are made only once or twice in the year, they might be posted direct to this account.

The following is an extract from the circular letter relative to the audit of accounts, issued to the trustees of savings banks by the Inspection Committee in October 1894:—

The annual general statement should be examined by the auditor in full detail, and if found correct should be certified by him. . . . . The form of this statement now in use is such that the auditor's certificate of its

correctness will render unnecessary a separate certificate as to liabilities and assets. If not satisfied of the accuracy of the statement the auditor should report in qualified terms to the trustees and managers, and also direct to the Inspection Committee.

The accuracy of the postings from the detailed Cash Books to the Deposit Ledgers at least should be tested in all cases where the postings are not independently checked in the manner usual where the system obtains of balancing the Deposit Ledgers by sections of not more than 1,000 accounts.

This could be done either by comparing the larger items, or, better still, by taking a section of the Cash Book for consecutive testings.

The detailed calculations of interest should be tested in all cases where they are not checked independently by a second paid officer. A list of balances extracted in at least four columns (No. of account, principal, interest and amount) should be checked throughout in all respects as to extraction, castings, cross castings, and final summations, apart from any assistance by the actuary or other paid officer, and should be clearly certified.

The auditor should report the general result of the audit for the half-year ended 20th May as soon as possible after that date, and not later than the 20th July, and the result of the audit for the year should be reported within nine weeks after 20th November of each year. It would be very convenient if the Inspection Committee could be supplied by the auditors of all banks with a list of work done on a form that will be provided. (See a suggested form in Appendix K, which will also serve as a guide for any auditor who may desire to have some indication of the points to which his attention may be most usefully directed.)

Pass Books should be examined from time to time throughout the year to the extent of at least 10 per cent. of the entire number of active accounts in the current Deposit Ledgers.

This examination will be practically useless if the Pass Books are left at the banks for any length of time prior to examination, or if they are sent to the auditor for audit with the books of the bank. The examination, to be efficient, should be made as the Pass Books are brought in by the depositors.

Appendix K (referred to above.)

Form in which it is suggested that the auditor should acquaint the Inspection Committee at the end of each year with the details of the work done by him in auditing the books of a savings bank:—

I certify that I have done the following work during the course of my audit of the ——— Savings Bank for the year ended 20th November 191 .

N.B.—A pen may be run through the work that has not been done.

1.—*General Cash Book.*

(*a*) Checked the receipts and payments from the Depositors' Cash Book.

(*b*) Checked the entries with the Bankers' Pass Book and agreed the balance { on—occasions / weekly. / monthly.

(*c*) Counted the cash in the actuary's hands { on—occasions. / weekly. / monthly.

(*d*) Checked the additions.

(*e*) Checked the weekly totals with the weekly statements sent to the National Debt Office, and certified the same as having been examined and found correct.

(*f*) Vouched the expenses.

2.—*General Ledger.*

(*a*) Checked the postings.

(*b*) Checked additions.

(*c*) Agreed the balance of Depositors' Accounts at 20th November with the total of the extracted list of balances.

(*d*) Verified the liabilities and assets each quarter/half-year and reported the result of such examination to the trustees and managers direct.

3.—*Journal.*

(*a*) Agreed in total the figures in the two columns.

(*b*) Vouched with the N. D. C. forms (transfers, purchases, and sales of stock, dividends, interest, &c.).

4.—*Depositors' Cash Books.*

(*a*) Checked / Tested } the agreement of the duplicate Cash Books.

(*b*) Checked / Tested } the additions.

(*c*) Checked / Tested } the withdrawals with the depositors' receipts (where taken) or order cheques.

(*d*) Checked / Tested } the receipts and payments by post.

N.B.—The receipts may be compared with the letters enclosing the deposits, and the payments with the acknowledgments sent by the depositors.

5.—*Depositors' Ledgers.*

(*a*) Checked / Tested } the postings. (If tested only, state the approximate percentage of postings verified.)

(*b*) Checked / Tested } the additions and subtractions.

Or

The Ledgers being balanced by the "section system," I have satisfied myself by examination that the system is correctly carried out.

(*c*) Checked / Tested } the interest credited, paid, and transferred.

(*d*) Checked the balances into the extracted list without the help of the staff.

(*e*) Checked the additions of the extracted list.

(*f*) Certified the book containing the extracted list in the form suggested by the Inspection Committee.

6.—*Pass Books.*

(*a*) Examined with the Ledgers from time to time during the year—Pass Books, having attended without notice—times for this purpose.

(*b*) Examined with Ledgers during the audit—Pass Books.

In both cases the Pass Books being taken as presented by depositors.

7.—*Stock Books.*

(*a*) Agreed the stock as shown in the Stock Ledger with the total amount in the General Statement.

(*b*) Checked / Tested } the postings of the dividends to the Depositors' Ledgers.

8.—*Annual General Statement.*

(*a*) Checked throughout with the books of the bank and agreed.

(*b*) Certified as having been examined and found correct.

9.—*And I have also done the following additional work.*

I further certify that on every occasion of visiting the savings bank I have seen that the proper persons have been in attendance, and that they were parties to every transaction of deposit or repayment, and that the use of the necessary double check upon all such transactions has been permanently recorded at the savings bank in at least two different handwritings apparently made independently at the time.

(Signed) ————,
Auditor of the ———— Savings Bank.
Address ————,
————,
Date————.

To the Trustee Savings Banks' Inspection Committee.

[*The word "checked" is used in the sense of being verified in every detail. The minimum "test" should be* 10 *per cent. of the whole work, taken either as a percentage of the transactions of the period under audit, or of the number of days on which the bank was open for business during that period.*]

The following is a list of books in use at the ———— Savings Bank:—

(*Here append the list.*)

Schedule.—A document appended to or accompanying some larger work, generally in the form of a list or catalogue, affording further details as to some part of the larger work, and which, though essential to the completeness of the document or work to which it is attached, it is inexpedient to embody in the principal document itself.

A schedule when referred to in an affidavit is called an " exhibit " (*see that title*).

Scrip.—A contraction of the word " subscription." Strictly scrip is a kind of provisional document given to an allottee entitling him to claim a certain specified number of bonds or share certificates, indicating the number of bonds or shares for which he has subscribed. The scrip states the amounts and due dates of the various instalments, and when these have all been paid and bankers' receipts obtained therefor the scrip is exchanged for the bond or bonds or share certificate.

The terms " share certificate " and " scrip " appear, however, to be used indiscriminately at the present time in commercial circles.

A scrip certificate entitling a person to *become* the proprietor of any share in a company, must bear 1d. stamp, which must be impressed, but a share certificate to the effect that the person named therein *is* a shareholder is not liable to any stamp duty.

A scrip certificate differs from an allotment letter, the latter being merely an intimation by the company to the subscriber that his application for shares or debentures has been accepted. (*See title* Allotment Letter.)

Every company shall within two months of the allotment or of the registration of the transfer of any shares or debentures complete and have ready for delivery the certificates therefor unless the conditions of issue otherwise provide. Failure to comply with this provision entails a liability to certain fines. (Companies (Consolidation) Act 1908, section 92.) (*See title* Certificate.)

Scrivener.—One whose business is to place money at interest for his clients, receiving a bonus or commission for so doing. The commission is sometimes termed a " procuration fee."

Scrutineer.—The articles of association of a company sometimes provide for the appointment of a scrutineer to compute the votes of the members of a company in general meeting when a poll is being taken. If the regulations of the company do not provide for such appointment, the members can elect scrutineers, or the chairman may nominate them with the assent of the members. In the case of small companies the chairman personally acts as scrutineer.

Seal.—Section 16 of the Companies (Consolidation) Act 1908 provides (*inter alia*) that a company incorporated under that Act may have a common seal, and section 63 provides that the company (if limited) must have its name engraven in legible characters on its seal.

A document to which the seal of a registered company is affixed is not necessarily a deed, *e.g.*, a share certificate is not a deed; whilst section 91, subsection 2, of the Bills of Exchange Act 1882 provides:—

> " In the case of a corporation, where by this " Act any instrument or writing is required to " be signed (*acceptances, indorsements, &c.*), " it is sufficient if the instrument or writing be " *sealed* with the corporate seal; but nothing " in this section shall be construed as " *requiring* the bill or note of a corporation to " be under seal."

Section 79 of the Companies (Consolidation) Act 1908 provides that companies registered under that Act, whose objects require or comprise the transaction of business in foreign countries (*e.g.*, the making of investments, the taking of mortgages, conveyances and leases, or the entering into contracts and engagements in such countries), may if authorised by the articles have an official seal for use in any place not situate in the United Kingdom. The seal is to 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.

A company having such a seal as above may, by writing under its common seal, authorise any person appointed for the purpose, in any place not situate in the United Kingdom, to affix the same to any document to which the company is party in that place; and any document to which any such seal has been *duly affixed* will bind the company as if it had been sealed with the common seal of the company.

Section 76 of the Companies (Consolidation) Act 1908 provides (*inter alia*) that 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. . . And 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.

Contracts not required by law to be under seal may be signed by an agent for a company. (*See title* Simple Contract.)

The articles of association of a company generally provide (1) for the custody of the instrument of the seal, and (2) the necessary formalities for affixing the seal to documents, *e.g.*:—

"The directors shall provide for the safe "custody of the seal, and the seal shall never "be used except by the authority of the direc- "tors, or a committee of the directors, "previously given, and in the presence of two "directors at the least, who shall sign every "instrument to which the seal is affixed, and "every such instrument shall be counter- "signed by the secretary or some other person "appointed by the directors."

Sometimes, in the case of large companies, the use of the seal, for the purpose of duly executing share certificates (only), is delegated to one director.

It is usual and desirable to keep a register in a concise form of all documents (other than share certificates) to which the seal of a company has been affixed, recording in each case (1) the date, (2) the parties to the contract (other than the company), (3) the attesting directors, and (4) a short statement of the purport of the document.

Where, as is usual, the seal is affixed only in pursuance of a resolution of the directors, the fact that a document has been "sealed" will be recorded in the Minute Book in the ordinary way, but a register of such documents in columnar form is much more satisfactory for future reference. It is a good plan to rule off a few pages at the end of the Minute Book for this purpose.

With regard to the "sealing" of deeds by individuals, the practice is to affix a form of seal or a wafer beforehand, which the party when executing the instrument merely touches, and adopts as his seal.

To give effect to a deed executed by an individual it must be sealed and *delivered*, the document taking effect (save in the case of an *escrow*) from the date of delivery; but in the case of a corporation the sealing *imports* delivery. "A "common seal fixed to the deed of a corpora- "tion is tantamount to a delivery."

Thus the attestation clause affixed to the deed of an individual usually reads: "Signed, sealed, and *delivered* in the presence of ————"; whereas, in the case of a company, the clause merely states that "The common seal of the "company was affixed hereto in the presence "of ————" (*i.e.*, the director or directors and/or secretary of the company, as the regulations may prescribe). (*See title* Deed.)

Seal Register.—A record of the documents to which the common seal of a corporation or company has been affixed, stating the purport of the documents, the parties, the date the seal was affixed, and the initials of the directors, &c., who signed the various documents.

This record is often kept at the latter portion of the Minute Book, for although such docu-

ments are recorded in the Minute Book from time to time, as and when the seal is affixed, it is found more convenient in large companies to keep a separate record to facilitate subsequent reference.

Seaworthiness.—The quality of a ship being in such a fit state as to repairs, equipment, and crew, as to render her capable of withstanding such perils of the sea as she may be expected to encounter in a contemplated voyage. In the absence of agreement to the contrary, in a contract for the carriage of goods by sea, the shipowner implies amongst other things that his ship is seaworthy.

In marine insurance there is an implied warranty in every *voyage* policy that the ship is seaworthy. In a *time* policy it is *not* implied; but where, with the privity of the insured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness. (Marine Insurance Act 1906, section 39.)

Second of Exchange.—*See title* Bill in a Set.

Secret Commissions.—*See titles* Agent; Corruption, Prevention of.

Secret Reserves.—*See title* Reserves.

Sectional Ledgers.—In recording the accounts of some businesses, particularly where the transactions are numerous, it is found necessary to keep the Ledger in parts, such as:—

(1) Debtors', or Sales, or Customers' Ledger;

(2) Creditors', or Bought or Purchase Ledger;

(3) Consignment Ledger;

(4) Nominal or Trade Ledger;

(5) Private Ledger;

and so on.

The Debtors' and Creditors' Ledgers are sometimes subdivided, either alphabetically, departmentally, or geographically, as the case may be.

The subsidiary books, to a great extent, are also devised upon identical lines, either by separate subsidiary books, or "dividing columns" in the same books, arranged according to alphabet, department, district, or otherwise. This allows of a division of labour upon the accounts of a large concern which would not be otherwise possible, and, furthermore, by means of the totals of the various subsidiary books, in a system of controlling accounts it is possible to render each Ledger self-balancing, and thereby not only minimise the trouble and risk involved in the balancing of the books as a whole, but make each Ledger clerk responsible for the balancing of his own portion of the work.

There are various methods of giving effect to this principle of self-balancing, and although some authorities advocate one method rather than another, yet the real test of the suitability of the particular method is to be found in the circumstances of the particular case.

Subject always to the particular circumstances of the case, the following method is found to work well in practice:—The Private and Nominal Ledgers are so kept as to contain between them in detail all the accounts of the business other than the Debtors' and Creditors' Accounts. In addition, a Total Debtors' Account (representing the debts in the Debtors' Ledger) and a Total Creditors' Account (representing the liabilities in the Creditors' Ledger) are kept in the Nominal Ledger. The Total Debtors' Account will be kept as illustrated below, it being understood that the Total Creditors' Account is dealt with on similar lines, but conversely. Assuming the operations in the Total Debtors' Account are made monthly, the following process is adopted:—

The Total Debtors' Account at the commencement of the period is debited with the total of all the debts due to the concern as shown by an extraction of the detailed balances from the Debtors' Ledger. This account is then charged each month with the total of the sales as shown by the Sales Day Book. It is credited (1) with the total of the cash received from debtors as shown either by a Special Cash Received Book or a specially ruled column in the Cash Book; (2) with the total of the discount allowed as shown by the Discount column in the Cash Book; and (3) with the total of the goods

returned as shown by the Returns Inwards Book. Effect must also be given in the Total Debtors' Account to any entries which have been made through the Journal or Bills Payable Book affecting the Debtors' Ledger, and if all the entries are arithmetically accurate the balance of the Total Debtors' Account at the end of any month should represent the balance of all the debts due to the concern as shown by the Debtors' Ledger.

If, as suggested above, the Total Creditors' Account has been kept on similar lines the balance to credit of the Total Creditors' Account will in the same way represent the balance of all the liabilities due by the concern as shown by the Creditors' Ledger.

The system has two important advantages:—

(1) By bringing into the Nominal Ledger in a small compass the book debts and liabilities of the concern it facilitates the preparation of a Trial Balance either without, or in advance of, the extraction of the detailed balances from the detailed Ledgers.

(2) It affords a controlling check upon the accuracy of such balances, and, in the event of a difference arising, enables such difference to be located much more rapidly than would otherwise be the case.

In the foregoing remarks the Total Debtors' Account and the Total Creditors' Account have each been treated as one account only, but it is, of course, obvious that by proper provision in regard to subsidiary books each account may be divided into as many sub-accounts as there are separate Ledgers.

cured Creditor.—A secured creditor is defined in section 168 of the Bankruptcy Act 1883 as a person holding a mortgage charge or lien on the *property of a debtor*, or any part thereof, as a security for a debt due to him from the debtor.

The holder of a bill of exchange or promissory note is not a secured creditor, such documents being mere personal engagements to pay, nor is a mere judgment creditor thereby secured, but, for the purpose of *voting*, the holder of a bill of exchange is, under certain circumstances, treated as a secured creditor. (*See below.*)

The holder of a bill of exchange may, however, be a quasi secured creditor as a result of the rule in *Ex parte Waring*, and where a holder of a bill of exchange (accepted payable against delivery of bills of lading), also holds the bills of lading, he is a secured creditor. (*Re Howe*, 6 Ch. 838, 1871.) (*See title* Proof in respect of Bills of Exchange.)

A landlord has a right of distress, but such right does not constitute him a secured creditor. (*See title* Distress.)

Where a creditor holds the security or guarantee of a third party he may prove for his *whole debt*, and then resort to his security or guarantor in respect of any deficiency, for he is not a person holding a charge, &c., upon the property of the *debtor*, but upon the property of some other person. This is termed "*collateral security*."

Thus, the creditor of a firm need not value a security given to him by *one* of the partners out of his separate estate, and *vice versâ*. (*Ex parte Caldicott; re Hart*, 1884.)

A secured creditor is subject to special conditions as to proof of debt for the purposes of voting and dividend. (*See below.*)

With the exception of the provisions of the Act of 1908 as regards debentures issued by a company under a floating charge, the rights of secured creditors in bankruptcy and winding-up procedure are unaffected by the Preferential Payments in Bankruptcy Act 1888 and the corresponding provisions of the Companies (Consolidation) Act 1908, which deal only with the *assets distributable* among the unsecured creditors.

Petition.—If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors, in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security; and, in the latter case, he may be admitted as a petitioning creditor for the balance of the debt (after deducting such value) in the same manner as if he were an unsecured creditor. (1883 Act, section 6.) The creditor is not compelled to give up his

security until a later stage (*i.e.*, when he seeks to vote or prove in respect of his debt), and an undervaluation of same will not of itself invalidate the petition; in fact, the omission to value is a formal defect which the Court will allow to be amended.

Voting.—For the purpose of voting, a secured creditor must, 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 he is 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. (Bankruptcy Act 1883, 1st Schedule, Rule 10.)

A creditor shall not 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 debtor, against whom a receiving order 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. (*Ibid*, Rule 11.)

Dividend.—After adjudication, the secured creditor must comply with one or other of the following conditions:—

(1) Rely upon his security and not prove for his debt.

(2) Surrender his security and prove for the whole debt.

(3) Surrender part of his security (if severable) and retain the remainder, which he may either value or realise and prove for the balance of his debt (if any).

The surrender of a security places the trustee in the position of the creditor so surrendering, and does not alter the rights of prior or subsequent parties. (*Cracknall v. Janson*, 1877.)

(4) Value or realise the whole security and prove for the balance of his debt (if any). (1883 Act, 2nd Schedule, Rules 9, 10, 11.)

If a secured creditor does not either realise or surrender his security, he must, before ranking for dividend, 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 receive a dividend only in respect of the balance due to him after deducting the value so assessed, subject to the rules as to valuation. (*Ibid*, Rule 11.)

A secured creditor's position is the same as regards proof, whether he realises or values his security. If he realises same under section 9, subsection 2, of the 1883 Act, and the proceeds are insufficient to satisfy his claim, he must when proving for the unsatisfied balance comply with, and is entitled to the benefit of, the rules applicable to *secured* creditors, although having exhausted his security he is really an *unsecured* creditor as regards his claim. (*London, &c., Hotels Co.*, 1891, 1 Ch. 639; and *Fox v. Jacobs*, 1893, 1 Q.B. 438.)

Valuation of Security.—The Bankruptcy Act 1883 (section 9) specially reserves the right to secured creditors to realise or otherwise deal with their securities, but should there be a surplus on realisation over the debt due, such surplus must be handed over to the trustee of the estate. (But *see infra.*)

With regard to the *valuation* of the security, the trustee or Official Receiver may, within 28 days after a proof (involving an estimate of the value of the security) has been *made use* of for *voting* purposes, require the security to be given up on payment of the assessed value, with the addition thereto of twenty per centum, provided that the creditor may at any time before he has been required to give up his security correct his valuation and lodge a new proof, but in that case he shall not be entitled to the addition of the twenty per centum if the security is required to be redeemed. (1883 Act, 1st Schedule, Rule 12.) After the expiration of the 28 days from the first use of the proof for voting purposes (by which time the creditor is presumed to have

decided definitely upon the value of the security) the trustee may *at any time* (subject to the exception below) redeem the security at its *assessed value*. (*Ibid*, 2nd Schedule, Rule 12.)

If the trustee is dissatisfied with the valuation put upon the security (and is yet unwilling to redeem same) he may require it to be sold, and if such sale be by public auction, the creditor, or the trustee on behalf of the estate, may bid and or purchase at such sale. (*Ibid*, Rule 12.) Where, however, a creditor, by notice in writing, requires a trustee to decide whether he will or will not redeem a security or require it to be realised, and the trustee does not within six months after receiving such notice signify in writing his election to redeem the security or require it to be realised, then the equity of redemption or other interest in the property, previously vested in the trustee, shall vest in the creditor, and he shall be allowed to prove for the balance of his debt after deducting such assessed value, and notwithstanding section 9 of the 1883 Act (*supra*) it makes no difference to this rule if the creditor's dividends should, with the actual value of the security as determined by subsequent events, make more than twenty shillings in the pound of the debt due to the creditor. (*Ibid*, Rules 12 and 17.)

Where a creditor has valued his security he may at any time amend the valuation and proof, on showing to the satisfaction of the trustee or the Court that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the trustee shall allow the amendment without application to the Court. (*Ibid*, Rule 13.)

Where a valuation has been amended in accordance with the foregoing rule, the creditor shall 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, shall be entitled to be paid out of any money for the time being available for dividend, any dividend or share of dividend which 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 shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment. (*Ibid*, Rule 14.)

If a creditor, after having valued his security, subsequently realises it, or if it is realised under the provisions of Rule 12, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor. (*Ibid*, Rule 15.)

If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend (*Ibid*, Rule 16), and a trustee need not make any provision (when calculating for the distribution of a dividend) in respect of any amount which may ultimately become provable by a secured creditor who has neither valued nor realised his security. (*Ex parte Good*, 1880.)

A secured creditor may apply his security to a debt which might not be provable in the bankruptcy, *e.g.*:—

(1) A claim postponed until after payment of the ordinary unsecured creditors. (*See title* Postponed Creditors.)

(2) A claim for excess interest. (*See title* Interest in respect of Proof of Debt.)

(3) A statute-barred debt. (*See title* Limitation of Actions.)

(4) A claim in respect of credit given after knowledge of act of bankruptcy, provided that the security was given before such knowledge.

Company Liquidation.

Bankruptcy procedure is applicable to the winding-up of an *insolvent* company, section 207 of the Companies (Consolidation) Act 1908 providing that in the winding-up of insolvent companies the same rules shall prevail and be observed with regard to the respective rights of *secured* and *unsecured* creditors and to debts

provable as are in force, for the time being, under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, so that a secured creditor of an *insolvent* company must conform to the bankruptcy procedure in respect of proofs of debt, and (*inter alia*) deduct the value of his security from his total claim, proving only for the balance; but in respect of *solvent* companies, section 207 does not apply, and a secured creditor of a solvent company is therefore entitled to prove for the whole amount of his claim, and retain his security until his debt is fully satisfied.

Note.—Creditors holding collateral security only are not required to deduct the value of such security, whether the company be solvent or insolvent.

LIMITED PARTNERSHIP.

The provisions of the Companies (Consolidation) Act 1908 [and therefore the provisions thereof as to secured creditors] shall apply to limited partnerships wound up by the Court. (Limited Partnerships Act 1907, section 6.)

(*See* also *titles* Debenture, Floating Charge, Interest in respect of Proof of Debt, Register and Registration of Mortgages.)

Securities (deposited against Bills of Exchange).—Where the drawer of a bill deposits goods or other property with the drawee, as cover for the bill, the drawee acquires no right to any of such securities where he does not accept the bill, but on acceptance he acquires a lien thereon or a right thereto. If the acceptor fails during the currency of the bill, or dishonours it at maturity, his lien upon the securities or right thereto is thereby determined, the securities being held at the disposition of the drawer; so, also, where a drawer deposits security with the drawee as cover for the bill, and is obliged to take up the bill himself because of the failure of the acceptor, the drawer is entitled to the return of the securities, or such of them as may be unrealised at the time of the failure.

The bankruptcy rule (*Ex parte Waring*, 1815) for determining the rights of the holders of bills where securities have been deposited as cover therefor, and *both drawer and acceptor* are insolvent, is dealt with under the title "Proof in respect of Bills of Exchange."

Security.—A bond or other written instrument giving the lawful holder a title (1) to a sum of money, (2) to certain goods, or (3) to property in land or buildings. The term is also applied to the subject-matter itself, *e.g.*, to the goods held under lien.

Transfers executed under seal, by way of mortgage, of any stock, shares, or marketable security, are chargeable, if the loan be disclosed in the instrument of transfer, according to the scale of stamp duty applicable to "Bonds and Debentures." If the loan be not disclosed in the instrument of transfer, and the transaction is disclosed by a further instrument, the further instrument, if under hand only, is chargeable with the duty of sixpence, or if under seal is chargeable according to the said scale, and in either case the instrument of transfer is chargeable with the duty of ten shillings.

ADMINISTRATOR.

Every person (except the solicitors to the Treasury and the Duchy of Lancaster) to whom a grant of administration is made must give security for the due administration of the personal estate of a deceased person.

The bond is (generally) required to be in a penalty to the extent of double the sworn amount of the estate; the Court has, however, a discretion as to the *amount* of the bond. (*See titles* Administration, Letters of; Justifying Security.)

LIQUIDATORS AND SPECIAL MANAGERS (WINDING-UP BY THE COURT).

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.

(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.

Note.—There is no power to transfer this expense to the estate as may be done in bankruptcy. (*See below.*)

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.

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 think fit. (Winding-up Rules 1909, Rules 57 and 58.)

Voluntary Liquidator.

There is no necessity for a voluntary liquidator to give security, unless the terms of his appointment require him to do so.

Trustees and Special Managers (in Bankruptcy).

With regard to a trustee or special manager the rules as to security in winding-up procedure, *mutatis mutandis*, apply, but in bankruptcy the cost of the premium on a trustee's guarantee bond will be allowed against the estate, if specially approved by the creditors—or the committee of inspection where the committee have power to fix the trustee's remuneration.

The trustee under a composition or a scheme of arrangement must give security in the same manner as a trustee in bankruptcy. (Rule 210.)

The following is an extract from the Board of Trade regulations affecting the security of trustees in bankruptcy:—

Renewal premiums on guarantee bonds are payable annually, and one month before the date of expiry of his bond a trustee, who has not obtained his release, will be required to renew his security, and failure to do so renders him liable to removal from office. The Board of Trade will, however, be prepared at the expiry of one year from the trustee's appointment, or at any time thereafter, to consider applications by a trustee for a reduction of security upon the accounts up to the date of such application being audited, and upon the production of a resolution by the committee of inspection recommending the reduction.

Where the premium is paid out of the estate the trustee should make application for reduction so soon and as often as the circumstances of the case require, and in the event of neglect will be surcharged with premiums needlessly paid.

Where there is no committee of inspection an application for reduction of security should be accompanied by a short statement as to the estate realised, and the assets outstanding, and also by the written approval of the Official Receiver.

Security cannot in any case be altogether dispensed with until the trustee has obtained an order of release, which should be applied for so soon as the whole estate has been

realised and distributed. If, however, the trustee has applied for his release and lodged his final account for audit not less than one month before the expiration of the bond, he need not renew his security, unless specially required by the Board of Trade to do so.

Where the security is reduced, or where the trustee has obtained his release and the period over which the guarantee extends has not expired, the leading guarantee societies have intimated their willingness to grant a rebate in the case of *renewal premiums*, and where the premium has been paid by the trustee personally, he should, upon receiving notification from the Board of Trade of his release, or that the security has been reduced, apply to the guarantee society for the rebate (if any) due to him; but where the estate has borne the expense, the rebate (if any) must be credited to the estate, and if arising upon the release of the trustee will be claimed by the Official Receiver.

Self-Balancing Ledgers. — *See title* Sectional Ledgers.

Selling Price System.—This system is used in some businesses for the purpose of recording the working of branch establishments. It is based upon the assumption that if the "commencing" stock on hand is taken at selling prices, and the goods inward are charged to the branch establishment at selling prices, then the difference between these two items added together, and the stock on hand at the end of a period (also at selling prices), should represent the cash taken during that period. This would be a satisfactory method if it could be worked, but apart from the difficulties attending the system in practice, it ultimately comes to a question of percentage. Inevitable waste, allowance for scale "breaking," loss of weight, and other deductions cannot be disregarded, and a certain percentage must be allowed for these, under a system which requires cash for the sale price of the goods consumed. But this consideration as to leakage would apply to the cost price system.

If 25 per cent. profit is required whilst the actual yield is only 22 per cent., the question arises, is 3 per cent. an excessive allowance for the "trade shrinkages"? This latter question, the gist of the whole matter, applies equally under either system, for if, under a selling price system it appeared that a branch was short in its cash by £5, or the equivalent of 3 per cent. of profit, it would be necessary to inquire whether the deficiency was justified or not, as in the case of the cost price basis. Furthermore, how could the following be charged out at selling prices?:—100 dozen pairs hose, sale prices 1s. a pair; 3 pairs for 2s. 6d.; 30 gallons petroleum, sale prices 1½d. per half-pint, 5d. a quart, 1s. 6d. a gallon; a sack of flour, which has to be manufactured into bread by those in charge of the branch, the ultimate weight of which may vary as much as 12 pounds per sack without calling for any special remark; or, lastly, a barrel of beer, which, if sold for consumption on the premises, would realise 2½d. per pint, but if taken away in jugs would only bring 1½d. for three gills.

Thus, if the *probabilities of the relative retailing quantities* are to be the subject of average in assessing the selling prices, it is clear the system cannot be better than a check by pure percentage, based upon cost prices. (*See title* Percentage.)

Separate Estates.—*See title* Joint and Separate Estates.

Set-off.—A cross claim. "The right of one party "who is bound under a contract towards "another, to set off a corresponding liability "upon the side of that other party, as counter-"balancing the want of performance of the con-"tract sued upon." (*See titles* Agent, Contributory, Mutual Credits, Statement of Affairs, &c.)

Settlement.—*See title* Fraudulent Conveyances and Settlements.

Settlement Estate Duty.—Where property of a deceased person, in respect of which estate duty is leviable, is settled by the will of the deceased,

or having been settled by some other disposition passes under that disposition, on the death of the deceased to some person *not competent to dispose* of the property, a further estate duty called "settlement estate duty," at the rate of one per cent. upon the principal value of the settled property, shall be levied, except where the *only* life interest in the property, after the death of the deceased, is that of a wife or husband of the deceased.

In the case of a person dying on or after 30th April 1909 the rate payable is 2 per cent. (Finance (1909-10) Act 1910, section 54), provided that where an interest in expectancy has before 30th April 1909 been *bonâ fide* sold or mortgaged for full consideration the duty shall be the same as if the 1909-10 Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee. (Section 64.)

Settlement estate duty shall not be payable more than once during the continuance of the settlement.

If estate duty has once been paid in respect of any settled property since the date of the settlement, it (estate duty) is not again leviable until the death of a person who was at the time of his death (or had been at any time during the continuance of the settlement) competent to dispose of such property.

But this is subject to the limitations imposed by section 55 of the Finance (1909-10) Act 1910.

Where the interest of any person under any settlement fails or determines, by reason of his death, before his interest in the property comprised in the settlement becomes an interest in possession, and *subsequent limitations* under the settlement continue to subsist, such property shall *not* be deemed to pass on his death.

Where *ad valorem* stamp duty has been charged on a settlement under the Stamp Acts, such duty may be deducted from the settlement estate duty payable in respect of the same property.

The settlement estate duty leviable in respect of a legacy or other *personal* property settled by the will of the deceased is (unless the will contains an express provision to the contrary) payable out of such settled legacy or property in exoneration of the rest of the deceased's estate.

Note.—This is sometimes construed as though the duty were payable "out of the *income*" of the settled property, but it is submitted that the intention is merely to *exonerate* that portion (if any) of the estate which is not settled, and that generally as between life-tenant and remainderman, the *duty only* is a capital charge; the *interest* thereon being chargeable to income.

Where settlement estate duty has been paid in respect of any property contingently settled and it is thereafter shown that the contingency has not arisen, and cannot arise, the settlement estate duty so paid can be recovered.

Where the *net* value of the property, real and personal, in respect of which estate duty is payable on the death of the deceased (exclusive of property settled otherwise than by the will of the deceased) does not exceed £1,000, and estate duty has been paid upon the principal value thereof, settlement estate duty is not payable thereon. (*See title* Estate Duty.)

The Commissioners of Inland Revenue may, if they think fit, accept land in satisfaction in whole or part of liability for settlement estate duty. (Finance (1909-10) Act 1910, section 56.)

Settling Days.—The days upon which Stock Exchange transactions are balanced, differences paid, and the stocks (bought and sold) taken up and delivered, or "carried over" to the next account.

The settlements are made fortnightly, and are termed "mid-monthly" and "end-monthly" respectively. The process of adjustment occupies three days, viz.:—

(1) *Contango day*, *carrying-over day*, or *making-up day*, upon which all speculative accounts should either be closed or continued to the following settlement. A charge is made for the latter privilege, which is termed *contango* in the case of a

bull transaction, the supply of stock being plentiful, and *backwardation* in the case of a *bear* transaction, there being a scarcity of stock. Transactions which are carried over are sometimes termed *continuances*, and the first day of the settlement is sometimes called *account* day. (*See below.*)

(2) *Ticket*, or *name day*, whereon the tickets are passed, and differences struck, or names of buyers declared.

(3) *Pay day*, *account day* (*proper*), or *settling day*, whereon all differences are paid and received, securities delivered, and money obtained.

Transactions are sometimes for *cash*, when they are settled at once without any recourse to the fortnightly process. Consols and a few other securities may be settled for once a month.

A bargain made for an " account " must be settled at that account, but the practice of " carrying-over," or " continuation of an account " is a device of brokers and jobbers, which enables them (in effect) to postpone the obligation under a contract, without committing a breach of the rules of the Stock Exchange. The necessary parties to a continuation are the " giver-on " of stock or shares, and the " taker-in " of stock or shares, he who sells for the current account and buys for the ensuing account is the " giver-on," and he who buys from and sells to the former is the " taker-in." Thus the stock that a person has (say) bought for settlement on a certain day, he may sell for the same day, and *concurrently* agree to purchase the same quantity for the ensuing account from the person to whom he has just sold. He is then responsible for the purchase price at the next account, but must pay, or is entitled to receive, the difference between the two contracts appertaining to the current account. A continuation may therefore be defined as " the combination of " a contract to sell and a contract to buy a " quantity of stock or shares made between the " *same* persons at the *same* time, but to be " executed at *different* accounts." Strictly, when a broker is instructed by his client to " carry-over," he should execute his orders by making the necessary contracts with a jobber, but a broker often " takes-in " upon his own account; he may contract with a jobber, or he may act as a principal, dependent upon the state of the market, personal convenience or otherwise. Doubts have been expressed as to whether a broker, having been instructed to " carry-over," is entitled to act as a principal and " take-in " himself.

Share Capital.—*See title* Capital.

Share Certificate.—*See title* Certificate.

Shareholder.—*See title* Member.

Share Ledger.—*See title* Register of Members.

Shares in Ships.—Every Registrar of British ships shall keep a book to be called the Register Book, and entries in that book shall be made in accordance with the following provisions:—

(1) The property in a ship shall be divided into sixty-four shares:

Note.—A share in a ship must be distinguished from a share in the capital of a limited company owning a ship or a number of ships. (*See title* Single Ship Company.)

(2) Subject to the provisions of the Merchant Shipping Act 1894, with respect to joint owners or owners by transmission, not more than sixty-four individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons, or of any company represented by or claiming under or through any registered owner or joint owner:

(3) A person shall not be entitled to be registered as owner of a fractional part of a share in a ship; but any number of persons not exceeding five may be registered as joint owners of a ship, or of any share or shares therein:

(4) Joint owners shall be considered as constituting one person only, as regards the persons entitled to be registered, and shall not be entitled to dispose in severalty of any interest in a ship, or in any share therein in respect of which they are registered:

(5) A corporation may be registered as owner by its corporate name.

A person shall not be entitled to be registered as owner of a ship, or of a share therein, until he, or, in the case of a corporation, the person authorised by the Act of 1894 to make declarations on behalf of the corporation, has made and signed a declaration of ownership, referring to the ship as described in the certificate of the surveyor, and containing a statement of his qualification to own a British ship, or, in the case of a corporation, of such circumstances of the constitution and business thereof as prove it to be qualified to own a British ship and other particulars.

A registered ship or a share therein (when disposed of to a person qualified to own a British ship) shall be transferred by bill of sale.

The bill of sale shall contain such description of the ship as is contained in the surveyor's certificate, or some other description sufficient to identify the ship to the satisfaction of the Registrar, and shall be in the form marked A in the first part of the First Schedule to the Merchant Shipping Act 1894, or as near thereto as circumstances permit, and shall be executed by the transferor in the presence of, and be attested by a witness or witnesses.

Where a registered ship or a share therein is transferred, the transferee shall not be entitled to be registered as owner thereof until he, or, in the case of a corporation, the person authorised by the Act to make declarations on behalf of the corporation, has made and signed a declaration (called a declaration of transfer) referring to the ship, and containing:—

(*a*) A statement of the qualification of the transferee to own a British ship, or if the transferee is a corporation, of such circumstances of the constitution and business thereof as prove it to be qualified to own a British ship; and

(*b*) A declaration that, to the best of his knowledge and belief, no unqualified person or body of persons is entitled as owner to any legal or beneficial interest in the ship or any share therein.

(*See title* British Ship.)

Every bill of sale for the transfer of a registered ship, or of a share therein, when duly executed, shall be produced to the Registrar of her port of registry, with the declaration of transfer, and the Registrar shall thereupon enter in the Register Book the name of the transferee as owner of the ship or share, and shall indorse on the bill of sale the fact of that entry having been made, with the day and hour thereof.

Bills of sale of any ship, or of a share therein, are entered in the Register Book in the order of their production to the Registrar. (*See titles* Bill of Sale (Shipping), Mortgage (of a ship), Port of Registry.)

Share Warrants.—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 the Act termed a share warrant.

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.

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.

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 the 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.

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.

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. (Companies (Consolidation) Act 1908, section 37.)

After the issue by the company of a share warrant, the annual summary required by the twenty-sixth section of the Consolidation Act 1908 (*see title* Annual List and Summary) shall contain the following particulars:—The total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the date of the last summary, and the number of shares or amount of stock comprised in each warrant.

There shall be charged on every share warrant a stamp 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 warrant, if the consideration for the transfer were the nominal value of such share or shares or stock. (Stamp Act 1891.)

Share warrants to bearer are but little used in this country. Should dealings in the shares of a company be expected to take place on the Continent, share warrants to bearer are found to be very convenient because of the saving of time and trouble in connection with the transfer registration, &c. Although the Act permits the issue of "share" warrants to bearer in respect of *stock* or shares the Stock Exchange object to their issue in respect of stock in respect of which a quotation is required.

Of course, a company which is empowered to issue share warrants cannot be a *private* company. (*See title* Private Company.)

Sheriff.—The chief officer of the Crown in every county, appointed annually to carry out the Sovereign's business in the county.

Ship.—For the purpose of marine insurance the term "ship" comprises the hull, tackle, apparel, ordnance, munition, boats, and other furniture, the last term covering the necessary provisions for the crew. (*See titles* British Ship, Mortgage of a Ship.)

Shipbroker.—A person (or firm) in a seaport carrying on business as agents for shipowners and attending to the affairs of vessels whilst in harbour, such as entering and clearing the vessel, collecting freights, chartering for new freight, and generally.

Ship's Articles.—The document forming the contract between the master and the crew of a vessel. The articles are signed by the master, and by each member of the crew (usually in the presence of a Board of Trade official or a Consul) and they contain particulars as to the "rating" of the men, the wages agreed upon, &c. &c.

Ship's Husband.—An agent (usually a direct employee) appointed by the shipowner to superintend a vessel as regards repairs, stores, and such like.

Ship's Papers.—The ship's register, articles, manifest, bill of health, the load-line certificate, &c.; all documents necessary to a vessel when entering or leaving port.

Short Bills.—Where bills are paid into a bank by a customer before maturity for collection it is the custom of some bankers to "enter them short," that is, not to carry them direct to the credit of the customer, but merely note the receipt of the bills, with their due dates and amounts in an inner column, carrying the proceeds to the usual cash column as and when received. Such bills are sometimes called "Bills for collection." (*See title* Bank Book.)

If the banker becomes bankrupt the bills deposited with him and entered short do not pass to the trustee under the "reputed ownership" clause, as the bills are treated as goods in the hands of a factor. Where bills have been indorsed and deposited by a bankrupt with a banker as security for an overdraft, proof for the purpose of *dividend* may be made on the full amount of the overdraft, but for the purpose of *voting* the banker must treat the liability to him (on the bills) of every person *antecedently* to the debtor (and against whom a receiving order has not been made) as security in his hands, and after estimating the value thereof, he must deduct same from his proof. (Bankruptcy Act 1883, 1st Schedule, Rule 11.)

Bankers for their own purposes classify all bills having less than ten days to run as short bills. The term may therefore be applied to demand and sight bills, and also to (say) a three months' bill within ten days of maturity.

Short Entry.—*See title* Short Bills.

Short Workings.—*See title* Royalty.

Show of Hands.—The common law mode of ascertaining the opinion or will of a meeting of persons.

Section 67 of the Companies (Consolidation) Act 1908 provides that as regards companies registered under that Act in default of any regulations as to voting every member shall have one vote.

Generally the articles of association of a company provide for the determination by a show of hands of all questions submitted to a meeting of the members, in which case every person present has one vote only, though he may hold numerous proxies, but they generally provide also for the demand of a poll so that each member may have such votes as he may be entitled to according to the articles in lieu of the system of showing hands. On the other hand, the articles of association may exclude the method of show of hands altogether—by providing that all questions shall be decided according to the shares held—thus rendering the demand for a poll unnecessary. (*See titles* Poll, Vote.)

Sight Bills.—Bills payable at sight, or on demand—that is, when presented for payment to the person liable to pay same; no days of grace are allowed upon a sight bill.

The most usual example of a sight bill is the ordinary cheque in every-day use.

Signatories (to Memorandum).—*See title* Memorandum of Association.

Signature (on a Bill of Exchange).—No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such (and delivered the bill), provided that:—

(1) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;

(2) The signature of the name of a firm is equivalent to the signature, by the person so signing, of the names of all persons liable as partners in that firm. (Bills of Exchange Act 1882, sections 21 and 23.)

The signature of a person may be made by him with his own hand, or be written by some other person duly authorised. A corporation may issue its bills under its seal, which is deemed a sufficient signature, but it is not bound to do so. (Section 91.)

The Companies (Consolidation) Act 1908, section 63, requires every limited company registered under that Act to have its name mentioned in legible characters in all bills of exchange,

promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company. Section 77 of the same Act provides that a promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of a company registered under that Act, if made, accepted or indorsed *in the name* of, or by or on behalf or on account of, the company by any person acting under its authority.

It should be noted that the above section does not confer upon all companies the *capacity* to issue bills or promissory notes: it simply prescribes the manner in which a company having the necessary power to issue same must exercise such power.

A forged or unauthorised signature on a bill is wholly inoperative, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. An unauthorised signature not amounting to forgery may, however, be ratified. (Bills of Exchange Act, section 24.) The foregoing section is subject to the provisions of sections 80 and 82 of the same Act, which afford protection to bankers paying or receiving payment of cheques in good faith and without negligence.

Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

In determining whether a signature on a bill is that of the principal, or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted. (Section 26.)

The drawer of a bill by drawing it:

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken:

(*b*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

The indorser of a bill by indorsing it:

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken:

(*b*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements:

(*c*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto. (Section 55.)

In view of the sections just quoted, viz., 26 and 55, officials of a company signing cheques or similar instruments on behalf of a company should make certain that their signatures are specifically stated to be *on behalf of* the company. (*Landes v. Marcus & Davids*, 1909.)

As regards the liability of a company in respect of bills of exchange improperly negotiated by a director for his own benefit, see *Premier Industrial Bank, Lim. v. J. & W. Crabtree, Lim.* (1908).

Silent Partner.—*See title* Dormant Partner.

Simple Contract.—A parol agreement, which may be either verbal or in writing, but not under seal.

The acceptance of an offer completes a contract, provided the requirements of the law as to form of acceptance be complied with. An offer may be withdrawn at any time before acceptance, for until both parties are bound neither is bound. So an offer may be withdrawn at any time, even though the party making the offer promised to keep the offer open for a

certain time unless the promise were by deed or for valuable consideration. Nevertheless the person who made the offer should notify the party that he has withdrawn the offer before entering into a contract with a third party in reference to the same subject-matter: this duty may be waived by the party to whom the offer is made, or expressly negatived by the party making same—*e.g.*, an offer of certain goods may be made "subject to being unsold on receipt of your acceptance." It has been held that under ordinary circumstances a contract is complete so soon as acceptance is signified, therefore an acceptance by post-letter completes the contract when the letter is posted, so that a telegram (purporting to withdraw an offer) received *after* acceptance is posted is inoperative although despatched before receipt of the acceptance. A written offer may be accepted verbally, and *vice versâ*.

With regard to the requirements as to stamp duty a mere proposal in writing, if accepted by parol, is not liable to stamp duty as an agreement, subject, of course, to the legal requirements attaching to special cases. (*See titles* Sale of Goods Act, Statute of Frauds.)

The law requires certain classes of simple contracts to be in writing, but they are none the less simple contracts on that account.

The essentials of a simple contract are:—

(1) Mutual assent.

(2) Competent parties.

(3) Legal subject-matter.

(4) Valuable consideration.

There are exceptions to the requirement of valuable consideration in simple contracts, viz.:—

(1) A promise of gratuitous service, *if the service be entered upon*, involves liability to use ordinary care and skill in the performance of such service.

(2) The holder of a bill of exchange for value has a right against a prior party who may have received no consideration for the bill. So the donee of the bill of exchange (although debarred from suing the donor) may sue all parties to the bill prior to the donor, whom the latter could have himself sued. (*See also title* Acknowledgment of Debt or Liability.)

The following classes of *simple contract* require to be in writing:—

(*a*) A bill of exchange (including cheque) and a promissory note.

(*b*) Assignments of copyright.

(*c*) Contracts of marine insurance (in the form of a policy).

(*d*) Acceptance or transfer of shares in a company. (But *see title* Share Warrants.)

(*e*) Acknowledgment of a statute-barred debt.

(*f*) Representation of credit, whereby one is enabled to obtain goods or money from a third party.

(*g*) The Statute of Frauds requires a memorandum of the under-mentioned:—

(1) Promise by executor or administrator to answer damages out of his own estate.

(2) Promise to answer for the debt, default or miscarriage of another person.

Note.—This must be distinguished from indemnity.

(3) Agreement made in consideration of marriage.

Note.—This must be distinguished from a promise to marry.

(4) Contract for the sale of lands or hereditaments, or any interest in or concerning them.

(5) Agreement not to be performed within the space of one year from the making thereof.

(*h*) The Sale of Goods Act 1893 requires a memorandum in respect of a contract for the sale of goods of the value of ten pounds or upwards, unless:—

(1) The buyer shall accept part of the goods and actually receive the same; or

(2) The buyer shall give an earnest to bind the contract or make a part payment therefor.

Note.—The requirements of the Statute of Frauds and Sale of Goods Act do not affect the validity of the various contracts themselves, but only state the essentials to prove their existence, so that they may be enforceable by action.

The consideration for a guarantee need not appear in the writing which affords evidence of the guarantee, but it must, nevertheless, exist. And the consideration for the sale of goods need not appear in the memorandum of the contract, where the price has not (at the time) been fixed by the parties.

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, and any contract which would 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. (Companies (Consolidation) Act 1908, section 76.)

A right of action upon a simple contract is barred after six years from the time the right first accrued.

(*See title* Consideration.)

Simple Interest.—*See title* Interest.

Simple Trust.—One where property is vested in one person simply upon trust for another, the nature of the trust not being further declared by the settlor.

Simpliciter.—Exclusive of anything not actually named.

Sine die.—When a matter is said to be adjourned *sine die* it means that a day has not been fixed for its resumption.

Single Account System.—One under which all the assets and liabilities, including the capital raised, are classed in a Single Account or Balance Sheet, as distinct from the method adopted in the Double Account system.

The term is also applied to the method of ascertaining the profits of a concern which relies more upon the Balance Sheet than upon the Revenue or Profit and Loss Account. If the total of the items on the credit or "assets" side of the Balance Sheet exceeds the paid-up capital and liabilities of the concern, including also any necessary or desirable reserve, then such excess is considered as profit. The terms "Double Account" and "Single Account" must be carefully distinguished from the terms "Double Entry" and "Single Entry." (*See titles* Bookkeeping, Double Account System, Profit.)

Single Entry.—*See title* Bookkeeping.

Single-Ship Company.—One incorporated for the express purpose of acquiring and trading with a single ship (as distinct from a fleet).

In such a case the company is registered as the owner by its corporate name, holding the whole 64 shares, *i.e.*, the whole ship; shareholders in a single-ship company therefore do not hold *shares in the ship* but in the capital of the company; as a consequence, although the former shares are transferable by bill of sale free from stamp duty, the latter are subject to the *ad valorem* duty of 10s. per cent. upon the consideration for a transfer thereof by way of sale.

(*See titles* Bill of Sale [Shipping], Shares in Ships.)

Sinking Fund.—Among the various circumstances to which this term applies are (*a*) redemption of Government debt, (*b*) redemption of municipal debt, (*c*) redemption of debentures issued by a commercial company, and (*d*) provision in respect of depreciation. These will be discussed *seriatim*.

When a Government or company issues a loan which it undertakes to repay at a certain date, it is usual for it to create a "sinking fund," *i.e.*, a fund which shall be sufficient to extinguish the debt at a fixed date. A certain sum, varying according to the amount of the debt and the length of the time before its repayment, is put aside each year and allowed to accumulate at interest until the loan is due. Another and a better method is to apply the annual amount set aside to the repayment each year of a correspond-

ing amount of the bonds, the distinctive numbers of which are decided by annual drawings, at par, or at a fixed price stated in the bond. Still another method is either to buy the bonds in the open market if they are selling below par, or draw them at par if above.

The term "sinking fund" came into use first as applied to the efforts made in this country from time to time to pay off some part of our enormous National Debt. That debt, being in the form of perpetual annuities, the ownership of which was registered in the names of individual possessors, could not be paid off by any drawings or be effectually dealt with by accumulations of surpluses or by setting aside so much per annum to accumulate for the redemption of the debt at some distant day. All attempts at accumulation have been disastrous. At present our National Debt is being redeemed by means of terminable annuities, and by the "old" and the "new" sinking funds. The "old" sinking fund is merely the surplus of revenue, if any, left at the end of a budget year, which is devoted to the purchase of stock in the open market for cancellation. The "new" sinking fund is a fixed proportion of the total annual sum charged upon the Consolidated Fund, and is applied in the same way as the "old," to the redemption of stocks by purchase in the open market.

Local authorities are required to repay borrowed moneys within certain periods, varying according to circumstances; the loans are, therefore, repaid by instalments direct to the lenders or periodically provided for through a sinking fund.

A loan may be redeemed, or a sinking fund created for that purpose, in at least two ways, and yet ultimately comply with the requirement that the whole shall be repaid within the stipulated period; but the annual contributions will vary. The method may be either:—

(1) Equal yearly or half-yearly instalments of principal, the interest upon the diminishing balance of debt from time to time outstanding being also paid as it becomes due; or

(2) Equal yearly or half-yearly instalments comprising principal and interest combined (called the annuity method).

The difference between these two methods as regards the particular years will be shown in the following example:—

Loan of £1,000 at 3 per cent. interest repayable by instalments in ten years.

	Method 1			Method 2		
Year	Principal	Interest	Total payment each year	Total payment each year	Principal	Interest
	£	£	£	£	£	£
1	100	30	130	117·2	87·2	30·0
2	100	27	127	117·2	89·8	27·4
3	100	24	124	117·2	92·6	24·6
4	100	21	121	117·2	95·4	21·8
5	100	18	118	117·2	98·2	19·0
6	100	15	115	117·2	101·1	16·1
7	100	12	112	117·2	104·1	13·1
8	100	9	109	117·2	107·2	10·0
9	100	6	106	117·2	110·5	6·7
10	100	3	103	117·2	113·9	3·3
Totals £	1,000	165	1,165	1,172	1,000	172

Either method of repayment will achieve its object at the end of the period in question (namely, the payment of accruing interest and redemption of the whole loan), but under the former method the loan is paid off proportionately throughout the whole period of redemption—that is to say, 25 per cent. during the first quarter of the period, 50 per cent. during the first half thereof, and so on.

But the annuity method relies upon the accumulating effect of compound interest to assist it in its work of redemption, and, as a consequence, the amount of debt redeemed at any time *during the currency* of the period is, under the annuity system, rather less than it would have been under the equal instalment method. The amount in "arrear" (comparing one system with the other) gradually accumulates until about the middle of the period, then the "arrears" are gradually reduced as the later portion of the period is running out, the whole debt being redeemed precisely when the end of the redemption period is reached.

The greater the rate of interest involved in the computation of the sinking fund contributions and the longer the period of redemption, the greater the "arrears" from time to time, and

the greater the ultimate interest paid in respect of the loan, comparing one method with the other. The difference in the "cost" is caused by the payment of *simple interest* at the rate involved upon the amount in "arrear" from time to time.

Many authorities suggest that the debt upon the more lasting assets might fairly be redeemed upon the annuity method, which requires the same amount of annual contribution for principal and interest throughout the whole period, while the "equal instalment of principal" system might more safely be employed where the assets are those quite likely to be exhausted as soon as the debt is redeemed. For in the latter case, although the instalment of principal remains constant throughout the whole period, the first year's contribution being the same as that of the last, the interest is obviously a gradually diminishing quantity, so that the two payments combined are much less in the later than in the earlier years, and this might be regarded as compensatory for the heavier expenditure required for the repairs of a rapidly expiring asset during the later years of the period of redemption of the loan.

With regard to the *depreciation* of assets acquired by loans which are made redeemable for the "protection of posterity," the rate at which the debt is to be redeemed is of the greatest importance. As a rule, the period granted to redeem a given loan is the result of computations which attempt to make some correspondence with the life of the wasting assets which are to be acquired with the money to be raised.

Many assets of lasting value, such as lands, must necessarily outlive the period fixed for the redemption of the loan raised to effect the purchase. Other assets, wasting more rapidly than usual, may perish entirely before the complete redemption of the loan raised for their acquisition.

But generally in specific instances, and most certainly on the average, the periods fixed for the redemption of the loans raised for the acquisition of wasting assets may be regarded as fairly commensurate with what was estimated to be, and with what generally proves to be, the periods of utility of the corresponding assets, while in the case of a lasting asset the period fixed for loan redemption is necessarily less than the life.

Under these circumstances, as between present and future ratepayers, a given undertaking is not called upon to do anything further out of revenue than keep the undertaking in good repair and working order; keep down the annual interest on the loan and provide the periodical instalments necessary to redeem the debt within the stipulated period—such instalments being equivalent to depreciation in every sense of the term. A reserve for contingencies is obviously necessary, but the amount of this must depend upon and vary with the circumstances of each particular case. Not only is the depreciation provided for, but the amount so provided is specifically set aside (in a sinking fund) or is actually repaid to the lenders. Thus, granting that the periods of the various loans ensure an adequate provision, the system of debt redemption is not only the best method of providing depreciation (being both compulsory and methodical), but it is the best method of applying the money representing the depreciation when same has been actually provided.

There are those who, in their opposition to the policy of municipal trading, contend that Repairs and Renewals, Interest and Sinking Fund, Depreciation and a contribution to Reserve Fund, should all be charged against Revenue; with the result that at the end of the period of the loan there should be presented to the succeeding generation of ratepayers (1) an undertaking in some respects exhausted, but in other respects maintained in good working order, but free of the debt originally raised; (2) a depreciation fund equal at least to the difference between the then value and the original value of the undertaking; and (3) what may chance to remain of a reserve fund. That is to say, apart from the question of a voluntary reserve fund, present day ratepayers are asked to pay off the debt raised for the first outlay and provide sufficient for the complete renewal when the undertaking needs to be renewed, so that such

renewal can be effected without further borrowing. The fact that the Local Government Board will sanction reborrowings for renewals to such extent as the cost of the original outlay has been redeemed shows that the foregoing contentions are not supported in official circles.

The view more generally held is that under existing regulations affecting municipal finance either adequate depreciation fund contributions or the statutory sinking fund contributions, whichever be the greater, should be charged against revenue in order to ascertain the true profit. If the period of the loan is found to be too long, a more exacting sum equal to an adequate depreciation fund contribution is certainly necessary, so that (in effect) the lesser sinking fund payments may be made out of the depreciation fund, the balance of which should equal the unredeemed portion of the debt on the premature exhaustion of the corresponding assets.

Reserve funds are optional as a general rule, and in many cases are restricted in aggregate to some fixed proportion of the outstanding capital expenditure from time to time, though in some instances the limit imposed by the local Act is not upon the aggregate amount of the fund, but upon the amount of annual contribution thereto. But in a great measure the amount set aside is voluntary, and in the result is in the discretion of the local authority.

What is desirable in this connection is more careful consideration of the circumstances affecting proposed loans than is afforded at present by either Parliament or the Government Departments. Local authorities should be given such periods within which their loans should be redeemed that it would involve such contributions to the sinking funds as might certainly be regarded as fully sufficient to protect succeeding generations, thus removing the question of depreciation from the province of each local authority and reducing the voluntary provision of reserve funds to a comparatively small compass.

In its application to commercial concerns the term Sinking Fund implies a sum set aside (either out of profits or forming a charge against profits) for some specific purpose, such as the redemption of debentures or other loans, &c.

The sums so set aside may be of fixed or varying amount; may be invested and allowed to accumulate, or, in some cases, used for the general requirements of the concern (with or without interest), or may be set aside at regular periods or otherwise.

As a result of a comparison between a surplus and a sinking fund it would appear that:—

I.—*As regards a Surplus.*

(*a*) Ordinarily it is created (*i.e.*, reserved out of profits) as a matter of prudence to meet unknown contingencies.

(*b*) It is not essential (though in many cases desirable) to invest the same in "outside securities," and so constitute a surplus in reserve (*i.e.*, a Reserve Fund).

II.—*As regards a Sinking Fund.*

(*a*) It is ordinarily created:

(1) To provide for the inevitable shrinkage of certain assets.

(2) To redeem known liabilities; or

(3) To achieve some other specific purpose.

Note.—When the sinking fund is being created to provide against known shrinkages of assets the instalments become a charge against revenue, and not an appropriation of profits, for until such charge has been made the amount of profit cannot be accurately ascertained.

(*b*) Where the particular object of the fund will render it necessary to have the fund at call, it is essential that it be invested in "outside securities," so that it may be made available for the purpose for which it was created.

(*c*) When created to redeem liabilities (but not when it is a mere provision against shrinkage of assets), a sinking fund is in effect a surplus for:—

(1) While the instalments towards the sinking fund are accumulating, they are reserved (withheld) profits pledged for a purpose; and

(2) When the ultimate object of the fund is carried out, the effect is merely substitutive—that is to say, assets are applied to redeem liabilities to a similar amount, leaving the amount hitherto named sinking fund as the measure of a surplus of assets over liabilities.

Thus:—

Capital and Liabilities	£	Property and Assets	£
Sundries	.. 15,000	Sundries	.. 25,000
Liability about to be redeemed	.. 10,000	Investments ..	.. 10,000
Sinking Fund (per contra)	10,000		
	£35,000		£35,000

On redemption being effected, the sinking fund and the particular liability disappear, while the consequent surplus assets become more apparent. Thus:—

Capital and Liabilities	£	Property and Assets	£
Sundries	.. 15,000	Sundries	.. 25,000
Surplus	.. 10,000		
	£25,000		£25,000

Muncipal debt in connection with trading undertakings is regarded as so much loan capital. The sinking fund instalments to redeem such debt should therefore be recognised as provision against depreciation and consequently a charge against Revenue Account, not an appropriation of profits tending to create a surplus of assets.

Many accountants decline to recognise the distinction between (1) the assets (be they business assets or outside investments) which *constitute* a reserve fund or a sinking fund, and (2) the Nominal Account with a credit balance which merely records the *amount* of the particular fund.

But it is submitted that all funds are dependent for their existence upon asset values, though not necessarily specific, and that whether sinking fund or reserve fund, the *amount* of same, but not the fund itself, is recorded in a Nominal Account having a credit balance to that extent; this result is inseparable from the principles of bookkeeping by double entry.

(*See title* Reserves and Reserve Funds.)

Sleeping Partner.—*See title* Dormant Partner.

Slip.—A memo. issued by an underwriter (pending the preparation of a stamped policy) briefly setting forth the main terms of a contract of insurance. A contract of marine insurance is deemed to be concluded when the proposal of the insured is accepted by the insurer, whether the policy be then issued or not: and for the purpose of showing when the proposal was accepted reference may be made to the slip or covering note, or other customary memorandum of the contract, although it be unstamped. The contract must, however, be confirmed by the issue of a policy, either at the time when the contract is concluded or afterwards. (Marine Insurance Act 1906, section 21.)

Slip Bookkeeping.—This is a system of bookkeeping which has latterly attracted considerable notice in this country, although it has long been used by banks in "posting" from slips termed "dockets."

There are several systems, three of which are as follow:—

(*A*) "Slip" posting.

(*B*) Loose-leaf Ledgers.

(*C*) Card Ledgers.

(*A*) Slips (or dockets) are generally utilised as a source of original entry and as a medium from which postings may be made direct to the Ledger. There are many variations of detail in practice, but the following is an example of the use of slip bookkeeping in place of the ordinary Sales Day Book:—

A carbon duplicate Sales Book is kept, the Sale Notes being numbered consecutively and a separate Sale Note made out for each customer. The particulars on these Sale Notes are posted at once direct to the debtors' Ledger Account, the reference in the Ledger being the number of the slip, the slip being then carefully filed in alphabetical and datal order. The credit posting

will be made either (1) by posting direct from the slip to the Sales Account, or (2) if an analysis of the sales is deemed necessary, then by entry in a Dissection Book, the departmental totals of which are posted periodically to the credit of the various Sales Accounts affected.

The advantages claimed are:—

(1) Reduction in the number of subsidiary books required, and consequent saving of labour both in writing up same and reference thereto.

(2) The original Sale Note can be readily referred to direct from the Ledger Account by means of the reference number there entered.

(3) Postings are more promptly made, the Sale Notes being sorted daily and handed to the various Ledger-keepers (if more than one).

(4) Diminution of risk of error—there is no intermediate entry between the original Sale Note and the Ledger, both of which can at any time be compared with the carbon duplicate in the Sales Book.

(*B*) *Loose-leaf Ledgers* consist of Ledger Sheets ruled in the ordinary way, but devised with the view of retaining within the Ledger "live" Accounts only. Two bindings are provided for these sheets, one marked "current" and the other "closed." A stated number of sheets is printed, and they are numbered consecutively, say 1 to 2,000, in the *left-hand top corner*. The disposal of these sheets is controlled by a principal who keeps a register of them, and on handing out any of them to the bookkeeping staff he makes a note of the account for which the sheet is obtained. The Ledger is arranged alphabetically A 1, A 2, *et seq.*, B 1, B 2, *et seq.*, C 1, C 2, *et seq.*, and the bookkeeper, on opening a new account, allocates to the customer a particular number (*e.g.*, John Burns—B 4—), and that number will always appear on the *right-hand top corner* of every sheet of the account to which it is originally appropriated. If the transaction is an isolated one so that the account is closed upon payment, or if the transactions are so numerous that another Ledger Sheet is shortly necessary, the first sheet is transferred to the "Closed" Ledger, so that only "live" sheets are in the "Current" portion. If an isolated transaction is followed later on by new business with the same customer, the original sheet is brought back to the "Current" portion for so long a period as may be required.

Loose-leaf Ledgers seem particularly suitable for Personal Accounts with debtors or creditors, but they are also made use of for other purposes, *e.g.*, for registers of members where the company is a large one and the *personnel* of the members is subject to constant change.

(*C*) *Card Ledgers.*—The principle underlying these is the same as that attaching to Loose-leaf Ledgers, and the method of working somewhat similar, save that cards of a convenient size are substituted for loose leaves, separate drawers being allocated to Current and to Closed Accounts.

The advantages claimed for the two methods (leaf and card) are:—

The elimination from the Ledger of blank sheets and pages fully written on, and the avoidance of the backward and forward reference often rendered necessary by a badly arranged Ledger.

As between the two it is urged upon behalf of the Loose-leaf System that:—

(1) The Ledger Form is retained, with such advantages as it may possess.

(2) It is equally applicable to large or small accounts, and if it is desired to go through the whole of a customer's account, a collation of the sheets will give a better idea of the business done than an inspection of cards.

(3) The sheets being larger there is less danger of their being mislaid or overlooked.

On the other hand, the advocates of the Card Ledger maintain that cards are more easily handled, and that there is little possibility of their being mislaid.

Two important objections urged against slip bookkeeping generally as a system are that:—

(1) It may assist in the committal and concealment of fraud, despite the facts that the registration of the slips and sheets, &c., already referred to, is designed to prevent this, and that the Loose-leaf Ledger bindings and the card drawers are usually fitted with a patent locking device, the key of which can, if necessary, be retained by the principal.

(2) It is not yet known how far slips or tickets will be recognised in English Courts of Law if put in as evidence of matters of account.

Small Bankruptcy.—Section 121 of the Bankruptcy Act 1883 provides:—When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the *Official Receiver reports* to the Court that the property of the debtor is not likely to exceed in value three hundred pounds, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:—

(1) If the debtor is adjudged bankrupt the Official Receiver shall be the trustee in the bankruptcy;

(2) There shall be no committee of inspection, but the Official Receiver may do, with the permission of the Board of Trade, all things which may be done by the trustee with the permission of the committee of inspection;

(3) Such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

Provided that the creditors may at any time, by *special* resolution, resolve that some person other than the Official Receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

The modifications in procedure referred to in the above section are prescribed by Rule 273, the more important of which are as follow:—

(1) There shall be no advertisement of any proceedings in a local paper unless the Board of Trade otherwise direct.

(2) The title of every document in the proceedings subsequent to the making of the order for summary administration shall have inserted thereon the words "Summary Case."

(3) All questions of law and fact shall be determined by the Court having jurisdiction in the matter, and no application for a jury shall be entertained.

(4) If no proposal for a composition or scheme is lodged with the Official Receiver within the time specified for that purpose in section 3 of the Act of 1890 (*i.e.*, within four days of submission by the debtor of his statement of affairs), or within such time thereafter as the Official Receiver may fix, or if the Official Receiver satisfies the Court that the debtor has absconded, or that the debtor does not intend to propose a composition or scheme, or that the composition or scheme proposed is not reasonable or calculated to benefit the general body of creditors, the Court may forthwith adjudge the debtor bankrupt. A report by the Official Receiver under this paragraph shall be *primâ facie* evidence of the facts stated therein.

(5) If during or at the conclusion of the public examination of the debtor it appears to the Court that a composition or scheme ought not to be sanctioned by reason of the conduct of the debtor, the Court may forthwith adjudge the debtor bankrupt.

(6) All payments shall, unless the Board of Trade otherwise orders, be made into and out of the Bank of England.

(7) The first meeting of creditors may, where it is expedient, be held on the day appointed for the public examination, or on any other day fixed by the Official Receiver. If a quorum of creditors be not present, it shall not be necessary to adjourn the meeting.

(8) Meetings of creditors shall, unless the Official Receiver for special reasons otherwise determines, be held in the town or place in which the Court usually holds its sittings, or in which the office of the Official Receiver is situate.

(9) On application by a bankrupt for his discharge the certificate of the Official Receiver shall not include, nor shall notices be sent to, creditors whose debts do not exceed £2.

(10) Notices of meetings, other than of first meetings, or of sittings of the Court, shall only be sent to creditors whose debts or claims exceed the sum of £2.

(11) The time for the payment of the first dividend shall be extended to six months.

(12) The estate shall be realised with all reasonable despatch, and where practicable distributed in a single dividend when realised.

(13) The costs or charges of any person employed by the Official Receiver other than of a solicitor may be paid and allowed without taxation where such costs or charges are within the prescribed scale; provided that the Board of Trade may require such costs or charges to be taxed by the taxing officer.

In addition to the above, the law costs and fees payable in "summary cases" are in certain instances based upon a lower scale, and in other instances the summary cases are entirely exempt from fees.

Small Damage Club.—A club by which members are covered against risks that do not usually come under the terms of an ordinary marine insurance policy. When funds are required for the payment of claims they are raised by contributions from all the members in the proportions which the sums insured by themselves respectively bear to the aggregate sum insured by the club at the ascertained dates of the losses in respect of which the contributions are made, or a fixed percentage may be periodically paid by members, so that the balance only (if any) will need to be called up at the date the losses are adjusted.

Société en commandite.—Partnerships (in France and certain of the American States) between one or more persons called general partners, and one or more other persons called partners *en commandite*. The business is carried on under the name of the general partners only, or their firm-name, and they are jointly and severally liable for the debts and losses of the partnership, while the partners *en commandite* contribute a certain amount of capital or stock, and their liability for debts and losses is limited to such amount. These partnerships are in effect the same as limited partnerships in England, but prior to the passing of the Limited Partnerships Act 1907 the nearest approach to the principle in English law was that contained in section 2 of the Partnership Act of 1890. (*See titles* Limited Partnership, Postponed Creditors.)

Sola.—Single, Solitary. The term, as applied to bills of exchange, signifies that only one copy of the bill is in circulation, as distinct from a bill drawn in a set of two or three. (*See title* Bill in a set.)

Sold Note.—*See title* Bought Note.

Sole Corporation.—*See title* Corporation.

Sole Trader.—One trading alone, *i.e.*, without a partner, often erroneously referred to as a sole partner—an obvious contradiction of terms.

Sounding in Damages.—An action is said to sound in damages when it is brought for the recovery of unascertained damages.

Special Agent.—*See title* Agent.

Special Bank Account.—*See title* Local Bank Account.

Special Business.—*See title* Ordinary Business.

Special Indorsement.—*See title* Indorsement.

Special Manager.—

BANKRUPTCY.

The Official Receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business, other than the Official Receiver, appoint a manager thereof accordingly, to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the Official Receiver. (Bankruptcy Act 1883, section 12.)

The Official Receiver may authorise the special manager to raise money or make advances for the purposes of the debtor's estate in any case where, in the interests of the creditors, it appears necessary to do so. (Section 70.)

Note.—The Official Receiver has an absolute discretion as to whether he will make the appointment, and no appeal lies from his decision. (*Re Whittaker*, 1884.) Where no appointment is made, it is the Official Receiver's duty to act as manager to the estate. (Section 70.)

The special manager shall give security in such manner as the Board of Trade may direct. Failure to give or keep up the security is a ground for rescission of appointment or removal. (*See title* Security.)

The special manager shall receive such remuneration as the creditors may by resolution at an ordinary meeting determine, or in default of any such resolution, as may be prescribed. (Section 12.)

Where a special manager is appointed and his remuneration is not fixed by the creditors he shall be paid such remuneration as may from time to time be fixed by the Board of Trade. (Rule 343.)

Every special manager shall account to the Official Receiver, and such special manager's accounts shall be verified by affidavit in the prescribed form, and, when approved by the Official Receiver, the totals of the receipts and payments shall be added to the Official Receiver's accounts. (Rule 344.)

The verified accounts of the special manager (so incorporated) must be forwarded to the Board of Trade, together with the necessary vouchers at the first audit of the trustee's accounts.

When the Official Receiver appoints a special manager he *may* at any time remove him if his employment seems unnecessary or unprofitable to the estate, and he *shall* remove him if so required by a special resolution of the creditors. (Rule 331.) But in any case a special managership ceases on the appointment of the trustee.

COMPANY LIQUIDATION (COMPULSORY).

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 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. (Companies (Consolidation) Act 1908, section 161.)

The special manager shall give such security, and account in such manner, as the Board of Trade direct. (*Ibid.*) Failure to give or keep up the security is a ground for rescission of appointment or removal. (*See title* Security.)

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.

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.

A copy of the order appointing a special manager shall be transmitted to the Board of Trade by the Official Receiver. (Winding-up Rules 1909, Rule 48.)

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. (Rule 49.)

The verified accounts of the special manager (so incorporated) must be forwarded, together with the necessary vouchers, to the Board of Trade at the first audit of the liquidator's accounts.

Special Referee.—A person to whom any question in any cause (other than a criminal proceeding) may be referred by the Court for inquiry and report, which report the Court may adopt either wholly or in part. The Court may also at any time order the *whole* cause or matter, or any question or issue of fact arising therein, to be tried before a special referee to be agreed upon by the parties, provided:—

(1) All parties interested who are not under disability consent; or

(2) The cause or matter requires prolonged examination of documents, or scientific or local knowledge; or

(3) The question in dispute consists wholly or in part of matters of account.

A special referee is deemed to be an officer of the Court, and his remuneration is fixed by the Court.

Special Resolution.—*See title* Resolution.

Special Settlement.—When a stock is first admitted to a quotation on the Stock Exchange the Committee fix a day upon which the first settlement of all prior dealings with the stock shall be made, and this day is called *Special Settlement Day*.

Specialty.—A contract by deed. (*See titles* Contract, Deed.)

Specialty Debts.—Bonds, mortgages, and other debts secured by writing under seal. Formerly they ranked in priority to simple contract debts in the administration of the estate of a deceased person, but this distinction was abolished as from 1st January 1870 by Hinde Palmer's Act (32 & 33 Vict., c. 46). (*See titles* Contract, Deed, Hinde Palmer's Act.)

Specie.—Something in its own form and essence, and not in the form of its equivalent, such as coin, as distinct from paper money.

Specie Point.—*See title* Par of Exchange.

Specification.—A detailed account of a thing; commercially, full particulars of certain goods required or work to be performed (1) supplied to contractors and others, so that they may base their estimates of the cost thereon, or (2) supplied by a contractor, stating fully what he offers to do for the price he estimates therefor.

Specific Legacy.—*See title* Legacy.

Specific Performance.—The actual accomplishment of the thing stipulated for in an agreement between parties.

The Court will enforce this where damages would be incommensurate with the injury sustained.

The several requisites of a valid contract will be particularly demanded where specific performance is sought. Even if the contract in question be *under seal*, valuable consideration must exist; that is, there must be some consideration passing from the party seeking to enforce the promise made in return for it.

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. (Companies (Consolidation) Act 1908, section 105.)

Spoiled Stamps.—Subject to such regulations as the Commissioners of Inland Revenue may think proper to make, and to the production of such evidence by statutory declaration or otherwise as the Commissioners may require, allowance will be made by the Commissioners for stamps spoiled in the cases hereinafter mentioned, that is to say:—

(1) The stamp on any material, inadvertently and undesignedly spoiled, obliterated, or by any means rendered unfit for the purpose intended, before the material bears the signature of any person, or any instrument written thereon is executed by any party.

(2) Any adhesive stamp which has been inadvertently and undesignedly spoiled or rendered unfit for use, and has not, in the opinion of the Commissioners, been affixed to any material.

(3) Any adhesive stamp representing a fee capable of being collected by means of such stamp which has been affixed to material, provided that a certificate from the proper officer is produced to the effect that the stamp should be allowed.

(4) The stamp on any bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance.

(5) The stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands.

(6) The stamp on any bill of exchange or promissory note which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange, may have been accepted or indorsed; or, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction or omission, with the spoiled bill or note.

(7) The stamp used for any of the following instruments, that is to say:—

(*a*) An instrument executed by any party thereto, but afterwards found to be absolutely void from the beginning.

(*b*) An instrument executed by any party thereto, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended.

(*c*) An instrument executed by any party thereto which has not been made use of for any purpose whatever, and which by reason of the inability or refusal of some necessary party to sign the same or to complete the transaction according to the instrument, is incomplete and insufficient for the purpose for which it was intended.

(*d*) An instrument executed by any party thereto, which by reason of the refusal of any person to act under the same, or for want of enrolment or registration within the time required by law, fails of the intended purpose or becomes void.

(*e*) An instrument executed by any party thereto which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped, or which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped.

Provided as follows:—

(*a*) That the application for relief is made within six months after the stamp has been spoiled or become useless, or in the case of an executed instrument after the date of the

instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, or within such further time as the Commissioners may prescribe in the case of any instrument sent abroad for execution, or when from unavoidable circumstances any instrument for which another has been substituted cannot be produced within the said period.

(*b*) That in the case of an executed instrument no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence, and that the instrument is given up to be cancelled.

(*c*) That in the case of stamps used for medicines or playing cards the medicines or cards bearing the stamps are produced to an officer, and the stamps are removed therefrom in his presence.

When any person has inadvertently used for an instrument liable to duty a stamp of greater value than was necessary, or has inadvertently used a stamp for an instrument not liable to any duty, the Commissioners may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if liable to duty, being stamped with the proper duty, cancel or allow as spoiled the stamp so misused.

In any case in which allowance is made for spoiled or misused stamps the Commissioners may give in lieu thereof other stamps of the same denomination and value, or, if required, and they think proper, stamps of any other denomination to the same amount in value, or, in their discretion, the same value in money, deducting therefrom the discount allowed on the purchase of stamps of the like description.

When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Commissioners may, if they think fit, repay to him the value of the stamp in money, deducting the proper discount upon his delivering up the stamp to be cancelled and proving to their satisfaction that it was purchased by him at the chief office or at one of the head offices, or from some person duly appointed to sell and distribute stamps, or duly licensed to deal in stamps, within the period of six months next preceding the application and with a *bonâ fide* intention to use it. (Stamp Duties Management Act, sections 9 to 12.)

The following regulations must be observed in connection with a claim for allowance for spoiled stamps:—

(1) The owner of the stamps (*i.e.*, the person for whose use and business the stamps are purchased) or his clerk, authorised by him in writing, must attend in person to make a statutory declaration on an official form before a distributor of stamps, or at Somerset House, respecting the property in the stamps, the reason for making the claim, and the grounds on which the claim is based. The declaration is not liable to stamp duty. The name, address, and occupation of the claimant must be written in full at the head of the declaration, and the declaration must be signed by him at the foot.

(2) In the case of a claim in respect of an executed instrument, the reason of the instrument becoming useless must be fully set forth in the declaration. The instrument used in lieu (if any) must be produced to the officer duly stamped and executed. A spoiled instrument must be presented in a complete state without mutilation, and the stamps thereon examined and counted by the officer, no instrument being received which does not fall within the conditions above set forth.

Stag.—A slang name for a speculator who applies for shares or stock in new concerns, or new issues of capital of existing concerns, with a view of obtaining allotment, and immediately selling the same at a profit. Also one who sells before allotment, anticipating a successful application.

Stale Cheque.—*See title* Unpresented Cheques.

Stamp Duties.—*See titles* Adhesive Stamp, Adjudication Stamp, *Ad valorem* Duty, Allotment Letter, Award, Bill of Exchange, Bill of Lading, Capital (Joint Stock Companies), Contract Note, Deed, Deed of Arrangement, Impressed Stamp, Limited Partnership, Memorandum of Association, Nominal Consideration, Proof of Debt, Proxy, Sale of Goods Act 1893, Share Warrants, Statement of Capital, Transfer (of stock or shares).

Stannaries.—*See title* Cost Book Mining Company.

Stated Short.—A term applied to the practice of recording items or transactions in books or accounts in an inner column, and resorted to in order to emphasise the existence or nature of such items or transactions, by bringing them into prominence with surrounding items. An instance is afforded in the Balance Sheet of a limited company, when the issued capital is less than the nominal or authorised capital. Here the particulars of the nominal capital would be "stated short," the amount of capital paid up being brought into account. (*See title* Short Bills.)

Statement in lieu of Prospectus.—Since the 1st July 1908 the Legislature has contemplated (apart from foreign companies having a place of business in the United Kingdom) the existence of three classes of companies, registered under the Companies Act 1862 or the Companies (Consolidation) Act 1908, viz.:—"Private Companies" and two classes of "public companies."

A private company is one which by its articles

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

(*b*) *Limits* the number of its members (exclusive of persons in the employment of the company) to fifty.

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

A private company may be converted into a public company under certain circumstances. (*See title* Private Company.)

All companies other than the foregoing are public companies, and they are subdivided into those which issue a prospectus, on or with reference to their formation, and those which do not. Section 82 of the Companies (Consolidation) Act 1908 provides that a company of the last named class must 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 prescribed form containing the following particulars:—

The nominal share capital of the company and its subdivision into shares.

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.

The number and amount of shares and debentures 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 such issue.

The names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company, stating the amounts payable in cash, shares, or debentures to each separate vendor. (*See title* 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.

Amount (if any) paid or payable as commission in respect of subscriptions for shares or debentures, and the rate per cent. of such commission.

Estimated amount of preliminary expenses.

The amount paid or intended to be paid to any promoter, giving the name of each promoter and the consideration for such payment.

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 the statement). (*Note.*—A company shall not previously to the statutory meeting vary the terms of a contract referred to in the statement in lieu of prospectus except subject to the approval of the statutory meeting. (Section 83.))

Time and place at which such 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 of his firm if a partner, 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.

Nature of any provisions in the articles precluding holders of shares or debentures receiving and inspecting Balance Sheets or reports of the auditors or other reports.

It will be seen that these particulars are in nearly all essentials the same as those which must be disclosed by a company issuing a prospectus. There does not appear to be any provision that all applicants for shares shall receive a copy of the statement in lieu of prospectus, and, further, the statement need not include particulars of the following, which must be disclosed in a prospectus:—

(*a*) 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 (if any) and the nature and extent of the interest of the holders in the property and profits of the company.

(*b*) 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.

(*c*) 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.

But the disclosure of these last-mentioned matters in the memorandum and articles of association which are filed and the filed statement itself are no doubt considered sufficient protection to persons desirous of obtaining information.

In the case of the first allotment of share capital payable in cash of a company (other than a private 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. (Section 85.)

An allotment made by a company to an applicant in contravention of the foregoing provisions 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; and if any director of a company knowingly contravenes or permits or authorises the contravention 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. (Section 86.)

(*See titles* Allotment, Prospectus.)

Statement (of account).—A written expression either in detail or in gross, showing:—

(1) The financial position of an individual or a business; or

(2) The financial transactions between different parties.

The former is dealt with under the heads of Balance Sheet and Statement of Affairs (*q.v.*).

With regard to the latter it is the custom for trading concerns to send to the debtors a summary of the unpaid or unsettled items standing against them in the Ledger. Usually the statements are forwarded by post, or presented by travellers, monthly, but the length of the period depends largely upon the terms as to credit in each business.

It is often found advisable for the auditors of a concern to check over the statements (already prepared for them) with the Debtors' Ledger Accounts, after the latter have been verified; and, on finding same to agree, the auditors place the statements in the Post Office, a small printed slip being attached to each statement asking the debtor to communicate *direct* with the auditors should anything be found inaccurate. This affords a fair check upon the debts, although the omission of a debtor to comply with the request should anything be wrong would not necessarily prejudice him. But, unless invited to do so, an auditor cannot insist upon direct communication with debtors.

With regard to the checking of such statements from the debtor's point of view a good plan is to post to the Ledger Accounts the consecutive numbers placed upon the invoices as they are recorded in the Purchase Book. This enables a Ledger clerk when checking a statement to place against the various items therein the invoice numbers as he passes each amount. He may then, by referring to the invoices themselves (either in a Guard Book or on files in consecutive order), ensure the accuracy of the statement from its *foundation*, seeing also that the invoices have been properly initialled by the various parties responsible. In practice, in very large concerns, where privity between the various officials is not always possible, it may be that an invoice is passed in proper form and duly recorded in the books, but afterwards some unforeseen circumstance arises which considerably affects the invoice which has already been passed. The salesman (who has seldom an accountancy mind) is most careful to alter the invoice which has been entered up and filed, and in so doing considers he has faithfully amended the whole matter. If, before passing a statement for payment, the invoices themselves are not scrutinised for any possible amendments since their first entry, such alterations as depicted above are made in vain.

Statement of Affairs.—

BANKRUPTCY.

Where a receiving order is made against a debtor he shall make out and submit to the Official Receiver a statement of, and in relation to, his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences, and occupations of his 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 shall be so submitted within the following times, namely:—

If the order is made on the petition of the debtor within three days from the date of the order.

If the order is made on the petition of a creditor within seven days from the date of the order.

But the Court may, in either case, for special reasons, extend the time.

Note.—Where any debtor requires any extension of the time for the filing by him of his statement of affairs, he shall apply to the Official Receiver, who may, if he thinks fit, give a written certificate extending such time, which certificate shall be filed, and shall render an application to the Court unnecessary. (Rule 218.)

If the debtor fails without reasonable excuse to comply with the requirements of this section, the Court may, on the application of the Official Receiver, or of any creditor, adjudge him bankrupt. (Bankruptcy Act 1883, section 16.)

When the debtor cannot himself prepare a proper statement of affairs the Official Receiver may, subject to any prescribed conditions and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs. (Section 70.) But it must be noted that it is none the less the debtor's statement, and not that of his accountant—in fact, as stated in greater detail later, the debtor must verify the statement of his affairs by oath or declaration.

The rate of remuneration is, as a rule, fixed beforehand by the Official Receiver, and subject to " Board of Trade " instructions, the remuneration is left, as a matter of bargain, between the Official Receiver and the person employed.

A person employed by the debtor without the sanction of the Official Receiver has no claim to any remuneration out of the estate.

Whenever the Official Receiver employs any person to assist the debtor in the preparation of his statement of affairs he shall forthwith report the matter by letter to the Board of Trade, justifying his action therein and specifying the remuneration to be allowed to such person. (Rule 326.) (*See title* Priority of Payments [Costs].)

Every debtor shall be furnished by the Official Receiver with instructions for the preparation of his statement of affairs. The statement of affairs must be in the prescribed form (brief particulars of which are set out below) with such variations or additions as circumstances may require, or in such other form as the Board of Trade may from time to time direct. The statement must be prepared in duplicate, and one copy must be verified; the latter being filed in Court by the Official Receiver. (Rule 217.)

In cases of partnership the debtors shall submit a statement of their partnership affairs, and each debtor shall submit a statement of his separate affairs. (Rule 263.)

Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the trustee or Official Receiver. (Bankruptcy Act 1883, section 16.)

When issuing the notice calling the first meeting of creditors the Official Receiver should, if possible, send to each creditor mentioned in the debtor's statement of affairs a summary of such statement, together with the causes of his failure, and any observations thereon which the Official Receiver may think fit to make. (Bankruptcy Act 1883, Schedule I, Rule 3.)

The debtor is also required to give written answers to a number of questions (printed) and to certify such answers to be correct to the best of his knowledge and belief.

The particulars required in the prescribed form of statement of affairs may be summarised as under:—

List A. Unsecured Creditors.—The name, address, and occupation of each creditor, the amount of the debt, the date contracted, and the consideration therefor. The names must be arranged in alphabetical order and numbered consecutively, creditors for £10 and upwards being placed first. Where there is a contra account against any creditor less than the amount of his claim against the estate, the amount of the creditor's claim and the amount of the contra account should be separately shown, and the balance (only) treated as the amount of debt. No such set-off should be included in List I. (*See title* Mutual Credits.) Particulars of any bills of exchange or promissory notes held by any creditor

should be inserted immediately below the name and address of such creditor.

Note.—The inclusion of a statute-barred debt by a debtor in his statement of affairs does not amount to an acknowledgment sufficient to revive the debt. Such an admission does not either express or imply a promise to pay except as to part of the debt or in some qualified manner which is not a sufficient acknowledgment. (*Ex parte Topping*, 1865.) (*See title* Acknowledgment of Debt.)

List B. Creditors Fully Secured.—The same particulars as in the case of unsecured creditors, and, in addition, particulars of the security held, the date the security was given, the estimated value of the security, and estimated surplus therefrom (if any).

List C. Creditors Partly Secured.—The same particulars as in the case of creditors fully secured, but showing, instead of "estimated surplus," the "estimated balance of debt unsecured."

List D. Liabilities of the Debtor on Bills discounted other than his own Acceptances for value.—The name, address, and occupation of each acceptor, the nature of the liability of the "debtor" (*i.e.*, whether as drawer or indorser), the date the bill became or will become due, the amount of the bill (distinguishing between accommodation and other bills), and the amount expected to rank for dividend.

List E. Contingent or other Liabilities.—Full particulars of all liabilities not otherwise scheduled, stating the name, address, and occupation of each creditor or claimant, the amount and nature of the liability or claim, and the date same was incurred.

List F. Creditors for Rent, &c., recoverable by Distress.—The name, address, and occupation of each creditor, the nature and amount of each claim, the period during which the claim accrued due, the due date, the amount recoverable by distress, and the balance (if any) ranking for dividend.

List G. Preferential Creditors for Rates, Taxes, and Wages.—The name, address, and occupation of each creditor, the nature and amount of each claim, the period during which the claim accrued due, the due date, the amount payable in full, and the balance (if any) ranking for dividend.

Note.—The amounts recoverable by distress or payable in full (if any) per lists F and G, must be deducted from the total assets shown on the "Front Sheet" (*see below*), whilst the balances (if any) ranking for dividend must be carried to List A (*above*).

List H. Property.—Full particulars of every description of property in possession and in reversion, and not included in any other list, showing the amount which each class of property is estimated to produce, and distinguishing between (*a*) Cash at bankers, (*b*) Cash in hand, (*c*) Cash deposited with solicitor for costs of petition, (*d*) Stock-in-Trade, giving the cost of same in addition to the amount which it is estimated it will produce, (*e*) Machinery, (*f*) Trade fixtures, fittings, and utensils, (*g*) Farming stock, (*h*) Growing crops and tenant rights, (*i*) Household furniture and effects, (*j*) Life policies (*see title* Surrender Value), and (*k*) any other property.

List I. Debts due to the Estate.—The name, address, and occupation of each debtor, the amount of each of the debts, distinguishing between those which are good, doubtful, and bad, the folio of the Ledger or other book (if any) where particulars of each debt are respectively to be found, the date each debt was contracted, particulars of the securities (if any) held for the debt, and the amount each debt is estimated to produce (the good debts, of course, being taken at their face value).

If any debtor to the estate is also a creditor, but for a less amount than his indebtedness, the gross amount due to the estate and the amount of the contra account should be separately shown, and the balance (only) treated as the amount of debt. No such claim should be included in List A. (*See title* Mutual Credits.)

List J. Bills of Exchange, Promissory Notes, &c., available as Assets.—The name, address, and occupation of the acceptor of each bill or (maker of) note, the amount of each bill or note,

the due date, the amount which it is estimated to produce, and particulars of any property held as security for the payment thereof.

Statement K. Deficiency Account.—This account is intended to show how the deficiency or estimated surplus (if any) as at the date of the receiving order is arrived at. The account must commence with the excess of assets over liabilities, or *vice versâ* (as the case may be), at some past date. This date should be 12 months before the date of the receiving order, or such other time as the Official Receiver may have fixed. The account must then show the subsequent profits or losses from business or otherwise, all subsequent expenses other than ordinary trade expenses, *e.g.*, household expenses, loss from bad debts per List I, and any extraordinary losses (of which full particulars must be given), the balance of the account showing the deficiency (or surplus, if so) as at the date of the receiving order, and agreeing with the balance shown upon the "Front Sheet" (*see below*). The Deficiency Account is dealt with more fully in the special article under that title.

The debtor shall, on the request of the Official Receiver, furnish him with Trading and Profit and Loss Accounts, and a Cash and Goods Account for such period not exceeding two years prior to the date of the receiving order as the Official Receiver shall specify. Provided that the debtor shall, if ordered by the Court so to do, furnish such accounts as the Court may order for any longer periods. If the debtor fails to comply with the requirements of this rule, the Official Receiver shall report such failure to the Court, and the Court shall take such action on such report as the Court shall think fit. (Rule 338.)

List L.—Every list containing particulars which form part of a debtor's statement of affairs must be dated and signed by the debtor, and such lists from A to J inclusive as are not applicable and do not contain any particulars whatsoever must be detached from the other lists and enumerated in List L, which must be dated and signed by the debtor, so that every list, whether applicable to the circumstances or not, may be satisfactorily accounted for.

Front Sheet.—This constitutes the summary of the debtor's position, and is virtually a Balance Sheet. The assets are obtained from Lists H, I and J, and the surplus (if any) from fully secured creditors per List B. From the total of these must be deducted (1) the distrainable and preferential claims per Lists F and G, and (2) any sheriff's charges which may be payable under section 11 of the 1890 Act. (*See title* Execution Creditor.) The liabilities which are expected to rank against the estate are made up from Lists A, C, D and E, and the resultant balance, surplus or deficiency, should agree with the balance shown in Statement K. A column is also provided for the amount of the gross liabilities as distinct from those expected to rank against the estate. The front sheet must bear a 2s. bankruptcy stamp as a filing fee, and, as already stated, the statement must be prepared in duplicate, and one copy verified by oath or declaration, the debtor stating that to the best of his knowledge and belief the statement and the several lists annexed thereto are a full, true, and complete statement of his affairs at the date of the receiving order.

The Debtors Act 1869 (section 11) provides that any person adjudged bankrupt shall be guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, if he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud.

Company Liquidation.

Where the Court 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.

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. (Companies (Consolidation) Act 1908, section 147.)

Every person who 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 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. (Winding-up Rules 1909, Rule 50.)

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. (Rule 50.)

The statement shall be submitted within fourteen days from the date of the winding-up order, or within such extended time as the Official Receiver or the Court may for special reasons appoint. (Section 147.)

Where 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. (Rule 51.)

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. (Rule 52.)

Any person making or concurring in making the statement and affidavit 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. (Section 147.)

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. (Rule 54.) (*See title* Priority of Payments [Costs].)

If any person without reasonable excuse makes default in complying with the requirements of the section he shall be liable to a fine not exceeding ten pounds for every day during which the default continues, and such default may be reported by the Official Receiver to the Court. (Section 147 and rule 53.)

The Official Receiver shall, 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. (Rule 120.)

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 take a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or con-

tributory shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the liquidator or of the Official Receiver. (Section 147.)

The particulars required in the prescribed form of statement of affairs may be summarised as under:—

List A. Unsecured Creditors.—The same particulars as are required in List A in bankruptcy, save that the names of any creditors who are also contributories, or are alleged to be contributories of the company, must be shown separately, and described as such at the end of the list.

Note.—The inclusion of a statute-barred debt in a statement of affairs does not amount to an acknowledgment sufficient to revive the debt. Such an admission does not either express or imply a promise to pay, except as to part of the debt, or in some qualified manner which is not a sufficient acknowledgment. (*Ex parte Topping*, 1865.) (*See title* Acknowledgment of Debt.)

List B. Creditors Fully Secured.—The same particulars as in List B in bankruptcy.

Note.—Debenture-holders must not be included here.

List C. Creditors Partly Secured.—The same particulars as in List C in bankruptcy, save that creditors who are also contributories of the company must be stated separately.

List D. Liabilities of the Company on Bills discounted other than own acceptances for Value.—The same particulars as in List D in bankruptcy.

List E. Other Liabilities.—The same particulars as in List E in bankruptcy.

List F. Preferential Creditors for Rates, Taxes, Salaries, and Wages.—The same particulars as in List G in bankruptcy.

Note.—There is no list corresponding to List F in bankruptcy, for, ordinarily, distress will not be allowed after the commencement of the winding-up to recover rent accrued due *prior* to that date.

List G. Debenture-holders.—The name and address of each debenture-holder, the amount of each claim, and a short description of the assets over which the security (if any) extends. The names of the debenture-holders must be arranged alphabetically and numbered consecutively. Separate lists must be furnished of the holders of *each issue* of debentures should more than one issue have been made.

List H. Property.—Full particulars of every description of property, not included in any other list, showing the amount which each class of property is estimated to produce and distinguishing between (*a*) Cash at bankers, (*b*) Cash in hand, (*c*) Stock-in-trade, (*d*) Machinery, (*e*) Trade fixtures, fittings, office furniture, and utensils, (*f*) Investments in stocks and shares, (*g*) Loans for which mortgages or other securities are held, and (*h*) Other property.

List I. Debts due to the Company.—The same particulars as in List I in bankruptcy.

List J. Bills of Exchange, Promissory Notes, &c., on hand, available as assets.—The same particulars as in List J in bankruptcy.

List K. Unpaid Calls.—The name, address, and occupation of each shareholder in arrear, the number in the Register, the number of shares held, the amount of call per share unpaid, the total amounts respectively due, and the amount which each is estimated to realise.

List L. Founders' Shares.—The name and address of each shareholder, the number in the Register, the nominal amount of the share, the number of shares held, the amount per share called up, and the total amount called up.

List M. Ordinary Shares.—The same particulars as in List L (*above*).

List N. Preference Shares.—The same particulars as in List L (*above*).

List O. Deficiency Account.—This account is intended to shew how the deficiency or estimated surplus (if any) as at the date of the winding-up order has been arrived at. Where the winding-up order is made within three years of the formation of the company the Deficiency Account must cover the whole period of the company's existence; but where the winding-up order is made more than three years after the formation of the company the account must commence at a date three years previous to the date of the winding-up order.

List P.—Similar particulars to those contained in List L in bankruptcy.

Front Sheet.—The assets and liabilities of the company as shown in the various lists are arranged in the bankruptcy form in order to show the position of the company "as regards creditors." The balance, being the estimated deficiency or surplus, as the case may be, is then carried down, and the amount of paid-up capital per Lists L, M, and N is brought into account in order to show the position "as regards contributories," the resultant balance being the net surplus or deficiency of the company (subject to the costs of liquidation). Where the balance, "as regards the creditors," represents a deficiency, the nominal amount of capital liable to be called up to meet such deficiency must be stated.

(*See title* Balance Sheet.)

Statement of Capital, &c.—Every company being a limited banking company or an insurance company or a deposit, provident, or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out below, or as near thereto as circumstances will admit.

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.

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.

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.

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.

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 (now consolidated, amended, and extended in 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.

Form of Statement referred to.

*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, £———.

*If the company has no share capital, the portion of the statement relating to capital and shares must be omitted.

(Companies (Consolidation) Act 1908, section 108 and 1st schedule.)

Upon the registration of a company under the Companies (Consolidation) Act 1908, a formal statement of the amount of nominal capital must be filed with the memorandum of association. This is required for the purpose of assessing the registration stamp duty, which is payable at the rate of 5s. for every £100 (or portion thereof) of the nominal capital of the company.

(*See title* Annual List and Summary.)

On registration of the memorandum of association of a company whose capital is limited by shares a statement of the nominal amount of the capital must be delivered to the Registrar, and an *ad valorem* duty of 5s. per cent. paid thereon.

On registration of a limited partnership, a statement of the amount contributed by the limited partner or partners, and on any subsequent increase therein a statement of such increase must be delivered to the Registrar and an *ad valorem* duty of 5s. per cent. paid thereon in each instance.

Statistical Books.—The books of a concern which are (ordinarily) not connected with the financial books; that is to say, they do not contain entries which form an integral part of the system of accounting. They may, however, be of such a character as to render them indispensable to a complete system of bookkeeping; for, in certain cases, the financial books are not sufficiently self explanatory, and statistical books are utilised to afford further details. A book containing an analysis of the *sales* of a business as regards (1) periods of time, (2) classes of goods, or (3) districts supplied, in a comparative form, is an example of a statistical book. (*See title* Statutory Books.)

Statute.—An edict of the Legislature; an Act of Parliament. (*See title* Act of Parliament.)

Statute of Frauds.—*See title* Frauds, Statute of.

Statutes of Limitation.—*See title* Limitation of Actions.

Statutory Books.—*Every* company formed and registered under the Companies Act 1862 or the Consolidation Act of 1908 must keep a Register of its members, and a Minute Book or Minute Books recording minutes of all proceedings of general meetings and of its directors or managers. (Companies (Consolidation) Act 1908, sections 25 and 71.)

Every *limited* company formed and registered as above must keep a Register of all mortgages and charges specifically affecting property of the company. (Section 100.)

Every company formed and registered as above must keep at its *registered office* a Register containing the names, addresses and occupations of its directors or managers, and must send to the Registrar of Joint Stock Companies a copy of such Register, and must from time to time notify to the Registrar any change among its directors or managers. Any default in compliance with these provisions renders liable to a fine, the company and every director and manager who knowingly and wilfully permits the default. (Section 75.)

The Companies Clauses Consolidation Act 1845 provides that every company to which that Act applies must keep a Register of its members, a Register of Mortgages, a Shareholders' Address Book, and a Minute Book or Minute Books.

The Stannaries Act 1887 provides that the purser of every Cost Book mine shall keep a Cost Book. The Assurance Companies Act 1909 provides that every company to which the Act applies, which is not registered under the Companies Acts, or which has not incorporated in 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.

(*See titles* Address Book, Annual List and Summary, Cost Book Mining Company, Minute Book, Register of Members, Register and Registration of Mortgages.)

Statutory Meeting.—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.

Private companies (as defined by section 121 of the Companies (Consolidation) Act 1908) are not required to forward or file the report mentioned below, but they are not exempted from the requirement as to holding the meeting.

The directors shall, at least seven days before the day on which the meeting is held, forward a report (called "the statutory report") to every

member of the company and to every other person entitled under this Act to receive it.

The statutory report shall be certified by not less than two directors of the company, or by the sole director and manager (as the case may be), 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 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.

The 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. (Companies (Consolidation) Act 1908, section 65.)

It is suggested that only *cash* received should be included in the Abstract of Receipts and Payments, the amount and nature of the consideration other than cash for shares or debentures allotted being excluded. Doubt has been expressed as to whether preliminary expenses and the like should be included among the payments on Capital Account. Those who favour the omission contend that the provision by the statute for the separate statement of preliminary expenses (*see* Par. (*c*) above) obviates the necessity for its inclusion in the Abstract.

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. (Section 65.)

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.

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.

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. (Section 65.)

If default is made in filing the statutory report or in holding the statutory meeting the company may be wound up by the Court, *on the petition of a shareholder* (only) presented at the expiration of fourteen days after the last day on which the meeting ought to have been held, but the Court may, on hearing such a petition, 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 order as may be just. (Sections 129, 137, and 65.)

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. (Section 83.)

(*See titles* Final Meeting, General Meetings.)

tipulation.—A bargain. With regard to stipulations in contracts for the sale of goods *see titles* Condition and Warranty.

tock.—The chief distinctions between shares and stock are:—

(1) Shares may not necessarily be fully paid up, but the amount of stock held is necessarily so.

(2) While shares can only be transferred in their entirety (*i.e.*, not in fractional parts), stock may be divided and transferred either in stated multiples or in any required amounts.

(3) Each share must be distinguished by its appropriate number, but this requirement does not extend to stock.

Section 41 of the Companies (Consolidation) Act 1908 provides that a company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum (*inter alia*) by converting all or any of its paid-up shares into stock and by reconverting that stock into paid-up shares of any denomination.

Section 43 of the Act provides:—

Where a company having 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.

Stockbroker.—One who buys and sells stocks and shares as the agent for others for a commission or brokerage. (*See titles* Defaulter, Jobbers.)

Stock Exchange Quotation.—The following are the principal rules of the Stock Exchange governing the grant of special settling days and official quotations:—

The Committee will appoint a *special settling day* for transactions in the shares of a new company, provided that no allegation of fraud be substantiated; that there has been no misrepresentation or suppression of material facts; that sufficient scrip or shares are ready for delivery; and that no impediment exists to the settlement of the account.

The secretary of the Share and Loan Department shall give one week's notice to the Stock Exchange of any application for a special settling day previously to such application being submitted to the Committee, and shall require the production of the following documents, viz.:—

The prospectus, the Act of Parliament, the articles of association, or a certificate that the company is constituted upon the Cost Book system under the Stannary Laws.

The original applications for shares, the Allotment Book, signed by the chairman and secretary to the company, and a certificate verified by the statutory declaration of the chairman and the secretary, stating the number of shares applied for and unconditionally allotted to the public, the amount of deposits paid thereon, and that such deposits are absolutely free from any lien.

The Banker's Pass Book, and a certificate from the bankers stating the amount of deposits received.

The Committee may order the *quotation* of a new company in the official list, provided (1) that the company is of a *bonâ fide* character, and of sufficient magnitude and importance; (2) that the requirements of the rule as to settling days have been complied with; (3) that the prospectus has been publicly advertised, and agrees substantially with the Act of Parliament, or the articles of association, and, in the case of limited companies, contains the memorandum of association (*Note.*—This requirement is now included in the provisions

of the Companies (Consolidation) Act 1908); (4) that the prospectus provides for the issue of not less than one-half of the nominal capital, and for the payment of 10 per cent. upon the amount subscribed, and sets forth the arrangements for raising the capital, whether by shares fully or partially paid up, with the amounts of each respectively, and also states the amount paid, or to be paid, in money or otherwise, to concessionaires, owners of property, or others, on the formation of the company, or to contractors for works to be executed, and the number of shares, if any, proposed to be conditionally allotted; (5) that two-thirds of the nominal capital proposed to be issued have been applied for and unconditionally allotted to the public (shares reserved or granted in lieu of money payments to concessionaires, owners of property, or others, not being considered to form part of such public allotment); (6) that the articles of association restrain the directors from employing the funds of the company in the purchase of its own shares; and (7) that a member of the Stock Exchange is authorised by the company to give full information as to the formation of the undertaking, and will be able to furnish the Committee with all particulars they may require.

The Committee will not consider any application for the quotation of shares or securities issued to the vendors, credited as fully or partly paid-up, until six months after the date when the shares or securities of the same class subscribed for by the public shall have been quoted in the official list. This rule does not necessarily apply to reorganisations or amalgamations of existing companies.

As a necessary condition to obtaining an official quotation of debentures (or debenture stock) the prospectus must set forth all terms, conditions and circumstances under which such debentures are, or may become, redeemable or repayable.

In cases where fully-paid shares have been granted in lieu of money payments, an official certificate will be required that the contract providing for the issue of such shares (or "the prescribed particulars," as the case may be) has been filed with the Registrar of Joint Stock Companies as required by the Companies (Consolidation) Act 1908. (*See title* Registered Contract.)

Foreign companies whose capital has been partly subscribed for and allotted in this country shall not, unless under special circumstances, be allowed a quotation in the official list until they have been officially quoted in the country to which they belong.

A company issuing, or promising to issue, new shares within twelve months after the first settling day appointed by the Committee, unless under special circumstances, shall be liable to exclusion from the official list.

(*See title* Settling Days.)

Stock-in-Trade.—The legal position of auditors with regard to the valuation of stock-in-trade contained in a Balance Sheet is expressed in the judgment of Lord Lindley (then L.J.), in the *Kingston Cotton Mill* case (1896), from which the following is an extract:—

"For several years frauds were committed "by the manager, who, in order to bolster up "the company and make it appear flourishing "when it was the reverse, deliberately "exaggerated both the quantities and values "of the cotton and yarn in the company's "mills. He did this at the ends of the years "1890, 1891, 1892, and 1893. There was no "book or account (except the Stock Journal "to which I will refer presently) showing the "quantity or value of the cotton or yarn in "the mill at any one time. It would not be "easy to keep such a book. Nor is it wanted "for ordinary purposes. There is considerable waste (20 or 25 per cent. on the "average) in the manufacture of yarn from "cotton, and the market prices of both cotton "and yarn are subject to great fluctuations. "The Balance Sheets of each year contained "on the asset side entries of the values of the "stock-in-trade at the end of the year, and "those entries were stated to be 'as per "manager's certificate.' The quantities did

" not appear in either case. The auditors " took the entry of the stock-in-trade at the " beginning of the year from the last pre- " ceding Balance Sheet, and they took the " values of the stock-in-trade at the end of the " year from the Stock Journal. This book " contained a series of accounts under various " heads, purporting to show the quantities " and values of the company's stock-in-trade " at the end of each year, and a summary of " all the accounts showing the total value of " such stock-in-trade. The summary was " signed by the manager, and the value as " shown by it was adopted by the auditors, " and was inserted as an asset in the Balance " Sheet, but 'as per manager's certificate.' " The summary always corresponded with " the accounts summarised, and the auditors " ascertained that this was the case. But " they did not examine further into the " accuracy of the accounts summarised. The " auditors did not profess to guarantee the " correctness of this item. They assumed no " responsibility for it. They took the item " from the manager, *and the entry in the " Balance Sheet showed that they did so.* I " confess I cannot see that their omission to " check his returns was a breach of their duty " to the company. *It is no part of an auditor's " duty to take stock.* No one contends that it " is. He must rely on other people for details " of the stock-in-trade in hand. In the case of " a cotton mill he must rely on some skilled " person for the materials necessary to enable " him to enter the stock-in-trade at its proper " value in the Balance Sheet. In this case the " auditors relied on the manager. He was a " man of high character and of unquestioned " competence. He was trusted by everyone who " knew him. The learned Judge (Vaughan " Williams) has held that the directors are not " to be blamed for trusting him. The auditors " had no suspicion that he was not to be " trusted to give accurate information as to the " stock-in-trade in hand, and they trusted him " accordingly in that matter. But it is said " they ought not to have done so, and for this " reason. The Stock Journal showed the " quantities—that is, the weight in pounds— " of the cotton and yarn at the end of each " year. Other books showed the quantities of " cotton bought during the year and the " quantities of yarn sold during the year. If " these books had been compared by the " auditors they would have found that the " quantity of cotton and yarn in hand at the " end of the year ought to be much less than " the quantity shown in the Stock Journal, " and so much less that the value of the cotton " and yarn entered in the Stock Journal could " not be right, or, at all events, was so " abnormally large as to excite suspicion and " demand further inquiry. This is the view " taken by the learned Judge (Vaughan " Williams). But, although it is, no doubt, " true that such a process might have been " gone through, and that if gone through the " fraud would have been discovered, can it be " truly said that the auditors were wanting in " reasonable care in not thinking it necessary " to test the managing director's return? I " cannot bring myself to think they were, nor " do I think that any jury of business men " would take a different view."

———

The following is an extract from a leading article in *The Accountant* newspaper of 30th May 1896, commenting upon the above judgment:—

It has now been held by the Court of Appeal that the auditor who does not attempt to verify a manager's valuation of stock is not guilty of legal negligence. We must, of course, accept this ruling, but it does not estop us from inquiring whether a more thorough audit is not sometimes possible. The problem which has to be considered, therefore, is the extent to which it is practicable that an auditor shall carry his independent scrutiny of the valuations which are submitted to him of assets which, in the nature of things, it must be admitted he himself is not really competent to value; and, so far as stock-in-trade is concerned, we pointed out in a previous issue how an auditor, by comparing the percentages of profits earned during different periods, may, up to a point,

check the accuracy of the figures of stock-in-trade that may have been submitted to him. . . . In every class of trade there is a percentage of gross profit which (within limits) will be found to be adhered to under all but abnormal circumstances, and *a fortiori* the same remark applies when one particular undertaking rather than one class of undertakings is considered. If, therefore, the auditor finds, upon a comparison of the percentages of profit earned during different periods, that there is a material variation in the rate of such percentage, we think it may safely be taken that, whatever the actual law may be, it is expedient that he should look upon the occurrence as abnormal, and set himself to inquire as to what circumstances may have occurred during the period in question which could possibly account for such a variation in the percentage as has been observed. It may, of course, be that there exists a very excellent reason for the difference in question, and where the auditor after inquiry has satisfied himself that the reasons which have been advanced to him, and which he is convinced have actually existed, are sufficient to account for the variation, it must, we think, be admitted that he has done all that an auditor can do towards verifying the valuation of stock-in-trade which has been placed before him.

The cases of *Henry Squire, Cash Chemist, Lim. v. Ball, Baker & Co.* and *Meade v. Ball, Baker & Co.* (1911) are also of considerable interest in this connection. The circumstances of these cases were somewhat similar to the *Kingston Cotton Mill* case, with the exception that in the case of *Meade v. Ball, Baker & Co.* the plaintiff was himself a director of Henry Squire, Cash Chemist, Lim., and had himself reposed every confidence in the servant of the company who had manipulated the Stock Sheets. It was held in both cases that on the facts the defendants had made a reasonable and proper investigation of the Stock Sheets, and that in making their investigation they were entitled to rely on documents vouched by servants of the business unless they had reason to believe such servants to be dishonest.

Lord Lindley has said that auditors cannot be made responsible for values, but upon another occasion the learned Judge stated that "an "auditor must only certify that which he "believes to be true, and he must use all reason-"able diligence to ascertain that that which he "so certifies is true," so that it cannot be safely asserted that an auditor has no responsibility *whatever* for values. He may rightly be relieved of the primary responsibility therefor, but he will at least need to test the bases of the values so far as he can under the particular circumstances. He should at least ascertain the principles upon which the valuations have been made, so that he may be in a position to state whether such principles are approved by him or otherwise. The bases of valuation depend largely upon particular circumstances, but as a general rule stock-in-trade should be valued (1) at actual cost where such cost is not in excess of a settled market value, and as a precautionary measure, (2) at market value where such market value is less than the actual cost of the goods on hand, and particularly so if it is anticipated that a "falling market" will be the condition of things for some time.

The term "actual cost" must not be narrowly interpreted. It may reasonably include (according to circumstances and the particular class of goods) carriage, interest on money, storage rent, dressing, &c.

If cotton is purchased three months before it is required, because of a fall in price, it may be that the actual purchase-money, plus the cost of storage for three months, is much less than the market price of the cotton at the time it is actually required by the spinner. So a wine merchant may either purchase in bulk a quantity of vintage port and store it for years in bottle in his own cellars, or he may purchase from another merchant in a matured state. Apart from the fact that in the former case the merchant is more satisfied as to the genuineness of the goods, it may often happen that the actual

purchase-money of the wine in bulk, plus the cost of bottling and reasonable interest thereon for the number of years the wine is kept in store, would in the aggregate be no more than the price of that same "vintage" in a matured state which is demanded by another merchant.

It will often be found that certain tests may be applied by an auditor in the reasonable conduct of his inquiry which are of wider effect and of a more searching character than those which the law demands as the minimum of precautions which he must take in order to avoid personal responsibility for the consequences of an excessive valuation.

The following expedients are suggested, varying according to circumstances, in connection with the valuation of the stock-in-trade as at the date of the Balance Sheet:—

(1) Require the valuation of an "outside" expert; or

(2) Require the valuation of a responsible official of the company or concern; one whose remuneration is not wholly or in part based upon the certified profits of the concern; and

(*a*) Obtain his certificate for such valuation;

(*b*) Inspect the original Stock Sheets which should be signed by the various parties who have assessed the prices, and made the various calculations;

(*c*) Check the various "extensions" and additions involved in the valuation;

(*d*) Examine some of the "purchase" invoices for goods which have been received into stock only a few days before stocktaking. These goods under ordinary circumstances will be unsold and included in the Stock Sheets. A comparison of the prices on the invoices and Stock Sheets respectively is thus possible;

(*e*) Where a "Price Book" of goods purchased is kept, compare a selection of the prices therein with the Stock Sheets.

The auditor may also apply the percentage test—*i.e.*, compare percentages of gross profit earned in the past with that shown by the accounts for the period under review, and compare the total values of the stocks held in previous years.

Where Cost Accounts and/or Stock Registers are kept, recourse may advantageously be had to these to substantiate prices and quantities respectively; but, as will be seen from the judgment in the *Kingston* case quoted above, even where a Stock Journal is kept recording *quantities*, and in such a manner as to reveal an inaccurate valuation of the stock-in-trade, were an inspection of such a book duly made by the auditor, an omission to make such inspection will not under ordinary circumstances render such auditor liable for negligence, if he has been supplied with a certificate as to the valuation of the stock from a responsible manager, and has considered it unnecessary (because his suspicions have not been aroused) to test the accuracy of the same.

An important point in connection with the *Kingston* case was that "the auditors took the "item from the manager, *and the entry in the "Balance Sheet showed that they did so.*" It is, therefore, advisable to require it to be stated upon the face of the Balance Sheet, or, in the alternative, in the auditor's report, that the valuation of the stock-in-trade "is as taken "and valued by ———," whether the certificate be given by an independent valuer or a responsible official.

(*See titles* Consignment Ledger, Incomplete Work, Investigation (stocks on hand), Manufacturers' Accounts, Stock Register, Stores Account.)

Stockjobber.—A dealer in stocks and shares; one who buys and sells stocks and shares on his own account, as distinct from a stockbroker, who deals on account of his clients. (*See title* Jobbers.)

Stock Register.—A record of the quantities of stock-in-trade bought, sold, and/or used for manufacturing purposes so as to afford (1) a check upon the stocks on hand, and (2) some guidance to those engaged in the buying and

selling departments respectively, whilst (3) in exceptional cases an interim and approximate Profit and Loss Account may be prepared without actually taking an inventory and valuation of the stock-in-trade. The register may deal with specific articles or goods in bulk (*i.e.*, weight, measure, or count), and is made up by dealing with the following:—

(1) Commencing stocks (classified).

(2) Subsequent purchases as shown by the various invoices or delivery notes, according to circumstances;

(3) Subsequent sales as shown by the Sales Books, or Delivery Notes, or "Stores Required" Slips, according to circumstances;

(4) The necessary adjustments arising from mixings, returns, and allowances for inherent shrinkages and losses from other recognised causes.

———

The resultant balances of each class of goods should substantially agree as regards quantities with the inventory of stock-in-trade when actually taken at the end of the period.

Where specific articles are dealt with, each having a consecutive stock number, the sales are credited by specifically writing off the "purchase entry" for each article, and in such instances the result attained from the Stock Register is more satisfactory than is the case under ordinary circumstances. A specific record is, however, but seldom possible, being applicable only to stocks held in a *completed form* and composed of articles of an isolated character (such as the pianos of a mere dealer therein)—in short, the *specific* record is only attainable in a satisfactory degree where the goods in question are (1) large or valuable, (2) capable of precise identification, and (3) bought and sold in the same state, no measuring, cutting, or weighing being required. (*See title* Stores Account.)

Stocktaking.—The technical term given to the whole procedure of a trader, when he takes an inventory and valuation of his stock-in-trade, and (generally) adjusts his books of account to the date of the valuation of the stock, so that he may ascertain his financial position as on that day.

Stop Order.—Any person entitled to a fund in Court may apply, on petition or summons, for an order to prevent any dealing with the fund without notice to the applicant.

Stoppage in transitu.—Under the following circumstances a seller of goods has, under the Sale of Goods Act 1893, a right of stoppage *in transitu*, so that he may resume possession of the goods and retain them until payment or tender of the price, viz.:—

(1) The buyer has become insolvent;

(2) The seller is unpaid;

(3) The seller has parted with the possession of the goods; and

(4) The goods are (at the time of exercising the right) in *course* of transit.

Note.—Insolvent means:—Ceased to pay debts in the ordinary course of business, whether an act of bankruptcy has been committed or not.

Course of transit means:—From the time of delivery to a carrier or other bailee for the *purpose* of transmission to the buyer, until:—

(*a*) The buyer or his agent takes delivery of the goods, whether they have arrived at their appointed destination or not; or

(*b*) The carrier notifies the buyer, or his agent, that he holds the goods on his behalf; or

(*c*) The carrier *wrongfully* refuses to deliver the goods to the buyer or his agent.

On the happening of either of the three last-mentioned events the transit is, or is deemed to be, at an end.

Where part delivery of the goods has been made to the buyer, or his agent, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

Mode of effecting stoppage.—The unpaid seller may exercise his right of stoppage *in transitu*

(1) by taking *actual* possession of the goods; or

(2) by giving notice of his claim to the carrier, or other bailee, in whose possession the goods are. Such notice must be given either to the person in actual possession of the goods or to his principal, and, in the latter case, the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee, in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

Effect of stoppage.—An unpaid seller who has exercised his right of stoppage *in transitu* may re-sell the goods under the following circumstances:—

(1) Where the goods are of a perishable nature; or

(2) Where he gives the buyer notice of his intention to re-sell, and the buyer does not, within a reasonable time, pay or tender the price of the goods; or

(3) Where the seller *expressly* reserves a right of re-sale in case the buyer makes default.

Where an unpaid seller re-sells the goods, the buyer acquires a good title as against the original buyer.

A contract of sale is not rescinded by the *mere exercise* of the right of stoppage *in transitu*, but where a seller has expressly reserved the right of re-sale in case the buyer makes default, and on such default the seller re-sells the goods, the original contract of sale is *thereby* rescinded. But a seller on re-sale, under any of the above circumstances, does not prejudice any claim he may have against the original buyer for damages occasioned by breach of contract or default.

The right of stoppage is defeated:—

(1) By termination of the transit (as defined above).

(2) By *sale* of the goods, and transfer of the documents of title, *e.g.*, bills of lading, to a person who takes the same in good faith and for valuable consideration.

Note.—If the transfer of the documents of title is not by way of sale, but by way of pledge or other disposition for value, the unpaid seller's right of stoppage *in transitu* can be exercised, but subject to the rights of the pledgee or transferee.

(3) By estoppel—*i.e.*, the seller may be estopped from exercising the right.

The right of stoppage is *not affected* by any sale or other disposition of the goods which the buyer may have made, unless (1) the seller has assented thereto, or (2) the transaction comes within (*a*) the circumstances here stated as to transfer of documents, or (*b*) the provisions of the Factors Act.

The right of stoppage being conferred upon an unpaid seller by implication of law, such implication may be rebutted, for, by section 55 of the Sale of Goods Act, where any right would arise under a contract of sale by implication of law, it may be *negatived or varied* by express agreement, or by the course of dealing between the parties, or by usage, if the usage be such as to bind *both parties* to the contract.

Stores.—Raw materials to be employed in manufacture as distinct from manufactured stock; sundry commodities, such as provisions, tackle, &c., varying according to circumstances.

Stores Account.—A Stores Account is termed in bookkeeping, by double entry, an Impersonal Ledger Account, and may be either (1) an expense account, according as it serves as a mere record of stores purchased and forthwith consumed—*e.g.*, ships' stores—or (2) a Stock Account, which is debited with all stores pur-

chased, and credited with all stores issued for work in hand or supplied to the various departments of a business. Both debits and credits being, of course, at *cost*, the balance of the account should at any time represent the stock on hand at cost, subject to questions of wastage and the like. In large undertakings the stores are often divided into classes, such as timber, iron, steel, brass, copper, &c., and separate accounts are kept for each class, thus assisting to localise any differences in the stocks. In keeping a set of Cost Accounts, only those materials which are *not* ordered specially for a particular job will, as a rule, pass through the Stores Account or Accounts, " direct materials " being debited to an account called " Direct Materials Account " in the Impersonal Ledger, the total debits to the latter account during a trading period agreeing with the total of the direct materials charged to the various contracts or classes of work in the Cost Books. It is in regard to the charging out of the indirect materials obtained from store that one of the most frequent sources of error and of omission in keeping Cost Accounts arises. The storekeeper should be a reliable man, and should not issue any goods from store except in exchange for a proper " Requisition Order," stating the object for which the goods are required, and signed by the foreman in charge of the job. Each of such Requisition Orders should be filed and numbered, its contents being entered in a " Goods Issued Book," and the articles should be priced out either (1) by the storekeeper and checked in the office, or (2) by the office staff.

The storekeeper should also keep a " Goods Received Book," in which he should enter full particulars (as to weights, quantity, quality, description, &c.) of all goods received into store. This must be done where the check on the stores is kept by weights or quantities. Amongst other advantages this book will be found useful in the office for checking invoices, which it is suggested the storekeeper should *not* see before writing up his Goods Received Book, as should he do so he may be tempted to take the invoice figures for granted, and enter them in his book without testing their accuracy. (*See title* Stock Register.)

Subdivision of Shares.—*See title* Memorandum of Association.

Submission to Arbitration.—The Arbitration Act 1889 defines a submission as " a written agree- " ment to submit present or future differences to " arbitration, whether an arbitrator is named " therein or not."

A submission may be *verbal*, but it will not be governed by the Arbitration Act, and may be revoked; but a *written* submission, unless a contrary intention is expressed therein, is irrevocable except by leave of the Court, and it has the same effect in all respects as if it had been made an order of the Court.

Unless there is any expression to the contrary, in a written submission, the provisions contained in the first schedule to the Arbitration Act are to be implied as contained therein, viz.:—

(*a*) If no other mode of reference is provided, the reference shall be to a single arbitrator.

(*b*) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

(*c*) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

(*d*) If the arbitrators have allowed their time or extended time to expire without making any award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(*e*) The umpire shall make his award (*quære*, in writing) within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to

which the umpire, by any writing signed by him, may from time to time enlarge the time for making his award.

(*f*) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall produce before the arbitrators or umpire all books, deeds, papers, accounts, writings, and documents, within their possession or power respectively which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.

(*g*) The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

(*h*) The award to be made by the arbitrators or umpire shall be final and binding on the parties, and the persons claiming under them respectively.

(*i*) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

A submission must be an agreement to take the *decision* of the arbitrator; an agreement to take his *opinion* is not a submission.

Capacity to submit to arbitration is regulated by the general law of contract.

Where the subject-matter involved does not exceed £5, and the submission is under hand only, no stamp is required, but otherwise the submission must have a sixpenny stamp affixed. If the submission be under seal a 10s. stamp is necessary.

Should one of the parties decline to carry out his contract of submission, there are *indirect* means of compelling him to do so, for (1) the arbitrator appointed by the willing party may be allowed to proceed *ex parte*, and the Court, if the proceedings are otherwise *bonâ fide*, will enforce the award when made, or (2) the Court may restrain any action in connection with any matter which might properly come before the arbitrator in pursuance of the submission. (*See titles* Arbitrator, Award, Special Referee, Umpire.)

Subpœna.—Under a penalty. A writ commanding attendance in Court under a penalty.

Subpœna ad testificandum.—A writ served personally upon a witness to compel him to attend a trial or inquiry to give evidence.

Subpœna duces tecum.—A writ served personally upon anyone having documents in his possession requiring him to produce them in evidence.

The Arbitration Act 1889 provides that any party to a submission under that Act may sue out a writ of subpœna *ad testificandum* or a writ of subpœna *duces tecum*, and the Court will enforce the same.

Subscribed Capital.—*See title* Issued Capital.

Subsidiary Books.—*See titles* Journal and Ledger.

Substituted (or Alternative) Director.—The articles of association of a company sometimes provide that a director who is abroad or about to go abroad may, with the approval of the other directors, appoint any person to be an alternative (or substituted) director during his absence abroad, and such appointment shall have effect, and such appointee shall be entitled to notice of meetings of the directors, and to attend and vote thereat accordingly, but he shall not require any qualification, and he shall, *ipso facto*, vacate office if and when the appointer vacates office as a director, and any appointment and removal under this clause shall be effected by notice in writing under the hand of the director making the same.

Referring particularly to the measure of responsibility of a *real* director for the acts or omissions of his substitute, a contributor to *The*

Accountant newspaper of 15th January 1898 says:—

It could, of course, be argued that the alternative director was the agent, not of the company, but of the director whom he had been specially nominated to represent in his absence, and that consequently the absent director was liable for the acts or omissions of his agent, just as though they had been actually his own acts or omissions (except, of course, so far as they might be the subject of a criminal charge); and, if this view were upheld, it would seem to necessarily follow that an absent director might be charged with misfeasance on account of the acts or omissions of his nominated "alternative." But, against this, it is clear that a director who is absent would never be regarded by the Courts as being liable for misfeasance committed by his co-directors behind his back, unless it could be shown that his absence was a palpable neglect of the duties which he had undertaken in accepting the post of director.

When, however, the articles of association of the company allow a director to go abroad (perhaps on the company's business), and nominate a substitute, apparently the company is estopped from suggesting that the absence of a director is in itself a neglect of his duties, particularly if he has used due diligence in selecting a substitute. Whichever view be taken, however, it would appear that the point is by no means free from doubt; and, apart from the question of the risk of an absent director being hit for something which he has never done, and could not possibly have known anything about, it seems clear that the practice of allowing directors to nominate substitutes would be open to serious abuse, if by so doing the directors could escape *all* liability at a time when it might be particularly convenient for them to be clear of the liabilities of a director, while still retaining his rights and privileges.

In a leading article of *The Accountant* of January 29th 1898, the above views are commented upon as follows:—

We are inclined to indorse our contributor's views as to the liability of the alternative director for acts done in his absence by his nominee or by the other members of the board, but we will put the law, as we understand it, in our own way. The nominating director would be liable, we think, if the company suffered damage through his appointment of an "alternative" director in breach of faith or in a manner, or possibly with a motive, not *bonâ fide*. He would not be liable for an absence contemplated by the articles—indeed, the *Marquis of Bute's* case goes to show that mere absence is not necessarily negligence. Further, an absent director would not in general be liable for acts done by his co-directors or even by his properly appointed substitute, for the rule is that directors are liable only for what they do themselves or adopt. The articles of association might be so worded that the substitute would be the agent of the absentee, in which case the legal position would be changed; but we have been assuming throughout this last paragraph that the articles contemplate the appointment of a director to be a director in place of, and not as servant of, the absent director. . .

We may add that the title "alternative directors" is hardly descriptive; substituted is not much better. Really, "temporary and substituted" expresses more nearly the idea.

Substitutional Legacy.—*See title* Legacy.

Succession Duty.—The duty levied upon all real property and chattels real (*e.g.*, leaseholds) in the United Kingdom passing, partly or wholly, from one person to another (the successor), because, or on the occasion, of the death of *any* person, provided the person becoming entitled is not a purchaser for value.

The scale of duty under the Succession Duty Act 1853 and under the Finance (1909-10) Act 1910 is the same as that prescribed for legacy duty (*q.v.*).

Exemptions from Succession Duty (*inter alia*):—

(1) Successions by the husband or wife of the deceased in the case of a person dying

prior to 30th April 1909, but in the case of a succession arising on or after that date succession duty is payable at 1 per cent. unless exempted by section 58 of the Finance (1909-10) Act 1910. (*See* Exemption No. 10 under *title* Legacy Duty.)

(2) Successions by lineals of the deceased where estate duty has been paid in the case of a person dying prior to 30th April 1909, but in the case of a succession arising on or after that date succession duty is payable at 1 per cent. unless exempted by section 58 of the Finance (1909-10) Act 1910. (*See* Exemption No. 10 under *title* Legacy Duty.)

(3) A succession (or successions from the same predecessor) the principal value of the whole of which does not exceed £100.

(4) Estates the *net* value of which (exclusive of property settled otherwise than by the will of the deceased, but inclusive of all real and personal property in respect of which estate duty is payable upon the death of the deceased) does not exceed £1,000, provided estate duty has been paid thereon.

(5) Property upon which legacy duty has been paid in respect of the *same acquisition* thereof.

(6) Timber, until sold, provided the cutting thereof does not exceed £10 in value in any one year. When the timber is sold, duty is payable on the net proceeds of the sale.

(7) Property applied to the payment of the duty upon any succession under any trust for that purpose.

But a bequest of *personal* property to pay succession duty will be chargeable with legacy duty (if not otherwise exempt).

(*See* Exemption No. 5 under *title* Legacy Duty.)

(8) Objects of national, scientific, or historic interest, subject to certain limitations. (*See* section 63, Finance (1909-10) Act 1910.)

Valuation.—Prior to the commencement of the Finance Act 1894 (2nd August 1894), the interest of the successor was taken to be of the value of an annuity equal to the annual value of the property during the life of the successor, or for a term of years, as the case might be, and the value of such annuity was ascertained by reference to the tables scheduled to the Act of 1853.

Since the commencement of the Finance Act 1894, the value, for the purpose of succession duty, of a succession to real property arising on the death of a person, where the successor is *competent to dispose* of the property, is to be the principal value of the property after deducting the estate duty payable in respect thereof on the said death, and the expenses (if any) properly incurred, of raising and paying same. The principal value of real property, for the purpose of succession duty, is to be ascertained in the same manner as it would be ascertained for the purpose of estate duty. (*See title* Estate Duty—Valuation.)

Successors to *limited* interests are still chargeable only upon the capitalised value of an annuity for life or a term of years, as prescribed by the Act of 1853.

Payment.—The duty attaches upon the creation of the succession by the death, but is not payable unless the successor becomes entitled in possession to his succession or to the receipt of the income and profits thereof. The duty may, however, be paid by instalments:—

(1) The Act of 1853 provides for payment in eight equal half-yearly instalments, the first being payable at the expiration of twelve months after the succession falls into possession.

(2) The Revenue Act 1888 gives an option to the successor of paying according to the Act of 1853, or in moieties, viz., one moiety in four equal yearly instalments, the first being payable at the expiration of twelve months from the date the suc-

cessor becomes entitled to the enjoyment of the property, and the other moiety in a *lump sum* on the due date of the last instalment of the first moiety. If the lump sum be not so paid, it may be extended over a further four years, interest being payable upon the unpaid portion of the second moiety at the rate of 4 per cent. per annum.

(3) The Finance Act 1894 provides that, where the successor to real property is *competent to dispose*, the succession duty is payable by the same instalments as those authorised for the payment of estate duty upon real property, viz., by eight equal yearly payments, or sixteen half-yearly payments, at the option of the person delivering the account. The first instalment is due and payable at the expiration of twelve months after the date upon which the successor becomes entitled to his succession or to the receipt of the income and profits thereof, and simple interest at the rate of 3 per cent. per annum, without deduction of income-tax, is payable as from the date when the first instalment is due upon the unpaid portion of the duty, and such interest is to be added to each instalment and paid accordingly.

If a successor dies before all the instalments due in respect of the succession have been paid, then:—

(1) Where the successor was competent to dispose of a continuing interest in the property the unpaid instalments, with interest, are a continuing charge upon *such interest*, in exoneration, of his other property, and are payable by the owner for the time being of such interest.

(2) Where the successor was not competent to dispose of a continuing interest in the property, the liability in respect of unpaid instalments varies according to the system of payment adopted, but generally it may be stated that such instalments as are *not due* at the death of the successor, will cease to be payable.

Succession duty is a personal debt due to the Crown from the successor, trustees, and others, and constitutes a first charge upon the property in respect of which the duty is payable or upon any property purchased with the proceeds of its sale.

The Commissioners of Inland Revenue may, if they think fit, accept land in satisfaction in whole or part of liability for succession duty. (Finance (1909-10) Act 1910, section 56.) (*See title* Legacy Duty.)

Sue and Labour Clause.—The clause in a marine insurance policy by which the underwriter engages that, where the assured or his agent "sues and labours" for, in, and about the safeguard and recovery of the subject-matter of the insurance to avert a loss for which the underwriter would have been responsible had it occurred, he may recover from the underwriter the amount of his expenditure in so doing.

Sui juris.—Of his own right. A person free from any legal disability, such as infancy or insanity, is said to be *sui juris*.

Summary Case.—When a petition is presented by or against a debtor, and the Court is satisfied by affidavit or otherwise or the Official Receiver reports to the Court that the property of the debtor is not likely to exceed in value the sum of three hundred pounds, the Court may make an order that the estate be administered summarily, and certain modifications in the ordinary procedure are prescribed with the view of saving expense. (Bankruptcy Act 1883, section 121.) (*See title* Small Bankruptcy.)

Sundries Ledger.—A Ledger used for separately recording the transactions with all persons with whom a trader does not deal sufficiently often to justify the maintenance of a separate Ledger Account for each of them. The general plan is to have the Ledger indexed, with a certain number of pages allotted to each letter, so that, although each successive transaction is recorded line for line in each section of the Ledger, the items may, nevertheless, be referred to subsequently without much difficulty.

Sundry Creditors Account.—*See titles* Sundry Persons Account; Sectional Ledgers.

Sundry Debtors Account.—*See titles* Sundry Persons Account; Sectional Ledgers.

Sundry Persons Account.—An account in the Ledger wherein are recorded the transactions with various persons with whom only occasional business is done, and in respect of which it is not considered necessary to open separate Ledger Accounts for each person.

Where the sundry accounts are numerous it is advisable to open (say) four accounts for the debtors and four for the creditors, so that the Personal Accounts may be classified alphabetically, and thus be more easily referred to. In any case, it will be found useful to include in the Ledger *Index* detailed references to the accounts entered in the Sundry Persons Account. (*See title* Sundries Ledger.)

Supercargo.—A person appointed by the owner of a vessel or its cargo to see that such cargo is properly disposed of at one or more foreign ports.

Sometimes he proceeds in the same vessel as the cargo, or he may go by steamer and await the arrival of the vessel and cargo.

Super-Tax.—The Finance (1909-10) Act 1910 made provision for the assessment of an additional income-tax (or super-tax) in respect of the income of any individual whose total income from all sources exceeds £5,000. The rate of super-tax from 6th April 1909 to 5th April 1910 was fixed at 6d. in the £, and this rate was renewed from 6th April 1910 to 5th April 1911. Although every individual whose total income from all sources exceeds £5,000 is assessable for super-tax, the first £3,000 of income is exempt, and it is only upon the excess over £3,000 that super-tax is payable.

For the purposes of the super-tax, the total income of any individual from all sources shall be taken to be the total income of that individual from all sources for the *previous year*, estimated in the same manner as the total income from all sources is estimated for the purposes of *exemptions or abatements* under the Income Tax Acts; but, in estimating the income of the previous year for the purpose of super-tax—

(*a*) There shall be deducted in respect of any land on which income-tax is charged upon the annual value the allowance for repairs under section 35 of the Finance Act 1894 and any sum on which duty has been repaid under the provisions of this Act relating to the repayment of duty in respect of the cost of maintenance, repairs, insurance, and management; and

(*b*) There shall be deducted the amount of any premiums in respect of which relief from income-tax may be allowed under section 54 of the Income Tax Act 1853 (as extended by any subsequent enactment); and

(*c*) There shall be deducted in the case of a person in the service of the Crown abroad any such sum as the Treasury may allow for expenses which in their opinion are necessarily incidental to the discharge of the functions of his office and for which an allowance has not already been made;

(*d*) Any income which is chargeable with income-tax by way of deduction shall be deemed to be income of the year in which it is *receivable*, and any deductions allowable on account of any annual sums paid out of the property or profits of the individual shall be allowed as deductions in respect of the year in which they are *payable*, notwithstanding that the income or the annual sums, as the case may be, accrued in whole or in part before that year. (Finance (1909-10) Act 1910, section 66.)

The super-tax is assessed by the Special Commissioners for Income Tax. Every person upon whom notice is served in manner prescribed by regulations under this section by the Special Commissioners requiring him to make a return of his total income from all sources or, in the case of a notice served upon any person who is chargeable with or liable to be assessed to income-tax, as representing an incapacitated, non-

resident, or deceased person, of the total income from all sources of the incapacitated, non-resident, or deceased person, shall, whether he is or is not chargeable with the super-tax, make such a return in the form and within the time required by the notice.

It is the duty of every person chargeable with the super-tax to give notice that he is chargeable to the Special Commissioners before the thirtieth day of September in the year for which the super-tax is chargeable.

If any person without reasonable excuse fails to make any return or to give any notice required by this section, he is liable to a penalty not exceeding fifty pounds, and after judgment has been given for that penalty to a further penalty of the like amount for every day during which the failure continues. If any person fails to make a return under this section, or if the Special Commissioners are not satisfied with any return made under this section, the Special Commissioners may make an assessment of the super-tax according to the best of their judgment. They may also amend an assessment, make an assessment or an additional assessment at any time within three years after the expiration of the year of assessment.

All provisions of the Income Tax Acts relating to persons who are to be chargeable with duty, assessments, and appeals against those assessments, shall, so far as they are applicable, apply to super-tax. (Finance (1909-10) Act 1910, section 72.)

The following directions have been issued by the Special Commissioners for the guidance of persons in receipt of partnership profits liable to super-tax.

Such profits are to be returned for assessment to super-tax for the year 1910-11 on the basis of the income-tax assessments made for the year 1909-10. To avoid misconception it should be remembered:—

(1) That an income-tax assessment under the rules of Schedule D made upon a firm is not made upon the actual profits of the year, but upon the average of the profits of the prescribed number of previous years, and that the profits actually realised in the year of assessment may be either more or less than such assessment.

(2) That such assessment is made *exclusive*:—

(*a*) Of any rents of property received by the firm, and of the annual value, as assessed to income-tax, Schedule A, of premises owned and occupied by them;

(*b*) Of any other taxed income received by the firm.

Such assessment, however, includes partners' salaries and interest, royalties, and other annual payments paid to partners and other persons out of the profits of the firm.

From these two considerations it follows that the whole income of the firm as described in the above paragraphs should be reviewed by a partner in computing his return for super-tax, and that the interest and charges should be adjusted as shown in the following illustration:—

A firm consisting of three members (A., B., & C.) might have—

	£	£
Partnership profits as assessed for the year 1909-10 (say)		20,000
Partnership income receivable in the year from (*a*) dividends upon investments, (*b*) interest, (*c*) rents, (*d*) annual value of premises (*see above*) and (*e*) any other sources of taxed income (say)—		
Dividends upon investments	2,500	
Interest upon loans	2,500	
Rents	2,500	
Annual value of premises owned and occupied by firm—*i.e.*, the net Income Tax Assessment Schedule A...	2,500	
		10,000
Total income for income-tax purposes ..		30,000
If the firm made any payments to third persons in respect of, for instance, (*a*) ground rents, (*b*) annual interest on mortgage or other loans to the firm, (*c*) annuities payable out of profits, these should be claimed as deductions from the above, as follows (say)—		
Ground Rents..	1,000	
Annual Interest	1,000	
Annuities payable out of profits	1,000	
		3,000
Leaving		.. £27,000

which represents the sum which for super-tax purposes is to be treated as divisible among the partners in the firm.

Supposing, therefore, that for the year 1909-10 under the deed of partnership, partner B. is entitled to a salary of £1,000 as a first charge in the partnership profits, and that the capital of the firm amounting for that year to (say) £60,000 held equally by the partners, is next directed to be credited with interest at 5 per cent. per annum, and that the balance of the profits is divisible in the proportion of:—A. 5/10ths, B. 3/10ths, C. 2/10ths, then the income from the partnership of each member of the firm for super-tax purposes for the year 1909-10 would be as follows:—

	£	£
Partnership Income for super-tax purposes, as shown above		27,000
Less—		
Managing Partner's Salary	1,000	
Interest on Partners' Capital (£60,000 at 5 per cent.)	3,000	
		4,000
Amount proportionally divisible among the partners		23,000

A.		B.		C.	
	£		£		£
Interest on Capital	1,000	Interest on Capital	1,000	Interest on Capital	1,000
5/10ths profits	11,500	3/10ths profits	6,900	2/10ths profits	4,600
		Salary	1,000		
	12,500		8,900		5,600
			£27,000		

These sums of £12,500, £8,900, and £5,600 represent the amounts such partners A., B. and C. respectively are for super-tax purposes to be considered to have derived from this business, and should be entered by them in their several returns.

Partners who have borrowed, on their personal security, money which they put into the business should not treat the interest they pay thereon as a deduction in arriving at their share of the *partnership* profits in space No. 1 (*a*) of the form of return, but such interest should be claimed as a deduction in space 2.

In normal cases there will not be much difficulty in making up a return for super-tax on the prescribed basis, *i.e.*, that of the profits from all sources of the preceding year, but where hardships would otherwise be incurred attention cannot be directed too strongly to the right of appeal afforded by section 72, quoted *supra*. It is contended—although the contention may be disputed by the Special Commissioners—that every circumstance (*e.g.*, death, discontinuance of business, &c. &c.) which would give a right of appeal against an ordinary income-tax assessment applies with equal force to super-tax. (*See title* Income Tax.)

Supervision Order.—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. (Companies (Consolidation) Act 1908, section 199.)

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. (Section 200.)

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 (section 201), and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court; in the case of creditors, regard shall be had to the value of each creditor's debt; and in the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles. (Section 219.)

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.

A liquidator so appointed 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.

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. (Section 202.)

Restrictions may be imposed upon the liquidator, but these depend upon circumstances, and in some cases no restrictions are imposed. 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. (Section 203.)

Should the powers of a liquidator not be specially restricted, it is nevertheless advisable to obtain the sanction of the Court on important matters, such as (*a*) compromises of claims, (*b*) rectification of the Register of Members, (*c*) commencement of an action, &c., and it is also convenient to apply to the Court, (*d*) to restrain proceedings against the company, (*e*) to enforce payment of calls, &c.

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 the Companies Act, namely, those as to:—

(1) Statement of company's affairs to be submitted to Official Receiver. (Section 147.)

(2) Official Receiver's report. (Section 148.)

(3) Appointment, remuneration, and title of liquidators (section 149), except the provision that the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification. (Subsection 10 of section 149.)

(4) First meetings of creditors and contributories. (Section 152.)

(5) Liquidator to give information to Official Receiver. (Section 153.)

(6) Payments of liquidator into bank. (Section 154.)

(7) Audit of liquidator's accounts by Board of Trade. (Section 155.)

(8) Books to be kept by liquidator. (Section 156.)

(9) Release of liquidators. (Section 157.)

(10) Exercise and control of liquidator's powers. (Section 158.)

(11) Control of Board of Trade over liquidators. (Section 159.)

(12) Committee of inspection. (Section 160.)

(13) Power to appoint special manager (Section 161.)

(14) Power to appoint Official Receiver as receiver for debenture-holders or creditors. (Section 162.)

(15) Delegation to liquidator of certain powers of Court by general rules. (Section 173.)

(16) Power to order public examination of promoters, directors, &c. (Section 175);

but, subject as aforesaid, an order for winding up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, and the exercise of all other powers, be deemed to be an order for winding up by the Court. (Section 203.)

Where a company is being wound up (voluntarily or) subject to supervision, a petition for winding up by the Court may be presented by the Official Receiver attached to the Court, as well as by any other person authorised in that behalf, 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. (Section 137 (2).)

(*See titles* Liquidator, Liquidators' Accounts.)

Supra Protest.—*See title* Acceptance *supra* protest.

Surcharge and falsify.—The accounts which a trustee or an executor has rendered to his *cestui*

que trust, and which have been approved and accepted by the latter are called "settled accounts." In the event of such accounts being subsequently disputed, the Court of Chancery will not usually allow the accounts to be re-opened *in toto*, but will grant the person who disputes the account liberty to scrutinise the particular items alleged to be irregular. The showing of an item for which credit ought to have been given by the accounting party, but has not been given, is to *surcharge* the account, whilst the proving of an item to have been wrongly inserted by the accounting party is to *falsify* the account.

urety.—A bondsman; one who undertakes to answer for the liability or performance of a duty for which another is responsible, in the event of the default of the latter. (*See title* Guarantee.)

uretyship.—*See title* Guarantee.

urplus.—*See titles* Interest in respect of Proof of Debt (*re* Surplus in Bankruptcy or Winding up), Reserves and Reserve Funds, and Surplus Assets.

urplus Assets.—

BANKRUPTCY.

A bankrupt is entitled to any surplus remaining after payment in full of his creditors, with interest as provided (by the Bankruptcy Acts) and of the costs, charges, and expenses of the proceedings under the bankruptcy petition. (Bankruptcy Act 1883, section 65.)

There is no surplus within the meaning of the above section until all the joint and separate debts have been paid. The bankrupt has no *property* in the surplus; he has merely an expectation to benefit therefrom, and this does not give him any right to interfere in the administration of the estate. (*Ex parte Sheffield*, 1879.)

DEED OF ASSIGNMENT.

Where a deed provides for the disposal of the whole of the proceeds of sale of the debtor's estate thereby assigned—*i.e.*, where the trust is "to divide the sum realised amongst the creditors in rateable proportions according to the "amounts of their debts," there will be no resulting trust in favour of the debtor as regards any surplus, should the proceeds be more than sufficient to pay the creditors in full, for in such a case the assignor divests himself of all interest in the property, and the creditors (accepting the assignment "for better for worse") agree to release the debtor in consideration thereof. But if the deed does not provide for the disposal of the whole of the proceeds—*i.e.*, where the trust is "to discharge the debts or to divide the proceeds of sale of the estate assigned in or towards payment of the debts," the property assigned is placed in trust for a limited purpose, and if in such a case the deed does not expressly provide for the disposal of any surplus there may ultimately be after payment of the debts in full, there will be a resulting trust in favour of the assignor. (*Smith v. Cooke*, 1891, A.C. 297.)

COMPANY LIQUIDATION.

(*a*) *As regards Creditors.*—Where there is any surplus after payment of all debts (together with interest to the date of the winding-up order upon all debts *carrying* interest) then such surplus may be applied in payment of further interest accruing since the date of the winding-up order upon such debts as were carrying interest prior to such date, and also upon those in respect of which a right to interest has been subsequently acquired. (*Re W. W. Duncan & Co.*, 1905, 1 Ch. 307.)

(*b*) *As regards Contributories.*—Surplus assets as regards contributories may mean (1) the surplus available for them after discharging all debts, liabilities, and costs, or (2) the surplus remaining after the payment of all debts, &c., and the repayment of all the shareholders' capital.

In *Re Crichton's Oil Co.* (1902), Collins, M.R., said that in his view in that particular case surplus assets meant "that which remains "after all the outside liabilities of the company "have been satisfied."

Section 123, subsection 1 (vii), of the Companies (Consolidation) Act 1908 provides:—

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.

Such a claim as the above would be considered in dealing with the surplus assets under the first-named circumstances, and where amounts have been paid up in respect of certain of the shares in advance of calls, *primâ facie*, such advances rank for repayment before the capital which has been actually called up.

In the absence of special provisions, the general distribution of assets must be made in such manner as to allot the loss of capital to the members in proportion to the *nominal* amounts of capital respectively held by them. If all the shares are fully paid, or, being of the same nominal amount, have equal sums paid up thereon, the distribution in the absence of special provisions to the contrary would be *pro ratâ*, but in some companies some of the shares are fully paid up and others not, so that in order to allot the loss of capital in proportion to the nominal amounts of capital held, it would be necessary (1) to call up the difference between the " short-paid " shares and the " fully-paid " shares, and (2) to distribute the assets (augmented by the calls just made upon the " short-paid " shares) amongst the whole of the members *pro ratâ*. In *Birch v. Croppcr* (*Bridgwater* case, 1889), the House of Lords held that the surplus remaining after discharging the liabilities and repaying the capital was to be divided among all the shareholders in proportion to the shares held by them, and not in proportion to the amounts respectively paid up thereon. The articles of association of companies invariably avoid the effect of these decisions by providing expressly for the distribution of the surplus assets, particularly providing for the prior payment out of the assets of the preference share capital, for without some such provision preference shares do not confer a preferential right to return of capital in a winding up; but, on the other hand, in the absence of any restricting clause, the preference shares would be entitled to participate rateably with the ordinary shares in respect of any suplus remaining after paying off the whole of the paid-up capital. (*Bridgwater* case, 1889.)

Frequently it is provided that, in the event of a surplus remaining after payment of the debts and all paid-up capital (preference and ordinary) the preference shareholders shall be entitled to some stated percentage, say 10 per cent. on their shares by way of bonus (and no more) out of such surplus, and that the balance of the surplus shall be divided wholly amongst the ordinary shareholders in proportion to the shares held by them or the amounts respectively paid up thereon.

The cases of *W. J. Hall & Co., Lim.* (1909), and *In re the Espuela Land & Cattle Co.* (1909) are of interest in this connection.

Where certain shares had been issued at a discount the holder was held liable to pay up the amount of such discount in cash to the liquidator even though the liabilities of the company had been paid, and the calls had been made merely to adjust the rights of the contributories between themselves. (*Welton v. Saffery*, 1897.)

It is found convenient to take power in the memorandum or articles of association of a company, in the event of a winding up, to divide among the contributories in *specie* any surplus assets remaining after payment of debts and expenses. (*See titles* Interest in respect of Proof of Debt, Reserves and Reserve Funds.)

Surrender of Shares.—Sometimes power is reserved in the articles of association of a company (registered under the Act of 1862 or the Consolidation Act of 1908) to accept from any member, upon such terms and conditions as may be agreed, a surrender of his shares or stock or any part thereof.

Sir F. B. Palmer says: "A power to accept " surrenders is valid, at any rate to some extent; " but having regard to the decision in *Trevor v.* " *Whitworth* it is a power which can rarely be

" exercised without the sanction of the Court " to the reduction of capital thereby effected.

" The law seems to be as follows:—

" First, as to paid-up shares—

"A gratuitous surrender to the company may " be valid (*Balgoolie Distillery Co.*, L.R. " 17 Ir. Eq. 263), if the circumstances are " very special, *e.g.*, where the surrender is " part of a compromise.

"And as to shares on which there is a " liability—

" It may be that where a company is in a " position to forfeit such shares a *bonâ fide* " arrangement for a surrender as a short cut " to the same end and without payment or " consideration is valid."

Lord Herschell said, in *Trevor v. Whitworth:* " The validity of each case of surrender of " shares must be decided upon its own merits."

There is at least one requirement in connection with a surrender of shares, viz., that in order to be effectual the transaction must be for the benefit of the company.

The distinction between *surrender* and *forfeiture* of shares is that the former is the act of the shareholder and the latter the act of the company. (*See title* Forfeited Shares.)

Surrender Value.—The amount receivable from an assurance company for a surrender of all claims in respect of a " life policy " when the policy-holder is either unable or unwilling to continue paying the premiums.

The annual cost of assurance gradually increases as age advances, but as the general practice is to assess " level " premiums, that is the same amount per annum throughout the whole of the life or period, as the case may be, it follows that during the earlier years of a policy the assured pays more each year than the actual cost of the risk, as actuarially ascertained. These annual excesses gradually decrease as the cost of the risk increases, that is, as the age of the assured advances, and ultimately the " level " premium is less per annum than the cost of insuring the assured. The " excess " premiums of the earlier years are reserved to meet the future " deficiencies " of premium, so that if a person wishes to surrender his policy it is out of such reserved excess premiums of the past that he receives his surrender value. The assurance company could not repay any of that portion of the premiums paid which is actually required each year to insure against the risk of the assured dying during such year. But as unhealthy " lives " do not, as a rule, surrender their policies, practically every surrender is in respect of a " good life." As the falling out of good lives in this way adversely affects the average of the remaining lives upon a company's books, and as certain preliminary expenses are incurred in connection with each policy of assurance, no " surrender value," as a rule, is obtainable, unless the policy has been in force for about three or four years. The surrender value depends upon (1) the length of time the policy has been in force, and (2) the age of the assured at the date of the policy, but as a result of competition for business the amount paid by some offices is much more liberal than that paid by others, and as a consequence the only reliable way of obtaining the surrender value of a specified policy is by making formal application to the assurance office. The " market value " of a life policy is generally higher than the amount offered by the assurance company; but in the preparation of a debtor's statement of affairs, where his life policies form part of the estate, the surrender values are the usual sums taken to credit in the statement.

Suspense Account.—A Ledger Account recording items in regard to which there is some uncertainty as to their eventual effect upon the financial position of a business, including such matters as cash paid with a possibility of its recovery, cash received from unknown sources, goods supplied the price of which is subject to later settlement, and the like. If a Balance Sheet is prepared prior to the ascertainment of the actual result of the items recorded in the Suspense Account, the balance of the account is treated as a liability or asset according as it is a credit or debit balance. Suspense Account some-

times contains an item which really represents the extent to which the Trial Balance is "out," and in other sets of accounts it is used for the apportionment of such matters as rent, rates, insurances, &c. The use of the term cannot be recommended; it is preferable to open separate accounts for the different classes of pending or uncertain items or transactions giving to each account a distinctive title.

An auditor should satisfy himself as to the elements of which the balance of a "Suspense Account" is composed, before accepting the item as a liability or asset, for an account of this character is sometimes resorted to in order to conceal fraud of various kinds.

Suspension of Payment.—"If a debtor gives "notice to any of his creditors that he has sus- "pended, or that he is about to suspend, pay- "ment of his debts," he commits an act of bankruptcy. (Bankruptcy Act 1883, section 4.)

The notice may be given verbally, but it must be formal, deliberate, and unqualified.

A circular issued to creditors, merely inviting them to a meeting when a statement of affairs will be laid before them, does not *per se* constitute an act of bankruptcy, nor does a mere *offer* of a composition. But a circular to creditors stating "that the debtor *was unable to meet his* "*engagements as they fell due*, and inviting "their attendance at a meeting when the debtor "would submit a statement of his position for "their consideration and decision," was held sufficient to constitute an act of bankruptcy. (*Crook v. Morley*, 1891, App. Cas. 316.) In this case Lord Selborne said: "Every creditor "receiving that communication must have felt "that it was a notice to him that he must not "expect to get payment if he asked for it." In a later case (*Re Dagnall*, 1896, 2 Q.B. 407) the judicial view was that a circular calling a meeting of creditors would amount to notice of intention to suspend payment if it were such a circular as would render it improper for the debtor to pay any one of his or her creditors separately between the date of the issue of the circular and the day appointed for the meeting.

A written notice, if it amounts to an act of bankruptcy, will be admissible as evidence of such, even though it be expressed to be "without prejudice." (*Re Daintrey*, 1893, 2 Q.B. 116.) But where a debtor has made an assignment for the benefit of his creditors, as the result of a meeting of creditors convened by a circular, which was of itself an act of bankruptcy, a creditor who has assented to such assignment cannot present a petition either upon the assignment or the circular, the latter being a part of the "machinery for making the deed effective."

Syndic.—An agent who acts for a corporation.

Syndicate.—There is no legal significance in this term, and syndicates are either (1) partnerships or (2) registered companies, according as they are unincorporated or incorporated, and are governed by the laws relating to these two classes of association, so that if a particular syndicate be not registered as a company the number of persons composing it must not exceed twenty or ten, as the case may be. (*See title* Partnership.)

The usual object in the formation of a syndicate is the development of some particular enterprise or property, probably with the intention (1) of selling the same when developed to a "public" company, or (2) if the enterprise or property is capable of flotation in different countries, of selling the rights for each country to separate companies. A syndicate under such circumstances is sometimes referred to as the "parent" company.

For example:—An inventor having provisionally protected an apparently good invention in this country and desiring to carry out further experiments and to protect his invention in foreign countries, but being without the requisite funds, would arrange with capitalists to join him for these purposes. The patent rights already obtained would be made over to the syndicate by the inventor in return for a certain interest in the syndicate, the others paying for their respective interests in cash. The invention would then be subjected to further tests and experiments, and if necessary improved, and the

patent rights thereof taken out in this and foreign countries, the patents, as improved, being eventually sold to a company or companies.

The objects for which the syndicate was formed being ultimately accomplished, steps would then be taken to wind it up (formally or otherwise according to circumstances), the net proceeds of the sale in cash and shares in various companies being divided amongst the members of the syndicate according to their respective rights and interests therein.

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Table A.—In the first schedule to the Companies Act 1862 there was a set of regulations for the management of a company limited by shares. It was marked Table A to distinguish it from certain other tables in the schedule dealing with other matters.

These regulations applied to any such company as was registered without a set of articles of association specially drawn up to meet its own particular requirements. They also applied (so far as applicable) to any such company as was registered with special articles in such respects as the special articles did not exclude or modify the provisions of Table A.

This table provided a scale with regard to voting powers—and with regard to a quorum at general meetings: and no provision was made for many problems of internal management which arose as the joint-stock system was gradually adopted throughout the country.

The power to reduce capital was not conferred upon companies until 1867, and the provisions with regard to the first meeting of a company and the audit of the books and accounts had been materially altered by subsequent legislation.

As a consequence the table became of little use to companies which might have adopted a more modern set of regulations.

Section 71 of the 1862 Act provided that the Board of Trade might from time to time make such alterations in the tables and forms contained in the first schedule to the Act as it might deem requisite, provided that no alteration of Table A should affect any company registered prior to the date of such alteration.

Although a Committee on company law reform recommended a new form of Table A in 1895, it was not until this recommendation was repeated in 1906, by a subsequent Committee, that a Revised Table A was issued by the Board of Trade. The provisions of the Revised Table A were to apply only to companies limited by shares registered after 30th September 1906, except to such extent as they were excluded or modified by the company's own articles, but companies governed by the original Table A might, by special resolution, adopt the Revised Table A for their future regulation.

The Companies (Consolidation) Act 1908, however, repeals the 1862 Act, as from the 1st April 1909, but provides (section 286) that the repeal shall not affect Table A in the First Schedule annexed to the 1862 Act, 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 on the 1st April 1909.

A new Table A (differing in a few particulars from the Revised Table of 1906) is embodied (*inter alia*) in the First Schedule to the Consolidation Act, and it is provided, as before, that in the case of a company limited by shares and registered after 1st April 1909, in so far as they are not excluded or modified by articles, the regulations in the new table 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. (Section 11.)

There are, therefore, three tables now in force as regards companies limited by shares and registered under the 1862 Act or the 1908 Act, viz.:—

(1) The original table, which may still apply as regards companies registered prior to 30th September 1906;

(2) The revised table, which may still apply as regards companies registered between 30th September 1906 and 1st April 1909, and those which may have adopted the revised table by special resolution.

(3) The new table, which applies as regards companies registered since 1st April 1909 and those which may have adopted same by special resolution.

The Consolidation Act, section 118, contains a similar provision to that contained in section 71 of the repealed 1862 Act, set out above, empowering the Board of Trade to amend the provisions of Table A.

Where it is desired to register a private company as defined by section 121 of the Act, it will be necessary to register special articles, for Table A does not comply with the requirements of that section. The restriction on the right to transfer partly paid-up shares and shares on which the company has a lien, &c. (clause 20), is not considered sufficient restriction on "the right to transfer," for the Registrar contends that the restriction must apply to *all* shares. Clauses 35 to 40 inclusive, as to share warrants, must also be deleted, as they nullify the provisions of section 121, and clause 5 cannot apply to a private company. (*See titles* Articles of Association, Private Company.)

Tabular Ledger.—One specially designed to record numerous transactions in an analysed form, so that they may be dealt with in total at specific times, and so effect a saving of labour.

Such a Ledger appears to be used more commonly in recording the accounts of hotels and theatres, the system allowing of an extended analysis of the various sources of income and expenditure.

Tacking.—"The union of two incumbrances on "the same property by the mortgagee, who has "the legal estate, so as to postpone an inter- "mediate incumbrance which is prior, in point "of date, to the one tacked, and of which he "had *no notice* at the time of making his "subsequent advance."

Tacking must be carefully distinguished from consolidation (*q.v.*).

Tally.—An ancient form of keeping "accounts"; two sticks are used, one being kept by the creditor, and the other by the debtor; when a transaction is to be recorded the two sticks are produced and placed together parallel to each other; both are then cut or marked across with notches or otherwise, and, as each party keeps his own part, the account between them is verified at any time by the production of both parts, for, on placing them together, the notches should correspond.

Talon.—The certificate attached to a series of coupons issued (generally by foreign Governments) with bonds, enabling the owner of the bond to obtain a further series of coupons when the previous issue is exhausted.

Tare.—*See title* Allowance.

Tariff.—A table of rates. Commercially a schedule of various types of merchandise, stating the rates of duties or customs payable thereon.

Tax.—*See titles* Income Tax, Inhabited House Duty, Land Tax, Preferential Payments, &c.

Taxation.—The levying of tribute or imposts on the subject. *Direct* taxation is that assessed on individuals (*e.g.*, income-tax); *indirect* is that levied on articles (*e.g.*, customs and excise), and is so called because the tax is not levied on the consumer directly, but on the producer, who adds it to the price.

Taxation of Costs.—

BANKRUPTCY.

All bills and charges of solicitors, managers, accountants, auctioneers, brokers and other persons not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made.

Every such person shall on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend) deliver his bill of costs or charges to the proper officer for taxation; if he fails to do so within seven days after the receipt of the request, or such further time as the Court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate. (Bankruptcy Act 1883, section 73.)

Before taxing the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an Official Receiver or trustee, the taxing officer shall require a certificate in writing, signed by the Official Receiver or trustee, as the case may be, to be produced to him, 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. (Rule 117.)

The sanction required for the employment of solicitors and other persons must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction. (Bankruptcy Act 1890, section 15.)

Every person whose bill or charges is or are to be taxed, shall in all cases give not less than seven days' notice of the appointment to tax the same to the Official Receiver and to the trustee (if any). (Rule 120.)

The bill, or charges, if incurred prior to the appointment of a trustee, shall be lodged with the Official Receiver, and if incurred after the appointment of a trustee, shall be lodged with the trustee, three clear days before the application for the appointment to tax the same is made. The Official Receiver or the trustee, as the case may be, shall forthwith, on receiving notice of taxation, lodge such bill or charges with the proper taxing officer. (Rule 121.)

Where any bill of costs, charges, fees, or disbursements of any solicitor, manager, accountant, auctioneer, broker, or other person has been taxed by a Registrar of a County Court, the Board of Trade may require the taxation to be reviewed by a bankruptcy taxing master of the High Court. (Rule 124.)

Where the estimated assets do not exceed the sum of £300 a lower scale of solicitors' costs is allowed in all proceedings under the Act in which costs are payable out of the estate, namely, three-fifths of the charges ordinarily allowed, disbursements being added.

Where, in any case, whether summary or not, the Official Receiver or trustee has certified the amount of the assets of a debtor and, after taxation of any costs on the footing of such certificate, the assets are ascertained to be either more or less than the amount at which they have been certified, the Official Receiver or trustee (as the case may be) shall amend his certificate and the taxing officer shall amend his allocatur in accordance with such amended certificate. Where the amount allowed by such amended allocatur is in excess of the sum previously allowed, such excess shall on demand in writing be paid by the trustee out of any available assets in his hands at or after the date of the amended allocatur; and where the amount allowed by such amended allocatur is less than the sum previously allowed, any excess over the amount allowed by the amended allocatur which may have been paid shall be repaid to the trustee by the person to whom it was paid. A fee shall only be payable on the amended allocatur where the amount thereby allowed exceeds the amount previously allowed, in which case the fee shall be calculated on the whole amount allowed, credit being given for the fee previously paid. (Bankruptcy Rule 112A, as amended December 1910.)

Before payment of a final dividend, the trustee should satisfy himself that the costs of the petition have been allowed on the proper scale. (Board of Trade Regulations.)

Company Liquidation (Winding up by the Court).

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 (*i.e.*, the costs and expenses sanctioned by the Official Receiver in connection with the preparation of the statement of affairs), and payments of bills which have been taxed and allowed under orders made for 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. (Winding-up Rules 1909, Rule 187.)

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. (Rule 187.)

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. (Rule 183.)

The necessary sanction to incur such costs and charges as aforesaid must be a sanction 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. (Companies (Consolidation) Act 1908, section 151.)

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. (Rule 185.)

LIMITED PARTNERSHIP.

The provisions of the Companies (Consolidation) Act 1908 as to companies wound up by order of the Court (and therefore presumably as to taxation) apply to limited partnerships wound up by the Court. (Limited Partnerships Act 1907, section 6.)

(*See title* Allocatur.)

Telegraphic Transfers.—Messages by telegraph, ordering the transfer of certain specified sums from one person to another, by means of debit and credit to the respective accounts.

Tenancy in Common.—This estate is created when several persons have several distinct estates, either of the same or of different quantity, in equal or unequal shares, by the same act or several acts, and by several titles and not a joint title in the same property or properties.

Each tenant in common is possessed of a distinct though undivided share, and has in contemplation of law a distinct tenement, consequently the right of survivorship does not apply.

The estate may be dissolved by voluntary or compulsory partition, or by the union of titles and interests in one tenant by grant, devise, or surrender.

Tenancy in common does not *of itself* create a partnership as to anything so held, whether the tenants do or do not share any profits made by the use thereof. (*See title* Joint Tenancy.)

Tenant at Will.—One who holds land at the will of the landlord. A tenancy at will may be determined by either party at will, and the death of either party determines the tenancy.

Tenant for Life.—One entitled to the rents and profits or the use and enjoyment of certain property for life. The rights of a tenant for life are usually referred to as a "life interest." (*See titles* Apportionment, Executorship Accounts, and Remainderman.)

Tenant from Year to Year.—One whose tenancy can only be determined at the end of a complete year or number of years from the commencement of his holding, and upon due notice given—in ordinary cases six months. (*See title* Yearly Tenancy.)

Tender.—Generally, the "attempted performance" of any act, but more particularly an attempted payment of a sum of money, which may be "frustrated by the act of the party for whose benefit it is to take place."

With regard to the tender of goods which are the subject-matter of a contract of sale, the Sale of Goods Act 1893 (section 37) provides:—

"When the seller is ready and willing to "deliver the goods, and requests the buyer to "take delivery, and the buyer does not within "a reasonable time after such request take "delivery of the goods, he is liable to the seller "for any loss occasioned by his neglect or "refusal to take delivery, and also for a "reasonable charge for the care and custody "of the goods."

"Provided that nothing in this section shall "affect the rights of the seller where the "neglect or refusal of the buyer to take "delivery amounts to a repudiation of the "contract."

Where the performance consists of the payment of a sum of money, a *valid tender* does not operate to discharge the debt, but only affords a complete answer to an action in respect thereof, if, when such an action is brought, the amount in question is paid into Court. In such a case, on pleading tender successfully, the defendant would obtain judgment for his costs of defence as against the plaintiff, while the latter would only obtain the amount originally tendered.

A tender must be absolute and unconditional, and the full amount or more must be actually produced at the time of tender, unless production is expressly dispensed with, or prevented, by the creditor.

Although the amount tendered need not be the precise sum, it must be of such a character that the creditor may take what is due to him without being called upon to give change.

If there are any special terms as to time, place, or mode of payment they must be strictly observed.

The Coinage Act 1870 provides that legal tender shall be in coins issued by the Mint, and not called in or materially diminished in weight, as follows:—Gold coins, for any amount; silver coins, for a payment not exceeding forty shillings; and bronze (copper) coins, for a payment not exceeding one shilling.

"In England and Wales (but not in Ireland "or Scotland) Bank of England notes payable "to bearer on demand are legal tender for any "sum above £5, so long as the bank continues "to pay its notes in legal coin, except at and "by the bank itself or its branches. The bank "in London is bound, on presentation, to pay "the holder of any of its notes in money; its "branches are bound to pay in money only "such notes as are made specially payable at "the branch where the note is presented for "payment." (Cavanagh.)

The King in Council has power to proclaim that the gold coinage of colonial mints shall be legal tender throughout such parts of his dominions as may be specified in the proclamation.

Tenendum.—The clause in a deed which limits and appoints the tenure of the land which is held, how it is held, and from whom.

Tenure.—The mode of holding property.

Terminating Building Society.—A terminating society is defined by the Building Societies Act 1874 as one which by its rules is to terminate at a fixed date, or when a result, specified in its rules, is attained (*e.g.*, when all the members

have received and repaid advances of stated amounts). A permanent society is one which has not, by its rules, any such fixed date or specified result at or upon which it shall terminate.

Terrier.—A land roll; a survey of land belonging either to a single individual or a parish, stating the number of acres and other particulars.

The auditor of the accounts of a landed estate should compare the rent roll with the terrier to ascertain that all the property of the estate has been either included in the rent roll or satisfactorily accounted for as unlet, or otherwise. (*See title* Rent Roll.)

Testament.—*See title* Will.

Testamentary Expenses.—These are also termed executorship expenses, and include all such expenses as are incident to the proper performance of the duties of an executor—*e.g.*, the death duties, the expenses ot obtaining probate, of collecting the effects of the deceased, of ascertaining the debts and liabilities, of taking care of the assets pending distribution, of making necessary applications to the Court for administration, and such like. An executor may charge against the estate all proper expenses incurred by him in carrying out the provisions of the will, but he will not be allowed any remuneration for his own time and trouble, nor will he be allowed to remunerate out of the testator's estate any agent (solicitor, accountant, &c.), unless the services rendered were (1) really necessary, and (2) of such a character that he could not reasonably have been expected to perform them himself. But this general rule of law as to remuneration and reimbursement is, of course, subject to any contrary direction in the will. Reasonable funeral and testamentary expenses are a first charge upon the assets of the deceased.

In preparing an executor's accounts it is usual to distinguish between testamentary expenses and ordinary expenses incurred by the executor, placing to the former account only such expenditure as *directly* applies to the obtaining of probate, viz.:—Estate duty, Court fees, valuation fees, solicitor's charges, &c. (*See title* Executorship Accounts.)

Thellusson Act.—*See title* Accumulation of Income.

Thing in action.—*See title* Chose in action.

Third of Exchange.—*See title* Bill in a Set.

Third Party.—A party other than two already in definite relation to one another.

Till Takings.—Receipts of a retail business, generally representing the cash received in respect of the sales for the period in question, but sometimes including also the payments on account of the credit sales of previous periods according to the system of accounting adopted.

The following is a system of checking till receipts (or cash sales) in large establishments:

(1) Duplicate (carbon) cash sale notes are prepared, and the amount of the sale is also entered on the counterfoil.

(2) The notes are initialled by the manager or another salesman.

(3) They are then handed (or mechanically transmitted) to the cashier.

(4) The cashier retains the duplicate and returns the " face " copy which is handed to the customer. Where it is unusual and undesirable to give the customer a bill, duplicates need not be prepared, particularly where the customer pays the cashier himself in accordance with the bill.

(5) The salesman ascertains the amount of his sales for the day from his counterfoils, and this should agree with the summary prepared by the cashier.

(6) The total sales of all the salesmen, as ascertained by the salesmen themselves respectively, and the cashier should, of course, agree with the actual cash takings of the day.

Where the business is not sufficiently large to justify an independent cashier, closer supervision must be exercised with regard to the pre-

paration and certification of the sales notes, and in such cases some type of cash register might conveniently be adopted. If the business consists of sales for very small amounts, where it is extremely inconvenient to prepare sale notes or dockets of any kind, some type of cash register is indispensable.

ime.—

BANKRUPTCY.

(1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter Week, or a day appointed for public fast, humiliation, or thanksgiving, or a day in which the Court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

(2) Where by this Act any act or proceeding is directed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified. (Bankruptcy Act 1883, section 141.)

Rule 4 provides:—

(1) The provisions of section 141 of the Act shall apply to the Rules.

(2) Where by the Act or these Rules the time limited for doing any act or thing is less than six days, Sunday, Christmas Day, Good Friday, the Saturday next after Good Friday, Monday and Tuesday in Easter Week, or any other day on which the offices of the Court are wholly closed, shall be excluded in computing such time.

(3) For the purpose of these Rules and of section 141 of the Act, "a day on which the Court does not sit" shall mean a day on which the offices of the Court are closed.

Where by the Bankruptcy Act or by general rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose. (Section 105.)

The Court may, under special circumstances and for good cause shown, 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. (Rule 351.)

Note.—Although the Court may *extend* the periods prescribed by the Acts and Rules, and abridge the periods fixed by the Rules, there is no power to *abridge* the periods fixed by the Acts.

COMPANY LIQUIDATION.

The Court may, in any case in which it shall see fit, extend or abridge the time appointed by the Rules or fixed by an order of the Court for doing any act, or taking any proceeding. (Winding-up Rules 1909, Rule 216.)

(*See title* Days of Grace.)

Time Bargains.—Engagements entered into with a view to being closed at or before a given time. The subject-matter of these bargains may be cotton, iron, corn, or any commodity whatever, but probably the largest number of this class of transaction is in connection with the "purchase" and "sale" of Stock Exchange securities. (*See titles* Differences, Options.)

Time Charter.—The hiring of a vessel for a certain time, say, for 6 or 12 months, the shipowner supplying and paying for the crew, whilst the charterer pays the port charges, pilotage, light dues, and (if a steamer) provides the necessary coals.

Time Policy.—Fire insurance policies usually run from year to year, on payment of the annual premium as agreed. Where a contract of marine insurance is to insure the subject-matter from one place to another, the policy is called a "voyage policy," and where the contract is to insure the subject-matter for a definite period of time the policy is called a "time policy." A contract for both voyage and time may be included in the same policy. (Marine Insurance Act 1906.) With regard to marine insurance policies, it is provided by statute that no policy upon any ship or any share therein can be made for any term exceeding twelve calendar months, but such a policy may contain a continuation clause to the effect that in the event of the ship being at sea, or in the event of the non-completion of the voyage at the expiration of the policy, the subject-matter of insurance shall be held covered until the ship's arrival, or for not more than 30 days thereafter. (Stamp Act 1891, section 93, as amended by section 11 of the Finance Act 1901.) There is no implied warranty of seaworthiness of a vessel which is insured under a time policy, but where with the privity of the insured the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

Title.—A claim of right; the evidence of ownership; the means whereby an owner possesses his property justly.

Title Deeds.—The Muniments or evidence of ownership Act—24 & 25 Vict. c. 96 provides:—Whosoever shall steal, or shall for any fraudulent purpose destroy, cancel, obliterate, or conceal the whole or any part of any document of title to lands, 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 the term of three (now five) years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Section 28.)

The term "document of title to lands" includes any deed, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate, or to any interest in or out of real estate. (Section 1.)

(*See titles* Equitable Mortgage, Land.)

Ton Measurement.—Goods shipped which are estimated for freight purposes at either 40 cubic feet or one ton weight. Whether the goods are treated as "dead weight" goods or measurement goods for freight is at the option of the shipowner.

(*See title* Measurement Goods.)

Tonnage.—The term applied to the cubical contents of a vessel or any of her compartments or superstructures, *one ton* being estimated at 100 cubic feet.

Gross tonnage is the cubical capacity of the whole vessel and every enclosed space thereon without deduction.

Net tonnage is the cubical capacity below decks available for stowing cargo only, and exclusive of engine room, boiler space, coal bunkers, cabins, crew spaces, &c.

Register tonnage, that measured according to the Customs regulations and entered in the ship's Register, and usually applied to the net tonnage of a vessel.

Tools.—*See title* Loose Plant and Tools.

Total Creditors' Account.—*See title* Sectional Ledgers.

Total Debtors' Account.—*See title* Sectional Ledgers.

Total Loss.—A total loss may be either an actual total loss, or a constructive total loss.

Actual total loss.—Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

In the case of an actual total loss no notice of abandonment need be given.

Constructive total loss.—Subject to any express provision in the policy, there is a con-

structive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer, and treat the loss as if it were an actual total loss, but in the latter case he must give notice of abandonment; if he fails to do so the loss can only be treated as a partial loss.

(Marine Insurance Act 1906.)

A constructive total loss of a ship cannot be converted into a *partial* loss by the expenditure of money by the underwriters after notice of abandonment. (*Re Blairmore Company*, House of Lords, 1898.)

In ascertaining whether a ship is a constructive total loss the value of the wreck ought to be taken into account as well as the estimated cost of repairs. (*Macbeth & Co. v. Maritime Insurance Co.*, App. Cas. 1908.)

(*See title* Abandonment, &c.)

Towage.—The charges payable by the owner of a vessel for services rendered by a tow-boat or tug in towing the vessel up and/or down rivers, or in from and/or out to sea.

Trade Bill.—A bill of exchange given in respect of goods shipped, or merchandise received, as distinct from an accommodation bill.

Trade Creditor.—A trade creditor is one whose claim is in respect of goods, services, or the like in connection with some trading transaction in the ordinary course of such creditor's business, as distinct from a cash creditor or a private creditor, whose claim is for cash advanced or in respect of some private liability unconnected with the debtor's business. Ordinarily there is no distinction in bankruptcy between trade and cash creditors, all ranking *pari passu* if unsecured, unless the claims are specially postponed or preferred.

(*See titles* Joint and Separate Estates, Postponed Creditors, Preferential Payments, &c.)

Trade Discount.—A creditor, when proving his debt in bankruptcy or winding-up procedure, must deduct therefrom all trade discounts, but he is not compelled to deduct any discount not exceeding five per centum on the *net* amount of the claim, which he may have agreed to allow for payment in cash. (Bankruptcy Act 1883, 2nd Schedule, Rule 8, and Winding-up Rules 1909, Rule 98.)

(*See title* Discount.)

Trade Ledger.—*See title* Nominal Ledger.

Trading Account.—*See titles* Deed of Assignment, Gross Profit, Liquidators' Accounts, Manufacturers' Accounts, Profit and Loss Account, Revenue Account, Trustee in Bankruptcy.

Transfer Fee.—The regulations of a company generally provide for the payment of a fee not exceeding a certain amount (generally 2s. 6d.) upon the registration of a transfer of shares or stock. Table A (1908 Act) confers power to make such a charge, but in many small (private) companies the power to charge a fee is not exercised.

Transfer of a Bill by Delivery.—Where the holder of a bill payable to *bearer* negotiates it by delivery without indorsing it, the transferor is not liable on the bill, but he thereby warrants to his immediate transferee being a holder for value—

(1) That the bill is what it purports to be,

(2) That he has a right to transfer it, and

(3) That at the time of transfer he is not aware of any fact which renders it valueless. (Bills of Exchange Act 1882, section 58.)

But where a holder of a bill payable to his *order* transfers the bill by delivery, inadvertently omitting to indorse it, the transferee or subsequent holder on discovering the omission is entitled to call for the indorsement of the bill. (*Walters v. Neary*, 1904.) (*See title* Indorsement.)

Transfer (of Stock or Shares).—The Companies (Consolidation) Act 1908 provides:—

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, and each share in a company having a share capital shall be distinguished by its appropriate number. (Section 22.)

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. (Section 28.)

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. (Section 29.)

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. . . . (Section 27.)

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. (Section 31.)

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, &c., complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, &c., otherwise provide.

If default is made in complying with these requirements, 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 £5 for every day during which the default continues. (Section 92.)

A company to be treated as a "private company" must by its articles *inter alia* restrict the right to transfer its shares. (Section 121.) (*See title* Private Company.)

The regulations of a company generally provide for the transfer and transmission of shares to the following effect:—

(1) The instrument of transfer of any shares or stock must be in *writing* and in the common form. *Note.*—The omission of details which are immaterial (*e.g.*, the address of the transferor) has been held not to render the instrument of transfer invalid. Sometimes a special form is required as set out in the regulations; in other cases a deed is required. The Stock Exchange authorities, however (where a quotation is desired), require the adoption of the common form. At least one disadvantage arises from requiring a transfer by deed (*see title* Blank Transfer), and Sir F. B. Palmer says the necessity for a deed "causes inconveniences and secures no benefit." The form of transfer given in Table A (1908 Act) assumes that the transfer will be under hand only and not by deed.

(2) The instrument of transfer of a share or shares, &c., must be signed by both the transferor and the transferee, and the transferor will be deemed to remain the holder of such share or shares until the name of the transferee is entered in the Register in respect thereof.

Notes.—To become a member a person must agree thereto, and his signature to the instrument of transfer is required in order to secure him as a member. This is of particular importance where the shares in question are not fully paid. The

company may, however, waive the transferee's signature, for instance, in the case of fully-paid shares.

When an instrument of transfer of shares is presented to a company for registration, the certificate for such shares should be surrendered so that a new one may be issued in the name of the transferee. (But *see title* Balance Scrip.)

(3) The executors or administrators of a deceased member (not being one of several joint holders) shall be the only persons recognised by the company as having any title to the shares registered in the name of such member, and in case of the death of any one or more of the joint holders of any registered shares, the survivors shall be the only persons recognised by the company as having any title to or interest in such shares.

(4) Any person becoming entitled to shares in consequence of the death or bankruptcy of any member, upon producing such evidence as sustains the character in respect of which he proposes to act under this clause, or of his title, as the directors think sufficient, may, with the consent of the directors (which they shall not be under any obligation to give), be registered as a member in respect of such shares, or may, subject to the regulations as to transfers hereinbefore contained, transfer such shares.

Note.—The personal representatives of a deceased member are only liable in respect of shares of the deceased in their representative capacity and not personally unless (1) they have personally accepted the shares, or (2) they have made themselves liable for a *devastavit*. The mere recording in the Share Register of the names of the representatives of a deceased member on production of probate or letters of administration does not *per se* amount to an election on the part of the representatives to become registered as the holders of the shares of the deceased member; there must be a "distinct and intelligent request" on the part of the representatives.

(5) The directors may decline to register any transfer of shares (or stock) upon which the company has a lien, and in the case of shares not fully paid up may refuse to register a transfer to a transferee of whom they do not approve.

Note.—Where a Stock Exchange quotation is required the lien must not extend to fully-paid shares. Directors will not be interfered with in exercising their discretion as to refusing a transfer provided they act *bonâ fide*, but if it can be proved that they have, in refusing a particular transfer, exercised their power "capriciously and wantonly," the Court may interfere on application being made.

Sir F. B. Palmer is of opinion that where a company is threatened with insolvency it might be the *duty* of the directors to refuse to register transfers of shares.

It must be particularly noted that the above five clauses do not necessarily state general rules of law; they are merely specimens of the provisions as to transfers usually contained in a company's regulations.

Stamp Duty.

An instrument of transfer must be stamped with the proper *ad valorem* duty at the rate of 10s. per cent. (by scale) upon the consideration or agreed consideration therefor, but where the amount stated in the instrument of transfer as the consideration is a merely nominal sum (*e.g.*, five shillings), a *fixed* duty of 10s. is payable.

With regard to transfer deeds wherein a nominal consideration is inscribed the following regulations have been issued by the Stamp Office, viz.:—

(*A*) If the transfer is made (1) on a sale, or (2) in satisfaction in whole or in part of a *pecuniary* bequest, or (3) in liquidation of a debt, or (4) in exchange for other securities, or (5) by way of gift *inter*

vivos, *ad valorem* duty is payable at the rate of 10s. per cent. (by scale) on the value or agreed value of the consideration.

(*B*) The *fixed* duty of 10s. is only payable when the transaction falls within one of the following descriptions:—

(*a*) Vesting the property in trustees on the appointment of a new trustee or the retirement of a trustee.

(*b*) A transfer, as for a nominal consideration, to a mere nominee of the transferor when no beneficial interest in the property passes.

(*c*) A transfer by way of security for a loan; or a re-transfer to the original transferor on repayment of a loan.

(*d*) A transfer to a residuary legatee of stock, &c., which forms part of the residue divisible under a will.

(*e*) A transfer to a beneficiary under a will of a *specific legacy* of stock, &c.

(*f*) A transfer of stock, &c., being the property of a person dying intestate, to the party or parties entitled to it.

Where the true consideration for a transfer is "nominal" the fixed sum of 10s. is none the less payable, although the real market value of the subject of transfer (or the par value in the case of stocks and shares) may be such that the *ad valorem* duty thereon would be less than 10s.

The sum named in the instrument of transfer may not, and often does not, agree with the amount receivable by the original seller (who signs the document as transferor) owing to a subsale by the original purchaser, and so on through other hands at different prices. The price paid by the *last* buyer is the one which fixes the *ad valorem* duty payable upon the transfer.

Section 17 of the Stamp Act 1891 provides:—

If any person whose office it is to enrol, register, or enter in or upon any rolls, books, or records any instrument chargeable with duty, enrols, registers, or enters any such instrument, not being duly stamped, he shall incur a fine of ten pounds.

Winding-up.

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. (Companies (Consolidation) Act 1908, section 205.)

A liquidator in voluntary winding up has, therefore, the power to register a transfer after winding up, and the transfer when registered will have full effect. (*Re National Bank of Wales*, 1897.)

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 the members of the company made after the *commencement* of the winding up shall, *unless the Court otherwise orders*, be void. (Section 205.)

Bankruptcy.

Where any part of the property of a bankrupt consists of stock, shares in ships, shares or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt. (Bankruptcy Act 1883, section 50.)

(*See titles* Annual List and Summary, Blank Transfer, Certificate, Certified Transfer, Contributory, Distringas, Forged Transfers, Infant, Lien (shares in companies), Married Woman, Private Company, Registered Contract (shares), Register of Members, Register of Transfers, Share Warrants, &c. &c.)

Treasury Bills.—Instruments of credit issued by the Treasury to raise temporary funds. They bear no interest (as such), being offered to public tender and issued at a discount. They are drawn for three or six months, and the difference between the price of issue and the nominal amount of the respective bills affords a margin for interest. Thus, a bill for £1,000 issued at 98 per cent. for six months would yield a little *over* 4 per cent. per annum upon the outlay. (*See titles* Exchequer Bills, Exchequer Bonds.)

ret.—*See title* Allowance.

rial Balance.—Under ordinary circumstances, a Trial Balance is a schedule of the balances of the Ledger Accounts, including the cash balance, prepared—(1) to test the equilibrium of the Ledger as at a given date, and (2) to form the basis of the Profit and Loss Account and Balance Sheet. The preparation of a Trial Balance is a process peculiar to the system of bookkeeping by double entry.

The Trial Balance should contain the following particulars:—The Ledger folio, the title of the account and the balance thereof (debit or credit, as the case may be, and recorded in separate columns in the schedule). Should the totals of the debit and credit columns correspond, the arithmetical accuracy of the books is deemed to have been proved. The Trial Balance merely demonstrates that "for every debit there has been a corresponding credit"—it does not disclose an error occasioned by (say) a debit item, which, although posted correctly (1) as regards amount, and (2) to the debit side, has been incorrectly dealt with as regards the particular Ledger Account. Nor will a Trial Balance (*where balances only are dealt with*) reveal any compensatory errors, such as a short post of £10 to the debit side, and another short post of £10 to the credit side. (*See title* Compensatory Errors.)

But while it is the general practice to deal with the *balance only* of each Ledger Account in preparing the Trial Balance, some concerns adopt the system of extracting (1) the debit or credit balance of the account as at the date of the last balance, (2) the total of the items posted during the subsequent period to the debit of the account, (3) the total of the items posted during the period to the credit of the account, and (4) the existing balance; this necessitates six money columns [as against two where existing balances only are dealt with], and each lateral line, containing the particulars of a distinct account, should be self-balancing, while the totals of the columns will not only serve to prove the equilibrium of the Ledger, but also afford checks not otherwise obtainable.

Thus, the total of the column containing the debit items posted during the period should agree with the totals of the various subsidiary books recording debit entries, and so with the credit entries, *mutatis mutandis*. This affords a check upon compensatory errors, and upon transfers which have been made from one Ledger Account to another without a subsidiary record. This function of a Trial Balance can be carried much further, and is fully dealt with under the titles Analysis of the Ledger, Journal, and Sectional Ledgers (*q.v.*).

Having served as a test of the accuracy of the records (as regards amounts) the Trial Balance, in order to facilitate the preparation of the Balance Sheet, must be analysed. The main classes into which the items in the Trial Balance should be resolved are (1) liabilities, (2) assets, (3) gains and losses, (4) capital. But ordinarily a Trial Balance is prepared before certain necessary adjustments have been made, so that the conversion of the Trial Balance into a Balance Sheet usually involves the incorporation of stocks on hand, and the apportionment of rent, rates, interest, fire insurance premiums, and such like matters which may be deemed to accrue from day to day. Some of these may have been paid in advance, while others are accruing, although they are not actually due at the date as at which the accounts are being prepared. There may also be the questions of depreciation, interest on capital, and provision for doubtful debts to be considered and dealt with.

When these adjustments have been made the items in the Trial Balance as amended may be readily transformed into a Balance Sheet and Profit and Loss Account by the application of two very simple rules, viz.:—

(1) A debit balance which is not recoverable is a loss; if it is recoverable it is an asset.

(2) A credit balance which is not payable is a gain; if it is payable it is a liability.

To decide whether and to what extent a debit balance is recoverable or not; to decide whether and to what extent a credit balance is payable or not, may be difficult matters, in many instances requiring great skill to determine, and they may possibly be the cause of much difference of

opinion. Moreover, some debit balances (*e.g.*, preliminary expenses) admittedly not recoverable may be fairly charged over more than one financial period, and pending distribution over several periods the undistributed portions are deemed Capital Expenditure. But once the facts have been determined or an opinion has been formed in connection with any particular set of items, the above simple rules are sufficiently comprehensive for all purposes. (*See title* Balance Sheet.)

Tripartite.—Divided into three distinct parts. A tripartite agreement is one in which there are three distinct parties, *e.g.*, novation (*q.v.*).

Trust Deed.—One of the most frequent modes of issuing debentures by a company is to secure same by a trust deed (sometimes called a covering deed), which usually conveys or assigns, or creates a charge upon, in favour of trustees, all or some part of the company's property, upon trust, to permit the company to carry on its business, under stated conditions, until default is made, either in respect of payment of principal or interest secured thereby, or on the breach of any other condition therein contained.

On such default, the deed generally provides for the entry of the trustees, with a power of sale, and liberty out of the proceeds to pay off the debentures with interest and costs, and to hold the surplus, if any, in trust for the company. Provision is also made, as a rule, for the carrying on of the business by the trustees (in case of entry) or by a receiver appointed by them, and such other powers and privileges as may be considered necessary for the due protection of the debenture-holders.

The main advantages of a trust deed to the debenture-holders, as compared with debentures not so secured, are:—

(1) On default, there are trustees ready to act for the protection of the debenture-holders. This is more convenient and effective than (*a*) independent action on the part of several debenture-holders, or (*b*) action which is dependent upon resolutions passed at meetings of debenture-holders.

(2) The rights of the debenture-holders are more clearly defined in a trust deed than is otherwise the case, and generally the trustees have certain rights prescribed as regards the periodical inspection of the books, the right to nominate directors, &c., although default may not have been made in respect of any of the conditions of the debentures or trust deed.

(3) The trustees invariably possess the legal estate of an important part of the company's property, *e.g.*, freeholds and leaseholds; thus, to this extent, they ensure their priority by effectually protecting the debenture-holders against the danger of having their security postponed to the claims of those holding specific mortgages granted subsequently.

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.

If a copy is not forwarded the company shall be liable 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 of the company who knowingly authorises or permits the refusal shall incur the like penalty. (Companies (Consolidation) Act 1908, section 102.)

(*See titles* Debentures, Floating Charge, Register and Registration of Mortgages.)

Trustee.—*See title* Trusts.

Trustee in Bankruptcy.—

Appointment.
Security (special article).
Remuneration.
Sundry matters:—
Property divisible amongst creditors.
Discovery, Examination, &c.
Exemption from stamp duty.
Control by Board of Trade.
Committee of Inspection (special article).
Powers (rights):—
Without sanction of committee.
With such sanction.
Disclaimer (special article).
Duties:—
Moneys.
Directions of the Court, Committee, &c.
Proofs.
Dividends.
Accounts and audit.
Creditors' rights:—
As regards accounts.
As regards meetings.
Removal.
Resignation.
Release.

Appointment.—Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may, by ordinary resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection.

Note.—A person holding special proxies to vote for the appointment of himself as trustee may use the said proxies and vote accordingly. (Bankruptcy Act 1883, 1st Schedule, Rule 26.)

The person appointed trustee shall give security, in manner prescribed (*see title* Security), to the satisfaction of the Board of Trade, and the Board, if satisfied with the security, shall certify that his appointment has been duly made, unless they object to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate, or any particular creditor, makes it difficult for him to act with impartiality in the interests of the creditors generally.

Provided that where the Board make any such objection they shall, if so requested by a majority in value of the creditors, notify the objection to the High Court, and thereupon the High Court may decide upon its validity. (1883 Act, section 21.)

With regard to solicitation for proxies in order to obtain the appointment of trustee, *see heading* Remuneration (*below*).

It shall be sufficient reason for refusing to certify the appointment of a person as trustee that in any other proceeding under the Acts such person has either been removed for misconduct or neglect of duties, or has failed or neglected without good cause shown by him to render his accounts for audit for two months after the date by which the same should have been rendered, or has otherwise failed to comply with any order of the Board of Trade. (Rules 300 and 301, 1890 Act, section 4.)

A person was appointed trustee by the creditors on the faith of his representation that he was a Chartered Accountant. The Board of Trade finding this to be untrue refused to certify the appointment, and the creditors elected another person. (Bankruptcy Report for 1903.)

When the appointment of a trustee is certified, notice of his appointment shall forthwith be gazetted by the Board of Trade, and a certificate of the appointment shall be sent by the Board of Trade to the Registrar. The appointment of a trustee shall take effect as from the date of the certificate. The trustee shall also forthwith insert notice of his appointment in a local paper. The expense of such gazetting and notice shall be borne by the trustee, and may be charged by him against the estate. (Rule 298.) Although the appointment of a trustee takes effect from the date of the certificate of the Board of Trade (1883 Act, section 21), the trustee's title relates back. (*See title* Relation Back.) A certificate of the Board of Trade that a person has been appointed trustee under the 1883 Act is conclusive evidence of his appointment. (Section 138.) The Official Receiver shall not be the trustee of the bank-

rupt's property, except under the following circumstances:—

(1) Until a trustee has been appointed by the creditors (section 54); during any vacancy (section 87); and after the release of the (creditor's) trustee. (Section 82.)

(2) Subject to the power of the creditors by *special* resolution to appoint their own trustee, the Official Receiver acts as trustee in small bankruptcies. (Section 121.) Subject to the power of the creditors by *ordinary* resolution to appoint their own trustee, the Official Receiver acts as trustee of the estate of a deceased insolvent. (1883 Act, section 125; 1890 Act, section 21.)

Note.—There is nothing to prevent the Official Receiver from acting as trustee under a composition or scheme of arrangement, and Rule 209 provides that in certain cases he is to act *ex officio* as trustee under compositions and schemes.

All expressions in the Bankruptcy Acts referring to the trustee under a bankruptcy unless the context otherwise requires, or the Acts otherwise provide, include the Official Receiver *when acting as trustee.* (1883 Act, section 68.)

If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or in the event of negotiations for a composition or scheme pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve, the composition or scheme, the Official Receiver shall report the matter to the Board of Trade, and thereupon the Board of Trade shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.

Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and on the appointment being made and certified, the person appointed shall become trustee in the place of the person appointed by the Board of Trade.

When a debtor is adjudged bankrupt, after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the Official Receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee. (1883 Act, section 21.)

The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed, they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee," and shall be joint tenants of the property of the bankrupt.

The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Board of Trade. (1883 Act, section 84.)

If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

The Official Receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the Official Receiver shall report the matter to the Board of Trade, and the Board may appoint a trustee, but in such case the creditors or committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment. (1883 Act, section 87.)

No defect or irregularity in the appointment of a trustee shall vitiate any act done in good faith. (1883 Act, section 143.)

Remuneration.—Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an

ordinary resolution of the creditors, or, if the creditors so resolve, 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 any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend. (1883 Act, section 72.)

The creditors, or, as the case may be, the committee of inspection, in voting the remuneration of the trustee, shall distinguish between the commission or percentage payable on the amount realised, and the commission or percentage payable on the amount distributed in dividend. (Rule 305.)

In calculating the percentage payable on the amount realised, assets realised by the Official Receiver, sums paid to secured creditors (in respect of their securities), premiums on life policies and moneys expended in carrying on the trade or business must be deducted from the total receipts. The percentage payable on dividends must not be charged until the dividend is in course of payment. (Board of Trade Regulations.)

The resolution of the creditors shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover. (1883 Act, section 72.)

The trustee is not entitled to make a *profit charge* in respect of keeping possession of the debtor's estate, but only to charge the amount actually paid. (Board of Trade Regulations.)

Where a trustee 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. When the trustee is a solicitor he may contract that the remuneration for his services *as trustee* shall include all professional services. (1883 Act, section 73.)

Where either the trustee or his firm acts as auctioneer or valuer no *special* charge for such services will be allowed. (Board of Trade Regulations.)

The trustee's remuneration is not a taxable charge. (1883 Act, section 73.)

The cost of the premium upon a trustee's guarantee bond will not be allowed against the estate unless such charge has been specially approved by the creditors or by the committee of inspection in those cases in which the committee have power to fix the trustee's remuneration. (But *see title* Security.)

If one-fourth in number or value of the creditors dissent from the resolution of the creditors, or the bankrupt satisfies the Board of Trade that the remuneration is unnecessarily large, the Board of Trade shall fix the amount of the remuneration. (1883 Act, section 72.)

Where a trustee acts without remuneration he shall be allowed, out of the bankrupt's estate, such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Board of Trade, approve. (1890 Act, section 15.)

In any case where the Board of Trade appoint a trustee (*see* Appointment, *supra*) he shall be paid out of the estate of the bankrupt such remuneration as the Board of Trade shall determine. (Rule 307.)

A trustee shall not, under any circumstances whatever, make any arrangement for or accept from, the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up any part of his remuneration, either as receiver, manager, or trustee to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy. (1883 Act, section 72.)

Where it appears to the satisfaction of the Court that any solicitation has been used by or

on behalf of a trustee in obtaining proxies or in procuring the trusteeship *except* by the direction of a *meeting* of creditors, the Court shall have power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary. (1883 Act, 1st Schedule, Rule 20.)

The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration (or conduct) of the trustee. (1883 Act, section 88.)

Where the trustee's remuneration has been fixed by resolution, and the trustee has performed his duties in whole or in part in pursuance of that resolution, it amounts to a contract which neither the creditors nor the committee of inspection have any power to alter. If under such circumstances it is desired to rectify the basis of the remuneration, application must be made to the Court. (*Re Marsden*, 1892.)

Property divisible amongst Creditors.—The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery. (1883 Act, section 50.)

Note.—In the Bankruptcy Acts, unless the context otherwise requires, "property" includes money, goods, things in action, land and every description of property, whether real or personal, and whether situate in England or elsewhere; also obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of, or incident to, property as above defined. (1883 Act, section 168.)

Section 44 of the Act provides:—

The property of a bankrupt divisible amongst his creditors, and referred to in the Bankruptcy Acts as the property of the bankrupt, *does not comprise* the following:—

(1) Property held by the bankrupt on trust for any other person.

Note.—This will include goods in the bankrupt's possession as factor, the property in such a case, where capable of being traced (though its character be changed), belonging to the bankrupt's principal.

(2) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole (these are sometimes referred to as the Excepted Articles).

Note.—Apparently the "tools of trade" for this purpose include only such implements as would be necessary to enable a working man to earn his living, and do not extend to "plant." It has been decided that a printing press is not a tool.

The personal earnings of a bankrupt do not vest in his trustee, but apparently only such part of the earnings as are "reasonably necessary" to maintain the bankrupt and his family are within the exception.

In *Re Roberts* (81 L.T. 467) Lindley, M.R., stated that there was no authority from the cases for the proposition "that property of "a bankrupt acquired by his personal exertions "since his bankruptcy and not required for his "present support did not belong to his trustee." No such doctrine could be maintained in face of section 44, Bankruptcy Act 1883. After bankruptcy and before his discharge, whatever property a bankrupt acquires belongs to his trustee, save only what is necessary for his support. If the bankrupt before his discharge becomes possessed periodically of an amount in excess of his requirements, such excess earnings might be made available for creditors by obtaining an order under section 53. (*Re Graydon*, 1895; *Re Rogers*, 1894.)

The words used in section 53 (2) to describe the earnings of a bankrupt which may be attached by the trustee are "*salary or income*," and in this connection Fry, L.J., defined "salary" (in *In re Shine*, 61 L.J., Q.B. 253) as follows:—"Whenever we get these four things "predicated of a sum of money—first, that it is "for services rendered; secondly, that it is "under some contract or appointment; thirdly, "that it is computed by time; and, fourthly, "that it is payable at a fixed time—we get a "salary, and it is none the less a salary because "it is liable to be determined by the paying "party or that it is liable to deduction."

Thus "contingent or possible income" analogous to the earnings of a professional man is not liable to be attached (*Re Hutton*, 54 L.J., Q.B. 53), but the *weekly salary* of a fish salesman comes within the section. (*Re Roberts*, Bradford County Court, *Accountant* Law Reports, 1906.)

In the event of the death of a bankrupt his trustee cannot exercise a general power of appointment which was vested in the deceased (*Re Nichols*, 1885), nor does the right of a husband to administer his wife's estate pass to his trustee in bankruptcy. (*Re Turner*, 1886.) (*See title* Defaulter.)

But the property divisible amongst the bankrupt's creditors *does comprise* and extend to the following:—

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

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

Note.—Rights of action to recover damages, whether in respect of torts or breaches of contract resulting immediately in injuries wholly to the person or feelings of the bankrupt by way of mental or bodily suffering, do not pass to the trustee or creditors. (*Stanton v. Collier*, 1854; *Beckham v. Drake*, 1849.)

Nor can the capacity which the donee of a limited power of appointment has of releasing such power of appointment for his own benefit be exercised by his trustee (in the event of his bankruptcy) for the benefit of his estate. (*In re Rose*, 1904, 2 Ch. 348.)

(3) All goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section. (*See title* Reputed Ownership.)

Where a bankrupt is a beneficed clergyman the trustee may apply for a sequestration of the profits of the benefice. . . .

The bishop of the diocese in which the benefice is situate may, if he thinks fit, appoint to the bankrupt such or the like stipend as he might by law have appointed to a curate duly licensed to serve the benefice in case the bankrupt had been non-resident, and the sequestrator shall pay the sum so appointed out of the profits of the benefice to the bankrupt by quarterly instalments while he performs the duties of the benefice.

The sequestrator shall also pay out of the profits of the benefice the salary payable to any duly licensed curate of the church of the benefice in respect of duties performed by him as such during four months before the date of the receiving order not exceeding fifty pounds. (1883 Act, section 52.)

Where a bankrupt is an officer of the army or navy, or an officer or clerk, or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under the sub-section, the Court shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the chief officer to the terms of such payment.

Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay or pension, or to any compensation granted by the Treasury, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, pension, half-pay, or compensation, or of any part thereof, to the trustee to be applied by him in such manner as the Court may direct.

Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited. (Section 53.)

The above provisions are substantially the same as those in sections 89 and 90 of the Act of 1869, and it was decided under that Act that in order to come within these sections the payment must be one to which the bankrupt had a legal or equitable claim, and thus an order could not be made for the payment to the trustee by a bankrupt of any portion of a *purely voluntary* allowance made to him. (*Ex parte Wicks*, 1881.)

If a creditor seeks to prove in an English bankruptcy he must bring into the common fund such part of the debtor's estate as he has already received abroad (*Selkrigg v. Davies*, 1814), except property to which he was entitled by reason of a lien or charge. (*Re Somes*, 1896.)

Until a trustee is appointed the Official Receiver shall be the trustee, and immediately on a debtor being adjudged bankrupt the property of the bankrupt (divisible amongst his creditors) shall vest in the trustee.

On the appointment of a (creditors') trustee the property shall forthwith pass to and vest in the trustee appointed.

Note.—The making of a receiving order against a debtor does not divest him of his property, but merely has the effect of protecting it pending adjudication or the acceptance of a composition or scheme of arrangement.

The property of the bankrupt shall pass from trustee to trustee, including under that term the Official Receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of the British dominions requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly. (1883 Act, section 54.)

The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, 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.

Where any part of the property of the bankrupt consists of stocks, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

Where any part of the property of the bankrupt is of copyhold or customary tenure, or is any like property passing by surrender and admittance, or in any similar manner, the trustee shall not be compellable to be admitted to the property, but may deal with it in the same

manner as if it had been capable of being, and had been, duly surrendered or otherwise conveyed to such uses as the trustee may appoint; and any appointee of the trustee shall be admitted to, or otherwise invested with, the property accordingly.

Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.

Note.—No person can have any lien on the debtor's books as against the Official Receiver or trustee; but this does not apply to an *assignment* of book debts to a *bonâ fide* purchaser, for in such a case the assignment of the debts carries with it the books in which they are recorded. (*Re White*, 1884.)

Any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not he shall be guilty of a contempt of Court, and may be punished accordingly on the application of the trustee. (1883 Act, section 50.)

Where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the Board of Trade, for the safety of the account or for some other sufficient cause, order the withdrawal of the account. (1883 Act, section 74.)

The trustee will not be held liable for the default of agents who have been selected with care and employed in accordance with common usage. (*Ex parte Belchier*, 1754.)

With regard to money paid by a debtor (after committing an act of bankruptcy) to his solicitor or accountant in respect of services rendered in connection with an abortive private arrangement with his creditors, *see title* Deed of Arrangement.

Discovery, Examination, &c.—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 its 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 Official Receiver or trustee at such time 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. (1883 Act, section 27.)

Note.—The provisions of this section have been held not to apply to orders for the administration of the estates of deceased insolvents. (*Re Hewitt*, 1885.)

Exemption from Stamp Duty.—Section 144 of the Act of 1883 provides that every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in, any real or personal property which is part of the estate of any bankrupt, and which after the execution of the deed, conveyance, assignment, surrender, admission, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy, paper, writ, order, certificate, affidavit, bond, or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under the Act.

This provision applies *inter alia* to receipts given by trustees, receipts given by creditors for dividends, receipts for costs payable for work done for the trustee, and cheques drawn on a Banking Account kept solely for the purposes of bankrupts' estates. (Board of Trade Regulations.)

Where a local Bank Account has been sanctioned, a trustee should therefore make application for an unstamped Cheque Book.

For the purposes of section 144 of the Act "bankruptcy" shall include any proceeding under the Act, whether before or after adjudication, and whether an adjudication is made or not, and "bankrupt" shall include any debtor proceeded against under the Act. (Rule 60.)

Control by Board of Trade.—The Board shall take cognisance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by the statute, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor in regard thereto, the Board shall inquire into the matter and take such action thereon as may be deemed expedient.

The Board may at any time require any trustee to answer any inquiry made by them in relation to any bankruptcy in which the trustee is engaged, and may, if the Board think fit, apply to the Court to examine on oath the trustee or any other person concerning the bankruptcy. The Board may also direct a local investigation to be made of the books and vouchers of the trustee. (1883 Act, section 91.) (*See also heading* Directions of the Court, &c., *below*.)

Powers.—Subject to the provisions of the Bankruptcy Acts, the trustee may, upon his own responsibility, do all or any of the following things:—

(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due, or growing due, to the bankrupt) 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.

Note.—The trustee is accountable for the proceeds of every auction sale authorised by him (Rule 295), and the gross proceeds are to be recovered from the auctioneers and included under the head of receipts in the Cash Book, credit being taken for the auctioneer's disbursements and charges, as payments, when such charges, &c., have been duly taxed. The auctioneer's Sale Accounts must in all cases be forwarded with the accounts for audit. In the case of any sale by private contract the account should show the name, address, and occupation of the purchaser, and the *mode* in which the amount of the purchase-money has been arrived at. (Board of Trade Regulations.)

The bankrupt's property may be sold to the bankrupt himself. (*Kitson v. Hardwick*, 1872.)

A purchaser of the goodwill of a bankrupt's business from his *trustee* cannot restrain the bankrupt from *bonâ fide* recommencing business and soliciting his former customers (*Walker v. Mottram*, 1881), but if the bankrupt joins in the sale and agrees not to carry on a similar business within a given area he will be bound thereby. (*Buxton Co. v. Mitchell.*) (Note also the effect of the decision in *Trego v. Hunt*, 1895.)

(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof.

(3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt.

(4) Exercise any powers, the capacity to exercise which is vested in the trustee under the Bankruptcy Acts, and execute any powers of attorney, deeds, and other instruments, for the purpose of carrying into effect the provisions of the Bankruptcy Acts.

(5) Deal with any property to which the bankrupt is beneficially entitled, as tenant in tail, in the same manner as the bankrupt might have dealt with it.

The trustee may, with the *permission of the committee of inspection*, do all or any of the following things:—

(1) Carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same.

Note.—The word "necessary" here means "highly expedient under all the circumstances of the case," and is not synonymous with "beneficial." (*Re Wreck Recovery Co.*, 1880, 15 Ch.D. 353.) The business ought not to be carried on with the object of paying dividends out of profits, or of increasing the value of the goodwill. Such a practice necessarily involves risk of loss, to which the creditors ought not to be exposed, and has, moreover, been held to be contrary to law. (Board of Trade Regulations.)

(2) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt.

Note.—Where a trustee refuses to carry on an action which is considered beneficial to the estate, the creditors may apply for his removal. (*Ex parte Phillips.*) When a trustee *brings an action* on behalf of the estate, although no personal benefit can accrue to him as a result of the litigation, he will be personally liable for the costs; so that if the estate of the bankrupt is insufficient for the payment of any of such costs, the trustee would have to pay them (or the balance of them) personally. Therefore the proper course (and the usual course) for the trustee, is to obtain an indemnity against the costs from the committee of inspection or the creditors personally before commencing litigation. (*Ex parte Angerstein*, 1874.)

Where an action is brought *against* a trustee (or the Official Receiver) as representing the estate of the debtor, or where a trustee (or the Official Receiver) is *made a party* to a cause or matter on the application of any other party thereto, he shall not be personally liable for costs unless the Court otherwise directs. (Rule 108.)

The trustee may sue and be sued by the official name of "the trustee of the property of . . . . a bankrupt," inserting the name of the bankrupt, and by that name may in any part of the British dominions, or elsewhere, hold property of every description, make contracts, sue, and be sued, enter into any engagements binding on himself or his successors in office, and do all other acts necessary or expedient to be done in the execution of his office. (1883 Act, section 83.)

(3) Employ a solicitor, or other agent, to take any proceedings or do any business which may be sanctioned by the committee of inspection.

Note.—The sanction for the employment must be obtained before the employment except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction. (1890 Act, section 15.)

(*See title* Taxation of Costs.)

(4) Accept, as the consideration for the sale of any property of the bankrupt, a sum of money, payable at a future time, subject to such stipulations as to security and otherwise, as the committee think fit.

(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.

(6) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist, between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times and generally on such terms as may be agreed on.

(7) Make such compromise or other arrangement, as may be thought expedient, with creditors or persons claiming to be creditors, in respect of any debts provable under the bankruptcy.

(8) Make such compromise or other arrangement, as may be thought expedient, with respect to any claim arising out of, or incidental to, the property of the bankrupt, made or capable of being made, on the trustee by any person, or by the trustee on any person.

(9) Divide, in its existing form, amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases. (1883 Act, section 57.)

The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt, or any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner, and on such terms, as the trustee may direct.

The trustee may, from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property, for the support of the bankrupt and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may be reduced by the Court. (1883 Act, section 64.)

In any case in which a trustee makes an allowance to a bankrupt out of his property, such allowance, unless the creditors by special resolution determine otherwise, shall be in money, and the amount allowed shall be duly entered in the trustee's account. (Rule 296.)

If there be no committee of inspection, any act or thing, or any direction or permission 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 trustee, and where such functions so devolve upon the Board of Trade they may, subject to any directions of the Board, be exercised by the Official Receiver. (1883 Act, section 22, and Rule 337.)

Upon every application by a trustee to an Official Receiver acting as committee of inspection a fee is payable as follows:—

Where the assets are certified by the Official Receiver as not likely to realise more than £500	5s.
Where the assets are *likely to exceed* £500	10s.

Disclaimer.—A trustee's powers as to disclaimer are separately dealt with under that title (*q.v.*).

Moneys.—An account, called the Bankruptcy Estates Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under the Bankruptcy Acts shall be paid to that account.

Every trustee in bankruptcy shall in such manner, and at such times as the Board of Trade with the concurrence of the Treasury direct, pay without any deduction the money received by him and remit all current bills of exchange to the Bankruptcy Estates Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

Provided that if it appears to the committee of inspection that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or if the committee shall satisfy the Board of Trade that for any other reason it is for the advantage of the creditors that the trustee should have an account with a local bank, the Board of Trade shall, on the application of the committee of inspection, authorise the trustee to make his payments into and out of such local bank as the committee may select.

Such account shall be opened and kept by the trustee in the name of the debtor's estate; and any interest receivable in respect of the account shall be part of the assets of the estate. (*See title* Local Bank Account.)

Upon any *application* by a committee of inspection to the Board of Trade for a local Banking Account a fee of £1 is payable, and upon every *order* of the Board of Trade for such local Bank Account a fee of £2 is payable.

There are no provisions in the Bankruptcy Acts similar to those contained in section 231 of the Companies (Consolidation) Act 1908 as to the investment of surplus funds awaiting distribution in a liquidation; but in view of the *probable amount of the cash balance* a trustee in bankruptcy having a substantial sum which is likely to remain undistributed for some time, may apply for permission to open a local Bank Account (*see above*) and on such permission being granted (as it will be in a proper case) the trustee when transferring the balance from the credit of the estate at the Bank of England to his credit at such local bank may make his own arrangements as to interest.

All necessary disbursements made by a trustee on account of an estate to the date of his application for release will be paid to him out of any money standing to the credit of the estate in the Bankruptcy Estates Account, on application to the Inspector-General in Bankruptcy.

Any expense properly incurred by the trustee 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.

Cheques to the order of the payee for sums which become payable on account of the estate may be obtained by the trustee on application by him on the prescribed form for delivery by him to the parties entitled, but in the case of small amounts payment will be made by money orders. Under no circumstances will the Board of Trade hold themselves responsible for payments made on the requisition of the trustee.

The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter.

The Inspector-General will be prepared to certify to the balance standing to the credit of an estate in the Bankruptcy Estates Account, on receiving from the trustee a statement of the balance shown by the bank columns of the Estate Cash Book. (Board of Trade Regulations.)

If a trustee 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 may authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in *excess* at the rate of

£20 per cent. per annum, and shall have no claim for remuneration, and may be removed from his office by the Board of Trade, and shall be liable to pay any expenses occasioned by reason of his default. (1883 Act, section 74.)

No trustee in bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private Banking Account. (1883 Act, section 75.)

Directions of the Court, Committee, &c.—Subject to the provisions of the Bankruptcy Acts (*see* Powers *above*) the trustee shall in the administration of the property of the bankrupt, and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy (1883 Act, section 89), and a fee of 5s. is payable upon every such application.

Neither the trustee nor any member of the committee of inspection of an estate shall, while acting as trustee 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 estate. Any such purchase made contrary to the provisions of the rule may be set aside by the Court on the application of the Board of Trade or any creditor. (Rule 316.) The trustee may also be removed from his office. (*Ex parte Reynolds.*)

Where the trustee carries on the business of the debtor he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from his employer (if any), or from any person whose connection with the trustee is of such a nature as would result in the trustee obtaining any portion of the profit (if any) arising out of the transaction.

In any case in which the sanction of the Court is obtained under the above rules or under Rule 317, 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 debtor's estate. (Rule 316A.)

No member of a committee of inspection of an estate 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 bankruptcy, or to receive out of the estate any payment for services rendered by him in connection with the administration of the estate, or for any goods supplied by him to the trustee for or on account of the estate. 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 trustee's account. (Rule 317.)

Subject to the foregoing and to the provisions of the Bankruptcy Act (*see* Powers *above*), the trustee shall use his own discretion in the management of the estate and its distribution among the creditors. (1883 Act, section 89.) But the Court, on the application of the bankrupt or any creditor aggrieved thereby, may confirm, reverse, or modify the act or decision complained of, and make such order on the premises as it thinks just. (1883 Act, section 90.)

Proofs.—The trustee shall examine every proof and the grounds of the debt, and admit or reject it, in whole or in part, or require further evidence in support of it. Where a creditor's proof has been admitted, the notice of dividend shall be sufficient notification to such creditor of such admission. If the trustee rejects a proof he shall state in writing to the creditor the grounds of the rejection. (1883 Act, 2nd Schedule, Rule 22, and Bankruptcy Rule 229.)

Subject to the power of the Court to extend the time, the trustee, other than the Official Receiver, shall deal with every proof (which has not previously been dealt with by the Official Receiver), within twenty-eight days after it has been lodged with him.

Provided that where the trustee has given notice of his intention to declare a dividend he shall, within seven days after the date mentioned in such notice as the latest date up to which proofs must be lodged, examine and in writing admit or reject every proof which has not been already admitted or rejected, and give notice of his decision rejecting a proof, wholly or in part, to the creditor affected thereby. (Rule 228.)

If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision. (1883 Act, 2nd Schedule, Rule 24.)

Subject to the power of the Court to extend the time, no application to reverse or vary the decision of an Official Receiver or trustee in rejecting a proof shall be entertained after the expiration of twenty-one days from the date of the decision complained of (Rule 230), but where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date upon which proofs may be lodged, desires to appeal against the decision of the trustee rejecting a proof, such appeal shall, subject to the power of the Court to extend the time in special cases, be commenced, and notice thereof given to the trustee within *seven days* from the date of the notice of the decision against which the appeal is made. (Rule 232.)

If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the *trustee*, after notice to the creditor who made the proof, expunge the proof or reduce its amount. (1883 Act, 2nd Schedule, Rule 23.)

The Court may also expunge or reduce a proof upon the application of a *creditor*, if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon application of the *debtor*. (*Ibid*, Rule 25.)

For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits. (*Ibid*, Rule 26.) He is not entitled to charge any fee therefor.

Where a trustee is appointed in any matter, all proofs of debt that have been received by the Official Receiver shall be handed over to the trustee. But the Official Receiver shall first make a list of such proofs, and take a receipt thereon from the trustee for such proofs. (Bankruptcy Rule 223.)

Every trustee in bankruptcy, other than the Official Receiver, shall, on the first day of every month, send to the Registrar a certified list of all proofs, if any, received by him from the Official Receiver, or otherwise tendered 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 transmit the proofs themselves for the purpose of being filed. (Rule 225.) (*See title* Proof of Debt.)

Dividends.—Subject to the retention of such sums as may be necessary for preferential claims and the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months. (1883 Act, section 58.)

In summary cases (small bankruptcies) the first dividend should be distributed within six months after the conclusion of the first meeting of creditors, but where practicable, the estate should be distributed in a single dividend when realised. (Rule 273.)

Not more than two months before declaring a dividend, the trustee must give notice of his *intention to do so* to the Board of Trade (fee 5s.), in order that the same may forthwith be gazetted, and at the same time must give notice to such of

the creditors mentioned in the bankrupt's 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. If a dividend be not *declared* within two months of the notice of *intention to declare*, a fresh notice of intended dividend must be gazetted before the dividend can be declared (Rule 232); but it is not necessary to give a fresh notice to such of the creditors mentioned in the bankrupt's statement of affairs as have not proved their debts. (Rule 232.)

Any postponement with regard to the first dividend, or any postponement (beyond the limit of two months) of a declaration of dividend, notice of intention to declare which has been gazetted, must be sanctioned by the committee of inspection. (1883 Act, section 58, and Rule 232.) Where dividends are declared in instalments a creditor who has not proved his debt is entitled to a notice before the declaration of *each* dividend (*i.e.*, instalment) so that he may be afforded an opportunity of proving his debt, notwithstanding his disregard of previous notices. (But *see* section 61, *below*.)

The trustee must also give notice to the Board of Trade in order that the *declaration of dividend* may be gazetted (fee 5s.).

Where joint and separate estates are being administered dividends out of the joint and separate estates shall (subject to any order to the contrary that may be made by the Court on the application of any person interested) be declared together. (1883 Act, section 59.) (*See title* Joint and Separate Estates.)

In the calculation and distribution of a dividend the trustee shall make provision for debts provable in the bankruptcy, appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting, that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims, and any possible costs in relation thereto, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand. (1883 Act, section 60.)

Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before the debt was proved by reason that he has not participated therein. (Section 61.)

Before declaring any subsequent dividend the trustee should therefore provide for all *prior* dividends on proofs admitted since the previous distribution—but a trustee need make no provision in respect of any amount which may ultimately become provable by a secured creditor who has neither valued nor realised his security. (*Ex parte Good*, 1880.) Nor need any provision be made for claims of auctioneers, brokers, solicitors, &c., who have not sent in their bills for taxation within the prescribed time. (1883 Act, section 73.)

When the trustee has realised all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realised without needlessly protracting the trusteeship, he shall declare a *final dividend*, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him but not established to his satisfaction, and if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. After the expiration of the time so limited, or, if the Court, on application by any such claimant, grant him further time for establishing his claim, then, on the expiration of such further time, the property of the bankrupt shall be divided among the creditors

who have proved their debts, without any regard to the claims of any other person. (Section 62.)

Upon the declaration of a dividend the trustee shall forthwith transmit to the Board of Trade a list of proofs filed with the proceedings. Such list shall be in the prescribed form, and if the proceedings are in a County Court the list shall be examined by the Registrar with the proofs tendered for filing, and, if found correct, shall be certified by the Registrar. A fee of 2s. is payable in respect of certified lists of proofs for *each bankruptcy*.

If the proceedings are in the High Court, the list must be certified by the trustee and accompanied by office copies of all lists of proofs filed. (Rule 225A.)

The payment of dividends will in every instance, except where a local bank 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 trustee (in the prescribed form) and will be transmitted to him for distribution amongst the creditors. The Board of Trade require ten days' notice to enable them to prepare the cheques or money orders for dividends. The creditors in the list 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 dividend payable should be charged in the Estate Cash Book in one sum. If the dividend has been paid by cheques on the Bankruptcy Estate Account the trustee, 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 Board of Trade. If the dividend has been paid through a local bank, the trustee must, at the expiration of six months from the date of the declaration of a dividend, forward to the Board of Trade for audit, vouchers for the dividends paid and a list of those remaining unclaimed. The trustee will then be furnished with a "receivable order" for payment of the unclaimed dividends into the Bank of England. Under no circumstances should unclaimed dividends be credited to the estate without the previous sanction of the Board of Trade. (Board of Trade Regulations.)

When the trustee has declared a dividend he shall send to each creditor who has proved, a notice showing the amount of the dividend, and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate. (1883 Act, section 58.)

Every bill of exchange, promissory note, or other negotiable instrument or security upon which proof has been made must be exhibited to the trustee before payment of dividend thereon, and the amount of dividend paid must be indorsed on the instrument, but the Court has power on special grounds to dispense with the production (Rule 233), and in the event of a bill or note having been lost the person who was the holder may nevertheless prove in respect thereof, and the loss of the instrument shall not be set up provided satisfactory indemnity be given against the claims of any other person in respect of the instrument in question. (Bills of Exchange Act 1882, section 70.)

The amount of a dividend may at the request and risk of the creditor be transmitted to him by post. (Rule 234.)

No action for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application. (1883 Act, section 63.)

Accounts and Audit.—The Official Receiver, until a trustee is appointed, and thereafter the trustee, 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 of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the estate, but he shall not be bound to insert in the record any document of a confidential nature (such as the opinion of counsel on any matter affecting the interests of the creditors), nor need he exhibit such a docu-

ment to any person other than a member of the committee of inspection. (Rule 285.) In particular the bankrupt has no right to inspect the Record Book. (*In re Solomons*, 1904.)

Note.—Where joint and separate estates are being administered together, it would appear that *one* Record Book will be sufficient.

The Official Receiver, until a trustee is appointed, and thereafter the trustee, 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. (Rule 286.)

Note.—A separate Cash Book must, of course, be kept for *each* estate where joint and separate estates are being administered together.

Where the trustee carries on the business of the debtor he shall keep a distinct account of the trading, and shall incorporate in the Cash Book the total weekly amounts of the receipts and payments on such Trading Account.

The Trading Account shall from time to time, and not less than once in every month, be verified by affidavit, and the trustee 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. (Rule 308.)

As already stated under the heading "Directions, &c." (*supra*), the trustee when he carries on the business of the debtor must not, without the express sanction of the Court (previously obtained, and at the cost of the person in whose interest such sanction is sought) purchase any goods for the carrying on of such business from his employer (if any) or from any person whose connection with the trustee is of such a nature as would result in the trustee obtaining any portion of the profit (if any) arising out of the transaction. Nor can a member of the committee rightly make a profit from any transaction arising out of the bankruptcy, or receive any payment for goods supplied without previous sanction of the Court. (Rules 316 and 317.)

The trustee 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. (Rule 287.)

The Committee of inspection shall, not less than once every three months, audit the Cash Book and certify therein, under their hands, the day on which the said book was audited. The certificate shall be in the prescribed form, with such variations as circumstances may require. (Rule 288.)

Every trustee shall, at the expiration of six months from the date of the receiving 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. When the trustee is appointed the Official Receiver accounts to him, and the receipts and payments of the Official Receiver are incorporated in the trustee's accounts and audited at the first audit of the trustee's accounts. The trustee must also forward, with the first accounts, a summary of the debtor's statement of affairs in such form as the Board of Trade may direct, showing thereon, in red ink, the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised.

When the estate has been fully realised and distributed, or if the adjudication is annulled, the trustee shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

The accounts sent in by the trustee shall be certified and verified by him in the prescribed form. (Rule 289.)

The trustee is also required to forward at *each* audit a report on the position, a form for which will be forwarded to him with notice of audit. (Board of Trade Regulations.)

The affidavits verifying the trustee's accounts (or the affidavits of "no receipts or payments," as the case may be, *see* Rule 291, *below*) should be so filled in as regards dates as to cover the

entire period from the date of the trustee's appointment to the date of his application for his release. The terms of these affidavits require that a trustee shall account for moneys received by his solicitor or any other person on his behalf, and for which the trustee will be held personally responsible. Upon being sworn to an affidavit verifying his accounts, the trustee should see that the account is duly marked by the commissioner or other person administering the oath.

Where there is no committee of inspection the trustee should forward the accounts for audit as soon as they are due, but where there is a committee the trustee should summon a meeting immediately the accounts become due, so that they may be audited before being forwarded to the Board of Trade, but the accounts must not be delayed in consequence of any neglect on the part of the members of the committee to attend such meeting, for in such event a memorandum should be inserted in the Cash Book to the effect that the meeting was duly summoned, but a quorum was not present. The accounts should be then forwarded to the Board of Trade.

Upon one copy of the Cash Book, showing the assets realised, forwarded by the trustee to the Board of Trade, a fee is payable, according to the following scale, on the assets realised and brought to credit, viz., £1 on every £100 or fraction of £100 up to £5,000, and 10s. on every £100 or fraction of £100 beyond £5,000. Provided that where a fee has been taken on an application to approve a composition or scheme of arrangement *seven-eighths* of the amount thereof shall be deducted from the fee payable upon the Cash Book. By an order dated 2nd February 1899 this fee is payable in money in lieu of stamps as formerly, and consequently a transfer of the amount payable will, on the request of the trustee, be made from the funds standing to the credit of the estate in the Bankruptcy Estates Account. If there are no funds, or insufficient funds, standing to the credit of the estate to cover the fees payable, a special remittance should be made to meet the same. In calculating the duty payable upon the copy of the Cash Book, the trustee should deduct from the gross realisations any payments made to secured creditors and any sums expended in carrying on the trade or business. (Board of Trade Regulations and Scale of Fees.)

The accounts required at audit (which should be forwarded to the "Inspector-General in Bankruptcy") are a copy of the Estate Cash Book, to be retained by the Board of Trade (verified by affidavit with a two-shilling stamp affixed thereto), and a copy for filing in the Court, each bearing copies of the certificates of audit by the committee of inspection, together with the vouchers for all payments, and allocaturs for taxable charges. The Record Book should also be forwarded for inspection, together with any original resolutions of the creditors or committee not entered in the record. (Board of Trade Regulations.)

When the trustee's account has been audited, the Board of Trade shall certify that the account has been duly passed, and thereupon the duplicate copy, bearing a like certificate, shall be transmitted to the Registrar, who shall file the same with the proceedings in the bankruptcy. (Rule 290.)

Where a trustee 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 debtor's estate, he shall, at the period when he is required to transmit his Estate Account to the Board of Trade, forward to the Board an affidavit of "no receipts or payments" (Rule 291), and the trustee must himself provide the stamp therefor and pay the affidavit fee, pending the receipt of assets. (*Re Rowlands*, 1887.)

Where at the first audit the affidavit of "no receipts or payments" is furnished under Rule 291, the trustee should forward therewith two copies of the Official Receiver's account of receipts and payments as shown by the Estate Cash Book, on transfer to the trustee. (Board of Trade Regulations.)

In practice the affidavit of "no receipts or payments" is seldom required, for even in those cases where no assets have come to the trustee by virtue of his office, he will in almost every

period for which the return is required have to make some small disbursements. Where it is unlikely that any assets will come to the hands of the trustee he may have obtained an undertaking before accepting office that these disbursements will be repaid to him by the parties for whom he is acting; but while receipts by way of reimbursement from such sources are not deemed to be on behalf of the estate, the payments made by the trustee *are* so considered.

An order of the Court annulling an adjudication does not relieve a trustee from the liability imposed on trustees by the Acts and Rules to account to the Board of Trade for all transactions of such trustee in connection with the estate. (Rule 194 (3).)

The following is an extract from the Board of Trade Regulations as to the form of the accounts:—

Each receipt and payment should be entered in the Cash Book in such detail as will fully explain its nature. Payments for rent, salaries, wages, &c., due at the date of the receiving order should be entered under the head of preferential payments, and carefully distinguished from similar payments which may arise or become necessary while carrying on trade; the latter should be entered into a separate Trading Account. (Rule 308.) Petty expenses should be entered in the Estate Cash Book in sufficient detail to show that no estimated charges are made, and vouchers should where possible be obtained and forwarded for audit. All bank transactions, whether with local banks or the Bankruptcy Estates Account, should be duly entered in bank columns. . . The Cash Book must record the *actual dates* upon which all moneys are received on account of an estate, and the payments out should be entered as of the date when the cheques are *issued*, except in the case of dividends, which should be entered as of the date when the cheques are received, and the total amount of such dividends should be charged in the Cash Book in one sum. In the case of any sale by private contract the account should show the name, address, and occupation of the purchaser, and the *mode* in which the amount of the purchase-money has been arrived at. The trustee is accountable for the proceeds of every auction sale authorised by him, and the gross proceeds must be collected and treated under the head of receipts, and the auctioneer's charges included amongst the payments, provided they have been duly taxed. In the case of partners, distinct accounts are to be kept and rendered of the joint and separate estates.

Where a parochial or other local rate is levied payable by instalments, any of which fall due at a date subsequent to the date of the receiving order, only such instalments as were actually due at the date of the receiving order are payable in full, under the terms of the "Preferential Payments in Bankruptcy Act 1888." Rates or instalments of rates are only payable for the period during which the premises in respect of which the claim is made are in the actual occupation of the debtor or the trustee. Claims for gas and water supplied prior to the receiving order do not come within the terms of the "Preferential Payments in Bankruptcy Act 1888," and are not payable in full except in cases where the authorities have power to recover the amount due in the same way as a landlord can recover rent in arrear—that is, by way of distress *without legal process*, in which event the claim may be paid provided the property available for distress is of sufficient value. Tithes are not payable in full under the "Preferential Payments in Bankruptcy Act 1888," and should only be so paid where the landlord has, in pursuance of the Tithe Act 1891, paid the tithes and given 10 days' notice of his intention to recover same by distress and there is property of the debtor upon which distress can be levied sufficient to cover the claim to the extent of two years in arrear. Not more than two years' tithes are recoverable by distress.

Creditors' Rights as regards Books and Accounts.—Any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent inspect any of the books in which the trustee has recorded any entries or minutes of proceedings at any meeting of creditors or of the committee of inspection (1883 Act, section

80), but the trustee is not bound to insert in the records any documents of a confidential nature (such as the opinion of counsel on any matter affecting the interests of the creditors) nor need the trustee exhibit such document to any person other than a member of the committee of inspection. (Rule 285.) The trustee or Official Receiver shall, whenever required by any creditor so to do, furnish and transmit to such creditor by post, a list of the creditors, showing in such list the amount of the debt due to each of such creditors. The trustee or Official Receiver shall be entitled to charge for such list the sum of threepence per folio of seventy-two words, together with the cost of the postage thereof. (1890 Act, section 16.)

It shall be lawful for any creditor, with the concurrence of *one-sixth of the creditors (including himself)*, at any time to call upon the trustee or Official Receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon receipt of such notice, furnish and transmit such statement of the accounts.

Provided the person at whose instance the accounts are furnished shall deposit with the trustee or Official Receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, such sum to be repaid to him out of the estate if the creditors or the Court so direct. (1890 Act, section 17.)

Note.—Section 18, with regard to meetings, says one-sixth *in value;* but this section, with regard to accounts, does not state whether one-sixth *in value* or *in number* of the creditors is necessary to make the request for accounts.

The cost of furnishing and transmitting such statement shall be calculated at the rate of threepence per folio for each statement where the creditors do not exceed ten, and where the creditors exceed ten, one shilling per folio for the preparation of the statement and the actual cost of printing. (Rule 315.)

When the trustee has declared a dividend he shall send to each creditor who has proved, a notice showing the amount of the dividend, and when and how it is payable, and a statement in the prescribed form as to particulars of the estate. (1883 Act, section 58.)

Any creditor who has proved his debt may apply to the trustee for a copy of the accounts (or any part thereof) relating to the estate, as shown by the Cash Book up to date, and, on paying for the same at the rate of threepence per folio, he shall be entitled to have such copy accordingly. (Rule 314.)

Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times. (1883 Act, 2nd Schedule, Rule 7.) All proceedings of the Court shall remain of record in the Court, so as to form a complete record of each matter, and they shall not be removed for any purpose, except for the use of the officers of the Court, or by special direction of the Judge or Registrar, but they may at all reasonable times be inspected by the trustee, the debtor, and any creditor who has proved, or any person on behalf of the trustee, debtor, or any such creditor. (Bankruptcy Rule 12.)

Creditors' Rights as regards Meetings.—The first meeting shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.

The Official Receiver shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the *London Gazette* and in a local paper.

The Official Receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the causes of his failure and any observations thereon which the Official Receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

The meeting shall be held at such place as is, in the opinion of the Official Receiver, the most convenient for the majority of the creditors. (1883 Act, 1st Schedule, Rules 1 to 4.)

Where a receiving order is made against a firm, the joint and separate creditors shall collectively be convened to the first meeting of creditors. (Rule 265.)

The notice of subsequent meetings to be issued to creditors by the Official Receiver or trustee shall be in the prescribed form, with such variations as circumstances may require. Where no special time is prescribed, the notices shall be sent off not less than three days before the day appointed for the meeting. (Rule 251.)

Where a meeting of creditors is called by notice, the proceedings had and resolutions passed at such meeting shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors shall not have received the notice sent to them. (Rule 252.)

It is not necessary to send notices of meetings (after the first meeting) to creditors under £2 where the estate is being administered summarily. (Rule 273.)

Where a trustee summons a meeting of creditors he shall send to the Official Receiver a copy of the notice convening the meeting. (Rule 252A.)

A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three. (1883 Act, 1st Schedule, Rule 23.)

In calculating a quorum of creditors present at a meeting those persons only who are entitled to vote at the meeting shall be reckoned. (Rule 257.)

The chairman of every meeting shall cause minutes of 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. (1883 Act, 1st Schedule, Rule 25.)

The Official Receiver or the trustee, as the case may be, must send to the Registrar of the Court in which the matter is pending a copy certified by him of every resolution of a meeting of creditors. (Rule 255.)

The trustee may, from time to time, summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee, or otherwise, may direct. (1883 Act, section 89.)

It shall be lawful for any creditor with the concurrence of *one-sixth in value of the creditors (including himself)*, at any time to request the trustee or Official Receiver to call a meeting of the creditors, and the trustee or Official Receiver shall call such meeting accordingly within fourteen days.

Provided that the person at whose instance the meeting is summoned shall deposit with the trustee or Official Receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate, if the creditors or the Court so direct. (1890 Act, section 18.)

Note.—Apparently the requisition need not be in writing.

Where, on request of the creditors, the Official Receiver or trustee calls a meeting of creditors, the cost of summoning such meeting including all disbursements for printing, stationery, postage, and the hire of room for the meeting, shall be calculated at the following rates for each creditor to whom notice is required to be sent:—Two shillings per creditor for the first 20 creditors; one shilling per creditor for the next 30 creditors; and sixpence per creditor for any number of creditors after the first 50. (Rule 254.)

Removal.—If a receiving order is made against a trustee he shall thereby vacate his office of trustee. (1883 Act, section 85.)

The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of

which seven days' notice has been given, remove a trustee appointed by them, and may at the same or any subsequent meeting appoint another person to fill the vacancy as provided in case of a vacancy in the office of trustee. (Section 86.)

Where one-fourth in value of the creditors desire that a general meeting of the creditors may be summoned to consider the propriety of removing the trustee, such meeting may be summoned by a member of the committee of inspection, or by the Official Receiver, on the deposit of a sum sufficient to defray the expenses of summoning such meeting. (Rule 311.)

The vote of a trustee or of his partner, clerk, solicitor or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the conduct of the trustee. (1883 Act, section 88.)

If the Board of Trade are of opinion that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under the Bankruptcy Acts, the Board may remove him from his office; but if the creditors, by ordinary resolution, disapprove of his removal, he or they may appeal against it to the High Court. (Section 86.)

If a trustee at any time retains in his own hands for more than ten days a sum exceeding fifty pounds or such other amount as the Board of Trade in any particular case may authorise him to retain, then, unless he explains such retention to the satisfaction of the Board, he is (*inter alia*) liable to be removed from his office as trustee. (Section 74.)

The power of the Board of Trade to remove a trustee shall extend to any case in which the Board are of opinion that the trustee is, by reason of lunacy, or continued sickness, or absence, incapable of performing his duties, or that his connection with or relation to the bankrupt or his estate or any particular creditor might make it difficult for him to act with impartiality in the interests of the creditors generally, or where, in any other matter, he has been removed from office on the ground of misconduct. (1890 Act, section 19.)

If the trustee purchases the estate or any part thereof the transaction may be set aside by the Court (Rule 316) and the act constitutes a ground for the removal of the trustee. (*Ex parte Reynolds.*)

Where a trustee refuses to carry on an action which is considered beneficial to the estate the creditors may apply for his removal. (*Ex parte Phillips.*)

Where two or more trustees have been appointed, any one of them may be removed without affecting the other or others. (*Ex parte Newitt*, 1884.)

Where a trustee has given security in the prescribed manner, but fails to keep up such security, the Board of Trade may, if they think fit, remove him from his office. (Rule 302.)

Where a trustee is removed by the Board of Trade, notice of the order removing him shall at once be transmitted by the Board of Trade to the Registrar of the Court, who shall file the notice with the proceedings in the matter, and give written notice thereof to the Official Receiver.

The Board of Trade shall also cause a notice of the order to be gazetted. (Rule 303.)

Upon a trustee being removed he must deliver over to the Official Receiver, or, as the case may be, to the new trustee, all books kept by him, and all other books, documents, papers and accounts in his possession relating to the office of trustee. (Rule 292.) A notice by the Board of Trade served on a trustee (who has been removed) requiring him to comply with this rule, may be enforced by an order of the Court. (*Hincks & Radcliffe*, 1891.)

A trustee who has been removed must none the less make formal application to the Board of Trade for his release (*q.v.*).

In addition to the power of removal the Board of Trade have the right to refuse to certify an appointment of trustee. (*See heading* Appointment, *supra.*)

It shall be sufficient reason for refusing to certify the appointment of a person as trustee, that in any other proceeding under the Act, such

person has been removed from the office of trustee by the Board of Trade for misconduct or neglect of duties. (Rule 301.)

Resignation.—A trustee intending to resign his office shall call a meeting of creditors to consider whether his resignation shall be accepted or not, and shall give not less than seven days' notice of the meeting to the Official Receiver. (Rule 304.)

Upon a trustee resigning he must deliver over to the Official Receiver, or as the case may be, to the new trustee, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of trustee. (Rule 292.)

The trustee so resigning must make application to the Board of Trade for his release (*q.v.*).

On a vacancy in the office of trustee the same proceedings must be taken on the re-appointment as in the case of a first appointment (*q.v.*)

Release.—When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, 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 person interested against the release of the trustee, and shall either grant or withhold the release accordingly, subject, nevertheless, to an appeal to the High Court. (1883 Act, section 82.)

A trustee, before making application to the Board of Trade for his release, shall give notice of his intention so to do in the prescribed form to all the creditors of the debtor who have proved their debts, and to the debtor, and shall send with such notice a summary of his receipts and payments as trustee in the prescribed form.

Provided that where such application is made upon the trustee ceasing to act, by reason of a composition having been approved, such notice and summary shall be sent to the debtor only. (Rule 309.)

On every application for release by trustees (in non-summary cases) a fee stamp is payable at the rate of 2s. 6d. on every £100, or fraction of £100 of assets realised and brought to credit. With his application for release the trustee must forward a copy of the notice and summary issued to the creditors, and an affidavit that such notice and summary were duly posted to all the creditors who have proved their debts, and to the debtor; also a notice for publication in the *London Gazette*, with a 5s. bankruptcy stamp. (Board of Trade Regulations.) The affidavit must bear a 2s. bankruptcy stamp.

The following is a summary of the documents which it is necessary for the trustee to forward to the Board of Trade on making application for his release in addition to those required for the final audit:—

(1) Formal application for release.

(2) Affidavit verifying postage of notices of intention to apply for release (*see above*), with a copy of the notice as an exhibit. A 2s. bankruptcy stamp should be attached to the affidavit.

(3) Certificate by trustee and committee of inspection (if any) as to realisation of all reasonably available assets. (*Note.*—If trustee certifies in his formal application that all assets have been realised, this certificate will not be required.)

(4) Form of notice of release for insertion in *Gazette*. A 5s. bankruptcy stamp to be attached.

(5) Order on the Bankruptcy Estates Account to credit to the Board of Trade 2s. 6d. per cent. on the assets realised and brought to credit.

(6) Statement of dividend (or dividends) declared, distinguishing between those claimed and those unclaimed.

(7) Cheques for unclaimed dividends (if any).

(8) Certificate as to disposal of onerous property on Form Tr. 14, together with office copies of all disclaimers executed by the trustee.

Where the release of a trustee is withheld, the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

An order of the Board releasing the trustee 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 bankrupt or otherwise in relation to his conduct *as trustee*, 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 trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and *thereupon the Official Receiver shall be the trustee.* (Section 82.)

Where the Board of Trade have granted to a trustee his release, a notice of the order granting such release shall be gazetted. The trustee must provide the requisite fee stamp (5s.), but it may be charged against the estate. (Rule 310.)

The release of a trustee shall not take effect unless and until he has delivered over to the Official Receiver all the books, papers, documents, and accounts, which, by the bankruptcy rules, he is required to deliver over on his release. (Rule 310A.)

See titles—

Absconding Debtor
Act of Bankruptcy
Adjudication
Advowson
Allocatur
Arrangements in Bankruptcy
Articled Clerk
Bankruptcy Notice
Bankruptcy Petition
Committee of Inspection
Competitive Proof
Debts provable in Bankruptcy
Deceased Insolvent
Deed of Arrangement
Discharge of a Bankrupt
Disclaimer
Distress
Double Proof
Execution Creditor
Fraudulent Conveyances and Settlements
Fraudulent Preference
Gazette Notice
Interest in respect of proof of debt
Interim Receiver
Joint and separate estates
Lien
Local Bank Account
Mutual Credits, &c.
Official Receiver
Postponed Creditors
Preferential Creditors
Preferential Payments
Priority of Payments (costs)
Proof in respect of Bills of Exchange
Proof of Debt
Protected transactions
Proxy
Public Examination
Receiving Order
Record Book
Relation Back
Reputed Ownership
Resolution
Secured Creditor
Securities deposited against Bills of Exchange
Security
Set off
Small Bankruptcy
Special Manager
Statement of affairs
Stoppage in transitu
Surplus Assets
Trade Creditor
Unclaimed Dividends
Undischarged Bankrupt
Undue preference
Vote
Voting letter
&c. &c.

Trust Investments.—The following provisions of the Trustee Act 1893 apply to trust investments:—

(1) A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, and may also, from time to time, vary any such investment in manner following, that is to say:—

(*a*) In any of the Parliamentary stocks or public funds, or Government securities of the United Kingdom.

(*b*) On real or heritable securities in Great Britain or Ireland. (This means an investment by way of advance on mortgage upon the security of real property, not the purchase of the real property itself. As to the limits within which such advance must be made, *see infra.*)

(*c*) In the stock of the Bank of England or the Bank of Ireland.

(*d*) In India Three-and-a-half per cent. Stock and India Three per cent. Stock, or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India under the authority of Act of Parliament and charged on the revenues of India.

(*e*) In any securities the interest of which is, or shall be, guaranteed by Parliament.

(*f*) In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District.

(*g*) In the debenture or rent-charge, or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per cent. per annum on its *ordinary* stock.

(*h*) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity, or for a term of not less than two hundred years at a fixed rental, to any such railway company as is mentioned in sub-section (*g*), either alone or jointly with any other railway company.

(*i*) In the debenture stock of any railway company in India the interest on which is paid, or guaranteed, by the Secretary of State in Council of India.

(*j*) In the "B" annuities of the Eastern Bengal, the East Indian, and the Scinde Punjaub and Delhi Railways and any like annuities, which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway; also in deferred annuities comprised in the register of holders of annuity Class D, and annuities comprised in the register of annuitants Class C of the East Indian Railway Company.

(*k*) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed.

(*l*) In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of the investment paid a dividend of not less than five pounds per centum on its *ordinary* stock.

(*m*) In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand or by any county council, under the authority of any Act of Parliament or Provisional Order.

(*n*) In nominal or inscribed stock issued, or to be issued, by any Commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such Commissioners shall not have exceeded eighty per cent. of the amount authorised by law to be levied.

(*o*) In any of the stocks, funds, or securities, for the time being authorised for the investment of cash under the control, or subject to the order, of the Court (for list of which *see below*.)

(2).—(1) A trustee may, under the powers of this Act, invest in any of the securities mentioned or referred to in section 1 of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2) Provided that a trustee may not, under the powers of this Act, purchase at a price exceeding its redemption value any stock mentioned or referred to in subsections (*g*), (*i*), (*k*), (*l*), and (*m*) of section 1, which is liable to be redeemed within fifteen years of the date of the purchase at par or at some other fixed rate, or purchase any such stock as is mentioned or referred to in the subsections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per cent. above par or such other fixed rate.

(3) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act.

(3) Every power conferred by the preceding sections shall be exercised according to the discretion of the trustee, but subject to any consent required by the instrument, if any, creating the trust, with respect to the investment of the trust funds.

(4) The preceding sections shall apply as well to trusts created before as to trusts created after the passing of this Act, and the powers thereby conferred shall be in addition to the powers conferred by the instrument, if any, creating the trust.

(5).—(1) A trustee having power to invest in real securities, unless expressly forbidden by the instrument creating the trust, may invest, and shall be deemed to have always had power to invest:—

(*a*) On mortgage of property held for an unexpired term of not less than two hundred years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption, or to any condition for re-entry, except for non-payment of rent; and

(*b*) On any charge, or upon mortgage of any charge, made under the Improvement of Lands Act 1864.

(2) A trustee having power to invest in the mortgages or bonds of any railway company or of any other description of company may, unless the contrary is expressed in the instrument authorising the investment, invest in the debenture stock of a railway company or such other company as aforesaid.

. . . . . .

(8).—(1) A trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the Court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property, as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust, only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the *lessor's* title.

(3) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase of, or in lending money upon, the security of any property, he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if, in the opinion of the Court, the title accepted be such as a person acting with prudence and caution would have accepted.

(9).—(1) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

The investment of cash under the control of, or subject to the order of, the Court is regulated by Rule 17 of Order XXII of the Rules of the Supreme Court.

The following are some of the chief investments authorised:—

Two-and-a-half per cent. Consolidated Stock.

Consolidated three pounds per cent. Annuities.

Reduced three pounds per cent. Annuities.

Two pounds fifteen shillings per cent. Annuities.

Two pounds ten shillings per cent. Annuities.

Local Loans Stock under the National Debt and Local Loans Act 1887.

Exchequer Bills.

Bank Stock.

India Three-and-a-half per cent. Stock.

India Three per cent. Stock.

India Two-and-a-half per cent. Stock.

India Guaranteed Railway Stocks or Shares, provided in each case that such stocks or shares shall not be liable to be redeemed within a period of fifteen years from the date of investment.

Stocks of Colonial Governments guaranteed by the Imperial Government.

Mortgage of freehold and copyhold estates in England and Wales.

Metropolitan Consolidated Stock, three pounds ten shillings per cent.

Three per cent. Metropolitan Consolidated Stock.

Debenture, preference, guaranteed, or rent charge stocks of railways in Great Britain or Ireland, having for ten years next before the date of investment paid a dividend on Ordinary Stock or Shares.

Nominal Debentures or Nominal Debenture Stock, under the Local Loans Act 1875, provided in each case that such debentures or stock shall not be liable to be redeemed within a period of fifteen years from the date of investment.

The Colonial Stock Act 1900 has added to the securities in which a trustee is authorised to invest, Colonial Stock which conforms to the following conditions:—

(1) The Colony shall provide by legislation for the payment out of the revenues of the Colony of any sums which may become payable to stockholders under any judgment, decree, rule, or order of a Court in the United Kingdom.

(2) The Colony shall satisfy the Treasury that adequate funds (as and when required) will be made available in the United Kingdom to meet any judgment, decree, rule, or order.

(3) The Colonial Government shall place on record a formal expression of their opinion that any Colonial legislation which appears to the Imperial Government to alter any of the provisions affecting the stock to the injury of the stockholder, or to involve a departure from the original contract in regard to the stock, would properly be disallowed.

Virtually all the existing Colonial Government Stocks are now (subject to the restrictions as to purchasing at a premium) available for the investment of trust funds.

"It is the rule of the Court, that, in the "absence of any special direction, it is the "duty of an executor or administrator to "invest any sums of sufficient amount; he "has no right to have money, as it were, "wrapped up in a napkin, though no doubt,

" if there are payments to be made, he is " justified in keeping balances adequate for " those payments. Where trust funds are " invested on an inadequate security, it is the " duty of trustees to re-invest them, although " the written consent of the tenant-for-life, " rendered necessary to any change of invest- " ment, is refused, and the security is one " expressly authorised by the trust. And " though power is given to them to invest upon " such securities as they shall approve, they " are bound, nevertheless, to exercise a careful " discretion in selecting a security as to value.

" The rule as laid down by Lord Eldon in " *Howe v. Earl of Dartmouth* amounts to this, " that, where there is a residuary bequest of " personal estate to be enjoyed by several per- " sons in succession, a Court of Equity, *in* " *the absence of any evidence of a contrary* " *intention*, will assume that it was the inten- " tion of the testator that his legatees should " enjoy the same thing in succession, and as " the only means of giving effect to such " intention will direct the conversion into per- " manent investments of a recognised character " of all such parts of the estate as are of a " wasting or reversionary character, and also " all such other existing investments as are " not of the recognised character, and are con- " sequently deemed to be more or less " hazardous."

Note.—Where a tenant-for-life is entitled to enjoy in *specie*, the rule in *Howe v. Dartmouth* does not apply, and the investments to be so enjoyed may remain.

Lord Watson, in delivering judgment in *Learoyd v. Whiteley*, said:—

"As a general rule the law requires of a " trustee no higher degree of diligence in the " execution of his office than a man of ordinary " prudence would exercise in the management " of his own private affairs; yet he is not " allowed the same discretion in investing the " moneys for the trust as if he were a person " *sui juris*, dealing with his own estate. Busi- " ness men of ordinary prudence frequently do " select investments which are more or less of " a speculative character: but it is the duty of " a trustee to confine himself to the class of " investments permitted by the trust, and like- " wise to avoid all investments of any class " which are attended with hazard. So long as " he acts in the honest observance of these " limitations, the general rule already stated " will apply. The Courts of Equity have indi- " cated and given effect to certain general " principles for the guidance of trustees in " lending money upon the security of real " estate. Thus it has been laid down that, " in the case of ordinary agricultural land, the " margin ought not be less than one-third of " its value, whereas in cases where the subject " of the security derives its value from build- " ings erected on the land, or its use for trade " purposes, the margin ought not to be less " than one-half (but now see the Act of 1893, " *supra*). I do not think these have been laid " down as hard and fast limits up to which " trustees would be invariably safe, and " beyond which they could never be in safety " to lend, but as indicating the lowest margins " which under ordinary circumstances a care- " ful investor in trust funds ought to accept." (*See titles* Apportionment, Judicial Trustees Act.)

A trustee who employs the fund entrusted to him in unauthorised investments (even acting *bonâ fide*, and believing that by so doing he will benefit the estate) renders himself liable not only for the capital, but for all profits made or alternatively for interest at 4 per cent. or 5 per cent. (according to circumstances).

Trusts.—"A trust is simply a confidence reposed " either expressly or impliedly in a person " (trustee) for the benefit of another (*cestui que* " *trust* or beneficiary), not, however, issuing out " of real or personal property, but as a collateral " incident accompanying it, annexed in privity to " (*i.e.*, commensurate with) the interest in such " property, and also to the person touching such " interest for the accomplishment of which con- " fidence the *cestui que trust* or beneficiary has " his remedy in equity only; the trustee himself " likewise being aided and protected in the

" proper performance of his trust when he seeks " the Court's direction as to its management." [Wharton.]

"An equitable obligation, either expressly " undertaken or constructively imposed by the " Court, under which the trustee is bound to deal " with certain property over which he has " control for the benefit of certain persons " (called *cestuis que trustent* or beneficiaries), of " whom he may or may not himself be one." [Underhill.]

Trusts may be classified thus:

(*a*) Express—

(1) Executed.

(2) Executory.

(*b*) Arising by operation of law—

(1) Constructive.

(2) Resulting.

(3) Implied.

They may be also subdivided into active and bare, permanent and temporary.

An *express* trust is one which is clearly expressed by the person creating it, whether verbally or by writing.

An *executed* trust is one which is completely declared by and expressed in the instrument creating it.

An *executory* (or directory) trust is one which is not completely expressed in the instrument creating the trust, but is indicated in general terms with a view to a complete declaration in a subsequent document.

Executory trusts may arise from marriage settlements and wills.

A *constructive* trust is one raised by construction in order to afford justice, but " *without* " *reference to any presumable intention of the* " *parties*," express or implied.

An instance of a constructive trust arises in the case of a vendor's lien upon lands for the unpaid purchase-money. (*See title* Lien, *sub-title* Unpaid Seller, (*a*) Land.)

A *resulting* trust is one *implied* in favour of the person creating the trust, or his representatives.

It occurs in cases where the trust or other purpose for which the transfer of the property was made by the owner has been completely executed without exhausting the property, and the resulting trust applies to the unexhausted property.

In some arrangements with creditors a debtor assigns his property to a trustee for the benefit of his creditors, upon condition that the surplus (if any) shall be reconveyed to him after paying twenty shillings in the pound upon all claims. In the absence of such a provision as to the surplus, there may or may not be a resulting trust in favour of the debtor.

Where the deed provides for the disposal of the whole of the proceeds of sale of the debtor's estate thereby assigned, *i.e.*, where the trust is " to divide the sum realised amongst the " creditors in rateable proportions according to " the amount of their debts," there will be no resulting trust in favour of the debtor as regards any surplus, for in such a case the assignor divests himself of all interest in the property, and the creditors (accepting the assignment " for better, for worse ") agree to release the debtor in consideration thereof. But if the deed does not provide for the disposal of the whole of the proceeds, *i.e.*, where the trust is " to discharge the " debts or to divide the proceeds of sale of the " estate assigned in or towards payment of the " debts," the property assigned is placed in trust for a limited purpose, and if in such a case the deed does not expressly provide for the disposal of any surplus there may chance to be after payment of the debts in full, there will be a resulting trust in favour of the assignor. (*Smith v. Cooke*, 1891, A.C. 297.)

An *implied* trust is one founded, not upon the express intention of the party creating it, but upon an implied or presumed intention.

An *active* trust is one in connection with which there are duties to be performed.

A *bare* trust is one in connection with which there are no active duties to be performed other than to convey or transfer the trust property to, or at the direction of, the beneficiary.

A *permanent* trust is one created for the benefit of several persons in succession.

A *temporary* trust is one which involves the performance of one particular duty only.

A *simple* trust is one not qualified by the settlor, but left to the construction of law.

All property, whether real or personal, and whether legal or equitable, which can be validly assigned, may be made the subject of a trust unless in the case of land the tenure under which it is held is inconsistent with the trust sought to be created.

The Statute of Frauds provides that "all "declarations or creations of trusts or con- "fidences of any *lands*, tenements, or hereditа- "ments shall be *manifested* and *proved* by some "writing signed by the party who is by law "enabled to declare such trust, or by his last "will in writing, or else they shall be utterly "void and of none effect."

The above provision does not require the trust to be declared in writing, but only *manifested and proved* in such manner, so that no form is necessary either as to the language or the nature of the instrument by which it is sought to establish the trust, in order to satisfy the provisions of the statute.

The statute does not apply to declarations of trust as to chattels personal (other than leaseholds for years), so that, provided they are to take effect in the lifetime of the creator, such trusts may be created in writing (with or without seal) or by word of mouth, or partly in writing, and partly by word of mouth, but in all cases, whether in connection with lands or personal property, there must be an indication with reasonable certainty of (1) an intention to create a trust, (2) the trust property, and (3) the person who is to be the beneficiary.

Capacity to create a trust is regulated by the general law concerning capacity to dispose of property.

Disclaimer.—Any person appointed a trustee may disclaim the trust either by writing, by word of mouth, or by conduct showing an intention to disclaim, but he must disclaim the whole trust and within a reasonable period, and before he has done any act showing an intention to accept the trust. A disclaimer by one of two or more persons appointed co-trustees vests the trust property in the other or others, and makes him or them sole trustee or trustees from the date of the inception of the trust. (*See heading* Renunciation, *infra*.)

Powers and Duties.—Where two or more trustees are appointed, their power is a joint one, although the power of executors (as such) is joint and several, but where a power of trust is given to or vested in two or more trustees jointly, then unless the contrary is expressed in the instrument (if any) creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being. The latter provision applies only to trusts coming into operation after 1881.

Ordinarily, a trustee cannot (without express permission in the instrument creating the trust), delegate his duties or powers as trustee either to a co-trustee or any other person. He must personally exercise the utmost diligence in carrying out the trust, for such is his main protection from liability for loss of the trust property; but "the law requires of a trustee no higher degree "of diligence in the execution of his office than "a man of ordinary prudence would exercise "in the management of his own private affairs." [Lord Watson.] There may be occasions when a trustee of ordinary prudence would, in like circumstances in connection with his own affairs, employ a qualified agent, such as a banker, stockbroker, or accountant, to perform certain duties for him. Such a delegation is permissible, provided the work so delegated is strictly within the scope of the business of the person employed. Where a discretion as to the mode of performing the trust is conferred on a trustee by the settlor, the trustee is not subject to any control in exer-

cising such discretion, provided that he exercises it in good faith. As a general rule the trustee cannot be allowed any remuneration—he must not make a profit out of his trust; but there are exceptions to this rule; a trustee may be remunerated (1) under an express or implied provision in the instrument creating the trust, (2) under an express contract with the *cestui que trust*, having legal capacity to contract (3) when allowed by the Court, and under certain other special circumstances. But a trustee is entitled to pay or reimburse himself out of the trust property all expenses properly incurred in connection with the execution of the trust. He must not, under ordinary circumstances, purchase any part of the trust estate, or take a mortgage or lease from himself or a co-trustee. But he may do so if he is expressly authorised by the instrument creating the trust, or if he obtains the consent of the Court.

So a trustee may, even without such authority or consent, acquire for value the interest of a beneficiary in the trust property, provided he gives a fair price therefor, and makes a full disclosure to the beneficiary of all facts within his knowledge relating to the trust property and of the circumstances of the transaction. The beneficiary must also have competent and independent advice in respect of the transaction.

Unless otherwise provided by the instrument creating the trust a trustee must keep clear and accurate accounts with regard to the trust property, and at all reasonable times at the request of a beneficiary, furnish him with full and accurate information as to the amount and state of the trust property, and permit the beneficiary or his duly authorised agent (at the expense of the beneficiary) to inspect and take copies of or extracts from the accounts and vouchers, and any other documents relating to the trust. (*See also title* Public Trustee.)

The Trustee Act 1893 consolidates a number of the enactments relating to trustees, as regards investments, the appointment of new trustees, and/or separate sets of trustees for distinct parts of the trust property, powers of trustees as to (*a*) purchase and sale of property, (*b*) compromises and submissions to arbitration, &c., &c.

The beneficiary, or, if there be more than one, any one of them, has the right to enforce performance by the trustee of his obligations and to have any loss occasioned by a breach of trust made good by the trustee liable therefor. (*See title* Breach of Trust.)

The Judicature Act 1873 provided that no claim of a *cestui que trust* against a trustee for any property held on any express trust or in respect of any breach of such trust, should be held to be barred by any Statute of Limitation, but section 8 of the Trustee Act 1888 effected a material alteration in this rule of law, providing *inter alia* that a trustee may have all rights and privileges conferred by any Statute of Limitation in the like manner and to the like extent as if he had not been a trustee, provided that in the action in which the Statute is so pleaded the claim (1) is not founded upon any fraud or fraudulent breach of trust to which the trustee was a party or privy, or (2) is not to recover trust property or the proceeds thereof (*a*) still retained by the trustee, or (*b*) previously received by the trustee and converted to his use.

The term "trustee" in the Act of 1888 includes an executor or administrator, and a trustee whose trust arises by construction or implication of law, as well as an express trustee, but it does not include the official trustee of charitable funds; and the provisions of the Act relating to a trustee apply as well to several joint trustees as to a sole trustee.

Note.—The directors of the Lands Allotment Company applied moneys of the company to an *ultra vires* purpose, but without any fraud. As more than six years had elapsed before an action was brought, the claim against them was held to be barred by the Act of 1888. (*In Re Lands Allotment Co.*, 1894, 1 Ch. 616.)

Renunciation.—Ordinarily a trustee cannot renounce his trusteeship after having accepted it, unless—

(1) The Court authorises him to do so, or

(2) The beneficiary, or if more than one, all the beneficiaries, have legal capacity to contract and consent to his doing so, or

(3) He is authorised to do so by the terms of the instrument creating the trust.

(4) He retires under the statutory powers conferred by the Trustee Act 1893 (sections 10 and 11).

Determination of Trust.—A trust is determined (1) when the trustee completely performs the obligations imposed on him, or (2) when the trust becomes impossible of performance in consequence of the destruction of the trust property or otherwise without the fault of the trustee, or (3) when the whole of the legal and beneficial interests in the trust property become vested in the same person or persons.

A trust may also be determined (1) by the exercise of a power of revocation expressly reserved at the time of creating the trust, or (2) by all the beneficiaries, if they are absolutely entitled to the whole of the beneficial interest in the trust property, and they have legal capacity to dispose of property.

Discharge of Trustee.—Upon the determination of the trust, the trustee is entitled to have the accounts of his administration of the trust property examined and settled by the beneficiary, and to an acknowledgment in writing by the beneficiary to that effect, and discharging him from any further liability in respect of the trust property. If a beneficiary should refuse to discharge the trustee in the manner here mentioned, the trustee is entitled to have his accounts taken by the Court.

No notice of any trust, expressed, implied or constructive, can be entered on the Register of Members of any company registered in England. (Companies (Consolidation) Act 1908, section 27.) (But *see title* Distringas.)

Summary of a Trustee's Duty for his own Guidance.

(1) Terms of his trust.
  (*a*) Learn them or refer to them periodically.
  (*b*) Adhere strictly to them.

(2) Exercise such prudence and diligence in connection with the trust as he would in the management of his own affairs.

(3) Observe the investment powers.

(4) Keep proper accounts and be ready and willing to afford information to the *cestui que trust* when required.

(5) Make no profit out of the trust, save the authorised remuneration, if any.

(6) Co-operate with his co-trustees, if any.

(7) When in doubt, protect himself by an application to the Court for directions.

(*See titles* Apportionment, Breach of Trust, Deed of Arrangement, Directors, Executor, Fraudulent Conveyances, &c., Judicial Trustees Act 1896, Maintenance, Public Trustee, Trust Investments.)

Turn of the Market implies the difference between the buying and selling prices of a stock—thus if a stock is quoted $107\frac{1}{4}$-$107\frac{3}{4}$, the buyer will probably have to give $107\frac{3}{4}$ and the seller will receive $107\frac{1}{4}$, the difference representing the dealer's or jobber's profit. (*See title* Jobbers.)

Turnover.—*See title* Output.

U

Uberrima Fides.—Most abundant faith. Contracts requiring *uberrima fides* are avoided by the concealment of a material fact equally as by the misrepresentation of something affecting the contract.

The following are of this class:—

(1) Contracts for the sale of lands.

(2) Contracts of suretyship.

(3) Contracts to take shares in a public company.

(4) Contracts of co-partnership.

(5) Contracts of insurance, whether fire, life, or marine.

Strictly, Suretyship and Partnership are *uberrimæ fidei* only after being entered into, for "the *intending* surety and the *intending* "partner cannot claim the protection accorded "to the *intending* insurer, investor, or buyer of "land." [Anson.]

Umpire.—A person to whose sole decision a question between parties is, by consent, referred.

In a submission to arbitration it is inferred, in the absence of anything expressed to the contrary, that if the reference be to *two* arbitrators, they may appoint an umpire at any time within the period during which they have power to make an award. If the arbitrators allow their time to expire without making an award, or have delivered to any party to the submission, or to the umpire, a notice that they cannot agree, the umpire may forthwith enter upon the reference in *lieu* of the arbitrators. Where the parties, or two arbitrators, are at liberty to appoint an umpire and do not appoint him, or where, having been appointed as umpire, such person appointed declines to act, is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy, any party may serve upon the other parties, or arbitrators, as the case may be, a written notice to appoint an umpire, and if such appointment is not made within seven clear days after service of the notice, the Court may make the appointment, on the application of the party who gave the notice.

It is, of course, much better in important and urgent cases, where two arbitrators are appointed, to appoint the arbitrators and *name the umpire* in the submission, or make it a term of the submission that the arbitrators appoint an umpire *before* entering on the reference. This enables the umpire to sit *with* the arbitrators and hear the evidence, and thus save the expense and delay of re-hearing in case the arbitrators disagree, but until the arbitrators *disagree* the umpire has no right to take any official part whatever in the proceedings. When the umpire does enter upon the reference, he *replaces* the arbitrators, and possesses the same rights and assumes the same duties as the arbitrators.

An umpire decides between the *parties*, not between the arbitrators. He has a lien upon his award for his costs, as in the case of an arbitrator.

(*See titles* Arbitration, Arbitrator, Submission.)

Unauthorised Signature.—*See titles* Acceptance, Indorsement.

Uncalled Capital.—*See title* Capital.

Unclaimed Dividends.—

Company.

The original Table A provided that all dividends (declared upon shares) remaining unclaimed for three years after having been declared, would be forfeited by the directors for the benefit of the company, but the revised Table of 1906 and the new Table contained in the Consolidation Act of 1908 contain no such provision.

Where a forfeiture clause is desired special provision must be made. The articles of association may provide for the forfeiture of all dividends remaining unclaimed after a given period—say five years.

Sir F. B. Palmer says that:—"As to when "dividends are barred by lapse of time, . . . "upon the declaration of the dividend the "shareholder has a right of action, and if "this is not upon a specialty it is barred by "non-claim for six years under 21 Jac. I, c. 16 "(*Severn, &c., Co.*, 1896, 1 Ch. 559), whereas "if it is upon a specialty it requires 20 years to "bar the claim. (*Cornwall Minerals Co.*, 1897, "2 Ch. 74; 3 & 4 Will. IV, c. 27, section 3.")

The Stock Exchange object to any clause in the articles as to forfeiture of unclaimed dividends, so that where a Stock Exchange quotation is required no such clause should be included in the regulations.

The revised Table A and new Table A, and, as a general rule, special sets of articles of association, provide that unclaimed dividends shall not bear interest against the particular company.

Company Liquidation.

Section 224 of the Companies (Consolidation) Act 1908 (as extended by general rules and the regulations of the Board of Trade) provides that where a winding-up of a company (whether compulsory, under supervision, or voluntary) is not concluded within one year after its commencement, the liquidator of such company shall

transmit in duplicate to the Registrar of Joint Stock Companies a detailed statement verified by affidavit of all the liquidator's receipts and payments on account of the company.

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 thirty 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, until the winding-up is concluded, each statement being brought down to the end of the half-year for which it is sent. (Winding-up Rules 1909, Rule 189.)

If it appears from any such statement or otherwise that a liquidator of a company has in his hands or under his control any moneys 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. (Section 224 (4).)

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. 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. (Rule 191.)

Note.—Although a liquidator may not be called upon to render any *account* unless the liquidation extends beyond the stated period, he will usually be asked by the Registrar for a *certificate* that any unclaimed dividends or undistributed assets have been paid into the Companies Liquidation Account.

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 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. (Rule 191.)

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 moneys 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. (Rule 192.)

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. (Rule 193 (1).)

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 realisation of the property of a debtor. (Rule 193 (2).)

Any person claiming to be entitled to any money paid into the Bank of England in pur-

suance of the 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. 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. (Section 224.)

The following fees are payable in respect of payments out of the Companies Liquidation Account:—

(1) On every application for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the account:—

(*a*) A fee of 1s. where the amount applied for does not exceed £1; or

(*b*) A fee of 2s. 6d. where the amount applied for exceeds £1; and

(2) Where the money consists of unclaimed dividends, a fee of 3d. on each pound, or fraction of a pound, on each dividend paid out.

Bankruptcy.

Where the trustee, under any bankruptcy, composition or scheme pursuant to this Act, shall have under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, such trustee shall have in his hands or under his control any unclaimed or undistributed moneys arising from the property of the debtor, he shall forthwith pay the same to the Bankruptcy Estates Account at the Bank of England. The Board of Trade shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof. . . . .

The Board of Trade, with the concurrence of the Treasury, may 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 shall have, and at the instance of the person so appointed, or of the Board of Trade, may exercise, all the powers conferred by this Act with respect to the discovery and realisation of the property of a debtor, and the provisions of this Act with respect thereto shall, with any necessary modifications, apply to proceedings under this section.

The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person. . . . (Bankruptcy Act 1883, section 162.)

If the dividend has been paid by cheques on the Bankruptcy Estates Account, the trustee, 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 Finance Department of the Board of Trade.

If the dividend has been paid through a local bank the trustee will be required, at the expiry of six months from the date of the declaration of a dividend, to forward to the Inspector-General in Bankruptcy for audit, vouchers for the dividends paid, and a list of those remaining unclaimed. The trustee 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 Inspector-General. (Board of Trade Regulations.)

Any person claiming to be entitled to any moneys paid into the Bankruptcy Estates Account pursuant to this section may apply to the Board of Trade for payment to him of the same, and the Board of Trade, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due. (Section 162.)

The Board of Trade may require the application to be supported by the affidavit of the claimant. (Rule 346.)

The following fees are payable in respect of payments out of the Bankruptcy Estates Account:—

(1) On every application for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the account, a fee of 2s. 6d.; and

(2) Where the money consists of unclaimed dividends, a fee of *threepence* on each pound or fraction of a pound, on each dividend paid out.

DEED OF ARRANGEMENT.

A trustee under a deed of arrangement is not required, like trustees in bankruptcy and liquidators in voluntary winding up, to pay over undistributed balances and unclaimed dividends to the Bank of England. Many trustees, desiring to obtain a complete discharge from their trust, have voluntarily offered to pay over unclaimed dividends to the Bankruptcy Estates Account, but the Board of Trade have no power to accept them, and they accordingly remain in the hands or under the control of the trustees.

A professional accountant who acts as trustee in a considerable number of cases can meet the difficulty by paying all unclaimed dividends into a special banking account in his own name (not that of his firm where he is in partnership), allowing the same to accumulate, and keeping a careful record of them as regards (1) the estate, (2) the creditor entitled, (3) the amount, and (4) any subsequent payments of same. He would then be prepared to deal with the matter in the event of any legislation in reference thereto which may be effected in the future on the lines of a well-known section of the Bankruptcy Act of 1883.

Uncompleted Work.—*See title* Incomplete Work.

Unconscionable Bargain.—*See titles* Catching Bargain, Usury.

Under-Lease.—A grant by a lessee to another of a part of his whole interest under the original lease, reserving to himself a reversion; it differs from an assignment, as the latter conveys the lessee's whole interest.

Undertaking.—Debentures issued by a company not unusually create (*inter alia*) a charge upon its *undertaking*.

"I take the object and meaning of the "debenture to be this, that the word 'under- "taking' necessarily infers that the company "will go on, and that a debenture-holder "could not interfere until either the interest "which was due was unpaid, or until the "period had arrived for the payment of his "principal, and that principal was unpaid. I "think the meaning and object of the security "was this, that the company might go on "during that interval, and, furthermore, that, "during the interval, the debenture-holder "would not be entitled to any accounts of "mesne profits, or of any dealing with the "property of the company in the ordinary "course of their business. I see no difficulty "or inconvenience in giving that effect to this "instrument, but the moment the company "comes to be wound up and the property has "to be realised, that moment the rights of "these parties, beyond all question, attach. "My opinion is that, even if the company had "not stopped, the debenture-holders might "have filed a bill to realise their security. I "hold that, under these debentures, they have "a charge upon all property of the company, "past and future, by the term 'undertaking,' "and that they stand in a position superior to "that of the general creditors, who can touch "nothing until the debenture-holders are "paid." [Giffard, L.J., in *Re Panama Mail Co.*, 1870.]

Section 93 of the Companies (Consolidation) Act 1908 provides for the registration of every charge being a floating charge on the undertaking or property of a company. (*See title* Register and Registration of Mortgages.)

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 5 per cent. per annum. (Companies (Consolidation) Act 1908, section 212.) As to the meaning of the word "solvent" herein *see title* Floating Charge.

Under-Tenant.—One who holds from a lessee. (*See title* Under-Lease.)

Underwriter.—An insurer; so called from his writing his name under the policy or contract of insurance.

Apart from marine and fire insurance, it is now a common practice to underwrite the issue of capital of a joint stock company, the underwriters agreeing, in consideration of a commission, to take up all shares which are not subscribed for by the public. Where there are many underwriters of the same issue of shares, they are liable for the short subscription in proportion to the amounts they have respectively underwritten.

Section 89 of the Companies (Consolidation) Act 1908 provides:—

(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.

(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.

Note.—It is apparently permissible for *Private Companies*, as defined by section 121 of the Act, to pay such commissions if the provisions of the above sections are complied with.

Section 89 is interpreted to mean that:—

(*a*) A payment out of the capital *money* may be made by the company, whether public or private, if authorised and disclosed as prescribed, but even capital *money* cannot be so applied if not so disclosed and authorised.

(*b*) A vendor to, or promoter of, or other person who receives payment in money *or shares* from, a company, may apply any part of the money *or shares* received, in payment of any commission which the company could legally have paid.

(*c*) Any direct application of a company's *shares* by the company (as distinct from its capital *money*) in payment of underwriting commission is prohibited under any circumstances, whether disclosed and "authorised" in the articles or not.

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 must be stated in the annual summary made next after the payment of the commission or the allowance of the discount, and the total amount so paid or allowed, or so much thereof as has not been written off, must be stated in every Balance Sheet until the whole amount thereof has been written off. (Companies (Consolidation) Act 1908, sections 26 and 90.)

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 with the Registrar of Joint Stock Companies, under section 93 of the Companies (Consolidation) Act 1908 (*see title* Register and Registration of Mortgages), 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.

(Companies (Consolidation) Act 1908, section 93, subsection 4.)

Undeveloped Land Duty.—A duty of one halfpenny for every twenty shillings of the site value of undeveloped land payable for the financial year ended 31st March 1910 and every subsequent financial year. For the purpose of the duty, land is deemed to be undeveloped if it has not been developed by the erection of dwelling-houses or of buildings for the purpose of any business, trade, or industry other than agriculture (but including glasshouses or greenhouses), or is not otherwise used *bonâ fide* for any business, trade, or industry other than agriculture.

Provision is made for allowances in respect of moneys expended, and there are a number of exemptions, including:—

(1) Any land where the site value does not exceed £50 per acre.

(2) Parks and spaces open to the public as of right.

(3) Certain agricultural lands.

For the purposes of the duty undeveloped land does not include the minerals. Where at any time increment value duty (*see that title*) has been paid in respect of any undeveloped land, undeveloped land duty is to be charged only on the value in excess of the amount on which increment value duty has been paid. (Finance (1909-10) Act 1910, sections 16, 17, and 18.)

Rating authorities are exempt from payment of undeveloped land duty. (*Ibid*, section 35.)

Where, in pursuance of any public, general or local Act, any capital sum or any instalment of a capital sum has been paid to any rating authority in respect of the increased or enhanced value of any land due to any improvements made or other action taken by the authority, the amount of that capital sum or instalment shall be deducted from the site value of the land for the purposes of the collection of undeveloped land duty. (*Ibid*, section 36.)

No undeveloped land duty shall be charged in respect of land or any interest in land held by or on behalf of any governing body constituted for charitable purposes (as defined by the Act) while the land is occupied and used by such a body for the purposes of that body. (*Ibid* section 37.)

Undeveloped land duty shall not be charged in respect of any land whilst it is held by a statutory company (*i.e.*, any railway or similar com-

pany authorised under any special Act of Parliament) for the purposes of the undertaking, and cannot be appropriated by the company except to those purposes. (*Ibid*, section 38.)

Undischarged Bankrupt.—Where a bankrupt, not having obtained his discharge, obtains credit to the extent of £20 or upwards from any person without informing such person that he is an undischarged bankrupt, he is guilty of a misdemeanour, and may be dealt with and punished as if he had been guilty of a misdemeanour under the Debtors Act 1869. (Bankruptcy Act 1883, section 31.)

To convict a bankrupt of such an offence it is not necessary to show that there was an *intent to defraud*.

" Until the trustee intervenes, all transactions " by a bankrupt after his bankruptcy (but before " his discharge) with any person dealing with " him *bonâ fide* and for value, in respect of his " *after-acquired property*, whether with or " without knowledge of the bankruptcy, are valid " against the trustee " (*Cohen v. Mitchell*, 1890, 25 Q.B.D. 262), but this doctrine, while extending to leaseholds (*Re Clayton & Barclay*, 1895, 2 Ch. 212) was held not to apply to freehold property (*Re New Land Development*, 1892, 2 Ch. 138), the reason for the exception in favour of freeholds being that it was inadvisable to make the question of the non-intervention of the trustee a link in the title to the property. On the other hand, freehold property held by partners as part of the partnership estate, and therefore vesting in them as personal estate under the Partnership Act 1890, section 22, comes within the principle of *Cohen v. Mitchell*, and if the trustees of the bankrupt partners do not intervene while the property is in the possession of the bankrupts the trustees lose all claim to the property. (*In re the Kent County Gas Light & Coke Co., Lim.*, 1909.)

With regard to the personal earnings of an undischarged bankrupt, Lindley, M.R., stated, in *Re Roberts* (81 L.T. 467) :—" The decided " cases are no authority for the proposition that " property of a bankrupt acquired by his personal " exertions since his bankruptcy, and not " required for his present support, do not belong " to his trustee. No such doctrine can be main- " tained in face of section 44 of the Act of 1883. " After bankruptcy and before his discharge " whatever property a bankrupt acquires belongs " to his trustee, save only what is necessary for " his support."

When an undischarged bankrupt, without his trustee's knowledge, acquired further property and carried on business, and again became bankrupt, it was held that the trustee in the *first* bankruptcy was entitled to such property; and to take it without any obligation to satisfy any of the liabilities incurred by the bankrupt since the first bankruptcy (*Re Clark*, 1894, 2 Q.B. 393), but the trustee in the second bankruptcy has been allowed all his proper disbursements as trustee and a reasonable sum by way of remuneration. (*Re Preston*, 1903.) In a more recent case, however, it was held that the trustee under the first bankruptcy is entitled to all assets in the second bankruptcy, and that the trustee under the second bankruptcy is not entitled to any costs or remuneration. (*Re Frost*, 1904.)

Undue Preference.—The improper preference by a debtor of one creditor, or a set of creditors, over the others.

A preference may be *undue*, although it does not amount to fraud, and cannot be set aside; but an undue preference is to be taken into consideration by the Court when a bankrupt makes application for his discharge. (*See titles* Discharge of a Bankrupt, Fraudulent Preference.)

Unearned Income.—*See title* Differentiation.

Unearned Increment.—Increase in value of property deemed to accrue thereto without expenditure of money or labour on the part of the owner. The phrase is to some extent controversial and is chiefly employed in connection with the increase in value of land. (*See title* Increment Value Duty.)

Unexpired Risks.—In the accounts of an insurance company (such as fire and marine) it is obviously impracticable to provide specifically against probable loss in respect of current risks at the date of preparing the Balance Sheet, and the auditor's certificate is sometimes qualified accordingly, for if there should be no reserved profits (as in the case of a new company), the surplus of premiums over expenses and known losses cannot be considered as profit available for dividend; while, in the case of a company having an ample reserve against all contingencies, if an amount equal to the surplus of premiums over expenses and known losses for a specified period is deemed available for dividend, it must be noted that the "standing reserve" is subject to the unexpired risks.

Although, as already stated, provision is not specifically made in the accounts in this respect, an estimate may be made by taking a proportion (such as $\frac{1}{3}$ or $\frac{1}{4}$) of the total annual premiums. It is submitted, however, that the *total* of the annual premiums is not necessarily a *direct* factor in the estimates, as so much depends upon the date upon which the various risks expire.

Mr. Pixley, F.C.A., says, for this purpose (*i.e.*, ascertaining the reserve), "it may be "assumed that the premiums are received, and "the claims in respect thereof arise at *equal* "*intervals* throughout the year, and, therefore, "at the date on which the books are closed, "half the risk will have run off the policies then "in force. The following calculation would then "obtain the amount which ought to be charged "against the Revenue Account for the year, and "included in the Balance Sheet as the reserve.

"(1) Ascertain from the experience of the "company, or of companies transacting similar "business, the rate per cent. the losses bear to "the net premium income.

"(2) Ascertain the amount which bears the "same ratio to the net premium income for the "year under audit. Half of this amount is the "reserve required.

"Very few, if any, insurance companies "calculate their reserve in this manner, and an "auditor would have no right to object to any "other method by which the directors may have "arrived at the reserve, provided, in his "opinion, it has been fixed on a sound basis."

As Mr. Pixley says, very few of the insurance companies calculate their reserve in this manner, so that the point is polemical rather than of practical importance, but it might be pointed out that as, in practice, an insurance company "closes its books" either on 30th June or 31st December in each year, and as these two dates are in close proximity to the Midsummer and Christmas quarter days respectively, it follows that the proportion of the current risks which will have run off at the date of closing the books will not amount to one-half, even assuming the equal distribution of premiums and claims throughout the year. Thus, assuming that the books are being closed at 31st December, that the company passes to credit of revenue the premiums as they become due each quarter day, and that the premiums are equally divided, then, ignoring the odd days:—

Premiums—

Lady-day quarter	$\frac{1}{4}$	of total,	$\frac{1}{4}$	of year of which unexpired.		
Midsummer "	$\frac{1}{4}$	"	$\frac{1}{2}$	"	"	"
Michaelmas "	$\frac{1}{4}$	"	$\frac{3}{4}$	"	"	"
Christmas "	$\frac{1}{4}$	"	1	"	"	"
			$2\frac{1}{2}$			

$2\frac{1}{2}$ times one quarter's premiums equal $\frac{5}{8}$ of the whole year's premiums, so that on the average only $\frac{3}{8}$ of the whole of the risks will have run off.

It would appear that half the risks (on the average) can only be run off at the date of closing the books under the following circumstances:—

(1) Premiums and claims for each quarter equal;

(2) Premiums passed to credit of revenue at *end* of quarter only;

(3) Books closed in the *middle of a quarter.*

Note.—The examples here given are merely intended to enunciate the general principles involved in estimating the reserve required, for adjustments would be necessary to deal with (1) short period risks, (2) those risks which are accepted for over 12 months [*e.g.*, (*a*) new

business, the first premiums generally being in respect of the period ending 12 months from the *next* quarter day, and (*b*) those premiums paid in advance in respect of a period of years].

Now, suppose the accounts of a company were being made up to 31st December and the premiums were apportioned as under:—

Premiums expiring next—				
Lady-day	£20,000	unexpired portion, at 31 Dec., say		£5,000
Midsummer	12,000	"	"	6,000
Michaelmas	8,000	"	"	6,000
Christmas	10,000	"	"	10,000
	£50,000			£27,000

If the annual losses averaged (say) 50 per cent. upon the annual premiums, then the probable losses in respect of unexpired risks might fairly be stated at £13,500; but, if the premiums of the same company had been classified as under, the estimate would be affected accordingly:—

Premiums expiring next—				
Lady-day	£8,000	unexpired portion, at 31 Dec., say		£2,000
Midsummer	6,000	"	"	3,000
Michaelmas	8,000	"	"	6,000
Christmas	28,000	"	"	28,000
	£50,000			£39,000

Here the unexpired risks might be taken at £19,500—for although the *total* premiums are the same in both cases, the greater portion is in respect of insurance effected in the *last quarter* of the year. If, therefore, it is considered necessary to estimate the reserve in this manner it is advisable to deal with the premiums according to the particular quarter days upon which they respectively expire, instead of *assuming* that they are equally distributed throughout the year, particularly so, as (ordinarily) the premiums for each quarter are separately stated in the books of account. (*See title* Assurance Companies Act 1909.)

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In 1910 Bray, J., held that an insurance company may set aside for income-tax purposes an apportionment of insurance premium receipts against possible loss on unexpired risks (*Clark, Surveyor of Taxes v. Sun Insurance Office*), and this decision is quoted under *title* Income Tax on p. 280 hereof. Since the Income Tax article was printed, however, the decision has been reversed by the Court of Appeal.

Unissued Capital.—That portion of the authorised capital of a company which has not been issued or has not been agreed to be taken by any person.

Such capital, in the case of a company limited by shares, may be cancelled by special resolution without the sanction of the Court. (*See title* Registered Capital.)

Universal Agent.—An agent who may do anything on behalf of his principal, and bind him by his proceedings, so long as they are legal and in accordance with the law of contracts. "Such an "agency may potentially exist, but it must be of "the rarest occurrence. And, indeed, it is "difficult to conceive of the existence of such an "agent practically, inasmuch as it would be to "make such an agent the complete master." (*See title* Agent.)

Universal Legacy.—A testamentary disposition whereby a person bequeaths the whole of the property which he may have at his death to one or more persons.

Universal Partnership.—"A universal partnership "is extremely rare, involving, as it does, a com-"plete community of interest in everything "concerning property. It is, in fact, socialism "in a strong form."

Unlimited Company.—Any seven or more persons (or where the company to be formed will be a private one 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 without limited liability—that is to say, a company not having any limit on the liability of its members (in this Act termed an unlimited company). (Companies (Consolidation) Act 1908, section 2.)

The memorandum must state:—

(i) The name of the company.

(ii) The part of the United Kingdom in which the registered office of the company is to be situate.

(iii) The objects of the company.

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 his name the number of shares he takes. (*Ibid*, section 5.)

There must 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.

If the company has a share capital the articles must state the amount of share capital with which the company proposes to be registered. 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. (*Ibid*, section 10.)

Subject to the provisions of the Act and to the conditions contained in its memorandum, an unlimited 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.

The power of altering articles extends to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum. (*Ibid*, section 13.)

Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, 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 this Act. 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. (*Ibid*, section 57.)

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. (*Ibid*, section 58.)

It may be added that the foregoing form of organisation is the only one to which the term unlimited company applies. Other associations for profit are either general partnerships, limited partnerships, or limited companies. (*See title* Syndicate.)

Unlimited Liability.—*See title* Liability.

Unliquidated Damages.—Penalties, or unascertained damages in respect of breach of contract or otherwise. Unliquidated damages arising out of tort do not constitute a debt provable in bankruptcy.

An unliquidated debt not only includes damages to be ascertained by a jury, but also any debt of which the creditor admits he cannot fairly state the amount. (*See title* Liquidated Damages.)

Unpaid Seller.—*See title* Sale of Goods Act 1893.

Unpresented Cheques.—Cheques issued by a person upon his banker, which have not been presented by the payee to the banker for payment.

These outstanding cheques need to be taken into consideration when reconciling the balance with the bankers at a given date, as shown by the banker's Pass Book and the customer's Ledger respectively. (*See title* Bank Book.)

A bill payable on demand is deemed to be overdue when it appears upon the face of it to have been, under the circumstances, in circulation an unreasonable length of time, and, as a consequence, can then only be negotiated subject to any defect of title affecting it when it matured for payment. Thus, a person who takes a stale cheque takes it at his own risk. What is an unreasonable length of time is a question of fact. Ordinarily a week would not be unreasonable.

The respective rights of the drawer and holder of a cheque in the event of the failure of the banker (on whom the cheque is drawn) before such cheque is presented for payment are important, and section 74 of the Bills of Exchange Act 1882 provides:—

> Subject to the provisions of this Act where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage—that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid. In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case. The holder of such cheque as to which such drawer or person is discharged shall be a creditor in lieu of such drawer or person of such banker to the extent of such discharge, and be entitled to recover the amount from him.

Under ordinary circumstances the person receiving a cheque has the day of receipt and the whole of the banking hours of the following business day within which to present the cheque. Although special circumstances might justify further delay, a cheque unpresented for three days would, in the event of the failure of the banker meantime, be regarded as having been held an unreasonable length of time.

Where a cheque instead of being presented for payment is transferred and circulated among several persons, the liability of the drawer cannot apparently be enlarged; therefore in order to charge the drawer in the event of the failure of the banker the cheque should be presented within the period within which the first holder should have presented it; but as regards the liability of the transferor of the cheque, it is sufficient if the holder presents it or forwards it for presentment on the day next after the transfer of the cheque to him.

Unsecured Creditor.—One who has a claim upon the general assets (only) of his debtor, derived from the obligation, expressed or implied, into which every debtor enters, of paying his debts out of his property; as distinct from a *secured* creditor, who, in addition to this general claim, has a mortgage, charge or lien for the payment of his debt upon all or some part of the *debtor's* property, real or personal. (*See title* Secured Creditor.)

Usance.—The time which it is the usage of countries, between which bills are drawn, to fix for payment of them. The existence of a usance must be proved. Sometimes foreign bills are drawn payable at one, two, or more usances. Thus, if the usance between London and some place abroad is one month, and a bill be drawn on 1st March in the latter place payable in London at double usance, the bill would fall due on 4th May.

Usury.—Compensation for the use of money; but usually applied to the taking of exorbitant interest, or interest to a greater rate than that allowed by law. With the exception of the case of pawnbrokers, however, there is no legal restriction upon the rate of interest chargeable, although

for the purpose of proof of debt in bankruptcy and winding-up proceedings the rate of interest provable is regulated. But the Moneylenders' Act 1900 provides that where the Court is satisfied that the interest or the charge for expenses in respect of a loan is excessive, and that the transaction is harsh and unconscionable, or is otherwise such that a Court of Equity would give relief, the Court may re-open the transaction and relieve the borrower from payment of any sum in excess of that adjudged to be reasonable. The rate of interest might be deemed excessive and yet the transaction might not be deemed "harsh and unconscionable." On the other hand, the interest might be deemed so extravagantly excessive that that fact alone might satisfy the Court that the transaction was harsh and unconscionable. But no fixed general rule is possible as to what is a proper rate of interest. The Court will consider the circumstances of each case, *e.g.*, the necessities of the borrower at the time the loan was made; the presence or absence of security; the relation in which the lender stood to the borrower, and the total remuneration derived by the moneylender in connection with the transaction. (*See title* Interest in respect of Proof of Debt.)

V

Valuable Consideration.—*See title* Consideration.

Valuation.—The Stamp Act 1891 provides that a valuation (or appraisement) of any property, or of any interest therein, or of the annual value thereof, or of any dilapidations, or of any repairs wanted, or of the materials and labour used in any building, or of any artificer's work whatsoever, shall be stamped with an *ad valorem* stamp rising by scale from 3d. (when the amount of the valuation does not exceed £5) to £1 (which is payable when the amount of the valuation exceeds £500).

Exemptions from Stamp Duty.

(1) Appraisement or valuation made for, and for the information of, one party only, and not being in any manner obligatory as between parties, either by agreement or operation of law.

(2) Appraisement or valuation made in pursuance of the order of any Court of Admiralty or of any Court of Appeal from a judgment of any Court of Admiralty.

(3) Appraisement or valuation of property of a deceased person made for the information of an executor or other person required to deliver an inventory of the estate of such deceased person for the purpose of assessing the amount of estate duty payable.

(4) Appraisement or valuation of any property made for the purpose of ascertaining the estate, legacy, or succession duty payable in respect thereof.

Every appraiser, by whom an appraisement or valuation chargeable with stamp duty is made, shall, within fourteen days after the making thereof, write out the same, in words and figures showing the full amount thereof, upon duly stamped material (but the valuation may be stamped after execution); and if he neglects or omits so to do, or in any other manner discloses the amount of the appraisement or valuation, he shall incur a fine of fifty pounds.

Every person who receives from any appraiser, or pays for the making of any such appraisement or valuation, shall, unless the same be written out and stamped as aforesaid, incur a fine of twenty pounds.

Appraiser is defined by 46 Geo. III, ch. 43, section 4, to be a person who values or appraises any estate or property, real or personal, or any interest, whether in possession or not, in any estate or property, or any goods, merchandise, or effects, for or in expectation of any hire, gain, fee, or reward.

Value.—"The *price* or charge is what is asked for "a thing; the *cost* or expense, what is given for "it; the *worth*, what it will fetch; the *value*, "what it ought to fetch." [Frank Broaker, C.P.A.]

" The word *value*, it is to be observed, has two " different meanings, and sometimes expresses " the utility of some particular object, and some- " times the power of purchasing other goods " which the possession of that object conveys. " The one may be called ' value in use,' the " other ' value in exchange.' The things which " have the greatest value in use have frequently " little or no value in exchange; and, on the " contrary, those which have the greatest value " in exchange have frequently little or no value " in use." [Smith's *Wealth of Nations*.]

Estate Duty.—With regard to the value of property for the purposes of estate duty *see title* Estate Duty, heading Valuation.

The Commissioners may authorise any person to make a valuation of property for the purpose of estate duty, but the Commissioners must defray the expense of such valuation.

Every estate shall include all income accrued upon the property included therein down to, and outstanding at, the date of the death of the deceased.

With regard to an auditor's duties in respect of the valuation of stock-in-trade, *see titles* Investigation and Stock-in-Trade.

For the rules as to the valuation of policies and life annuities *see titles* Assurance Companies Act 1909, Life Annuity.

Valued Policy.—One in which the sum at which the subject of the policy is insured is expressed. As between the assured and the underwriter such sum is binding as to the amount at risk, in the absence of fraud. (*See title* Double Insurance.)

Value in Merchandise.—*See title* Consideration for a Bill of Exchange.

Value Received.—*See title* Consideration for a Bill of Exchange.

Vendor.—For the purposes of section 81 of the Companies (Consolidation) Act 1908 every person is 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.

Where any of the property to be acquired by the company is to be taken on lease, the section applies 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.

A vendor to, or other person who receives payment in 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 section 89 of the Companies (Consolidation) Act 1908. (Section 89.)

Although a company may pay a commission out of its capital *money* if authorised and disclosed (section 89 (1) of the 1908 Act) it cannot apply its *shares* in that manner (subsection 2). The " power " granted to vendors by the Act to apply *shares* by way of payment of commissions in cases where the company might have legally done so would therefore appear to be ineffectual, unless it be that a vendor can, apart from the Act, do what he thinks fit with his own, whether in the form of shares or cash. (*See title* Underwriter.)

Venture.—Sometimes termed "adventure"; a specific shipment of goods "on consignment" when made the subject of a separate account, is an example of a venture. (*See title* Consignment.)

Vested Legacy.—*See title* Legacy.

Void and Voidable.—

Void means that an instrument or transaction is "absolutely null and ineffectual so that "nothing can cure it; destitute of legal effect."

Voidable means that the "imperfection or "defect can be cured by the act or confirmation "of him who could, if he chose, take advantage "of it."

"*Voidable*" must be carefully distinguished from "unenforceable," for a contract may of itself be good, being unaffected by fraud or incapacity of any of the parties and having no "flaw of substance"; yet it may be unenforceable (1) for want of form (*e.g.*, writing), (2) from lapse of time, or (3) for the want of a stamp. As to these *see titles* Simple Contract, Impressed Stamp, and Limitation of Actions.

With regard to rights under a *voidable* title, *see titles* Factor, Fraudulent Conveyances, Holder in Due Course, Sale of Goods Act (section 23), and Undischarged Bankrupt, being instances of modifications of the maxim, *nemo dat quod non habet*.

Voluntary Liquidation.—A company registered under the Companies (Consolidation) Act 1908, or under the Companies Act 1862, 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* (*i.e.*, an ordinary 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* that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up. (Companies (Consolidation) Act 1908, section 182.)

A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising the winding-up (section 183), so that if the winding-up is the result of a special resolution it commences when the confirmatory resolution is carried.

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. (Section 184.) Moreover 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. (Section 205.)

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*. (Section 185.)

A copy of every special and extraordinary resolution to wind up must also (in common with every other special and extraordinary resolution) 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. (Section 70.)

The following consequences ensue on the voluntary winding up of a company:—

(i) The property of the company shall be applied in payment of the costs, charges, and expenses properly incurred, including the remuneration of the liquidator, and in satisfaction of its liabilities (in the order mentioned later), and, subject thereto,

shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company (sections 186, 196, and 209):

(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 exercise certain powers (which are fully set out under *title* Liquidator):

(v) The liquidator may exercise the powers of the Court under the 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. (Section 186.)

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. If he fails to comply with this requirement he shall be liable to a fine not exceeding five pounds for every day during which the default continues. (Section 187.)

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.

Note.—Although in the majority of cases it would be desirable to do so, there is no requirement that the liquidator shall submit a statement of affairs of the company at such meeting.

At such meeting 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.

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. No appeal shall lie from any order of the Court upon such application.

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 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. (Section 188.)

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. For that purpose a general meeting may be convened by any contributory, or, if there were more liquidators than one, by the continuing liquidators. 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. (Section 189.)

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. 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. (Section 190.)

Any arrangement entered into between a company about to be, or in course of being, wound up voluntarily, and its creditors, shall, subject to the undermentioned right of appeal, 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. (Section 191.)

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 (called the transferee company), the liquidator of the first-mentioned company (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 shall be binding on the members of the transferor company, but 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. 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 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. (Section 192.)

The purchasing company must not be a foreign company, but one registered under the Companies Acts. (*See* Section 285, and *Thomas v. United Butter Cies, &c.*, 1909.)

Although perfectly solvent, a company in voluntary liquidation for the sole purpose of amalgamating with another company will thereby cause a forfeiture of a lease which provides for re-entry if the lessees " being a company shall be wound up compulsorily or voluntarily." Such a proviso is " a condition for forfeiture on the bankruptcy of the lessee " within section 14, subsection 6, of the Conveyancing Act 1881. (*Fryer v. Ewart*, 1902, App. Cas. 187.)

Where there are debentures secured by a floating charge, the assets are applied in the following order :—

(1) In payment of preferential claims. (*See title* Preferential Payments in Bankruptcy and Winding-up.)

(2) In payment of the debenture-holders' principal, interest, and costs, including the remuneration of the receiver.

(3) In payment of all costs, charges, and expenses properly incurred in the winding-up, including the remuneration of the liquidators.

Note.—There is no prescribed order of priority *inter se* as in the case of bankruptcy and winding up by the Court.

(4) In satisfaction of the unsecured liabilities *pari passu*.

(5) By way of a " return " to the contributories according to their rights and interests.

Where there are no such debentures, the order in which the assets are applied is as follows :—

(1) In payment of all the costs, charges, and expenses of the liquidation.

(2) In payment of the preferential claims.

(3) In satisfaction of the unsecured liabilities *pari passu*.

(4) By way of a " return " to the contributories according to their rights and interests.

Note.—Secured creditors holding a fixed charge will, of course, obtain priority to the extent to which their respective securities are of sufficient value to satisfy their claims.

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. 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. (Section 193.)

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.

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. (Section 194.)

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. 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.

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.

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.

It shall be the duty of the person on whose application such an order of the Court 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 fine not exceeding five pounds for every day during which the default continues. (Section 195.)

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 creditors or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding-up. (Section 197.)

Where a company is being wound up voluntarily (or subject to supervision) a petition for winding up by the Court may be presented by the Official Receiver attached to the Court, as well as by any other person authorised in that behalf, 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. (Section 137 (2).)

"The section includes every case where the "powers of the voluntary liquidator are proved, "in the opinion of the Court, to be insufficient "for the purposes of winding-up in so far as the "interests of creditors or contributories are con-"cerned. If, in short, the Official Receiver, after "a compulsory winding-up order, would possess "any power which the voluntary liquidator "cannot exercise, and which is shown to be "necessary in order that there may be an "efficient winding-up in the interests of the "creditors or contributories, then section 14 (now "section 137 (2) of the 1908 Act) applies. When "a zealous voluntary liquidator acting under the "advice of counsel of great experience, arrives at "the conclusion that he cannot satisfactorily "take proceedings for misfeasance without some "examination going beyond that which may be "obtained under section 115 of the Companies "Act 1862 (now section 174 of the 1908 Act)— "or, in other words, that a public examination "under section 8 of the Act of 1890 (now section "175 of 1908) is absolutely necessary—then a "winding-up order under section 14 of that Act "(now section 137 (2) of 1908) should be "made." (*Re Jubilee Sites Syndicate*, 1899.)

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. (Section 198.)

(*See titles* Amalgamation, Calls, Contributory, Liquidator, Liquidators' Accounts, Reconstruction, Resolution, Winding-up, &c. &c.)

Voluntary Liquidator.—*See title* Liquidator.

Voluntary Settlement.—One made upon a "good" but not upon a valuable consideration. (*See titles* Consideration, Fraudulent Conveyances, &c.)

Vote.—

COMPANY.

The votes to which the members of a company (registered under the Acts of 1862 and 1908) are respectively entitled may be conferred in the company's regulations. Section 67 of the 1908 Act provides that in default of any regulations as to voting every member shall have one vote (*i.e.*, irrespective of the number of shares he may hold).

The original Table A provided that "every "member shall have one vote for every share "up to ten; he shall have an additional vote for "every five shares beyond the first ten shares up "to one hundred, and an additional vote for every "ten shares beyond the first hundred shares."

The "scale" system, however, was not generally adopted, the articles of association (where Table A did not apply) generally conferring one vote for every share held, viz.:—

> On a show of hands every member present *in person* shall have *one vote*. On a poll every member present *in person or by proxy* shall have one vote for *every share held by him*.

The revised Table of 1906 and the new Table of 1908 contain similar provisions.

As there appears to be no common law right to vote by proxy, it is necessary that special power be given by the company's regulations where the right so to vote is desired.

The articles of association may provide (1) for a show of hands, and (2) for a poll (when share values are considered), or they may provide for share-value voting to the exclusion of a show of hands—thus rendering the demand for a poll unnecessary. (*See title* Show of Hands.)

In some companies the right to attend and vote at any meeting of the company is not conferred upon a particular class of members (*e.g.*, preference shareholders) unless the meeting is convened for the purpose of (1) reducing the capital, (2) winding up the company, (3) sanctioning a sale of the undertaking, (4) altering the regulations of the company, or (5) considering and voting upon any proposition which directly affects the rights and privileges of such class of members.

Where a company has shares of more than one class, particulars of the right of voting at meetings of the company conferred by the several classes of shares respectively must be set out in any prospectus issued to the public. (Companies (Consolidation) Act 1908, section 81.)

Winding-up by the Court.

Section 219 of the 1908 Act provides that the Court may direct meetings of creditors or contributories to be held for the purpose of ascertaining their respective wishes (referred to in the rules as Court meetings), and that—

(1) In the case of creditors, regard shall be had to the value of each creditor's debt; and

(2) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

In the case of a first meeting of creditors (under section 152) 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 (*see* Winding-up Rules 1909, Rule 121) 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. (Rule 133.)

A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained, 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. (Rule 134.)

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. (Rule 135.)

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. (Rule 136.)

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. (Rule 137.)

The foregoing rules (133 to 137 inclusive) do not apply to a Court meeting of creditors held prior to the "first" meeting of creditors. (Rule 133.)

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. (Rule 100.)

A creditor or a contributory may vote either in person or by proxy. (Rule 139.)

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. (Rule 128.)

BANKRUPTCY.

A person is not entitled to vote as a creditor at any meeting of creditors unless he has duly proved a debt (provable in bankruptcy) to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

A surety for a debt who has not actually paid same cannot vote, nor can postponed creditors (unless the postponed claim be in respect of excess interest) vote whilst the ordinary creditors' claims remain unsatisfied. (*See title* Postponed Creditors.)

A creditor cannot vote at any meeting in respect of any unliquidated or contingent debt, or any debt the value of which is otherwise not ascertained.

For the purpose of voting a secured creditor must, 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 such creditor is 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.

A creditor is not entitled to prove 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 debtor, against whom a receiving order 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.

Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument, he must, subject to any special order of the Court to the contrary, produce the instrument to the Official Receiver, chairman of the meeting, or the trustee, as the case may be, before the proof can be admitted either for *voting* or dividend.

The trustee or the Official Receiver may, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any 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 centum. Provided that where a creditor has put a value on such security, he may at any time before he has been required to give up such security as aforesaid correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

Although interest upon a provable debt is limited for the purpose of *dividend* to 5 per cent. per annum, in cases where interest at a greater rate has been agreed for, this restriction does not affect a creditor's right to prove for the whole amount of the debt, and the agreed interest (or pecuniary consideration in lieu of interest) for the purpose of *voting*.

If a receiving order is made against *one partner* of a firm, any creditor to whom that partner is indebted *jointly* with the other partners of the firm or any of them, may prove his debt for the purpose of *voting* (only) at any meeting of creditors, and shall be entitled to vote thereat. Where a receiving order is made against a *firm* the joint and separate creditors are *collectively* convened to the first meeting of creditors, but each separate set of creditors may consider and vote upon any proposal for a composition or scheme independently of each other, and one set of creditors may accept a proposal, although the other sets of creditors may have refused their respective proposals.

The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but this decision is subject to an appeal to the Court. If the chairman is in doubt whether the proof of a creditor should be admitted or rejected he must mark the proof as objected to and allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

A creditor may vote either in person or by proxy.

In ascertaining the wishes of creditors by ordinary resolution, regard is had to the *value* of the debt proved for by each creditor present at the meeting personally or by proxy, and voting on the resolution; in ascertaining their wishes by special resolution, regard is had (1) to the number of creditors present personally or by proxy and voting on the resolution, and (2) to the value of the debts proved for by *such* creditors; in ascertaining their wishes in regard to the acceptance of a composition or scheme of arrangement, regard is had, not only to the number and value of the creditors who are present and vote upon the particular resolution, but also to the number and value of *all the creditors who have proved their debts*, for those creditors who prove their debts (and whose proofs have been admitted) but do not vote in respect of a debtor's proposal for a composition or scheme are in this particular instance counted as having voted *against* it. (Bankruptcy Act 1883, 1st Schedule, Rules 265 and 267; and Bankruptcy Act 1890, section 3.) (*See titles* Casting Vote, Poll, Proxy, Resolution, Voting Letter.)

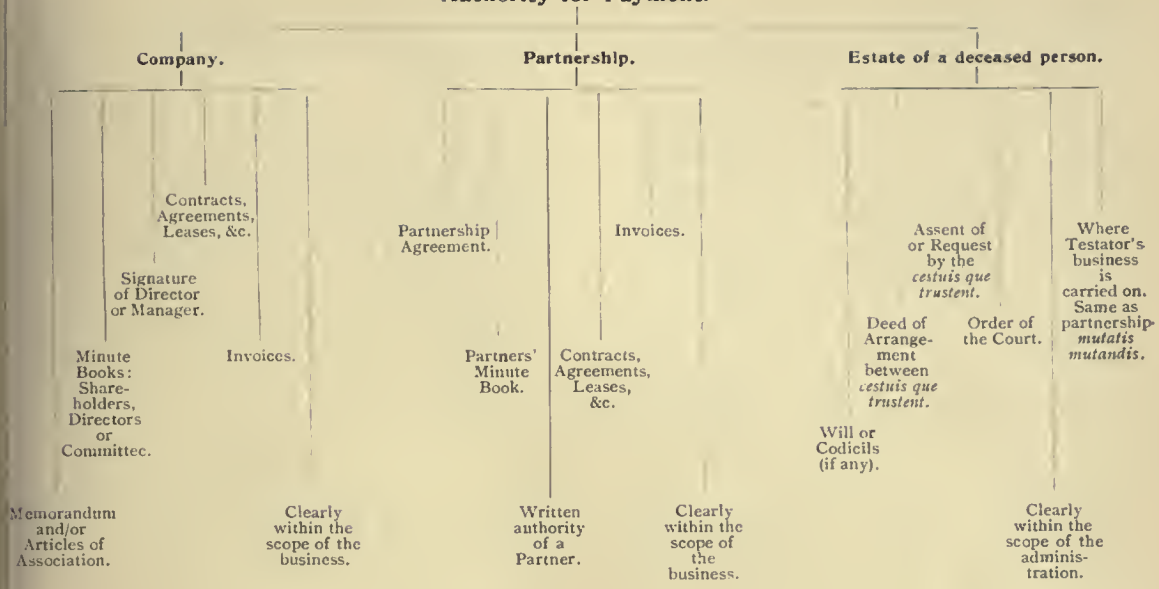
Voting Letter.—Any creditor who has proved his debt against a debtor's estate in *bankruptcy* may assent to or dissent from a proposal made by the debtor for a composition in satisfaction of his debts, or a scheme of arrangement of his affairs by a letter in the prescribed form addressed to the Official Receiver so as to be received by him not later than the day preceding the meeting, and any such dissent or assent shall have effect as if the creditor had been present and had voted at the meeting. (Bankruptcy Act 1890, section 3.) In respect of a debtor's proposal *all the creditors who have proved* are factors in ascertaining the majority necessary to determine their assent; so that all creditors who have proved their debts, and whose proofs are admitted, but do not vote on the debtor's proposal, are counted as having voted *against* it. (*See titles* Arrangements in Bankruptcy, Proxy, Resolution, Vote.)

Voucher.—A receipt for cash received or paid; any documentary or other satisfactory evidence as to the accuracy of accounts.

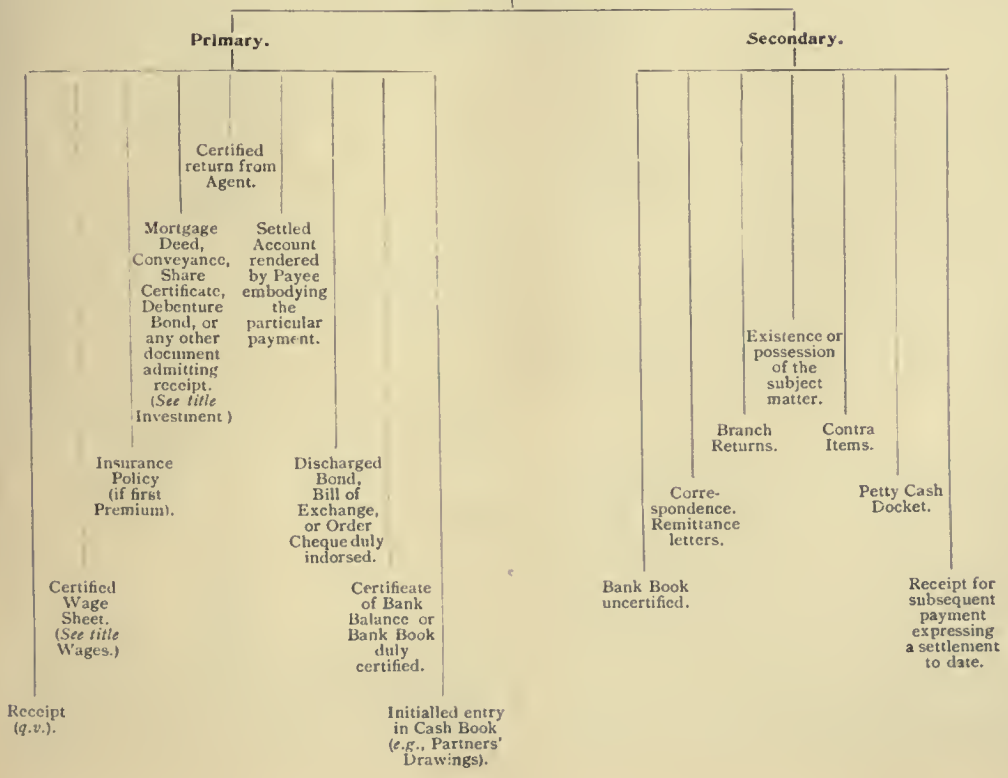
(*See titles* Cheque, Inscribed Stocks, Investigation, Investment, Receipt, Savings Banks, Terrier, Wages, &c.)

The following diagrams show the main sources of authority for, and evidence of, a payment respectively under the different circumstances.

Authority for Payment.



Evidence of Payment.



Vouching.—The operation of vouching is most intimately associated with the audit of a Cash Account, and particularly with the payments, but the term is of much wider application, for it extends to the verification of all financial transactions and items in accounts. As an instance, under the Building Societies Act 1894, auditors have to certify, *inter alia*, whether or not the accounts are duly *vouched* and in accordance with law. The word "vouched" is here used in the widest sense. (*See title* Building Societies.)

In vouching cash payments evidence is necessary, not only of the fact of payment, but also of the authority for same, in order to have complete evidence of justification for the charge against the partner, account, person, or estate. (*See title* Voucher.)

So in the case of investments it may be necessary not merely to verify their existence, but also to inquire into the questions of the legality thereof and the title thereto. In special cases the value of such investments may also need to be considered where the certificate of an auditor is required to deal with values. (*See title* Investment.)

Where an accountant is examining accounts for some special purpose he may require to consider the questions of stock-in-trade on hand and on consignment, and to test the *bona fides* of book entries relative to sales, purchases, and other matters. As to the methods of procedure in these respects, *see title* Investigation.

The entries made in the Journal are often a source of fraud, and they require vouching as much as Cash Book entries, the method of verification depending upon circumstances.

Particular attention should ordinarily be devoted to the verification of credits in respect of (1) goods alleged to have been purchased, and (2) goods returned. In comparing an invoice with the Purchase Day Book, an auditor should examine (1) the date, (2) the title of the person or company to whom it is addressed, (3) the nature of the subject-matter, (4) the amount.

(*See also titles* Allowance, Bank Book, Cancellation of "Scrip," Cancellation of Vouchers, Cheque, Inscribed Stocks, Receipt, Rent Roll, Savings Banks, Wages.)

Vouching Back.—The term given to the process whereby the position of affairs as at a past date is substantiated.

As an instance, suppose it were required to count the amount of cash in the hands of a cashier on the first day of a given month, but, as a matter of fact, it were not convenient or practicable to count the cash actually until, say, the fifth day of that month.

In such a case, the entries of receipts and payments between the two dates must be carefully vouched, and the balance in hand on the "fifth" duly counted.

Where this is done, great care must be exercised in vouching the "intervening entries," while the Bank Book should be certified to the *same date* as that upon which the cash was actually counted, and not to the date the cash balance *ought* to have been substantiated.

Voyage Account.—An account showing the result of the working of a vessel for a particular voyage. The freight, passage money, proceeds of sale of dunnage, &c., are brought to credit, whilst the expenses of the voyage are charged against the earnings; such expenses will generally include port expenses (analysed between the various ports), cost of outfit and up-keep of the vessel, coals (if a steamer), wages of master and crew, provisions of master, crew, and passengers, brokerages and commissions, management, insurance premiums, &c. Port charges may be subdivided into dock and harbour dues, towage, pilotage, agents' commission, &c. These may be considered as *special* items connected with Voyage Accounts, others being either ordinary or special, arising from the circumstances of the case. (*See title* Portage Bill.)

Voyage Policy.—*See title* Time Policy.

W

Wager.—A contract whereby a person agrees to pay another a fixed sum upon the happening of a given event, in consideration of the latter agreeing to pay a fixed sum to the former should the event not happen.

Wagers are not of themselves illegal, but they are rendered unenforceable at law by the Statute 8 and 9 Vict. c. 109. The Gaming Act 1892 further restricts the right of action in respect of wagers, for it extends the provisions of the former Act to certain transactions collateral to wagers, to the effect that " any promise, express or implied, to " pay any person any sum of money *paid* by him " under or in respect of any contract or agree- " ment rendered null and void by 8 and 9 Vict. " c. 109, or to pay any sum of money by way of " commission, fee, reward, or otherwise in " respect of any such contract, or of any services " in relation thereto, or in connection therewith, " shall be null and void, and no action shall be " brought or maintained to recover any such sum " of money."

As a result of the above, a person cannot legally recover his commission for making bets for another, nor can he recover moneys paid in discharge of such bets whether such payments are made in pursuance of a contract of regular employment as a betting commissioner, or as a result of a special request or otherwise, but a person may still recover moneys *received* by another in respect of bets made and won by the former. (*See title* Differences.)

Wager Policy.—At Common Law every insurance, unless the contrary were expressed, was required to be based upon an interest, but the parties were allowed to insert clauses in the policy dispensing with interest.

The Marine Insurance Act 1906, however, provides that " every contract by way of gaming or wagering is void."

A similar provision was made in connection with fire and life insurance by a Statute of George III.

Any person who effects a contract of marine insurance without possessing an insurable interest now commits a punishable offence. (Marine Insurance (Gambling Policies) Act 1909.)

(*See title* Insurable Interest.)

Wages may be defined as the compensation payable in money, usually by the hour, day, week, or piece, to workmen, labourers, and the like, for labour which is more or less mechanical.

Labour is indispensable to production, although it does not necessarily have production for its effect. Political economists carry their analysis of labour much further than is necessary for the purposes of practical accountancy, even assuming the embodiment of their views in the preparation of accounts at all feasible, but it is, nevertheless, found necessary to divide the *cost* of labour to some extent.

Thus labour, *directly* employed " in investing " material things with properties which render " them serviceable," or stated otherwise, labour directly employed in " adapting raw material " is considered as an element of the cost of the articles in question when preparing Manufacturers' Accounts. Carriage, cartage, and freight on goods inward, that is, the cost of the labour of the carriers, must be treated under this head, for such labour vests the commodity with the property of being in the place where it is wanted, instead of being in some other place.

Accountants are inclined to class the labour rendered by clerks, warehousemen, and the like as *unproductive*, when their labour, although essential to the ultimate effect, is not conferred *directly* upon the *production* of the commodities with which they have to deal. Unproductive labour may be roughly subdivided into (1) establishment charges, such as the salaries of clerks, and (2) cost of distribution, such as the salaries of travellers. (*See title* Manufacturers' Accounts.)

The vouching of payments for wages, whether productive or otherwise, is a question of importance to auditors on account of the many facilities for fraudulent dealings which an imperfect system of payment affords. (*See title* Dummy Men.) Where wages are paid on a basis of tonnage (such as in mining concerns), some measure of check in the aggregate may be obtained from the total amounts of output and wages respectively, but the general principle underlying the various systems which have been

suggested for the payment of wages appears to be to engage as many persons as possible in the system, so that nothing short of collusion can allow of any irregularities.

The foreman should prepare, or be responsible for, the groundwork of the Wages Sheet, and this should be checked over by an independent clerk (say the cashier when handing over the money), another clerk (that is a third party) making the actual payments to the men.

Time clocks are now largely used with beneficial results. Each employee is provided with a numbered ticket, and is required to insert same in the clock on arrival and departure, the clock stamping the time of insertion automatically. Supervision is necessary to see that employees do not by collusion stamp for one another.

Where there is any ground for suspicion, it will sometimes be found advisable for a principal to pay the wages in person or for the auditors to attend unexpectedly at the Pay Table.

The system of payment of seamen's wages is regulated by the Merchant Shipping Acts 1894 and 1906.

The wages of any servant, labourer, or workman cannot be attached to satisfy a judgment.

An infant can himself sue in the County Court to recover wages due to him provided the amount does not exceed £50.

The weekly wages of a working man (should he become bankrupt) are not attachable under the Bankruptcy Act 1883.

It is provided that in the distribution of the property of a bankrupt or the assets of a company being wound up (also in the administration of the estate of a deceased insolvent) the following shall be paid in priority to all other debts:—

(1) Not exceeding one year's rates and taxes.

(2) Not exceeding four months' salary of any clerk, and not exceeding £50 in each case.

(3) Not exceeding two months' wages of labourers or workmen, and not exceeding £25 in each case.

These claims abate *pari passu* in the event of a deficiency of assets. (Preferential Payments in Bankruptcy Act 1888, and Companies (Consolidation) Act 1908, section 209.)

In the case of a company being wound up these claims are to be paid up to the date of the winding-up order, or the commencement of the winding-up, as the case may be, or up to the date of the debenture-holders taking possession, if the company is not being wound up, in priority to the claims of the holders of debentures under any floating charge created by the company. (Companies (Consolidation) Act 1908, sections 107 and 209.)

In bankruptcy and winding-up procedure, where wages are due to a number of labourers, one proof may be made for the whole of such wages by the foreman or some other person acting on behalf of the workmen. (*See title* Preferential Payments, &c.)

The Truck Acts prohibit the payment of wages in goods or in any way other than by money.

Wagon-Hire Agreements.—*See title* Hire and Purchase Agreements.

Waring, Ex parte (Rule in).—*See title* Proof in respect of Bills of Exchange.

Warranty.—A guarantee: a stipulation. With regard to contracts for the sale of goods a warranty is defined as:—"An agreement with "reference to goods which are the subject of a "contract of sale, but collateral to the *main* "*purpose* of such contract, the breach of which "gives rise to a claim for damages but *not* to a "right to reject the goods and treat the contract "as repudiated."

For convenience both warranty and condition are referred to here, but *see title* Condition.

The general rule as to contracts of sale of goods is that a person buys at his own risk, the maxim *caveat emptor* applying; a warranty as to quality or fitness for a particular purpose may, however, be expressed at the *time* of the sale, but under certain circumstances as under, a condition or warranty may be implied:—

(*a*) Where a buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that he relies upon the seller's skill or judgment, and the goods are of the description which it is in the course of the seller's business to supply, there is an implied *condition* that the goods shall be reasonably fit for such purpose (with a saving in favour of goods sold under patent or trade names). (Section 14 (1) Sale of Goods Act 1893.)

(*b*) Where goods are bought by description from a seller who deals in goods of that description there is an implied *condition* that the goods shall be of merchantable quality, but if the buyer has examined the goods there is no implied condition as regards defects which such examination *ought* to have revealed. (Section 14 (2).)

(*c*) Where goods are bought by sample there is an implied *condition* that the bulk shall correspond with the sample, that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and that the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. (Section 15 (2).)

(*d*) An implied warranty or condition as to quality and fitness for a particular purpose may be annexed by usage of trade. (Section 14 (3).)

A good illustration of section 14, subsection 2 (*supra*), is afforded in the case of *Wren v. Holt* (1903, 1 K.B., 610.) Wren frequented a certain beerhouse of Holt's for the purpose of purchasing and consuming a particular manufacture of beer which he knew was sold there. The beer which was on one occasion supplied to Wren contained arsenic and poisoned him. He brought an action to recover damages for injury to his health. The jury found that he had not relied upon the seller's skill or judgment (under section 14, subsection 1), but had asked to be supplied with beer of the description he knew was sold there, and as there was consequently an implied condition that the goods should be of a merchantable quality he recovered damages. Of course, Wren had an opportunity of examining the beer before consuming same, but the defect was not one which such an examination could reveal, for the presence of arsenic is discoverable only by chemical analysis.

Apart from the question of quality, there is an implied *warranty* in every contract for the sale of goods (unless a contrary intention is shown) that (1) the buyer shall have and enjoy quiet possession of the goods, and that (2) the goods are free from undisclosed incumbrances. (Section 12.)

Where a contract of sale is subject to a condition, the buyer may waive the condition or may elect to treat the breach of the condition as a breach of warranty. (Section 11 (1*a*).)

If a statement is merely descriptive or commendatory of the subject-matter of a contract, but is not a representation which amounts to one of the terms of the contract, it cannot be either a condition or a warranty. An innocent misrepresentation (*i.e.*, one not made fraudulently) which is not part of a contract does not give rise to an action thereon.

Waste Book.—*See title* Journal.

Wasting Assets.—*See titles* Depreciation, Profits available for Dividend, Trust Investments, Wear and Tear.

Watered Stock.—An expression signifying the addition of stock to that already issued by a company or State without any additional provision for the payment of interest on the same; or securities, the nominal value of which has been increased without a corresponding payment in cash. (*See title* Conversion of Stock.)

Way Bill.—A record of passengers or goods being carried by public conveyance.

Way-leave.—A right of way over another's land.

A way-leave under a colliery lease may be payable for the right of carrying the coal of another mine, through the demised premises:

(1) In order to be raised to the surface on other lands, or

(2) In order to be " brought to bank " on the demised premises.

Income-tax should be deducted by the payer when paying way-leaves, and accounted for to the Inland Revenue authorities, inasmuch as such way-leaves represent income to the landlord, and there is a statutory provision to the effect that income-tax thereon must be paid *at the source* and accounted for to the Revenue by the person paying over the income.

Wear and Tear.—By the Customs and Inland Revenue Act 1878, section 12, it is enacted as follows:—

" Notwithstanding any provision to the contrary contained in any Act relating to income-tax, the Commissioners . . . shall, in assessing the profits or gains of any trade, manufacture, or adventure, or concern in the nature of trade, chargeable under Schedule D, or the profits of any concern chargeable by reference to the rules of that schedule, allow such deduction as they may think just and reasonable as representing the diminished value by reason of *wear and tear during the year* of any machinery or plant used for the purposes of the concern and belonging to the person or company by whom the same is carried on."

The allowance for wear and tear is specially deducted from the assessment, *after* the profits assessable on the proper average basis have been ascertained, and is to represent the diminished value *during the year of assessment.*

For the purpose of enabling deductions for wear and tear to be allowed by the Commissioners, claims in respect of those deductions shall be included in the annual statement required to be delivered under the Income Tax Acts of the profits or gains of the concern for the purpose of which the machinery or plant is used, and the Commissioners in assessing those profits and gains shall make such allowances in respect of those claims as they think just and reasonable.

No deduction for wear and tear or repayment on account of any such deduction shall be allowed in any year if the deduction when added to the deductions allowed on that account in any previous years to the person by whom the concern is carried on will make the aggregate amount of the deductions *exceed the actual cost to that person* of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement, or reinstatement.

Where, as respects any trade, manufacture, adventure, or concern, full effect cannot be given to the deduction for wear and tear in any year, owing to there being no profits or gains chargeable with income-tax in that year, or owing to the profits or gains so chargeable being less than the deduction, the deduction or part of *the deduction to which effect has not been given*, as the case may be, shall for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear for that year and deemed to be part of that deduction, or if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for *succeeding years.* (Finance Act 1907, section 26.)

The allowance in respect of repairs and depreciation is in the hands of the District or Special Commissioners, as the case may be, and they have to decide in each case as it arises the adequacy of the deductions allowed, but in 1897 the Board of Inland Revenue—in response to a memorial of the Association of Chambers of Commerce of the United Kingdom—undertook to give instructions to surveyors, where necessary, that where a *claim* is made in respect of the *introduction of more modern machinery* in a factory, no objection is to be taken to the allowance, as a deduction from the assessable profits of the year, of so much of the cost of replacement as is represented by the *existing value* of the machinery replaced. Any excess in the cost of the new machinery over the actual present value of the old is an addition to the capital of the business, and cannot properly be regarded

as a charge upon revenue for the purposes of income-tax assessment.

For ordinary wear and tear (as distinct from obsolescence just referred to) the allowance on plant and machinery is usually at the rate of 5 per cent. per annum on the reducing value.

In regard to ships the Liverpool Commissioners of Income Tax in 1901 fixed the following basis of allowance for depreciation in 1901-2 and future years:—

3 per cent. per annum on the prime cost of sailing ships, 4 per cent. for passenger and ordinary cargo steamers, and 5 per cent. for oil tank steamers.

The Liverpool Commissioners further decided that depreciation to the extent of 97 per cent. for sailing ships and 96 per cent. for steamers is to be allowed, the "breaking up" values being considered 3 per cent. and 4 per cent. respectively, and if during any year or years the profit made is insufficient to exhaust the depreciation, the years during which depreciation will be allowed will be extended so that the full 97 per cent. or 96 per cent. may be obtained. (*See* Finance Act 1907, section 26, *supra*.) The *original* prime cost is to be used for determining the basis of depreciation, without regard to any subsequent purchase price, but the net cost of renewing engines and boilers may be *added* to the prime cost, and depreciation will then be allowed on the aggregate so obtained. The cost of ordinary repairs and renewals (exclusive of renewals of engines and boilers) is to be allowed as a deduction in the expense account.

The allowance in the case of refrigerators or refrigerating plant is to be 6½ per cent. until the original cost has been allowed.

The Liverpool Commissioners will specially consider any case coming under either of the following categories:—

(1) Where the total allowance is exhausted before the termination of the ship's life and the ship *subsequently* changes hands.

(2) Where a shipowner can prove that in consequence of special circumstances his vessel is depreciating by wear and tear more rapidly than others of a similar class.

(*See titles* Depreciation, Income Tax.)

Wharfage.—The charges payable for the use of a wharf when loading or discharging the cargo of a vessel.

Wharfinger.—A person who owns or keeps a wharf for the purpose of shipping or taking delivery of goods. He has a general lien upon goods in his possession for any moneys due to him from the owner.

Whole Life Policy.—One in respect of which the premium has to be paid during the whole life of the assured, while the sum assured is not payable until death. (*See title* Endowment Policy.)

Will.—"The legal declaration of a man's intentions, which he wills to be performed after his death."

The Wills Act 1837 provides that:—

No will (which includes a codicil) shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned (that is to say) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of *two or more witnesses* present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

The above provision is qualified by the Act of 1852, which provides that a will shall be valid if the signature shall be so placed at, or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and no will shall be affected by the circumstance that the signature shall not

follow, or be immediately after the foot, or end of the will, or by the circumstances that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause, or of the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names, or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page, or other portion of the paper, or papers, containing the will whereon no clause, or paragraph, or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page, or other portion of the same paper on which the will is written, to contain the signature.

Although no form of attestation is necessary, it is desirable and usual to state that the formalities of the Wills Act have been complied with.

Section 5 of the Statute of Frauds provides that all devises of any *lands* shall be in writing and signed by the party so devising same, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said devisor by *three* or *four* credible witnesses, or else they shall be utterly void and of none effect.

Section 3 of the Wills Act 1837 provides (*inter alia*) that it shall be lawful for every person to devise by his will, executed in manner thereinafter required, all *real* (and personal) estate which he shall be entitled to, either at law or in equity, at the time of his death, and which if not so devised *would devolve upon the heir-at-law*, or the customary heir of him, or (if he became entitled by descent) of his ancestor.

As, apparently, real estate of a testator dying *without heirs* does not come within the latter section, it has been suggested by some writers that the will of a devisor dying without heirs should be in accordance with the Statute of Frauds and attested by three or four credible witnesses, for the provisions of the latter Act (by section 2 of the Act of 1837) still subsist as to wills to which the Act of 1837 does not extend.

If any person attests a will containing any bequest, or devise to, or conferring any interest upon him or her, or the wife or husband of such person, the directions in the will in that respect will be "utterly null and void," but the fact that a will has been attested by a person beneficially interested will not otherwise affect the validity of the document. This provision does not apply to a creditor of the testator, nor to a person by reason only of his being named an executor in the will.

The signatures of either the testator and/or the witnesses may be made by a mark, whether he or they can write or not.

No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or some other part of the will.

Everyone, except those under disability, may make a will, and disability may arise from infancy, idiocy, or lunacy. Ordinarily a person under twenty-one years of age cannot make a will, but any soldier being in active military service, or any mariner being at sea, may dispose of his personalty by will, irrespective of age; in fact, under these circumstances, soldiers and sailors may still make a will verbally before witnesses, so as validly to dispose of personal estate. A lunatic may make a valid will during a lucid interval.

Apart from the foregoing, a will is void which has been obtained by force, fear, or undue influence.

Every will shall be construed, with reference to the real estate and personal estate comprised in it, to " speak " and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Revocation.—A will is always revocable, even though the testator may declare it to be irrevocable.

Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not, in default of such appointment, pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next-of-kin, under the statute of distributions).

No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances. No will or codicil, or any part thereof, shall be revoked except as aforesaid, or except by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or except by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence, and by his direction, with the intention of revoking the same.

Revival.—No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

Every will and other testamentary instrument made *out of the United Kingdom* by a British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall as regards *personal estate*, be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of His Majesty's dominions where he had his domicile of origin.

With regard to real estate, the position is not quite clear, for the Act refers only to personalty, and it might be suggested that, under similar circumstances, there would be an intestacy as to realty, but the better opinion seems to be that as regards realty also a will executed outside the United Kingdom will be good if executed in accordance with the formalities required by the Wills Act.

Every will and other testamentary instrument made *within the United Kingdom* by a British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his or her death) shall, as regards *personal estate*, be held to be well executed, and shall be admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where the same is made.

No will or other testamentary instrument shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered by reason of any *subsequent* change of domicile of the person making the same.

A depository for the safe custody of wills and codicils of living persons has been provided at Somerset House. Wills and codicils enclosed in sealed envelopes are received by the Registrars at the principal or any district registry, and placed in, or forwarded to, the depository upon compliance with the prescribed regulations, and payment of a fee of 12s. 6d. Envelopes for wills, with the necessary indorsements and forms of

affidavits, may be obtained on application at the principal registry above-mentioned. (*See titles* Accumulation of Income, Administration, Letters of, Administration of Assets, Codicil, Distribution (Statutes of), Estate Duty, Executor, Free of Duty, Land Transfer Act, Legacy, Locke King's Act, Maintenance, Married Woman, Probate, Trust Investments, Trusts.)

Winding-up.—The legal process by which an estate is collected and distributed. The term is most frequently applied to the process whereby the assets of a joint-stock company, which may or may not be insolvent, are distributed amongst those entitled thereto, and the company formally dissolved.

Procedure.—There are three methods of winding up a company, viz.:—(1) By the Court, (2) Under supervision of the Court, and (3) Voluntarily.

Where the amount of the share capital of a company paid up or credited as paid up exceeds £10,000 a petition to wind up the company must be presented to the High Court, or, in the case of a company whose registered office is situate within the jurisdiction of the Chancery Courts of the Counties Palatine of Lancaster or Durham, either to the High Court or to the Palatine Court having jurisdiction.

Where the amount of the share capital of a company paid up or credited as paid up does not exceed £10,000, 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. (Companies (Consolidation) Act 1908, section 131.)

Commencement.—The 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. (Section 139.)

A voluntary winding-up is deemed to commence at the time of the passing of the resolution authorising the winding-up (section 183), that is, in the case of a special resolution, the date of the confirmatory meeting, but if a compulsory order is made by the Court after the commencement of a voluntary winding-up, the winding-up *recommences* as from the date of the presentation of the petition to the Court.

Where a supervision order is made it merely *continues* a voluntary winding-up, and accordingly the proceedings are deemed to have commenced with the voluntary winding-up.

Conclusion.—Winding-up proceedings, where conducted by the Court, are concluded and the company is dissolved from the date of an order of the Court to that effect.

A voluntary winding-up is concluded when the liquidator has distributed all the assets and laid an account of the liquidation before the final meeting of members. Within one week after the meeting the liquidator must make a return to the Registrar of Companies of the holding of the meeting and of its date. 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 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. (Section 195.)

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. (Section 223.)

It shall be the duty of the person on whose application any such order deferring the date of, or declaring void, the dissolution was 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 fine not exceeding five pounds for

every day during which the default continues. (Sections 195 and 223.)

For the purpose of the statements required to be forwarded by the liquidator to the Registrar of Joint Stock Companies under Section 224 of the Act, the respective liquidations are *deemed to be concluded* as under:—

(1) *Winding-up by the Court.*—At the date on which the order dissolving the company has been *reported* by the liquidator to the Registrar, or at the date of the order of the Board of Trade releasing the liquidator pursuant to section 157 of the Act.

(2) *Winding-up voluntarily or under supervision.*—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. (Winding-up Rules 1909, Rule 188.)

The term "winding-up" is also used in connection with the realisation and distribution of the assets of a limited partnership.

In the event of the dissolution of a limited partnership, the affairs of the firm shall be wound up by the general partners unless the Court otherwise orders. (Limited Partnerships Act 1907, section 6 (3).)

Section 268 of the Companies (Consolidation) Act 1908 provides that:—

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.

The Limited Partnerships (Winding-up) Rules 1909 made under the foregoing section provide *inter alia* as follows:—

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, shall apply to the winding-up by the Court of limited partnerships subject to the modifications following, that is to say:—

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."

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.

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.

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 of 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.

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 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.

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.

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 partner-

ship, and shall for that purpose have all the powers of the prescribed officer of the High Court.

8. The provisions of section 137, subsection (1), paragraphs (*a*) and (*b*), and subsection (3) of the Act shall not apply.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

(*See titles* Arrangements [Joint Stock Companies], Calls, Contributory, Liquidator, Liquidators' Accounts, Petition to Wind up a Company, Resolution, Supervision Order, Voluntary Liquidation, &c., &c.)

Winding-up Order.—*See titles* Supervision Order, Winding-up.

Without Prejudice.—A phrase used when negotiating for a compromise of some dispute, negativing all waiver of rights in the event of the offers of settlement proving ineffectual.

Negotiations commenced "without prejudice" are all without prejudice notwithstanding the omission of the phrase from future correspondence. But a written notice, if it amounts to an act of bankruptcy, will be admissible as evidence of such even though it be expressed to be "without prejudice." (*Re Daintrey*, 1893, 2 Q.B. 116.)

Without Recourse to Me (*or Sans Recours*).—*See title* Indorsement.

Working Account.—A Manufacturing Account, and sometimes a Trading Account, is called a Working Account. (*See titles* Gross Profit and Manufacturers' Accounts.)

Working Capital.—*See title* Capital.

Work in Progress.—*See title* Incomplete Work.

Workmen's Compensation.—The principal statutes relative to the liability of employers to their employees for injuries to the latter in the course of and arising out of their employment are the Employers' Liability Act 1880 and the Workmen's Compensation Act 1906.

The Workmen's Compensation Act 1906, which came into operation on 1st July 1907, repealing the Acts of 1897 and 1900, gives to employees the right to claim compensation from their employers for personal injuries sustained and certain specified industrial diseases contracted in the course of their employment, provided. however, that the injury disables them for a period of at least one week from earning full wages.

This Act constitutes a material advance on those superseded. and though not of universal application is very comprehensive. The only employees excepted are:—

(1) Persons employed otherwise than by way of manual labour whose remuneration exceeds £250 per annum.

(2) Persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business.

(3) Members of a police force.

(4) Outworkers, *i.e.*, persons to whom work is given to be done in their own homes or other premises not controlled by the employer.

(5) Members of the employer's family dwelling in his house.

(6) Persons in the naval or military service of the Crown.

The amount of compensation payable by the employer may be stated generally as follows:—

(*a*) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding 50 per cent. of the employee's average weekly earnings calculated in accordance with the first schedule to the Act, such weekly payment not to exceed £1.

Provided, however, that if an injured employee, *who is totally incapacitated*, is under 21 years of age at the time of injury, and his average weekly earnings are less than 20s., he shall be paid the full amount of the average up to 10s. per week, and that in any case where the employee is a minor at the date of the injury, the amount of the weekly payment *may* be increased after twelve months' disablement to 50 per cent. of the weekly sum he would probably have then earned but for the accident, but not in any case exceeding £1.

(*b*) Where death results from the injury—

(1) If there are dependants *wholly* dependent on the deceased's earnings, a sum equal to his earnings, actual or estimated, as the case may be, in accordance with the first schedule to the Act, during the three years preceding the injury, or the sum of £150, whichever is the larger, but not exceeding in any case £300: provided that the amount of any weekly payments under paragraph (*a*) above shall be deducted from such sum.

(2) If the employee leaves dependants *partially* dependent upon him a sum to be determined by agreement, or in default, by arbitration, under the Act.

(3) If he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding £10.

If any question arises in any proceedings under the Act as to the liability to pay compensation under the Act, or as to the amount or duration of compensation under the Act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to the Act, be settled by arbitration in accordance with the second schedule to the Act.

A weekly payment or a sum paid by way of redemption thereof shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

The following section (5) of the Act is of special importance to accountants:—

(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman then, in the event of the employer becoming bankrupt, *or making a composition or arrangement with his creditors*, or if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding-up of companies, be transferred to and vest in the workman; and upon any such transfer the insurers shall have the same rights and remedies, and be subject to the same liabilities as if they were the employer, so, however, that the

insurers shall not be under any *greater* liability to the workman than they would have been under to the employer.

(2) 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 bankruptcy or liquidation.

(3) There shall be included among the debts which, under section 1 of the Preferential Payments in Bankruptcy Act 1888, and section 4 of the Preferential Payments in Bankruptcy (Ireland) Act 1889, are in the distribution of the property of a bankrupt, ... to be paid in priority to all other debts, the amount *not exceeding* in any individual case *one hundred pounds*, due in respect of any compensation the liability wherefor accrued before the date of the receiving order . . . . and those Acts . . . . shall have effect accordingly. 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 this Act.

Note.—The preferential debts payable in the distribution of the assets of a company being wound up include, 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 prescribed date, subject nevertheless to the provisions of section 5 of that Act. (Companies (Consolidation) Act 1908, section 209.) (*See title* Preferential Payments in Bankruptcy and Winding-up.)

(4) . . . . . .

(5) The provisions of this section with respect to preferences and priorities *shall not apply* where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

Note.—It would appear that where the liability of the insurer to the employer is not so great as that of the employer to the workman, the last-named, having regard to subsection 5, may be in a worse position than if his employer had not insured at all, *e.g.*, if the liability of the employer to the workman were £100, and the former is only insured to the extent of £50, the workman would get £50 from the insurer and prove as a non-preferential creditor for the balance; whereas if his employer had *not* insured he would be a preferential creditor for the whole £100, and (subject to assets) would be paid in full.

The Assurance Companies Act 1909 applies to companies transacting employers' liability insurance business. (*See title* Assurance Companies Act 1909.)

Writing-Down Assets.—The term given to the process of reducing the *book value* of assets. It may have a wider effect than the practice of merely providing for wear and tear and depreciation, in so far as assets may be written down to a given amount, or written off altogether (irrespective of their actual value) as a prudential measure. (*See title* Reserves and Reserve Funds (Secret Reserves).)

Writing-Up Assets.—The term given to the process of increasing the "book value" of assets, upon the assumption that they have improved in value, although the alleged increase has not been actually realised. This is not a practice to be recommended, particularly in the case of a joint-stock company, but an auditor cannot prevent the directors of a company from increasing the book values of their assets in a *bonâ fide* manner. The "profit" resulting from such an increase in values would not be available for dividend where the regulations provided for the distribution of "*realised profits*" (*q.v.*). But in the case of the

Natal Land Co. the company credited the Profit and Loss Account in the year 1882 with a sum of about £70,000 in respect of an increased value *attributed* to their lands in South Africa, over and above the cost price of such lands at which they had previously stood in the company's books, and by so doing neutralised the effect of a bad debt of a somewhat similar amount which had been written off to the debit of the Profit and Loss Account, and also practically balanced the profit and loss of the company as at a given date. A profit having been subsequently earned a dividend was declared thereout in 1886. The Court was asked to restrain the payment of such dividend on account of the *increased book value* of the assets already referred to, same being in excess of the *true value* of the lands in question at the time of declaring the dividend. The Court held that, "assuming that a part of the capital "had in fact been lost, and not subsequently "made good, no sufficient ground was thereby "afforded for restraining the payment of the "dividend; that the fact of the company having "written up the value of their land in 1882 and "credited the increase to the profit of that year "in the manner described, did not place them "under any obligation to bring into account in "every subsequent year the increase or decrease "in the value of their lands; and that, having "regard to the case of *Lee v. Neuchâtel "Asphalte Co.*, it was not correct, in estimating "the profits of a year, to take into account the "increase or decrease in the value of the capital "assets of the company." (*Bolton v. Natal Land Co.*, 1892, 2 Ch. 124.)

Y

Yearly Tenancy.—A tenancy from year to year, or yearly tenancy, is constituted by a letting which is liable to be terminated at the end of the first or any following year, by either landlord or tenant, by a notice to quit, which is a six months' notice, expiring with the current year.

Thus, a yearly tenancy commencing 1st January 1899, is determinable by a notice given any time up to 30th June 1899, which notice would expire on 1st January 1900, when the tenancy would terminate; but if the notice were not given by, at latest, 30th June 1899, the tenancy could not end until 1st January 1901, and then only if six months' prior notice had been given. In the absence of any notice, the tenancy may continue for any number of years, until the tenant gives up his interest or the landlord's title expires.

Death would not, of itself, be sufficient to terminate the tenancy, but in the event of death the notice must be given to or by the parties for the time being entitled to the term or the reversion, as the case may be. A tenancy "for one year certain, and so on from year to year," is a tenancy for two years certain; but a tenancy for "a year" or for "one year certain" is good for one year, and requires no notice at the end of the year. A tenant for a certain term who remains in possession after the end of his lease, and continues or agrees to pay the same rent, is a yearly tenant on the same conditions as those in the lease, so far as applicable to a yearly tenancy, but only in the absence of any agreement to the contrary.

2/- Net.